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7 *Attorneys for Receiver Geoff Winkler*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 vs.

14 CAPSOURCE, INC., STEPHEN J. BYRNE, AND
15 GREGORY P. HERLEAN, .

16 Defendants.

CASE NO. 2:20-CV-02303-RFB-DJA

**RECEIVER’S MOTION FOR
ORDER AUTHORIZING RECEIVER
TO EMPLOY TAX
PROFESSIONALS**

17 Geoff Winkler, the Court-appointed Receiver (the “Receiver”), respectfully submits this
18 Motion for an Order Authorizing the Receiver to Employ Tax Professionals.

19 The Motion is based upon the Memorandum of Points and Authorities below, the
20 Declaration of Jere G. Shawver attached as **Exhibit 1**, the pleadings and papers on file, and any
21 further arguments and evidence the Court may hear.

22 DATED this 21st day of February, 2023.

23 **GREENBERG TRAUIG, LLP**

24 By: */s/ Kyle A. Ewing*

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Nevada Bar No. 7743
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Attorneys for Receiver Geoff Winkler

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On August 26, 2022, the Court entered an order appointing Geoff Winkler of American Fiduciary Services LLC to serve as the Receiver for the estate of Defendant CapSource, Inc. (ECF No. 17) (the “Appointment Order”). To assist in the performance of his duties under the Appointment Order, the Receiver seeks to employ the firm of Baker Tilly US, LLP (“Baker Tilly”) to provide tax, accounting, and advisory services.

Considering the breadth and complexity of the tax and accounting at issue in this matter, and as contemplated by Paragraph 6(F) of the Appointment Order, the employment and assistance of Baker Tilly is necessary to adequately carry out the Receiver’s duties and responsibilities thereunder. As a result, the Receiver has, *subject to this Court’s approval*, engaged Baker Tilly to provide tax, accounting and advisory services.

II. RELEVANT BACKGROUND

The Securities and Exchange Commission filed the Complaint in this action on December 21, 2020, alleging violations of the securities laws.¹ The SEC sought permanent injunctions against each of the Defendants, enjoining each of them from future violations of the securities laws described in the Complaint, disgorgement of all their ill-gotten gains from the unlawful activity set forth in the Complaint, together with prejudgment interest, and civil penalties against each of the Defendants under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and equitable relief with regard to enforcing the judgments it sought.²

Contemporaneously with filing its Complaint, the SEC submitted a joint motion for stipulated final judgments as to all Defendants.³ On May 5, 2021, the Court entered Judgment as to CapSource, Byrne, and Herlean. (*See* ECF Nos. 7-9). On March 21, 2022, the SEC submitted its Motion to Appoint Receiver over Defendant CapSource, Inc.⁴ On August 26, 2022, having

¹ (ECF No. 1).

² (ECF No. 1, p. 22).

³ (*See* ECF No. 2, pp. 1-2).

⁴ (*See* ECF No. 12).

1 found that “the appointment of a receiver in this action is necessary and appropriate for the
 2 purposes of marshaling and preserving all assets of the Defendant CapSource, Inc.,” the Court
 3 granted the SEC’s motion and appointed Mr. Winkler as Receiver for CapSource.⁵

4 III. LEGAL ARGUMENT

5 A. Legal Standard.

6 “The power of a district court to impose a receivership . . . derives from the inherent power
 7 of a court of equity to fashion effective relief.”⁶ The “primary purpose of equity receiverships is
 8 to promote orderly and efficient administration of the estate by the district court for the benefit of
 9 creditors.”⁷ To accomplish the orderly and efficient administration of a receivership estate, the
 10 district court holds broad discretion in determining the appropriate steps to be taken, including
 11 authorizing the receiver’s employment of attorneys, professionals, and others:

12 “A district court’s power to supervise an equity receivership and to
 13 determine the appropriate action to be taken in the administration of the
 14 receivership is extremely broad. The district court has broad powers and
 15 wide discretion to determine the appropriate relief in an equity receivership.
 16 The basis for this broad deference to the district court’s supervisory role in
 equity receiverships arises out of the fact that most receiverships involve
 multiple parties and complex transactions.”⁸

17 Based on this framework, the Ninth Circuit will “generally uphold reasonable procedures instituted
 18 by the district court that serve this purpose.”⁹

19 Accordingly, this Court holds the inherent power to permit the Receiver to employ persons,
 20 including tax professionals and accountants, to assist him in carrying out his duties and
 21 responsibilities. Further, paragraph 6(F) of the Appointment Order permits the Receiver to:

22 “engage and **employ persons in his discretion** to assist him in carrying out
 23 his duties and responsibilities hereunder, **including, but not limited to,**
 24 **accountants**, attorneys, securities traders, registered representative,

25
 26 ⁵ (See ECF No. 17).

27 ⁶ *S.E.C. v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980).

28 ⁷ *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986).

⁸ *S.E.C. v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (internal citations omitted).

⁹ *Hardy*, 803 F.2d at 1038; see also *CFTC v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999).

1 **financial or business advisers**, liquidating agents, real estate agents,
2 forensic experts, brokers, traders or auctioneers.”¹⁰

3 The Appointment Order also directs the Receiver to, among other things, use reasonable
4 efforts to determine the nature, location and value of all property interests of the Receivership
5 Defendant,” “take custody, control and possession of all [such] Receivership Property,” and “use
6 [such] Receivership Property for the benefit of the Receivership Estates”¹¹ Thus, a primary
7 point of focus of the Receiver is to ensure that all assets derived from the Ponzi-scheme alleged in
8 the Amended Complaint are preserved with the goal of establishing a fund sufficient to provide
9 redress for those victimized by the Defendants’ acts. To accomplish this goal, the Receiver is to
10 identify, locate, and take possession of all monies, funds, securities, credits, effects, goods,
11 chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits,
12 dividends, interest or other income.¹² Moreover, the Receiver is to manage said assets, which
13 includes listing for sale or lease real or personal property of the Receivership Estate and taking all
14 steps necessary to maintain the business operations of the Receivership Estate.¹³ Additionally, the
15 Receiver is to “take all necessary steps to enable the Receivership Funds to obtain and maintain
16 the status of a taxable ‘Settlement Fund,’ within the meaning of Section 468B of the Internal
17 Revenue Code.”¹⁴ Given the scale of assets at issue in this case, the expertise of a tax professionals
18 is necessary to ensure tax compliance in all such transactions and other business.

19 Approval of persons or entities, including accounting firms, is a matter properly within this
20 Court’s power to promote the orderly and efficient administration of the receivership estate for the
21 benefit of the creditors.¹⁵ In this case, the Appointment Order expressly permits the Receiver to
22 retain persons and entities, including accountants, to assist him in carrying out the duties and
23 responsibilities set forth, and a tax professional is necessary because of the complexity of issues
24

25 ¹⁰ (ECF No. 17 at ¶ 7(F)) (emphasis added).

26 ¹¹ (ECF No. 17 at pp. 2-3 ¶ 6(A)-(D)).

27 ¹² (*Id.* at ¶ 6(A)).

28 ¹³ (*Id.* at ¶¶ 35-38).

¹⁴ (*Id.* at ¶ 38).

¹⁵ See e.g., *SEC v. Capital Cove Bancorp LLC*, No. 8:15-cv-00980-JLS-JCX, 2017 U.S. Dist. LEXIS 235479, at *7 (C.D. Cal. Mar. 16, 2017) (granting the receiver’s motion to employ tax accounting firm).

1 related to the management and disposition of such assets. Accordingly, the Court should exercise
2 its inherent power to approve the Receiver’s employment of a tax professional to assist him in
3 carrying out his duties under the Appointment Order.

4 **B. Employment and Compensation of Baker Tilly.**

5 The Receiver has determined, in his reasonable business judgment, that the employment of
6 Baker Tilly is appropriate given the scale of assets at issue in this case and the complexity of tax
7 implications relating to the same. Baker Tilly will assist the Receiver in, among other things,
8 (a) reviewing and evaluating historical accounting, tax, and other records relating to the
9 receivership and its entities; (b) preparing tax report for receivership entities as requested and
10 required; (c) any other account and tax advisory services requested by the Receiver, including, but
11 not limited to potential expert witness testimony; and (d) such other services as may be requested
12 by the Receiver and permitted by this Court.¹⁶

13 Baker Tilly was chosen by the Receiver based on its expertise and experience. Baker Tilly
14 is a top ten global advisory, tax, and assurance firm that has been operating for more than ninety
15 (90) years.¹⁷ Baker Tilly will be providing services at discounted rates that are also utilized in
16 bankruptcy and insolvency matters.¹⁸ Baker Tilly anticipates staffing this matter with experienced
17 insolvency accountants including those identified below at the discounted rates identified:

- 18 • Stacy Elledge Chiang, Director at \$395/hour;
- 19 • Eileen Castle, Senior Manager at \$350/hour;
- 20 • Nicole Calvillo, Manager at \$225/hour.¹⁹

21 Baker Tilly further plans to utilize other professionals as needed based on the following
22 billing rates by professional level²⁰:

23 ///

24 ///

25 _____
26 ¹⁶ See Declaration of Jere G. Shawver attached as **Exhibit 1** (the “Shawver Decl.”) at ¶ 7 and copy of Baker
Tilly engagement letter attached thereto.

27 ¹⁷ *Id.* at ¶ 6.

28 ¹⁸ *Id.* at ¶ 7.

¹⁹ *Id.*

²⁰ *Id.* at ¶ 8.

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POSITION	HOURLY RATE
Managing Directors, Principals, and Partners	\$400-\$695
Senior Managers and Directors	\$250-\$430
Managers	\$230-\$360
Senior Consultants	\$210-\$320
Staff Consultants	\$150-\$270
Paraprofessionals	\$95-\$260

As a term of its engagement, Baker Tilly has agreed to accept compensation only as approved by this Court.²¹ Baker Tilly has acknowledged that its fees and expenses are governed by any orders entered by this Court with regard to professional compensation, including, but not limited to interim holdbacks on fees and expenses and that Baker Tilly will only be paid after approval by and authorization from this Court.²² Baker Tilly will also work with the Receiver to ensure proper and timely filing of all fee requests.²³

As a term of engagement, Baker Tilly evaluated any potential conflicts of interests and affirmatively determined that it could perform the work requested free of any conflict of interest.²⁴

IV. CONCLUSION

For the foregoing reasons, the Receiver respectfully requests this Court enter an Order authorizing the Receiver to employ Baker Tilly in accordance with the terms described herein.

DATED this 21st day of February, 2023.

GREENBERG TRAUIG, LLP

By: /s/ Kyle A. Ewing

KARA B. HENDRICKS

Nevada Bar No. 7743

KYLE A. EWING

Nevada Bar No. 14051

CHRISTIAN T. SPAULDING

Nevada Bar No. 14277

Attorneys for Receiver Geoff Winkler

²¹ **Exh. 1**, Shawver Decl. at ¶ 9.

²² *Id.*

²³ *Id.* at ¶ 10.

²⁴ *Id.* at ¶ 11.

CERTIFICATE OF SERVICE

I hereby certify that, on the 21st day of February, 2023, a true and correct copy of the foregoing **RECEIVER’S MOTION FOR ORDER AUTHORIZING RECEIVER TO EMPLOY TAX PROFESSIONALS** was filed electronically via the Court’s CM/ECF system. Notice of filing will be served on all parties by operation of the Court’s CM/ECF system, and parties may access this filing through the Court’s CM/ECF system.

/s/ Evelyn Escobar-Gaddi
An employee of GREENBERG TRAUIG, LLP

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INDEX OF EXHIBITS	
EXHIBIT	DESCRIPTION
Exhibit 1	Declaration of Jere G. Shawver
	Exhibit A Baker Tilly Engagement Agreement

EXHIBIT 1

EXHIBIT 1

Declaration of Jere G. Shawver

1 KARA B. HENDRICKS, Bar No. 7743
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9 *Attorneys for Receiver Geoff Winkler*

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 SECURITIES AND EXCHANGE
13 COMMISSION,

CASE NO. 2:20-CV-02303-RFB-DJA

14
15 Plaintiff,

**DECLARATION OF JERE G.
SHAWVER IN SUPPORT OF
RECEIVER’S MOTION FOR ORDER
AUTHORIZING RECEIVER TO
EMPLOY ACCOUNTING FIRM**

16 vs.

17
18 CAPSOURCE, INC., STEPHEN J. BYRNE,
19 AND GREGORY P. HERLEAN, .

20 Defendants.
21

22 **DECLARATION OF JERE G. SHAWVER IN SUPPORT OF RECEIVER’S MOTION**
23 **FOR ORDER AUTHORIZING RECEIVER TO EMPLOY ACCOUNTING FIRM**

24 I, Jere G. Shawver, declare as follows:

- 25 1. I am a Managing Partner-Assurance and Risk for Baker Tilly US, LLP (“Baker
26 Tilly”).
27 2. I make this declaration in support of the Receiver’s Motion for Order Authorizing
28 Receiver to Employ Tax Professionals (the “Motion”).

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1 3. I have personal knowledge of the following facts and am competent to testify
 2 thereto if necessary.

3 4. On or around January 25, 2023, the Receiver executed an engagement letter
 4 outlining the scope and terms of services Baker Tilly proposes to provide in this case. A true and
 5 correct copy of which is attached as **Exhibit A**.

6 5. Upon approval from this Court, Baker Tilly will assist the Receiver in, among other
 7 things: (a) reviewing and evaluating historical accounting, tax and other records relating to the
 8 receivership estate and its entities; (b) preparing tax report for receivership entities as requested
 9 and required; (c) any other account and tax advisory services requested by the Receiver, including,
 10 but not limited to potential expert witness testimony; and, (d) such other services as may be
 11 requested by the Receiver and permitted by this Court.

12 6. Baker Tilly is a top ten global advisory, tax and assurance firm which has been
 13 operating for more than ninety (90) years.

14 7. Baker Tilly will utilize its bankruptcy and insolvency rates, which are lower than
 15 our standard rates for non-bankruptcy/insolvency matters, for the engagement team and anticipates
 16 staffing this matter with experienced insolvency accountants including: Stacy Elledge Chiang,
 17 Director at \$395/hour; Eileen Castle, Senior Manager at \$350/hour; and Nicole Calvillo, Manager
 18 at \$225/hour.

19 8. Baker Tilly further plans to utilize lower-billing rate professionals as needed based
 20 on the following billing rates by professional level:

POSITION	HOURLY RATE
Managing Directors, Principals, and Partners	\$400-\$695
Senior Managers and Directors	\$250-\$430
Managers	\$230-\$360
Senior Consultants	\$210-\$320
Staff Consultants	\$150-\$270
Paraprofessionals	\$95-\$260

21
 22
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 26 9. As a term of its engagement, Baker Tilly has agreed to accept compensation only
 27 as approved by this Court. Baker Tilly has acknowledged that its fees and expenses are governed
 28 by any orders entered by this Court with regard to professional compensation, including, but not

1 limited to interim holdbacks on fees and expenses and that Baker Tilly will only be paid after
2 approval by and authorization from this Court.

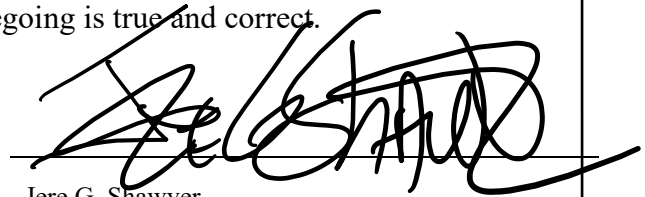
3 10. Baker Tilly will also work with the Receiver to ensure proper and timely filing of
4 all fee requests.

5 11. As a term of engagement, Baker Tilly evaluated any potential conflicts of interests
6 and affirmatively determined that it could perform the work requested free of any conflict of
7 interest. However, in the interest of full disclosure, Baker Tilly notes that it has previously
8 provided services to the Receiver in his capacity as receiver for the SEC in unrelated matters.
9 Further, Baker Tilly provides or has provided services to mutual clients of the Receiver’s counsel’s
10 law firm Greenberg Traurig, LLP.

11 12. To the best of my knowledge, neither Baker Tilly, nor any of its employees hold an
12 interest or represent any interest adverse to the parties in this matter, or the Receivership Entities
13 and their assets, and have no prior connections with any party.

14 I declare under penalty of perjury that the foregoing is true and correct.

15 DATED this 20 day of February, 2023.



Jere G. Shawver

Declarant

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(702) 792-9002 (fax)

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EXHIBIT A

EXHIBIT A

Baker Tilly Engagement Agreement



Baker Tilly US, LLP
3655 Nobel Drive, Suite 300
San Diego, CA 92122

+1 (858) 597 4100
bakertilly.com

January 22, 2023

Geoff Winkler, Receiver
American Fiduciary Services LLC
715 NW Hoyt Street #4364
Portland, Oregon 97208

RE: *Securities and Exchange Commission v. CapSource, Inc., Stephen J Byrne, and Gregory P. Herlean.*

Dear Mr. Winkler:

Thank you for the opportunity to provide accounting, tax and advisory services on your behalf as the duly appointed Receiver ("Client" or "Receiver") with respect to the litigation matter *Securities and Exchange Commission v. CapSource, Inc., et al.* ("Matter"). This letter ("Engagement Letter") and the attached *Standard Terms and Conditions* confirm the understanding and agreement between Baker Tilly US, LLP ("Baker Tilly") and Client with regard to the advisory, consulting and potential testimonial services Baker Tilly will provide. Stacy Elledge Chiang will lead this engagement on behalf of Baker Tilly.

SCOPE OF SERVICES

1. In your capacity as Receiver, you have asked that Baker Tilly provide services to assist you with the completion of your duties. These tasks may include, but are not limited to:

- a. Review and evaluate historical accounting, tax and other records relating to the receivership and its entities;
- b. Prepare tax reporting for receivership entities as requested and required;
- c. Any other accounting and tax advisory services requested by the Client, including, but not limited to potential expert witness testimony; and,
- d. Such other services as may be requested by the Receiver and permitted by the United States District Court for the District of Nevada ("Court").

2. If expert witness testimony is required in this Matter, the subject and scope of any such testimony will be subject to Client's direction; however, Client understands that Baker Tilly shall undertake all work we deem necessary to deliver such advisory, consulting and testimonial services.

3. Furthermore, Client understands that the professional conclusions reached regarding this Matter are those of the Baker Tilly professionals. Accordingly, Baker Tilly has not and cannot predict what conclusions the Baker Tilly professionals will reach concerning the specific questions or issues for which Stacy Elledge Chiang's opinion testimony may be requested.

Geoff Winkler, Receiver
 American Fiduciary Services LLC
 January 22, 2023
 Page 2

4. Client additionally agrees not to schedule any depositions or trial testimony for Stacy Elledge Chiang or any Baker Tilly employee without first consulting with Stacy Elledge Chiang or the Baker Tilly employee to ensure availability.

5. Client will make available to Baker Tilly the documents necessary for our professionals to complete all requested services. Should we determine that additional documents are necessary, we will make all requests for such records to Client.

CONFLICTS OF INTEREST

6. Client has requested that Baker Tilly determine if any work currently being performed by Baker Tilly would pose a conflict with the work that is the subject of this Engagement Letter. As of the date of this Engagement Letter, we have determined that we can perform the work contemplated herein, free of any conflict of interest.

7. During the course of this engagement, Client agrees to inform Baker Tilly of additional parties to the dispute or name changes for those parties provided to the extent such additional parties or name changes come to the attention of the Client's attorneys working with us on this engagement. Should this information or any other circumstance that comes to our attention have the potential to change our prior conclusion with regard to a conflict of interest, we will advise Client as soon as possible.

FEES AND BILLING ARRANGEMENTS

8. Our fees are based upon the hours actually expended by each engagement team member at each member's applicable hourly billing rate. Baker Tilly will utilize its standard bankruptcy/insolvency rates for the engagement team working on this Matter. Our hourly billing rates by professional level for the personnel to be assigned to the Matter for these services are:

Position	Hourly Rate
Managing Directors, Principals, and Partners	\$400 - \$695
Senior Managers and Directors	\$250 - \$430
Managers	\$230 - \$360
Senior Consultants	\$210 - \$320
Staff Consultants	\$150 - \$270
Paraprofessionals	\$95 - \$260

9. In the normal course of business, Baker Tilly annually revises its hourly rates. Client understands that, to the extent allowed by the Court, the hourly rates charged for the work on this engagement will reflect the hourly rates in effect at the time services are rendered.

10. Client agrees to reimburse Baker Tilly for any reasonable and documented out-of-pocket expenses, including, without limitation, travel, photocopying, delivery services, postage, vendor changes and other reasonable and documented out-of-pocket expenses incurred in

Geoff Winkler, Receiver
American Fiduciary Services LLC
January 22, 2023
Page 3

providing professional services. Additionally, payment for such expenses shall be made only after approval by and authorization from the Court.

11. Baker Tilly acknowledges that its fees and expenses in the Matter are governed by any orders entered by the Court with regard to professional compensation, including, but not limited to interim holdbacks on fees and expenses. Baker Tilly agrees to accept compensation as awarded by the Court. In the event of a dispute under this agreement, the Court will have sole and exclusive jurisdiction to resolve such dispute.

12. Our fees and expenses are not contingent or conditioned upon the specific advice, conclusions, opinions or testimony rendered in this Matter. We do not predict or guarantee any result or resolution in this Matter. We will meet with Client regularly to discuss its ongoing work and associated fees and will communicate our progress to Client.

13. Client agrees that invoices need only contain general time descriptions in blocks of daily or weekly increments.

14. Invoices will be presented periodically, typically following completion of tax returns, and are due upon presentation. Client, in his capacity as Receiver, shall be responsible for paying our fees and expenses in connection with this engagement using receivership estate funds. Invoices will be sent to Client. Only Client, in his capacity as Receiver, shall be responsible for payment of invoices or amounts due pursuant to this engagement. If a fee application or similar court filing is required, Client will work with Baker Tilly to ensure proper and timely filing of such fee request.

15. Baker Tilly reserves the right to halt further services until payment is received on past-due invoices. We must be paid in full for all work performed to date prior to issuance of a report, deposition testimony or trial testimony.

16. Baker Tilly shall be compensated for any time and expenses (including, without limitation, any fees and expenses of one law firm serving as legal counsel) that may be incurred in connection with this engagement, including, without limitation, considering or responding to discovery requests or other requests for documents or information, participating as a witness or otherwise in any legal, regulatory or other proceedings, or defending Baker Tilly's retention or performance of services hereunder.

OTHER MATTERS

17. The Client agrees to prepare and file any papers necessary in Court to ensure Baker Tilly is properly retained in the Matter. Further, the Client agrees to take the steps necessary to notify Baker Tilly to prepare any papers to be filed by the Client necessary to ensure that Baker Tilly is paid in the Matter.

18. To the extent of any inconsistency between the terms of this Engagement Letter and the Standard Terms and Conditions, the terms of this Engagement Letter shall govern.

Geoff Winkler, Receiver
American Fiduciary Services LLC
January 22, 2023
Page 4

Client acknowledges their respective agreement with the terms stated herein and acknowledge that they have reviewed and agreed to be bound to the terms of this Engagement Letter and the attached Standard Terms and Conditions, as evidenced by their respective signature below, which may be executed in multiple counterparts. Please return to me the signed copy of this Engagement Letter by facsimile or portable document format ("pdf"). Facsimile and pdf signatures shall be deemed original, binding signatures.

We appreciate the opportunity to work with you. Should you have any questions, please do not hesitate to contact me at (858) 597-4100.

Very truly yours,

Baker Tilly US, LLP


By:



Stacy Elledge Chiang, Director

Acceptance by Receiver

The above Engagement Letter and the attached *Standard Terms and Conditions* confirm our understanding of the services which Baker Tilly US, LLP will perform relating to the above referenced matter and the fee arrangement and our understanding and agreement to the terms of the Engagement Letter and the attached *Standard Terms and Conditions*.

Accepted by: 
Geoff Winkler, Receiver

Date: January 22, 2023

Baker Tilly US, LLP

Consulting Standard Terms and Conditions

1. Services. It is understood and agreed that while Baker Tilly US, LLP's ("Baker Tilly") services may include advice and recommendations, all decisions in connection with the use thereof shall be the responsibility of, and made by the Client. References herein to "Client" shall refer collectively to all of the entities on whose behalf services are being rendered as identified in the engagement letter (the "Engagement Letter") to which these Standard Terms and Conditions are attached, including but not limited to the entity(s) responsible for paying Baker Tilly's fees. "Attorney" shall refer collectively to the law firm or firms retaining Baker Tilly on behalf of Client and/or the law firm or firms representing Client with regard to the matter for which Baker Tilly is retained. The Engagement Letter and these Terms and Conditions shall be collectively referred to as the "Agreement."

2. Not Assurance Services. Baker Tilly's work generally will involve the financial analyses of accounting books and records and other financial information/documents. Our Engagement does not include an audit, review, or compilation in accordance with Generally Accepted Auditing Standards ("GASS") of any financial statements.

3. Privilege. All communications between Baker Tilly and Attorney, either oral or written, as well as any materials or information developed or received by us pursuant to this Engagement, are intended to be protected by all applicable legal privileges, including attorney-client and work-product privileges, and therefore, will be treated as confidential. If access to any of the materials in Baker Tilly's possession relating to this matter is sought by a third-party, we will promptly notify Attorney of such action and cooperate with Attorney and Client concerning our response thereto. In the event that any person or entity serves a subpoena upon Baker Tilly for testimony or the production of documents or records relating to or arising from any work performed for Client in connection with this Engagement, Client shall reimburse Baker Tilly for all time, costs, and attorneys' fees incurred in responding to such subpoena(s).

4. Payment of Invoices. Client agrees to pay properly submitted invoices within thirty (30) days of the invoice date or such other due date as may be indicated in the Engagement Letter. Baker Tilly shall have the right to halt or terminate entirely its services under the Agreement until payment is received on past due invoices. Baker Tilly may impose interest at a rate equal to one percent (1%) per month on any outstanding balance that remains unpaid for more than 30 days after issuance of the invoice(s). In the event that collection procedures are required, Client shall pay all expenses of collection and any attorneys' fees and costs actually incurred by Baker Tilly, including costs of Baker Tilly personnel at their then published rate, in connection with such collection efforts, whether or not suit or arbitration is filed thereon.

5. Taxes. All fees, charges, and other amounts payable to Baker Tilly under the Agreement do not include any sales, use, excise, value added or other applicable taxes, tariffs or duties, payment of which shall be Client's sole

responsibility, excluding any applicable taxes based on Baker Tilly's net income or taxes arising from the employment or independent contractor relationship between Baker Tilly and its personnel.

6. Term of Engagement

a. Commencement. Baker Tilly will commence work at your direction (written or oral). If the Client or Attorney requests that we begin work on the Engagement, but we have not received the fully executed Engagement Letter and any requested retainer, Attorney and Client agree that they accept the terms of the Engagement Letter as stated herein. We reserve the right to cease rendering services if the fully executed Engagement Letter is not received by us within 10 days of the date of this Engagement Letter. Client will be responsible for all fees and expenses incurred prior to our stopping work.

b. Termination. Unless terminated sooner in accordance with the terms set forth below, the Agreement shall terminate on the completion of Baker Tilly's services thereunder. In addition, either party may terminate the Agreement at any time by giving written notice to the other party not less than ten (10) calendar days (or as otherwise provided in the Engagement Letter) before the effective date of termination. Baker Tilly shall be paid in full for all services rendered or expenses incurred as of the date of termination. Further, we may terminate the Engagement in the event that: (i) we are asked to reach conclusions with which we disagree; (ii) critical information previously unavailable becomes known to us that impacts our conclusions; (iii) information that was expected by us becomes unavailable; (iv) a party or parties to the litigation hire alternate counsel, which makes continued involvement in the litigation inappropriate due to conflicts of interest; and/or (v) Client fails to pay our fees and expenses on a timely basis. Client will be responsible for all fees and expenses incurred prior to termination.

7. Ownership.

a. Baker Tilly Property. Baker Tilly has created, acquired, owns or otherwise has rights in, and may, in connection with the performance of services under the Agreement, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques, models, templates; software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems (collectively, the "Baker Tilly Property"). Baker Tilly retains all ownership rights in the Baker Tilly Property. Client shall acquire no right or interest in such property. In addition, Baker Tilly shall be free to provide services of any kind to any other party as Baker Tilly deems appropriate, and may use the Baker Tilly Property to do so. Baker Tilly acknowledges that Baker Tilly Property shall not include any of Client's confidential information or tangible or intangible property and Baker Tilly shall have no ownership rights in such property.

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b. Ownership of Deliverables. All documents, materials or information of any kind created by Baker Tilly in connection with this Engagement, including, without limitation, any written reports, memoranda, work papers or status summaries, are work product (collectively, "Work Product"). All Work Product shall be owned and maintained by Baker Tilly. It is agreed that all Work Product and all other working papers and other documents prepared by Baker Tilly pursuant to this Engagement will be maintained as confidential materials and will not be disclosed to third parties without the Client's consent, except as may be required by law, regulation or judicial or administrative process. Baker Tilly agrees to notify the Client promptly of any of the following events: (i) a request by anyone to examine, inspect or copy any Work Product or other working papers, documents or records relating to this Engagement, unless prohibited by law; or (ii) any attempt to serve, or the actual service of, any court order, subpoena or summons upon Baker Tilly that requires the production of such documents or records.

c. Use of Work Product. Attorney and Client agrees not to use Baker Tilly Work Product in connection with any other litigated matter, nor to share/publish our Work Product with any third-party without our express written consent.

8. Limitation on Warranties.

a. Admissibility of Testimony. Attorney and Client acknowledge that it is common for litigants to challenge the basis, experience and credentials of opposition experts. The admissibility of testimony is a legal matter and we make no warranties that our testimony or work product will be admitted into evidence by the court or trier of fact. As a condition to the release of any opinions to the opposition and the rendering of any testimony by us, Attorney and Client will review the facts and circumstances surrounding our work and opinions and agree that, in fact, Baker Tilly was retained because of the experience and credentials of its professionals. Further, Attorney and Client will review and agree, prior to the release of any expert opinion and the rendering of any expert testimony, that the anticipated testimony has a basis in fact and such testimony is both relevant and reliable. Attorney, as counsel, retains sole responsibility for assessing other factors that may bear upon the question of admissibility. As such, should testimony be excluded as a result of any evidentiary challenge (e.g., a Daubert or similar challenge), Baker Tilly shall be held harmless for any damages, losses, or negative results in the Matter unless incurred because of willful misconduct on the part of Baker Tilly. Further, even if testimony is excluded, any and all professional fees and expenses are still due and owing upon presentation of Baker Tilly's invoice(s) and Client is not relieved of liability for such fees and expenses

b. Services Agreement. **This is a services Engagement. Baker Tilly warrants that it will perform services under the agreement in good faith, with qualified personnel in a competent and workmanlike manner. Baker Tilly disclaims all other warranties, either express or implied, including, without limitation,**

warranties of merchantability and fitness for a particular purpose.

9. Limitation on Damages. The liability (including attorneys' fees and all other costs) of Baker Tilly and its present or former partners, owners, principals, agents or employees related to any claim for damages relating to the services performed under this Agreement shall not exceed the fees paid to Baker Tilly for the portion of the work to which the claim relates, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of Baker Tilly relating to such services. This limitation of liability is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted, including the negligence of either party. Additionally, in no event shall any party be liable for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages delays, or interruptions arising out of or related to this Agreement even if the other party has been advised of the possibility of such damages. The provisions of this Paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract, statute, tort or otherwise.

10. Indemnification.

a. Client will indemnify, defend and hold harmless Baker Tilly, its partners, owners, affiliates, principals, members, managers, officers, directors, employees, subcontractors, attorneys, professionals, representatives and agents (collectively, the "Indemnified Parties" or, individually, the "Indemnified Party") against any and all losses, claims, damages, liabilities, penalties, obligations and expenses, including, without limitation, the costs and expenses for counsel or others (including employees of Baker Tilly, based on their then current hourly billing rates) in investigating, preparing or defending any action or claim, whether or not in connection with litigation, in which any Indemnified Party is a party, as and when incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Agreement; provided, however, that such indemnity shall not apply to any such loss, claim, damage, liability or expense to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from such Indemnified Party's gross negligence or willful misconduct.

b. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) for or in connection with the Engagement or this Agreement except for any liabilities and related expenses incurred by Client that are finally judicially determined to have resulted from the willful misconduct or gross negligence of such Indemnified Party. In no event will any Indemnified Party be liable for incidental or consequential damages even if such Indemnified Party has been advised of the possibility of such damages.

c. Client acknowledges and agrees that any advice, recommendations, information or Work Product provided to Client (through Attorney or otherwise) by Baker Tilly in connection with this Engagement is for the confidential use

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of Client only and, (except as otherwise required by law or permitted by the Agreement), Client will not disclose or permit access to such advice, recommendations, information or Work Product to any third party (other than Attorney) or summarize or refer to such advice, recommendations, information or Work Product or to Baker Tilly's Engagement without, in each case, Baker Tilly's prior written consent. Client is responsible for all information it provides to third parties directly, or indirectly through Baker Tilly, and agrees to clearly acknowledge such responsibility in writing to all such third parties. In furtherance of the foregoing, Client will indemnify, defend and hold harmless the Indemnified Parties from and against any and all liabilities suffered by or asserted against the Indemnified Parties in connection with a third party claim to the extent resulting from such party's use or possession of or reliance upon Baker Tilly's advice, recommendations, information or Work Product as a result of Client's use or disclosure of such advice, recommendations, information or Work Product.

d. The Indemnified Parties shall promptly notify Client of any claim for which they seek indemnification provided that any failure to notify the Client or timely notify the Client shall not impact, in any way, the applicability of the indemnification provisions contained herein.

11. Cooperation; Use of Information.

a. Client agrees to cooperate with Baker Tilly in the performance of the services under the Agreement and shall provide Baker Tilly with timely access to and use of Client's personnel, facilities, equipment, data and information or such other personnel, facilities, equipment, data and information to the extent necessary for Baker Tilly to perform the services under the Agreement. The Engagement Letter may set forth additional obligations of Client in connection with the Engagement. As requested by Baker Tilly, Client acknowledges that Client's failure to assign Client personnel having skills commensurate with their role with respect to this Engagement could adversely affect Baker Tilly's ability to provide the services under the Agreement.

b. Client acknowledges and agrees that Baker Tilly may, in performing its obligations pursuant to this Agreement, use data, material and other information furnished by Client without any independent investigation or verification and that Baker Tilly shall be entitled to rely upon the accuracy and completeness of such information in performing the services under the Agreement.

c. To the extent the Services require Baker Tilly receive personal data or personal information from Client, Baker Tilly may process any personal data or personal information, as those terms are defined in applicable privacy laws, in accordance with the requirements of the applicable privacy law relevant to the processing in providing services hereunder. Applicable privacy laws may include any local, state, federal, or international laws, standards, guidelines, policies, or regulations governing the collection, use, disclosure, sharing, or other processing of personal data or personal information with which Baker Tilly or its Clients must comply. Such privacy laws may

include (i) the EU General Data Protection Regulation 2016/679 (GDPR); (ii) the California Consumer Privacy Act of 2018 (CCPA); and/or (iii) other laws regulating marketing communications, requiring security breach notification, imposing minimum security requirements, requiring the secure disposal of records, and other similar requirements applicable to the processing of personal data or personal information. Baker Tilly is acting as a Service Provider/Data Processor in relation to Client personal data and personal information, as those terms are defined respectively under the CCPA/GDPR. Client is responsible for notifying Baker Tilly of any data privacy laws the data provided to Baker Tilly is subject to and Client represents and warrants it has all necessary authority (including any legally required consent from data subjects) to transfer such information and authorize Baker Tilly to process such information in connection with the Services described herein.

d. Baker Tilly has established information security related operational requirements that support the achievement of our information security commitments, relevant information security related laws and regulations, and other information security related system requirements. Such requirements are communicated in Baker Tilly's policies and procedures, system design documentation, and contracts with customers. Information security policies have been implemented that define our approach to how systems and data are protected. Client is responsible for providing timely written notification to Baker Tilly of any additions, changes, or removals of access for Client personnel to Baker Tilly provided systems or applications. If Client becomes aware of any known or suspected information security or privacy related incidents or breaches related to this agreement, Client should timely notify Baker Tilly via email at dataprotectionofficer@bakertilly.com.

e. Baker Tilly does not treat de-identified data or aggregate consumer information as personal data or personal information, and we reserve the right to convert Client personal data or personal information into de-identified data or aggregate consumer information for our own purposes. As a benefit of benchmarking your Company to others in your industry, you allow us to enter your confidential accounting and/or financial data into the third party benchmarking software that we utilize. By signing this Engagement Letter, you expressly authorize us to make such disclosure of your confidential accounting and/or financial data, as we may elect within our discretion, with the understanding that, in doing so, you will not be specifically identified.

12. Force Majeure. Neither Client nor Baker Tilly shall be liable for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence or any law, order or requirement of any governmental agency or authority.

13. Limitation on Actions. No action, regardless of form, arising out of or relating to this Engagement, may be

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brought by Client more than one year after the cause of action has accrued.

14. Independent Contractor. It is understood and agreed that each of the parties hereto is an independent contractor and that neither party is or shall be considered an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of or in the name of, the other.

15. Confidentiality.

a. “Confidential Information” means all documents, software, reports, data, records, forms and other materials (including without limitation Work Product as defined herein) obtained by one party (the “Receiving Party”) from the other party (the “Disclosing Party”) in the course of performing the services under the Agreement: (i) that have been marked as confidential; (ii) whose confidential nature has been made known by the Disclosing Party to the Receiving Party; or (iii) that due to their character and nature, a reasonable person under like circumstances would treat as confidential. Notwithstanding the foregoing, Confidential Information does not include information which: (i) is already known to the Receiving Party at the time of disclosure by the Disclosing Party; (ii) is or becomes publicly known through no wrongful act of the Receiving Party; (iii) is independently developed by the Receiving Party without benefit of the Disclosing Party’s Confidential Information; or (iv) is received by the Receiving Party from a third party without restriction and without a breach of an obligation of confidentiality.

b. The Receiving Party shall not use or disclose to any person, firm or entity any Confidential Information of the Disclosing Party without the Disclosing Party’s express, prior written permission; provided, however, that notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent required pursuant to a statutory or regulatory provision or court order or to fulfill professional obligations and standards.

c. Each party shall be deemed to have met its nondisclosure obligations under this Paragraph 15 as long as it exercises the same level of care to protect the other’s information as it exercises to protect its own confidential information but in no event less than reasonable care, except to the extent that applicable law or professional standards impose a higher requirement.

d. If the Receiving Party receives a subpoena or other validly issued administrative or judicial demand requiring it to disclose the Disclosing Party’s Confidential Information, the Receiving Party shall provide prompt written notice, unless legally prohibited, to the Disclosing Party of such demand in order to permit it to seek a protective order. So long as the Receiving Party gives notice as provided herein, the Receiving Party shall be entitled to comply with such demand to the extent permitted by law, subject to any protective order or the like that may have been entered in the matter.

e. Notwithstanding anything to the contrary set forth herein, no provision in the Agreement is or is intended to be construed as a condition of confidentiality within the meaning of Internal Revenue Code sections 6011, 6111, 6112 or the regulations thereunder. Client (and each employee, representative or other agent of Client) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction within the scope of this Engagement that reduces or defers Federal tax and all materials of any kind (including opinions or other tax analyses) that are provided to Client relating to such tax treatment and tax structure.

16. Document Retention.

a. It is not our practice to retain work papers, e-mails, notes or data files that have been updated or superseded, unless shared with you or a third-party working with you. However, we will retain certain copies of e-mails, analyses, draft reports, or other materials provided by Attorney, Client or any third party, or provided by us to Attorney, Client or any third-party. Any requests for other document retention policies must be made in writing at the time of the execution of the Engagement Letter.

b. We may maintain copies of all our work product and related materials for our files. If we choose not to retain copies, Attorney and Client will provide access to the work papers upon reasonable notice. Baker Tilly has a file retention policy requiring the destruction of all client files seven years after each case is “resolved” and/or appeals have been completed as it pertains to this type of Engagement, unless otherwise dictated by a valid protective order issued by an appropriate court of law. Baker Tilly makes no representation of retention of files after this date, and shall have no liability for not retaining information or data after such date, regardless of any obligation of Attorney or Client to maintain information or data beyond that time, and regardless of whether there may be important tax or financial information in the files that will be destroyed. Both Attorney and Client will have access to our files and may request all or part of our records to be copied at their expense, or returned prior to destruction so long as all fees and expenses have been paid in full. By signing the Engagement Letter, Attorney and Client acknowledge their understanding of, and agree to, Baker Tilly’s retention policy.

17. Survival. The provisions herein that, by its nature, including without limitation provisions relating to limitations on liability and indemnification, should survive the termination of the Engagement are intended to and do survive the termination of the Engagement.

18. Assignment. Neither party may assign, transfer or delegate any of its rights or obligations without the prior written consent of the other party, such consent not to be unreasonably withheld. However, Baker Tilly may use subcontractors to provide services under the Agreement.

19. Severability. In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected and each such term and provision of this

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Agreement shall be valid and enforceable to the fullest extent permitted by law.

20. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to the conflict of laws provisions thereof.

21. Arbitration.

a. Except for disputes related to confidentiality or intellectual property rights, all disputes and controversies between the parties hereto of every kind and nature arising out of or in connection with this Agreement as to the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuation, or termination of this Agreement shall be resolved as set forth in this Section using the following procedure: In the unlikely event that differences concerning the Services or fees should arise that are not resolved by mutual agreement, both parties agree to attempt in good faith to settle the dispute by engaging in mediation administered by the American Arbitration Association (“AAA”) under its mediation rules for professional accounting and related services disputes before resorting to litigation or any other dispute-resolution procedure. Each party shall bear their own expenses from mediation and the fees and expenses of the mediator shall be shared equally by the parties. If the dispute is not resolved by mediation, then the parties agree that the dispute or claim shall be settled by binding arbitration. The arbitration proceeding shall take place in the city in which the Baker Tilly office providing the relevant services is located, unless the parties mutually agree to a different location. The proceeding shall be governed by the provisions of the Federal Arbitration Act (“FAA”) and will proceed in accordance with the then current Arbitration Rules for Professional Accounting and Related Disputes of the AAA, except that no pre-hearing discovery shall be permitted unless specifically authorized by the arbitrator. The arbitrator will be selected from AAA, JAMS, the Center for Public Resources, or any other internationally or nationally-recognized organization mutually agreed upon by the parties. Potential arbitrator names will be exchanged within fifteen (15) days of the parties’ agreement to settle the dispute or claim by binding arbitration, and arbitration will thereafter proceed expeditiously. The arbitration will be conducted before a single arbitrator, experienced in accounting and financial advisory matters. The arbitrator shall have no authority to award non-monetary or equitable relief and will not have the right to award punitive damages. The award of the arbitration shall be in writing and shall be accompanied by a well-reasoned opinion. The award issued by the arbitrator may be confirmed in a judgment by any federal or state court of competent jurisdiction. Each party shall be responsible for their own costs associated with the arbitration, except that the costs of the arbitrator shall be equally divided by the parties. The arbitration proceeding and all information disclosed during the arbitration shall be maintained as confidential, except as may be required for disclosure to professional or regulatory bodies or in a related confidential arbitration. In no event shall a demand for arbitration be made after the date when institution of

legal or equitable proceedings based on such claim would be barred under the applicable statute of limitations.

b. Because a breach of any the provisions of this Agreement concerning confidentiality or intellectual property rights will irreparably harm the non-breaching party, Client and Baker Tilly agree that if a party breaches any of its obligations thereunder, the non-breaching party shall, without limiting its other rights or remedies, be entitled to seek equitable relief (including, but not limited to, injunctive relief) to enforce its rights thereunder, including without limitation protection of its proprietary rights. The parties agree that the parties need not invoke the mediation procedures set forth in this section in order to seek injunctive or declaratory relief.

22. Miscellaneous.

a. Sarbanes-Oxley. In accepting this Engagement, Client acknowledges that completion of this Engagement will not constitute a basis for Client’s assessment or evaluation of internal control over financial reporting and disclosure controls and procedures, or its compliance with its principal officer certification requirements under Section 302 of the Sarbanes-Oxley Act of 2002 (“SOX”). This Engagement shall not be construed to support Client’s responsibilities under Section 404 of SOX requiring each annual report filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 to contain an internal control report from management.

b. Electronic Communication. Baker Tilly may communicate with Client by electronic mail or otherwise transmit documents in electronic form during the course of this Engagement. Client accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices) and agrees that it may rely only upon a final hardcopy version of a document or other communication that Baker Tilly transmits to Client.

c. Notices. Any notices given pursuant to this Agreement shall be in writing, delivered to the address (es) set forth in the Engagement Letter and shall be considered given when received.

d. Entire Agreement. This Agreement, including the Engagement Letter and all Exhibits, constitute the entire agreement between Baker Tilly and Client with respect to this Engagement and supersede all other oral and written representation, understandings or agreements relating to this Engagement.

e. Failure to Enforce Not a Waiver. The failure of either party at any time to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provisions and will not affect the right of party thereafter to enforce each and every provision thereof in accordance with its terms.

f. Baker Tilly International Limited. Baker Tilly US, LLP is an independent member of Baker Tilly

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International. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity and each describes itself as such. Baker Tilly US, LLP is not Baker Tilly International's agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, Baker Tilly US, LLP, nor any of the other member firms of Baker Tilly International has any liability for each other's acts or omissions. The name Baker Tilly and its associated logo is used under license from Baker Tilly International Limited.