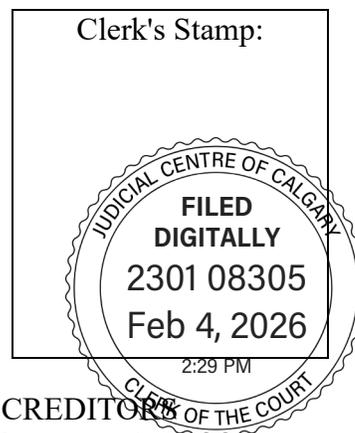


COURT FILE NUMBER 2301-08305
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, RSC 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF WALLACE & CAREY INC., LOUDON BROS LIMITED and CAREY MANAGEMENT INC.

APPLICANT DIGIFLEX INFORMATION SYSTEMS INC.
DOCUMENT **BRIEF OF THE DIGIFLEX INFORMATION SYSTEMS INC.**

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BRIEF OF ARGUMENT OF DIGIFLEX

**MONITOR'S APPLICATION FOR ADVICE AND DIRECTION AND DIGIFLEX'S
CROSS-APPLICATION TO TERMINATE THE SOFTWARE LICENSE
AGREEMENTS BETWEEN DIGIFLEX AND WALLACE & CAREY**

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I. OVERVIEW

1. This brief is filed by Digiflex Information Systems Inc. (**Digiflex**):
 - (a) in response to the Monitor's Application seeking, *inter alia*, a declaration that notwithstanding the lifting of the stay, the Companies are permitted to continue to use the software on a read-only basis, without paying for maintenance fees; and
 - (b) in support of Digiflex's Cross-Application to terminate the W&C Software Licenses.

2. Throughout this CCAA proceeding, Digiflex, a third party, has: (1) obeyed all Court orders in this proceeding, including the Amended and Restated Initial Order dated June 30, 2023 (the **ARIO**); (2) has supplied a critical software and service to the Companies (as defined below), which in turn, permitted the Companies to service 7-Eleven Canada Inc. (**SEC**) and Seven Eleven Distribution Corporation Canada (**SEDCC**, together with SEC and 7-Eleven Inc., **7-Eleven**), which in turn, has kept 7-Eleven's Canadian retail business afloat; and (3) has been voluntary offering the Companies continued access to the Digiflex Software for the purposes of reporting and audits after the Stay is lifted.

3. In exchange, Digiflex:
 - (a) was not advised of the SEC and Wallace & Carey's transaction, despite this Court noting that it should have been;¹
 - (b) was held to a Stay that was extended multiple times for the benefit of the Purchaser – SEC/SEDCC – which this Court noted was not in line with certain CCAA principles;²

¹ *Wallace & Carey Inc (Re)*, 2025 ABKB 750 (**Re W&C** or the **Reasons**) at paras 86.

² *Re W&C* at paras 116, 117.

- (c) was forced to respond to an application that sought the forced assignment of the W&C Software Licenses, for the benefit of the Purchaser – SEC/SEDCC – for that application to only be abandoned;
- (d) has continuously been accused of trying to use this CCAA proceeding to extract resources from stakeholders and the Companies; and
- (e) has even had its access to its own software cut off by an unauthorized user of the software – the Purchaser – a clear breach of the W&C Software Licenses in more ways than one.

4. Further, despite being successful in the Stay Application, and despite the W&C Software Licenses being properly terminable in more than one way, Digiflex is now also being forced to respond to the Advice and Direction Application³ that seeks the continued use of the Digiflex Software for free. Digiflex has always been open to discussions with the Companies about the terms of their use of the software for audit and reporting obligations and is unsure why this application arose. It was not until two days before the hearing that Digiflex finally received an answer on its inquiries about the use of the software that it had started discussions about in November.

5. With the licenses being properly terminable, in order for the relief to be granted in the Advice and Direction Application without Digiflex's consent, the Companies must meet the test of a mandatory injunction. The Companies cannot.

6. Digiflex has had enough. Digiflex is the owner of its software (its intellectual property). Digiflex never sold its software to the Companies. The Companies had the right to use the software for a limited use until the contracts were terminated. That time should come at that latest, as of February 15, 11:59 PM. Digiflex has tried to negotiate to no avail. It is no longer interested having any sort of commercial relationship with the Companies.

7. Finally, Digiflex submits that there is new evidence since the Reasons were issued which demonstrates it would be appropriate to lift the stay immediately. Digiflex also request relief that

³ [Application of the Monitor](#) filed January 26, 2026 (**Advice and Direction Application**).

would assist it in ensuring that any and all copies of its software, and supporting written materials, have been deleted.

II. FACTS

A. Background to Digiflex's Lift Stay Application

8. This CCAA Proceeding, involving the Wallace & Carey, Loudon Bros, and Carey Management Inc. (**CMI**) (together, the **Companies**), began in June 2023. The Companies were formerly in the distribution business but are no longer operating.⁴ The Companies are now under the control of the Monitor.⁵

9. As part of this CCAA Proceeding, SEC purchased some of Wallace & Carey's assets, including its computer servers that were located at Wallace & Carey's Calgary offices (the **Designated Server**).⁶ Wallace & Carey's Calgary offices are now SEDCC's Calgary offices.⁷

10. As part of this asset sale, Wallace & Carey, CMI, SEC, and the Monitor entered into a Transition Service Agreement (the **TSA**), which came into force on November 21, 2023.⁸ Under the TSA, Wallace & Carey was required to continue to employ certain employees and wind-down third-party customers so that SEC would be the only go-forward customer of Wallace & Carey. The original term of the TSA was to be a maximum of 15 months, but the TSA gave SEC the

⁴ See cites at the [Brief of Digiflex Information Systems Inc.](#) filed November 17, 2025 (**Digiflex's Brief re: Lift Stay**) at para 42.

⁵ [Order \(Monitor's Enhanced Powers\)](#) dated August 26, 2025 at para 3.

⁶ [Affidavit No. 2 of Patrick Carey](#) sworn November 21, 2023 (**Carey Affidavit #2**) at para 24; [Nineteenth Report of the Monitor](#) dated January 26, 2026 (**Monitor's 19th Report**), s 2.2 at para 4; [Fourteenth Report of the Monitor](#) dated December 13, 2024 (**Monitor's 14th Report**), s 3.0 at para 7.

⁷ [Monitor's 19th Report](#), s 2.2 at paras 4. See [Mardukhi Affidavit #1](#), Exhibit H (PDF pp 121-122), which has an email from Joshua Buchanan to Mr. Mardukhi in which Mr. Buchanan states, "Seven Eleven Distribution Canada Corporation will have the same address in Calgary that W&C has had in the past"; [Allen Affidavit #1](#), Exhibits D, E (PDF pp 64, 67), which are screenshots of Wallace & Carey's and SEDCC's websites showing that SEDCC uses Wallace & Carey's old address; [Mardukhi Affidavit #1](#), Exhibit X (PDF p 212), which is SEDCC's purchase order listing Wallace & Carey's old address as the address for SEDCC's warehouse; [Mardukhi Affidavit #1](#), Exhibit Y (PDF p 214), which is an email from Cliff Harrison, SEDCC's IT employee using ProCLASS, showing, in his email signature, that Wallace & Carey's old address is the address for SEDCC's offices.

⁸ [Monitor's 14th Report](#), Appendix A (TSA) (PDF p 18).

option of additional extensions. SEC sought multiple extensions of the TSA that ultimately extended the term of the TSA to be over two years.⁹

11. The extensions SEC sought to the TSA were because it wanted continued access to the Digiflex Software.¹⁰ Since 2000, Wallace & Carey and Loudon Bros have licensed the Digiflex Software from Digiflex through the W&C Software Licenses.¹¹ The W&C Software Licenses were a "non-transferable, non-exclusive, perpetual License of certain computer application software owned by Digiflex", the main software being the ProCLASS Distribution Management System. The W&C Software Licenses included restricted rights of use, the right to terminate, the requirement to return or destroy the software upon termination, an acknowledgement of copyright ownership, and a provision stating that the licenses are not assignable, without consent.

12. Wallace & Carey has not been acting as a distribution company for some time.¹² However, Digiflex could still see that Wallace & Carey's copy of the Digiflex Software was still being used to actively run a distribution company, which Digiflex believes to be SEC's new Canadian distribution company, SEDCC.¹³ Digiflex has alleged that this constitutes a breach of the W&C Software Licenses and is copyright infringement and has commenced a suit for copyright infringement against 7-Eleven Inc, SEC, and SEDCC in the Federal Court of Canada.¹⁴ While a Court has yet to try these allegations, the Honourable Justice Marion has described these allegations as "non-frivolous".¹⁵

13. Digiflex has not been permitted to terminate the W&C Software Licenses to end the breaches or infringement given that it has been prevented from doing so under the Stay in relation

⁹ *Re W&C* at paras 34-38.

¹⁰ [Seventeenth Report of the Monitor](#) dated August 13, 2025 (**Monitor's 17th Report**), s 4.2 at para 1; [Carey Affidavit #8](#), Exhibit D (June 2 email from counsel for the Monitor to counsel for 7-Eleven) (PDF p 28); [Second Supplement to the Seventeenth Report of the Monitor](#) dated September 11, 2025, s 2.2 at para 1.

¹¹ [Mardukhi Affidavit #1](#) at paras 27-29, Exhibits B, C, D, E (W&C Software Licenses) (PDF pp 46, 59, 71, 83).

¹² See footnote 4 of this Brief.

¹³ [Affidavit of Mohamad Mardukhi](#) affirmed November 24, 2025 (**Mardukhi Affidavit #2**) at para 33; Affidavit of Mohamad Mardukhi affirmed January 30, 2026 (**Mardukhi Affidavit #3**) at para 14.

¹⁴ Affidavit of Jennifer Allen affirmed February 2, 2026 (**Allen Affidavit #3**), Exhibit M (Statement of Claim) (PDF p 80).

¹⁵ *Re W&C* at para 100.

to Wallace & Carey and Loudon under the Amended and Restated Initial Order dated June 30, 2023.¹⁶ Therefore, on November 13, 2025, Digiflex brought an application to lift the Stay so that it could immediately terminate the W&C Software Licenses and prevent any further unauthorized use by 7-Eleven Inc, SEC, and SEDCC,¹⁷ which was heard by the Honourable Justice Marion on November 27, 2025.

14. On December 15, 2025, the Honourable Justice Marion issued his Reasons in relation to Digiflex's Lift Stay Application.¹⁸ Digiflex was successful in that the Stay no longer applies to it as of February 15, 2026 at 11:59 PM (the **Lift Stay Order**)¹⁹ Digiflex was also successful in that the Honourable Justice Marion found that the CCAA Proceeding could not be used to continue to transition the business from Wallace & Carey to SEC and SEDCC after February 15, 2026, at least as it relates to Digiflex.²⁰ Justice Marion stated: "To continue the stay and the Digiflex Consent Order *vis a vis* Digiflex beyond that time would no longer be for the purpose of facilitating CCAA restructuring but rather to use the Court's protection to unfairly benefit a purchaser in its ongoing post-restructuring business."²¹

15. Justice Marion did not immediately lift the stay on the basis that, *inter alia*, the Monitor advised that it was Wallace & Carey who were using the Digiflex Software (and not SEC / SEDCC, which would be an act of copyright infringement).²²

B. The Companies previously sought an assignment of the W&C Software Licenses for the benefit of 7-Eleven, which is no longer in play

16. In response to Digiflex's Stay Lift Application, SEC and SEDCC asked the Monitor (as management for the Companies) to bring an application for an assignment of the W&C Software

¹⁶ [ARIO](#) at paras 18-19.

¹⁷ [Application by Digiflex Information Systems Inc.](#) filed November 13, 2025 (**Digiflex's Lift Stay Application**).

¹⁸ *Re W&C*.

¹⁹ *Re W&C* at para 124.

²⁰ *Re W&C* at paras 116-124.

²¹ *Re W&C* at para 124.

²² *Re W&C* at paras 98-99.

Licenses from Wallace & Carey and Loudon Bros to SEDCC. The Monitor's application was supported by a brief from 7-Eleven.²³

17. At the hearing in November 2025, 7-Eleven advised that it was no longer seeking an assignment of the W&C Software Licenses for the full use of the software (i.e. to run a distribution company). Rather, given that it would have its own ERP software up and running come February 15, 2026, it merely needed a read-only license to have access to Wallace & Carey's historical data for audit and reporting purposes.²⁴

18. The Honourable Justice Marion declined to decide the Monitor's Assignment Application, noting that there did not appear to be a need for it as he had lifted the Stay vis a vis Digiflex effective February 15, 2026.²⁵ The Honourable Justice Marion also noted that, in any event, an assignment no longer appeared necessary as 7-Eleven only wanted access to the Digiflex Software to be able to access historical electronic records.²⁶ Justice Marion encouraged the parties to come to a commercial resolution without the need for an additional hearing on this issue.²⁷

19. On December 19, 2025, counsel for SEC and SEDCC wrote to counsel for Digiflex and proposed a settlement of the Monitor's Assignment Application, the details of which were: 7-Eleven would pay Digiflex \$200,000 CDN for a read-only license to use the Digiflex Software for historical and auditing purposes; in exchange Digiflex would need to drop the Federal Court lawsuit against 7-Eleven for copyright infringement.²⁸ Digiflex declined the offer. Digiflex's counsel advised that it would be in touch after the holidays.²⁹

20. On January 7, 2026, counsel for 7-Eleven wrote to counsel for Digiflex and stated: "I have not heard from you since your email below of December 23, over two weeks ago. Given Justice Marion's comments in paragraphs 137 and 138 of his Reasons, we assume this non-

²³ *Re W&C* at paras 130-131.

²⁴ *Re W&C* at paras 134-135.

²⁵ *Re W&C* at para 133.

²⁶ *Re W&C* at paras 135-136.

²⁷ *Re W&C* at paras 137-138.

²⁸ Allen Affidavit #3, Exhibit C (letter from 7-Eleven's counsel dated December 19, 2025) (PDF pp 15-16).

²⁹ Allen Affidavit #3, Exhibit D (email from Digiflex's counsel dated December 23, 2025) (PDF p 20).

engagement means that Digiflex is not interested in a commercial solution. Accordingly, we will be asking the Monitor to ask His Honour to schedule the return of the Section 11.3 assignment motion in the very near future and in any event, before February 15."³⁰

21. On January 7, 2026, counsel for Digiflex responded to counsel for 7-Eleven and advised that Digiflex remained open to settlement, but that in any event, an assignment did not appear to be necessary. Counsel for Digiflex also suggested some ways that 7-Eleven could extract historical data from the Digiflex Software, and suggested that the parties schedule a call, with IT personnel from 7-Eleven and Mr. Mardukhi to assess 7-Eleven's wants and needs.³¹

22. Counsel for 7-Eleven never responded to the January 7th email and has not had any further correspondence with counsel for Digiflex on this issue since.³²

23. Neither 7-Eleven nor the Monitor have resurrected the Monitor's Assignment Application.

C. Digiflex advises that the W&C Software Licenses will be terminated effective as of February 16, 2026 at 12:00 AM

24. The Companies have been on notice for quite some time that Digiflex seeks to terminate the W&C Software Licenses, including since at least from November 2025 through the Digiflex Stay Application.

25. In addition, on January 16, 2026, counsel for Digiflex wrote to counsel for the Monitor (as management for the Companies) to give the 30 days notice required to terminate the Maintenance Agreements affiliated with the W&C Software Licenses.³³

26. Further, on January 28, 2026, counsel for Digiflex wrote to counsel for the Monitor in response to the Monitor's Advice and Direction Application to make clear that the Monitor

³⁰ Allen Affidavit #3, Exhibit D (email from 7-Eleven's counsel dated January 7, 2026) (PDF p 19-20).

³¹ Allen Affidavit #3, Exhibit D (email from Digiflex's counsel dated January 7, 2026) (PDF pp 18-19).

³² Allen Affidavit #3 at para 4.

³³ Allen Affidavit #3, Exhibit G (PDF p 46).

understood that Digiflex's position was that the W&C Software Licenses would be terminated effective February 16, 2026 at 12:00 AM.³⁴

D. The Companies are now seeking to use the Digiflex Software, indefinitely, forever, for free

27. Digiflex has asked the Companies on more than one occasion whether it would need access to the Digiflex Software for audit and reporting purposes, following the lifting of the Stay. The first time was on November 20, 2025, prior to the hearing of Digiflex's Stay Application and the Assignment Application. Given that the Monitor had represented that Wallace & Carey's logistics business had been transferred from Wallace & Carey to SEDCC in August 2025, Digiflex believed that Wallace & Carey no longer needed the Digiflex Software to be in active mode and Digiflex asked the Monitor whether it would agree to turn the Digiflex Software into read-only mode.³⁵ The Monitor did not respond to this letter,³⁶ but rather, provided it to counsel to 7-Eleven, who described it as: "attempts by Digiflex to restrict and interfere with Wallace & Carey's access to the computers, systems, servers and databases that utilize the licensed ProClass/LAZER/NEXUS and CLASS ERP software, and the software itself, to carry out Wallace & Carey's transition services obligations to Seven Eleven in accordance with the Court approved Transition Services Agreement. They are therefore unacceptable to Seven Eleven."³⁷

28. The second time Digiflex asked the Companies about turning the software to read-only mode was in early January 2026.³⁸ Digiflex advised counsel for the Monitor that: "Digiflex understands that your client, KSV (as court-appointed monitor of Wallace & Carey), may need access to the historical Wallace & Carey ERP databases for the purposes of potential CRA audits and go forward financial reporting generally. As you know, the current maintenance agreement between Wallace & Carey and Digiflex runs until February 15, 2026. Should the Monitor need access to Wallace & Carey's historical data on a read only basis, post February 15, 2026, please

³⁴ Allen Affidavit #3, Exhibit H (PDF p 52).

³⁵ Allen Affidavit #3, Exhibit A (letter from Digiflex's counsel dated November 20, 2025) (PDF p 4).

³⁶ Allen Affidavit #3 at para 1.

³⁷ Allen Affidavit #3, Exhibit B (letter from 7-Eleven's counsel dated November 26, 2025) (PDF p 10).

³⁸ Allen Affidavit #3, Exhibit E (email from Digiflex's counsel dated January 8, 2025) (PDF p 24).

let us know and we will send you an invoice for maintenance fees."³⁹ Digiflex asked for a response by January 12, 2026. While counsel for the Monitor once advised that it was "reviewing some technical considerations"⁴⁰ in response to Digiflex's offer, the Monitor ultimately never provided a response.⁴¹

29. Subsequently, on January 26, 2026, the Monitor served a new application,⁴² seeking *inter alia*, an order that, despite the Lift Stay Order, the Companies should be permitted to continue to use the W&C Software Licenses "for any purpose related to the business and operations of [Wallace & Carey] and Loudon [Bros]".⁴³ The Monitor's Application was unclear whether the Companies would consent to the software being restricted to read-only use,⁴⁴ however, it was clear that the Companies did not want to pay for continued access to the Digiflex Software.

30. The Monitor's Advice and Direction Application was supported by the Monitor's 19th Report.⁴⁵ In the Monitor's 19th Report, the Monitor includes the following reasons for their need for the continued use of the Digiflex ERP Software after February 15, 2026:

- (a) "Access to Historical Database";⁴⁶
- (b) "retrieving data to meet its statutory and Court-ordered obligations, including any potential tax audit requirements and responding to questions

³⁹ Allen Affidavit #3, Exhibit E (email from Digiflex's counsel dated January 8, 2025) (PDF p 24).

⁴⁰ Allen Affidavit #3, Exhibit F (email from Monitor's counsel dated January 15, 2025) (PDF p 38).

⁴¹ Allen Affidavit #3 at para 5.

⁴² [Advice and Direction Application](#).

⁴³ [Advice and Direction Application](#) at para 1(b)(iv); [Advice and Direction Application](#), Schedule C (Proposed Order) at para 10 (PDF p 34).

⁴⁴ For example, the Monitor suggests that "read-only" would be sufficient for its purposes: see [Advice and Direction Application](#) at para 52(c); [Monitor's 19th Report](#), s 5.2 at para 2(c). However, the Order that the Monitor is seeking is much more broad than that: "for *any purpose* related to the business and operations of [Wallace & Carey] and Loudon [Bros]": see [Advice and Direction Application](#), Schedule C (Proposed Order) at para 10 (PDF p 34).

⁴⁵ See [Monitor's 19th Report](#).

⁴⁶ [Monitor's 19th Report](#), s 5.2.

from tax authorities (i.e., the Permitted Uses), whether as Monitor or in a subsequent role, such as a bankruptcy trustee."⁴⁷

31. On January 26, 2026, counsel for the Monitor advised counsel for Digiflex of the further requirements: "It is essential that such access does not impede the Monitor's ability to perform its statutory duties or obtain required information from the ERP Software. In particular, the Monitor requires access to historic data and the ability to generate reports on the same."⁴⁸

32. In response to an inquiry as to why the Monitor needed this access for potential audits and reporting duties on an urgent basis, counsel for the Monitor replied with: "We aren't interested in having that access cut off or not available for any period of time."⁴⁹

33. On January 28, 2026, counsel for Digiflex wrote to counsel for the Monitor to clarify whether they were seeking read-only access, given that their requested relief appeared to be much broader.⁵⁰ The Monitor asked some clarifying questions on what read-only permits,⁵¹ to which counsel for Digiflex responded.⁵² Digiflex also served the parties a copy of an Affidavit from Mr. Mardukhi which detailed that read-only access would satisfy all of the Company's needs.⁵³

34. On the renewal terms of the Maintenance Agreements, Digiflex advised that it would offer a 50% discount to the Companies than what they were currently paying for annual maintenance fees, and an extra 30% discount if the Companies wanted to pay up-front for the 6 years that the Companies are required to maintain their books for, and the time period that counsel for the Monitor had previously advised that the Companies would need access to the software

⁴⁷ [Monitor's 19th Report](#), s 5.2 at paras 1, 2.

⁴⁸ Allen Affidavit #3, Exhibit J (letter from Monitor's counsel dated January 29, 2026) (PDF p 65).

⁴⁹ Allen Affidavit #3, Exhibit F (email from Monitor's counsel dated January 26, 2026) (PDF p 30, 32-33).

⁵⁰ Allen Affidavit #3, Exhibit H.

⁵¹ Allen Affidavit #3, Exhibit J, Exhibit K.

⁵² Allen Affidavit #3, Exhibit K.

⁵³ Mardukhi Affidavit #3 at paras 17 – 26.

for.⁵⁴ These were significant discounts. In response to this suggestion, counsel for the Monitor wrote:

The fees your client is asking from the Monitor are **outrageous and unjustified**. The Monitor **does not require services for six years**. The Monitor is prepared to pay for maintenance services, if required, at contract rates, which is consistent with the basis on which services are provided during a CCAA proceeding and pursuant to the ARIO. The Licence Agreement, by its terms, patently does not require that such services be provided or paid for, unless services are actually provided. **We remind you that as a participant in CCAA proceedings, your client has an obligation to act in good faith, and these demands raise questions as to whether your client is improperly leveraging its position to extract value from bona fide creditors of the Applicants.** We will be making submissions to the Court explaining why the Monitor should be permitted to continue using its Perpetual License in read only mode without ongoing maintenance services or related fees, unless such services are required. Should the Court order that these fees must be paid, we will, of course, comply, by paying for these services at the contracted rates. But we are not interested in wasting time negotiating further.⁵⁵

E. The Digiflex Software continues to be used to actively run SEDCC's business

35. In the Monitor's 19th Report, the Monitor advised that:

- (a) "[T]he Monitor understands that 7-Eleven has now completed the implementation of the Integration Software and that it no longer requires Wallace & Carey to provide the [Digiflex] Software to [SEC] to operate the Logistics Business."⁵⁶
- (b) "[T]he transition of the Logistics Business to [SEC] has been completed."⁵⁷

36. These statements implied that no company was using the ERP Software to operate a distribution company or logistics company: if 7-Eleven no longer needed Wallace & Carey to provide SEC with the Digiflex Software, it must be using its own ERP software to run its business;

⁵⁴ Affidavit of Jennifer Allen affirmed February 4, 2026 (**Allen Affidavit #4**), Exhibit A.

⁵⁵ Allen Affidavit #4, Exhibit B.

⁵⁶ [Monitor's 19th Report](#), s 2.1 at para 9.

⁵⁷ [Monitor's 19th Report](#), s 3.0 at para 1.

and Wallace & Carey would not be actively using the ERP Software as it has wound-down and the Monitor has advised that the logistics business has been transferred to SEDCC.

37. However, this is not what was shown on Digiflex's systems. Rather, the Digiflex's systems reveal that the Digiflex Software that was installed on the Designated Server (that was sold to SEC) at the Wallace & Carey's Calgary office (now the SEDCC's Calgary office) continue to be used daily to run a distribution business.

38. Given the discrepancies, Digiflex sought clarification from the Monitor on its belief that Wallace & Carey had completed its transition to 7-Eleven.⁵⁸ In response, counsel for the Monitor advised that "the Monitor clarifies that paragraph 2.1.9 of the Nineteenth Report was intended to state that, it was the Monitor's understanding that by the time of the upcoming Application, and in particular, on February 1, 2026, the integration software would be complete, and SEC would no longer require W&C to provide the ERP Software."

39. In response to this, Mr. Mardukhi filed evidence that shows the copy of the Digiflex software being used on the Designated Server was continuing to be used to actively run a distribution company after January 26, 2026.⁵⁹ Mr. Mardukhi also stated that, from all he could see, the data did not indicate that SEC / SEDCC was close to having their own ERP software.⁶⁰

F. Digiflex's access to its software has been removed

40. On January 31, 2026, Mr. Mardukhi noticed that his access to the copy of Digiflex's software installed on the Designated Server had been cut off,⁶¹ contrary to section 4B of the Maintenance Agreements of the W&C Software Licenses.

41. On February 1, 2026, counsel for Digiflex wrote to counsel to the Monitor to advise of this, and to confirm Digiflex's understanding that this meant that the Companies were no longer interested in any form of license with Digiflex – read-only or active. Digiflex also asked for the

⁵⁸ Allen Affidavit, Exhibit H, point 3 (PDF 55).

⁵⁹ Mardukhi Affidavit #3 at paras 4 – 16, Confidential Appendix.

⁶⁰ Mardukhi Affidavit #3 at para 15.

⁶¹ Affidavit of Mohamad Mardukhi affirmed February 2, 2026 (**Mardukhi Affidavit #4**).

Companies to destroy all copies of the software and asked the Monitor to assist Digiflex in ensuring that SEC / SEDCC was not using the software.⁶²

42. On February 2, 2026, counsel for Digiflex wrote to counsel to the Monitor with questions surrounding Digiflex's loss of access and asking when it would be enabled. In response to these inquiries, counsel for the Monitor advised:

[...] It is our understanding that SEC has completed its transition, but requires access to generate its final monthly reports required by SEDCC and the Monitor to reconcile, among other things, TSA accounting and tax obligations. Further, **we understand that SEC and SEDCC will not reinstate access to DigiFlex prior to the lifting of the Stay as they have concerns that DigiFlex might change information or access requirements which would significantly prejudice SEC/SEDCC in these final stages.** The VPN access will be re-enabled to provide the Monitor read-only access once the Stay is lifted. **If you have any issue with that, take it up with 7-Eleven, not the Monitor.**⁶³

43. This confirms that Wallace & Carey is not using the software – that SEC / SEDCC is.

III. ISSUES

44. On this application, the Court should consider:

(a) Are the W&C Software Licenses capable of being terminated on a breach of the W&C Software Licenses?

(i) *Yes. The W&C Software Licenses explicitly note that the W&C Software Licenses are terminable upon a breach. There is no requirement to have "amounts outstanding" to be able to terminate the W&C Software Licenses due to a breach. Even if there is, there are amounts owed to Digiflex by both Wallace & Carey and Loudon.*

(b) Have the W&C Software Licenses been breached by Wallace & Carey?

⁶² Allen Affidavit #3, Exhibit L, email from BD&P to Cassels dated February 1, 2026 (PDF page 76).

⁶³ Allen Affidavit #4, Exhibit B, email from BD&P to Cassels dated February 3, 2026.

Yes. Wallace & Carey has breached the W&C Software Licenses on more than one basis, including: (1) breach of turning off its access requirements; (2) breach of its obligation to maintain confidentiality; and (3) breach of the requirement that only Wallace & Carey use the Digiflex Software. Further, Wallace & Carey has repudiated the W&C Software Licenses.

(c) Should the Companies' request for read-only access to the Digiflex ERP Software be granted without paying for maintenance fees, as of February 16?

(i) *No. Digiflex has elected to terminate the W&C Software Licenses as of February 16, 2026. Should the Court agree with Digiflex that the W&C Software Licenses are properly terminable, the Companies will be required to meet the test for a mandatory injunction in order to gain continued access to the software without the consent of Digiflex. They cannot meet this test.*

(d) Should the Stay period be truncated in light of the new evidence?

(i) *Yes. The evidence demonstrates that 7-Eleven is the one in possession of the software, not any of the Companies, which is a clear breach. The Companies acknowledged that a breach would permit Digiflex to apply for equitable relief.*

(e) Should 7-Eleven be ordered to pay Digiflex's costs in respect of the Assignment Application?

(i) *Yes. 7-Eleven asked the Monitor to bring the Assignment Application and has never resurrected the Assignment Application.*

IV. LAW AND ARGUMENT

45. The law on contractual interpretation is critical to properly considering the purpose, terms, rights, obligations and breaches of the W&C Software Licenses. Contractual interpretation is the search for the objective intent of the parties when contracting.⁶⁴ The Court must read the W&C Software Licenses as a whole, giving the words their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of forming the contract.⁶⁵ The meaning of the words often comes from contextual factors, including the purpose of the agreement and the nature of the relationship created under the agreement.⁶⁶ Similarly, commercial contracts should be interpreted in accordance with sound commercial principles and good business sense.⁶⁷ These principles apply to the interpretation of all commercial agreements, including a software license like the ones at issue between Digiflex and Wallace & Carey.⁶⁸

A. The W&C Software Licenses expressly permit termination upon breach

1. *The W&C Software Licenses contain a termination clause*

46. Clause 5 of the W&C Software Licenses is termination clause (the **Termination Clause**), which reads:

5. LICENSE TERMINATION. If Customer breaches any of its obligations hereunder, or if the Customer becomes insolvent, files a petition in bankruptcy, or has filed against it an involuntary petition in bankruptcy, or has a receiver appointed over all or substantially all of its assets, then Digiflex may, at its option, **if there are any amounts owing by Customer to Digiflex**, immediately terminate the License To Use granted hereunder upon written notice to Customer. In case of receivership or bankruptcy the License To Use shall be continued provided the Receiver or Trustee in Bankruptcy assumes all of the Customer's obligations under this agreement. If the License To Use is so terminated, all the License fees paid hereunder will be deemed to have been paid for the use of the Package during the time it was in Customer's possession and Customer shall not be entitled to a refund of any portion of the License To Use fee. In addition, in the event of a breach by Customer of any of its

⁶⁴ *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 (*Sattva*) at para 49.

⁶⁵ *Sattva* at para 47.

⁶⁶ *Sattva* at para 48.

⁶⁷ *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 at para 88.

⁶⁸ See e.g. *Bennett Law Chambers Professional Corporation v Camcentre Holdings Inc*, 2022 ONCA 658 at para 28.

obligations hereunder, Digiflex shall be entitled to seek equitable relief, including by way of injunction, to protect its interests herein, it being acknowledged by the Customer that Digiflex would suffer irreparable harm by any such breach and that damages would not be an adequate remedy.

In the event that Digiflex breaches any of its obligations, or if Digiflex becomes insolvent, or files a petition in bankruptcy, then the Customer may, at its option terminate the License To Use granted hereunder upon written notice to Digiflex.

In the event of a termination of the License hereunder, the Package and all copies thereof shall forthwith be returned to Digiflex or, at Digiflex 's option, destroyed or erased from electronic memories or other storage devices and thereafter Customer shall deliver to Digiflex a letter, from an officer of the Customer, certifying that all copies of the Software and any code or listings produced by the Software have been destroyed, returned or erased and that the Customer has discontinued use of the Package.⁶⁹

47. When reading the W&C Software Licenses as a whole, and a reasonable interpretation of the Termination Clause allows Digiflex to terminate the W&C Software Licenses upon a breach of the W&C Software Licenses, with or without "any amounts owing by Customer to Digiflex".

48. In the Reasons, Justice Marion suggested that the Termination Clause could only be terminated for a breach if Wallace & Carey had "amounts owing" to Digiflex.⁷⁰ Justice Marion made this statement without hearing argument from the parties on the interpretation of the Interpretation Clause. With respect, when the W&C Software Licenses are read as a whole, this cannot be what Wallace & Carey and Digiflex intended.

49. First, the Court must avoid interpretation that led to commercially absurd results.⁷¹ An interpretation that required Wallace & Carey to have amounts owing to terminate for a breach would effectively bar Digiflex from terminating for any breach whatsoever unless Wallace & Carey also happened to owe money to Digiflex at the time. It would mean Digiflex could not terminate even for serious, *non-monetary* breaches, such as a breach of confidentiality or an infringement of proprietary rights, unless there were amounts owing. This would create a perverse incentive for Wallace & Carey to freely violate the terms of the W&C Software Licenses and avoid

⁶⁹ [Mardukhi Affidavit #1](#), Exhibits B, C, D, E (W&C Software Licenses), cl 5 (PDF pp 48-49, 61-62, 73-74, 86).

⁷⁰ *Re W&C* at paras 104 – 106.

⁷¹ *Freyberg v Fletcher Challenge Oil and Gas Inc*, 2005 ABCA 46 at para 57.

termination simply by maintaining payments up to date. Sophisticated commercial parties like Wallace & Carey and Digiflex cannot have intended such an unfair outcome.

50. There are other textual elements of the W&C Software Licenses that demonstrate that Wallace & Carey and Digiflex could not have intended that Wallace & Carey only be permitted to terminate upon a breach if Wallace & Carey owed Digiflex money. For example, the parties agreed that Wallace & Carey could terminate in the event of a breach. It would be unfair if Wallace & Carey could terminate in the event of a breach, but not Digiflex. By way of another example, Wallace & Carey acknowledged that, in the event of a breach, monetary remedies would not be sufficient, and that Digiflex would be entitled to apply for an equitable injunction. An interpretation of the Termination Clause that only permits termination if Wallace & Carey owes Digiflex money is in direct contradiction with this acknowledgement.

51. Against the commercial context and the other textual clues of the W&C Software Licenses, Digiflex submits that the parties intended for the phrase "if there are any amounts owing by Customer to Digiflex" (the **Amounts Owing Condition**) to be a condition to termination that only applied in the event that Wallace & Carey became "insolvent, filed a petition in bankruptcy, or filed an involuntary petition in bankruptcy, or has a receiver appointed over all or substantially all of its assets." The bankruptcy and insolvency context support this interpretation.

52. In Canada, there are statutory⁷² and common law⁷³ prohibitions on "*ipso facto*" clauses that purport to terminate contracts solely based on the debtor's insolvency or bankruptcy.⁷⁴ In the context of the *CCAA*, this prohibition is often translated into an Order of the Court to prevent the termination of contracts during a Stay of Proceedings.⁷⁵ However, termination clauses that are triggered by an event other than insolvency or bankruptcy, such as payment default, are not solely because of insolvency or bankruptcy and can be enforced.⁷⁶ In this context, the Amounts Owing

⁷² *CCAA*, ss 34(1).

⁷³ Also known as the anti-deprivation rule, which renders void contract provisions that, upon insolvency, remove value that would otherwise be available to creditors: see *Chandos Construction Ltd v Deloitte*, 2020 SCC 25 (**Chandos**) at para 31.

⁷⁴ On the definition of "*ipso facto*" clause, see *Servus Credit Union v Sulyok*, 2018 ABQB 860 at para 23.

⁷⁵ *CCAA*, s 11.02; [Model CCAA initial order](#); [ARIO](#), s 18.

⁷⁶ *Chandos* at para 40. See e.g. *Validus Power Corp et al and Macquarie Equipment Finance Limited*, 2023 ONSC 6367 at para 97.

Condition should be interpreted as the parties' attempt to tether termination to non-payment so as to avoid offending the rules relating to bankruptcy and insolvency. Whether the Amounts Owing Condition would have given Digiflex a legal basis to terminate despite a Stay of Proceedings is irrelevant. What matters for interpretation is the purpose for which the Amounts Owing Condition was included. Given the context of the *CCAA*, the only reasonable interpretation is that the parties intended to *preserve* Digiflex's right of termination rather than to narrow it.

2. *Wallace & Carey has "amounts owing" to Digiflex*

53. In the alternative, the event the Court decides that Digiflex may only terminate the contract for breach if Wallace & Carey has amounts owing to Digiflex, both Wallace & Carey and Loudon currently have amounts owing to Digiflex⁷⁷

54. Wallace & Carey has two unpaid invoices and Loudon Bros has one unpaid invoice in relation to the Digiflex Software, including year-end support.⁷⁸

55. There is nothing in the W&C Software Licenses that describes what the "amounts owing" must be tied to. If the parties intended this to be a condition to terminate for breach, it is reasonable to infer that it would be related to *any* amounts tied to the Digiflex Software, not just the initial lump-sum license fee, and not just the maintenance fee. Such an interpretation would be in line with the interpretation of the licenses, which includes significant protections for Digiflex as the IP rights holder. It would be non-sensical if the parties agreed that Digiflex could only terminate the license if Wallace & Carey had not paid for its up-front license fee.

3. *"Perpetual" does not mean the W&C Software Licenses are irrevocable or never-ending*

56. The Companies' position is that because the W&C Software Licenses are "perpetual", they are never-ending, in the sense that the Companies have a right to use the software, for whatever purpose, until the end of time. This would be an absurd interpretation and is not what the Companies and Digiflex intended when the W&C Software Licenses are read as a whole.

⁷⁷ [Monitor's 19th Report](#), s 2.2 at para 2(a).

⁷⁸ Mardukhi Affidavit #3 at para 30, Exhibit B (outstanding invoices and related correspondence) (PDF p 49).

57. Licenses are contractual in nature and can be revoked if (1) the license does not expressly or impliedly prohibit revocation, and (2) there is a right of termination provided by the contract or in common law.⁷⁹ The W&C Software Licenses do not expressly or impliedly prohibit revocation, and they contain a right of termination under the Termination Clause. Such a right also exists generally in common law, as explained further down below.

58. The fact that the W&C Software Licenses are perpetual does not mean that they are irrevocable. The word "perpetual" can have two meanings: "never-ending" (irrevocable, or incapable of being brought to an end) or "of indefinite duration" (operating without limit of time).⁸⁰ In the context of license agreements that set out a right of termination, the word "perpetual" has been interpreted to mean "of indefinite duration".⁸¹

59. The case of *BMS Computer* is illustrative. In this case, the UK High Court emphasized that the termination provisions were central to the agreement and not displaced by the use of the word "perpetual".⁸²

60. To ascertain the proper meaning of the word "perpetual" in this case, the Court should have regard to the general rules of contract interpretation stated above as well as relevant case law.⁸³ In reading the W&C Software Licenses, the Court should strive to give effect to all the terms where possible and avoid any interpretation that may render one or more of the terms meaningless.⁸⁴

61. A proper interpretation of "perpetual" in this case is that the W&C Software Licenses are "of indefinite duration" but remain subject to termination in accordance with their terms. As in *BMS Computer*, the W&C Software Licenses specifically grant both parties a right of termination

⁷⁹ Barry B Sookman, *Sookman: Computer, Internet, Electronic Commerce and Artificial Intelligence Law* (Toronto: Carswell, 1988) (loose-leaf updated 2025, release 6), ch 2 at § 2:23, n 32; *R v Senick*, 1982 CanLII 3985 (MBCA) at para 17; *Imperial Oil Limited v Young*, 1996 CarswellNfld 261 (NLSC) at para 141;

⁸⁰ *BMS Computer Solutions Ltd v AB Agri Ltd*, [2010] EWHC 464 (Ch) (*BMS Computer*) at para 17; Sookman, ch 2 at § 2:23.

⁸¹ See e.g. *BMS Computer*.

⁸² *BMS Computer* at para 18(ii) [emphasis added].

⁸³ *Trico Developments Corporation v El Condor Developments Ltd*, 2020 ABCA 132 at para 25.

⁸⁴ *Kensington Energy Ltd v B & G Energy Ltd*, 2008 ABCA 151 at para 13; *National Trust Co v Mead*, 1990 CanLII 73 (SCC), [1990] 2 SCR 410 at 425.

under the Termination Clause. The mere existence of the Termination Clause demonstrates that the parties contemplated an end to the license relationship and did not intend the word "perpetual" to extinguish the right of termination. The parties' intention to preserve the right of termination is further supported by the fact that the Termination Clause specifies in detail what Wallace & Carey must do post-termination to discontinue its use of the W&C Software Licenses. Such information would serve no purpose if the W&C Software Licenses were truly irrevocable.

B. Wallace & Carey has breached its obligations in the W&C Software Licenses

62. Wallace & Carey has breached more than one of its obligations in the W&C Software Licenses. Specifically, Wallace & Carey breached its: (i) obligation to provide Digiflex full access to the Digiflex Software for purposes of maintenance (under Clause 4.B of the W&C Software Licenses – Maintenance Agreements); (ii) obligation to keep the Digiflex Software confidential (under Clause 11); (iii) Wallace & Carey's obligation to only use the Digiflex Software in relation to the type of business it was when the W&C Software Licenses were signed (under Clause 4); and (iv) Wallace & Carey's obligation to not transfer the right to use the Digiflex Software to anyone else (under Clause 2.A).

63. Further, Wallace & Carey's conduct has repudiated the W&C Software Licenses. Digiflex's common law right to terminate the W&C Software Licenses supersedes any termination clauses within the contract.

1. *Wallace & Carey breached its obligation to provide Digiflex full access to the Digiflex Software for purposes of maintenance*

64. Clause 4.B of the Maintenance Agreements reads:

4. MAINTENANCE SERVICES

B. Digiflex representatives will have full access to the Software in order to effect the necessary Maintenance Services, and for these purposes Customer shall be responsible for providing all necessary ports, dial-in lines and compatible media at Customer's site and cost, and allow physical access to the Customer's site when required to perform maintenance On-Site.

65. As of January 31, 2026, Digiflex has lost access to the Digiflex Software.⁸⁵ When asked about this to counsel for the Monitor, counsel for the Monitor replied: "We understand that SEC and SEDCC will not reinstate access to DigiFlex prior to the lifting of the Stay as they have concerns that DigiFlex might change information or access requirements which would significantly prejudice SEC / SEDCC in these final stages. The VPN will be re-enabled to provide the Monitor read-only access once the Stay is lifted. If you have an issue with that, take it up with 7-Eleven, not the Monitor."⁸⁶

66. Further, there is absolutely nothing in the W&C Software Licenses that permits a third party – SEC / SEDCC – to remove Digiflex's access to monitor Digiflex's *own* software. The W&C Software Licenses are with Wallace & Carey, they are not with SEC / SEDCC. The TSA and Stay were granted on the representations that Wallace & Carey was the one using the software, not SEC / SEDCC. If SEC / SEDCC removed Digiflex's access, it would have been as a result of Wallace & Carey permitting such action to occur.

67. Turning off Digiflex's access to monitor its *own* software is serious. Again, Digiflex is the owner of the software. The Companies do not own the software – they had a mere license. The Companies cannot do whatever it wants with the software. The entire purpose of a license is to prevent non-owner customers like Wallace & Carey, and especially a third party like SEDCC, from controlling the software as if it is their own property. Preventing Digiflex's access to and control of the Digiflex Software subverts the protections provided by the W&C Software Licenses and is a fundamental breach.

2. *Wallace & Carey breached its obligation to keep the Digiflex Software confidential*

68. Clause 11 of the W&C Software Licenses states:

11. CONFIDENTIALITY. Each party acknowledges that **all material** and information which has or will come into its possession or knowledge **in connection with this Agreement** or in the performance hereof, and in particular the terms and conditions of this agreement, **consists of confidential and proprietary data**, whose disclosure to or use by third

⁸⁵ Affidavit of Mohamad Mardukhi affirmed February 2, 2026 (**Mardukhi Affidavit #4**) at para 3.

⁸⁶ Allen Affidavit #4, Exhibit A.

parties will be damaging. **Both parties, therefore, agree to hold such material and information in strictest confidence**, not to make use thereof other than for the performance of this Agreement, to release it only to employees who need to know such information in the course of their employment, **and not to release or disclose it to any other party**. The obligation of both parties under this paragraph shall continue during and after the term of this License To Use agreement.

69. The Digiflex Software is Digiflex's confidential information of which Wallace & Carey came into possession in connection with the W&C Software Licenses and is therefore protected by confidentiality under this Clause.⁸⁷ Wallace & Carey was to maintain the Digiflex Software in "strictest confidence" and not release or disclose it to any other party.

70. Wallace & Carey breached this Clause by allowing SEC and SEDCC access to the Digiflex Software. In November 2023, the title to Wallace & Carey's "technology, software and systems" (including servers) was transferred to SEC.⁸⁸ Wallace & Carey's server had a copy of the Digiflex Software installed on it.⁸⁹ Wallace & Carey and SEC's asset purchase agreement dated November 7, 2023 (the **W&C APA**) provided for the sale of intellectual property *owned* by the Companies.⁹⁰ Wallace & Carey never owned the Digiflex Software; it only had a license to use it, and the license was not assigned under the W&C APA. By transferring to SEC servers on which the Digiflex Software was installed, Wallace & Carey breached the W&C Software Licenses.

71. This type of breach has been recognized in case law. *Re Nortel Networks Corporation et al*⁹¹ dealt with a similar fact pattern and is illustrative. In *Nortel*, the plaintiff granted a software license to the defendant. The license agreement contained a confidentiality clause similar to the one found in the W&C Software Licenses, in that it required the defendant to keep the source code of the software confidential.⁹² The defendant later entered into an asset purchase agreement with a third party, which provided for the sale of intellectual property *owned* by the defendant.⁹³ The

⁸⁷ Mardukhi Affidavit #3 at para 32.

⁸⁸ See footnotes 6 and 7 of this Brief.

⁸⁹ Mardukhi Affidavit #3 at para 5; [Monitor's 19th Report](#), s 2.2 at paras 4.

⁹⁰ Article 2.1 of the W&C APA: Approval and Vesting Order dated November 17, 2023, Schedule B (W&C APA) (PDF p 23).

⁹¹ *Re Nortel Networks Corporation et al*, 2016 ONSC 2732 (*Nortel*).

⁹² *Nortel* at paras 6, 8.

⁹³ *Nortel* at para 11.

Court noted that the defendant did not own the software – it owned only its license rights with the plaintiff, and these rights were not assigned or transferred to anyone.⁹⁴ By providing the purchasers with access to its database, which contained the source code, the defendant breached the license agreement.⁹⁵

72. The fact that Wallace & Carey's server was transferred in accordance with the TSA does not excuse Wallace & Carey's breach. The same can be said for the fact the TSA was approved by the Court. The TSA did not require Wallace & Carey to engage in activities that are in breach of any contract or license it was subject to.⁹⁶ Likewise, in approving the TSA and authorizing certain transfers of Wallace & Carey's assets, the Court was not approving or ordering the transfer of the Digiflex Software specifically.⁹⁷ If Wallace & Carey needed use of the Digiflex Software until the transition to SEDCC was complete, it should not have sold the servers to SEC. It was Wallace & Carey's choice to forgo this option and find itself in breach.

3. *Wallace & Carey breached its obligation to not use the Digiflex Software for new business ventures*

73. Clause 4 of the W&C Software Licenses contains a provision that reads:

4. LICENSE TO USE FEE. [...]

This unlimited License shall apply to the current Customer's business.
New business acquisitions or startups are not covered under this unlimited use License.

74. Wallace & Carey was required to use the Digiflex Software solely for its business. It was not allowed to use the Digiflex Software for new business ventures.

75. Today, the Digiflex Software installed on the Designated Server is not being used by Wallace & Carey. It is being used by SEDCC.⁹⁸

⁹⁴ *Nortel* at para 23.

⁹⁵ *Nortel* at paras 14, 18.

⁹⁶ See clause 21(b) of the TSA: [Monitor's 14th Report](#), Appendix A (TSA) (PDF p 27).

⁹⁷ *Nortel* at para 25.

⁹⁸ Allen Affidavit #4, Exhibits A (PDF, page 5, item 3) and B (PDF, page 32, item 3).

4. ***Wallace & Carey breached its obligation to not transfer the right to use the Digiflex Software to anyone else***

76. Clause 2.A of the W&C Software Licenses dictates that the W&C Software Licenses are "non-transferable":

2. GRANT OF LICENSE TO USE

A. Digiflex hereby grants to Customer a **non-transferable**, non-exclusive, perpetual License, one (1) copy of a machine executable version of the Software together with the Supporting Documentation under the terms expressed herein, effective on the date this Agreement has been executed by both parties.

77. This clause means that only Wallace & Carey has the right to use the Digiflex Software and that this right cannot be transferred to any third party. This interpretation is supported by the presence of a non-assignment clause in the W&C Software Licenses, which prohibits the parties from assigning the rights under the W&C Software Licenses without the other party's consent.⁹⁹

78. Wallace & Carey has breached the W&C Software Licenses by allowing 7-Eleven to use the Digiflex Software.

5. ***Wallace & Carey's breaches have repudiated the W&C Software Licenses***

79. In the alternative, should this Court not find that there is an explicit right to terminate within the W&C Software Licenses Agreement, Digiflex submits that it may rely on the law of repudiatory and fundamental breach. Wallace & Carey's breaches amount to a repudiation of the W&C Software Licenses. The W&C Software Licenses do not remove the common law right to terminate upon breach.

Legal principles related to the law of repudiatory and fundamental breach

80. Repudiation occurs when a party breaches a contract such that the non-breaching party is deprived of substantially the whole benefit of that contract.¹⁰⁰ The non-breaching party may then

⁹⁹ [Mardukhi Affidavit #1](#), Exhibits B, C, D, E (W&C Software Licenses), cl 15 (PDF pp 51, 64, 76, 88).

¹⁰⁰ *Booster Juice Inc v West Edmonton Mall Property Inc*, 2019 ABCA 58 (***Booster Juice***) at para 13; *Spirent Communications of Ottawa Ltd v Quake Technologies (Canada) Inc*, 2008 ONCA 92 (***Spirent***) at para 37.

accept the breaching party's repudiation and terminate the contract or reject the repudiation and continue with the contract.¹⁰¹ Digiflex has expressly notified Wallace & Carey of its acceptance and intention to terminate the contract following the lifting of the stay.¹⁰²

81. Finding repudiatory, or fundamental, breaches of contract relies on breaches that are fundamental or substantial enough to the core purpose and intention of a contract. A breach will be found to be repudiatory where it deprives the innocent party of substantially the whole benefit of the contract.¹⁰³ A substantial enough breach will also be found if the contracting party, by its words or conduct, justifiably exhibits a clear and unmistakable intention to no longer be bound by its contractual undertaking.¹⁰⁴

82. The common law right to terminate when there is repudiation exists beyond the limits or requirements placed in the contract's termination clause.¹⁰⁵

83. The starting place when considering repudiation and a fundamental or substantial breach is the contract itself – here, the W&C Software Licenses. As stated above, contractual interpretation relies on the search for the objective intent of the parties at the time of contracting – considering the whole contract while giving the words their ordinary and grammatical meaning, consistent with the surrounding circumstances.¹⁰⁶

84. Courts consider five factors to guide the analysis of whether a breach is fundamental enough to repudiate a contract: (a) the ratio of the party's obligations not performed to that party's obligations as a whole; (b) the seriousness of the breach to the innocent party; (c) the likelihood of repetition of such breach; (d) the seriousness of the consequences of the breach; and (e) the relationship of the part of the obligation performed to the whole obligation.¹⁰⁷

¹⁰¹ *Acden Environment Limited Partnership v Environmental Metal Works Ltd*, 2021 ABQB 160 (**Acden**) at para 66.

¹⁰² Allen Affidavit #3, Exhibit H (PDF page 53).

¹⁰³ *Booster Juice* at para 13; *Spirent* at para 37; *Acden* at para 63.

¹⁰⁴ *Acden* at para 63.

¹⁰⁵ *John Barlot Architect Ltd v 413481 Alberta Ltd*, 2013 ABQB 388 at para 42; *Harco Enterprises Ltd v Knelsen Sand and Gravel Ltd*, 2021 ABQB 263 at para 173.

¹⁰⁶ *Sattva* at para 47.

¹⁰⁷ *Spirent* at para 36, The Alberta Court of Appeal endorsed the chambers judge's application of these factors in *Canadian Western Bank v 702348 Alberta Ltd*, 2010 ABCA 227 at paras 16-17. These factors were recently considered

Wallace & Carey's breaches have repudiated the W&C Software Licenses

85. The purpose of the W&C Software Licenses was to provide Wallace & Carey with a limited right to use the Digiflex Software while simultaneously protecting Digiflex's intellectual property via clauses concerning confidentiality of information, the Licenses' non-transferable nature, and the Licenses' use being specific to Wallace & Carey's business at the time of contracting.

86. Wallace & Carey's breaches have made it clear that Wallace & Carey does not intend to continue to be bound by the W&C Software Licenses.

87. The contractual obligations that Wallace & Carey agreed to acknowledge that Wallace & Carey understood that the Digiflex Software was not its property, and also that Digiflex maintained the right to control how its intellectual property (i.e., the software) was used. Wallace & Carey agreed to: (a) respect and protect the non-transferable nature of the W&C Software Licenses;¹⁰⁸ (b) use the Digiflex Software only for its own business, current at the time of contracting;¹⁰⁹ (c) not breach its obligations;¹¹⁰ (d) respect Digiflex's proprietary rights and not copy or allow the Digiflex Software to fall into the hands of a third-party;¹¹¹ and (e) to only assign the license upon Digiflex's written consent.

88. Considering the five criteria relevant to determining whether Wallace & Carey's breaches were fundamental or substantial enough to repudiate a contract, the facts demonstrate that the breaches are fundamental or substantial enough to repudiate the contract:

89. ***Criteria 1: the ratio of the party's obligations not performed to that party's obligations as a whole:*** Wallace & Carey has acted directly contrary to substantially all of its contractual obligations. Part of the purpose of the W&C Software Licenses was to outline the specific use of

in *CNOOC Petroleum North America ULC v 801 Seventh Inc*, 2025 ABKB 145 at para 834, citing *Spirent*. See another recent reference to these factors in *Acden* at para 65.

¹⁰⁸ [Mardukhi Affidavit #1](#), Exhibits B, C, D, E (W&C Software Licenses), cl 2.A (PDF pp 48, 61, 72-73, 85).

¹⁰⁹ [Mardukhi Affidavit #1](#), Exhibits B, C, D, E (W&C Software Licenses), cl 4 (PDF pp 48, 61, 73, 85).

¹¹⁰ [Mardukhi Affidavit #1](#), Exhibits B, C, D, E (W&C Software Licenses), cl 5 (PDF pp 48-49, 61-62, 73-74, 86).

¹¹¹ [Mardukhi Affidavit #1](#), Exhibits B, C, D, E (W&C Software Licenses), cl 12 (PDF pp 51, 64, 75-76, 88).

Digiflex's license and protect Digiflex from allowing inappropriate use of its software. Another part of the licenses was to establish yearly maintenance rates that Wallace & Carey would pay to Digiflex for the ongoing maintenance of the software under the license. Wallace & Carey has not maintained or fulfilled substantially all its contractual obligations.

90. **Criteria 2: the seriousness of the breach to the innocent party:** Wallace & Carey's breaches compromise Digiflex's business model and the control and exclusive use of its copyrighted software. The protection and control of its intellectual property rights is of the utmost seriousness to Digiflex – this software is central to Digiflex's business. Wallace & Carey's breaches are extremely serious to Digiflex.

91. **Criteria 3: the likelihood of repetition of such breach:** Wallace & Carey has continually, for more than two years, has been breaching the W&C Software Licenses. Since the TSA, Wallace & Carey has allowed 7-Eleven to improperly use the licenses without having 7-Eleven establish its own license with Digiflex. Repetition of these ongoing breaches is guaranteed.

92. **Criteria 4: the seriousness of the consequences of the breach:** The consequences of the breach put Digiflex business and core asset, the software licenses, at risk. They are extremely serious consequences.

93. **Criteria 5: the relationship of the part of the obligation performed to the whole obligation:** Digiflex and Wallace & Carey have had a collegial ongoing relationship for 20 years. Both Digiflex and Wallace & Carey respected their obligations under the agreement until Wallace & Carey entered CCAA proceedings and were an unwitting party to the TSA. These contractual obligations were continuing obligations that were expected to be maintained for the life of the contract. Instead, Wallace & Carey has been breaching the W&C Software Licenses for more than two years – once Wallace & Carey allowed the improper use of its software licenses for the benefit of 7-Eleven, as allegedly required by the TSA.

94. Wallace & Carey has repudiated the licenses and Digiflex has accepted that repudiation. Digiflex is entitled terminate the W&C Software Licenses upon the lifting of the Stay.

C. The Companies request for access to the Digiflex Software post February 15th should not be granted

95. Whether the Companies' request for access to the Digiflex Software following the lifting of the Stay should be granted depends on whether the Court finds that the W&C Software Licenses are properly terminable or not. If they are, the only way the Companies can justify the relief they are seeking is by satisfying the test for a mandatory injunction. If the licenses are not terminable, the issue comes down to the interpretation of the W&C Software Licenses and whether the maintenance agreement can be severed.

1. The Companies have not met the test for a mandatory injunction

96. Granting a mandatory injunction is a well-known three-part test. The applicant must demonstrate (i) a strong *prima facie* case that it will succeed at trial, (ii) irreparable harm will result if the relief is not granted, and (iii) that the balance of convenience favours granting the injunction.¹¹² This sort of intervention is extraordinary.¹¹³

97. The Companies cannot meet the mandatory injunction test.

98. First, it has no cause of action against Digiflex.

99. Second, the Companies will not face any harm, let alone irreparable harm, if a mandatory injunction is not granted. The Companies have advised that it only needs the software in the event that it has a reporting duty or an audit. Should the need arise, Mr. Mardukhi has advised that he would be happy to make himself available to assist the Monitor in the event they need assistance with an audit or an investigation during their time as management or trustee of the companies.¹¹⁴ The Monitor has also advised that it is prepared to pay contract rates should the need arise.¹¹⁵ Thus, it appears that there is a solution that would permit Digiflex to control its intellectual property, and satisfy the Companies obligations should an audit arise.

¹¹² *R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 18; *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC) (***RJR-MacDonald***).

¹¹³ *RJR-MacDonald* at 338–39, citing *Trieger v Canadian Broadcasting Corp*, 1988 CanLII 4568 (ONSC).

¹¹⁴ Mardukhi Affidavit #3 at para 26.

¹¹⁵ Allen Affidavit #4, Exhibit A (PDF page 4, para 1).

100. Third, the balance of convenience favours Digiflex. The interests at play include balancing (1): Digiflex's right to control its intellectual property, Mr. Mardukhi's moral right to control who gets to use his software, and third-party's rights in the CCAA process; with (2) the Companies desire to always have access to the software in the event they are audited (despite the fact that Mr. Mardukhi has indicated in the event an audit arises, Digiflex would be happy to assist).

101. The balance of convenience favours Digiflex, because a decision otherwise would be an affront to third-parties in the CCAA regime. If this Court accepts the Companies' arguments, it would, in effect, be as if Digiflex was never successful in the application to lift the stay, as it would permit the W&C Software Licenses to carry on, even though they are properly terminable. Digiflex submits such a holding would also be contrary to this Court's previous ruling that: "Third-party counterparties to agreements with debtors under CCAA protection must also be treated fairly and equitably."¹¹⁶

102. Digiflex has been stuck in this CCAA proceeding for over 2 years and has been forced to sit by idle and watch while SEC / SEDCC uses its software without a license. Digiflex was forced to bring an application to lift the stay, which the Court noted is difficult to do. Digiflex submits that this is especially so when the CCAA regime has developed in such a way that Court-appointed monitors are afforded great deference, who are not held to the same evidentiary standards as third parties to the CCAA, and who are not permitted to be cross-examined. Digiflex has already been penalized for failing to bring its application to lift the stay sooner,¹¹⁷ a factor which led to the decision to not lift the stay immediately, but rather not until February 15, 2026. Digiflex should not be penalized anymore.

103. The balance of convenience also favours Digiflex as allowing the Companies to have a never-ending license to use the Digiflex Software, for free, would further be contrary to principles of intellectual property law. Canadian Parliament has granted Digiflex copyright registrations in respect of the Digiflex Software and has the exclusive control over how its Digiflex Software is

¹¹⁶ *Re W&C* at para 86, see also para 123, citing *In Re Hudson's Bay Company*, 2025 ONSC 5998 at para 32; *Veris Gold Corp (Re)*, 2015 BCSC 1204 at para 58.

¹¹⁷ *Re W&C* at paras 88 – 94.

used. Canadian Parliament has enacted very few situations where the forced use of intellectual property is permitted.¹¹⁸ Allowing a former licensee (here the Companies) to use intellectual property for the purpose of reporting and audits is not one. These principles militate against the Companies' request to use the software, for free, following the termination of their license agreements.

2. *The W&C Software Licenses cannot be broken apart*

104. In the event that this Court finds that the W&C Software Licenses are not terminable, Digiflex submits that the Companies must still pay consideration for read-only access to have continued use of the software.

105. The Monitor's position that maintenance is not required is effectively a request to sever the W&C Software Licenses and their incorporated Maintenance Agreements, which would be contrary to the parties' objective intentions as expressed in the W&C Software Licenses. The W&C Software Licenses contain an entire agreement clause, which states the Maintenance Agreements form part of the W&C Software Licenses and together they represent the entire agreement.¹¹⁹ To allow the Companies to continue to have access to the software without paying the corresponding maintenance fees would be to re-write the parties' agreement, in contradiction to the express terms of the W&C Software Licenses. Re-writing parties contracts in a CCAA proceeding is not permitted.¹²⁰

106. That W&C Software Licenses and the Maintenance Agreements are indivisible is also clear from an operational standpoint. Mr. Mardukhi confirmed that the Digiflex Software cannot operate without maintenance support and updates.¹²¹ This is true even if the Digiflex Software is turned to read-only.¹²² The fact that Loudon Bros has been shut down for years but continues to

¹¹⁸ For further information see Digiflex's briefs submitted in respect of the November Applications.

¹¹⁹ [Mardukhi Affidavit #1](#), Exhibits B, C, D, E (W&C Software Licenses), cl 14 (PDF pp 51, 64, 76, 88).

¹²⁰ See for example, *Nexient Learning Inc*, 2009 CanLii 72037 at paras 62 – 63.

¹²¹ [Mardukhi Affidavit #2](#) at paras 20, 21.

¹²² [Mardukhi Affidavit #3](#) at para 27.

pay the maintenance fees for audit and record keeping purposes is proof that maintenance support is not just optional but crucial and necessary for any type of license use.¹²³

107. The Companies' position that it will not need any help desk or support, and therefore, is not required to pay maintenance fees, is the result of a skewed interpretation of the W&C Software Licenses and ignores the Entire Agreement Clause. The Companies position is focusing on the examples of "maintenance services" that are listed in the W&C Software License that was signed in 2000, when the Companies were active distribution companies. The Companies position ignores the fact that the W&C Software Licenses explicitly state that the terms of the Maintenance Agreement can change on an annual basis,¹²⁴ and the parties are permitted to vary the maintenance fees.¹²⁵ The Companies and Digiflex have amended the terms of the Maintenance Agreements to require maintenance fees to continue to be paid when in read-only format, as exemplified with the current maintenance fees arrangement with Loudon Bros.

108. Contrary to the Companies' assertions, Digiflex's has not raised maintenance fees in an attempt to try and exploit its position in these CCAA proceedings, and in fact, Digiflex has offered to provide the Companies with continued access to the software in exchange for maintenance fees at a significant discount from what the Companies were paying when the software was being used in active form. Digiflex offered a 50% discount on the annual maintenance fee rates, and offered an extra 30% discount if the Companies wished to pay upfront for 6 years (as counsel for the Monitor advised that they would need access for 6 years for the Companies' audit obligations).¹²⁶

109. In exchange to this suggestion, the Companies strongly opposed these fees, and stated: "We remind you that as a participant in CCAA proceedings, your client has an obligation to act in

¹²³ Mardukhi Affidavit #3 at para 28.

¹²⁴ Section 2 of the Maintenance Agreement states: "However that this Maintenance Agreement will be automatically renewed for successive one year terms **upon terms to be agreed upon by the parties**".

¹²⁵ Clause 5 states "[t]he annual rate for Maintenance Charges shall be firm for the period of this Agreement. Subsequent annual Maintenance Charge renewals, as provided under paragraph 3, may be increased or decreased by Digiflex providing that Digiflex has given Customer written notice of such increase or decrease not less than thirty (30) days prior to the end of the then current term of the Maintenance Agreement".

¹²⁶ Allen Affidavit #3, Exhibit L, email from BD&P to Cassels dated February 2, 2026 at 1:49 PM, item 1.

good faith, and these demands raise questions as to whether your client is improperly leveraging its position to extract value from bona fide creditors of the Applicants."¹²⁷ This was uncalled for.

D. The Stay Period ought to be truncated to be lifted immediately in light of the new evidence and the seriousness of the breaches of the Digiflex Software

1. *Digiflex is entitled to equitable relief*

110. Digiflex has a further claim to equitable relief under the W&C Software Licenses. The termination provision notes that Wallace & Carey recognized that Digiflex would suffer irreparable harm and that damages for that harm may not be an adequate remedy. The termination provision allows for Digiflex to seek equitable relief in the event Wallace & Carey breaches the contract. This equitable relief includes the possibility of seeking an injunction.

111. Equitable relief should be considered when there is irreparable harm that cannot be adequately resolved with damages.¹²⁸ Here, the Court should consider the harm that Digiflex has experienced as irreparable harm, given that the protections of its intellectual property have been ignored and have (a) caused Digiflex to lose control of its intellectual property, and (b) allowed its software fall into the control of a third-party it has not contracted or licensed with.¹²⁹

2. *Varying the Interlocutory Order*

112. A Court may vary an interim order and resolve disputants' disagreements of an order under the *Alberta Rules of Court*. Rule 9.3 allows the disputants to apply to the Court to resolve the dispute on an order.¹³⁰ Rule 9.15(4)(a) allows a Court to set aside, vary or discharge an interlocutory order because information arose or was discovered after the order was made, or on other grounds the court considers just.¹³¹ Further, some courts have commented on section 11 of

¹²⁷ Allen Affidavit #4, Exhibit A, email from Cassels to BD&P dated February 3, 2026 at 12:17 PM, item 1.

¹²⁸ *Landmark Solutions Ltd v 1082532 BC Ltd*, 2021 BCCA 29 (**Landmark**) at paras 61-67.

¹²⁹ *Landmark* at para 48 citing *RJR-MacDonald Inc v Canada (AG)*, [1994] 1 SCR 311 at 341.

¹³⁰ Alta Reg 124/2010.

¹³¹ Alta Reg 124/2010.

the *CCAA* as providing a broad remedial power of the court that has been found to include the authority to amend orders as part of the *CCAA* process, as that process must be fluid.¹³²

113. Digiflex requests that Justice Marion adjust or vary his previous order to permit the Stay to be lifted immediately so that Digiflex can immediately turn the Digiflex Software to read-only to prevent any further unauthorized use by SEC / SEDCC. This equitable relief should be allowed because the previous Order was made on the basis that it was still Wallace & Carey using the Digiflex Software; however, this new evidence shows that is not the case.

E. Digiflex is entitled to costs as it relates to the Assignment Application

114. In the Reasons, the Honourable Justice Marion deferred the matter of costs in relation to the Assignment Application pending agreement of the parties, or a later decision, if required.¹³³ Since 7-Eleven never resurrected the proposed assignment aspect of the Assignment Application, Digiflex should be entitled to costs, and 7-Eleven should be ordered to pay for such costs.

115. Costs are appropriate in this case, notwithstanding the *CCAA* context. Costs are typically not awarded in *CCAA* proceedings, in part, because they involve involuntary participants of the *CCAA* process.¹³⁴ However, here, Digiflex submits that these policy reasons are not present.

116. First, the proposed assignment under the Assignment Application was primarily a commercial dispute between Digiflex and 7-Eleven regarding the latter's access to and use of the Digiflex Software. The Honourable Justice Marion noted that limiting or terminating 7-Eleven's access to the Digiflex Software would have little negative impact to the Companies (i.e. Wallace & Carey and Loudon Bros), their creditors, and other stakeholders.¹³⁵

117. Second, 7-Eleven asked the Monitor to bring the Application on their behalf and filed a brief in support of the Application. The 7-Eleven entities are sophisticated commercial parties that

¹³² *Re: AlphaBow Energy Ltd*, 2025 ABKB 550 at paras 33-34.

¹³³ *Re W&C* at para 140.

¹³⁴ *Calpine Canada Energy Ltd, Re*, 2008 ABQB 537 (*Calpine*) at para 1.

¹³⁵ *Re W&C* at para 120.

entered the *CCAA* process voluntarily in an attempt to better their positions.¹³⁶ They are not the type of parties contemplated under the no-costs convention, which is to shield involuntary participants of the *CCAA* from adverse cost consequences.

118. As a result, Digiflex requests an order that orders 7-Eleven to pay for Digiflex's costs on the Assignment Application. Digiflex requests an opportunity to provide short written representations to the Court on the amount it ought to be entitled to.

V. RELIEF REQUESTED

119. See attached draft Order as enclosed hereto as **Schedule "A"**.

BURNET, DUCKWORTH & PALMER LLP

Per:



Chelsea Nimmo
Florence Hogg
Counsel for the Respondent, Digiflex
Information Systems Inc.

¹³⁶ *Calpine* at para 1.

VI. AUTHORITIES RELIED UPON

TAB	DOCUMENT
1.	<i>Acden Environment Limited Partnership v Environmental Metal Works Ltd</i>, 2021 ABQB 160
2.	<i>AlphaBow Energy Ltd</i>, 2025 ABKB 550
3.	Barry B Sookman, <i>Sookman: Computer, Internet, Electronic Commerce and Artificial Intelligence Law</i> (Toronto: Carswell, 1988) (loose-leaf updated 2025, release 6)
4.	<i>Bennett Law Chambers Professional Corporation v Camcentre Holdings Inc</i>, 2022 ONCA 658
5.	<i>BMS Computer Solutions Ltd v AB Agri Ltd</i> , [2010] EWHC 464 (Ch)
6.	<i>Booster Juice Inc v West Edmonton Mall Property Inc</i>, 2019 ABCA 58
7.	<i>R v Canadian Broadcasting Corp</i>, 2018 SCC 5
8.	<i>Canadian Western Bank v 702348 Alberta Ltd</i>, 2010 ABCA 227
9.	<i>Calpine Canada Energy Ltd, Re</i>, 2008 ABQB 537
10.	<i>Chandos Construction Ltd v Deloitte</i>, 2020 SCC 25
11.	<i>CNOOC Petroleum North America ULC v 801 Seventh Inc</i>, 2025 ABKB 145
12.	<i>Freyberg v Fletcher Challenge Oil and Gas Inc</i>, 2005 ABCA 46
13.	<i>Harco Enterprises Ltd v Knelsen Sand and Gravel Ltd</i>, 2021 ABQB 263
14.	<i>IFP Technologies (Canada) Inc v EnCana Midstream and Marketing</i>, 2017 ABCA 157
15.	<i>Imperial Oil Limited v Young</i>, 1996 CanLII 11643 (NLSC)
16.	<i>John Barlot Architect Ltd v 413481 Alberta Ltd</i>, 2013 ABQB 388
17.	<i>Kensington Energy Ltd v B & G Energy Ltd</i>, 2008 ABCA 151
18.	<i>Landmark Solutions Ltd v 1082532 BC Ltd</i>, 2021 BCCA 29
19.	<i>National Trust Co v Mead</i>, 1990 CanLII 73 (SCC), [1990] 2 SCR 410
20.	<i>Nexient Learning Inc</i>, 2009 CanLii 72037
21.	<i>Re Nortel Networks Corporation et al</i>, 2016 ONSC 2732
22.	<i>RJR-MacDonald Inc v Canada (Attorney General)</i>, 1994 CanLII 117 (SCC)

23.	<u><i>Sattva Capital Corp v Creston Moly Corp</i>, 2014 SCC 53</u>
24.	<u><i>R v Senick</i>, 1982 CanLII 3985 (MBCA)</u>
25.	<u><i>Servus Credit Union v Sulyok</i>, 2018 ABQB 860</u>
26.	<u><i>Spirent Communications of Ottawa Ltd v Quake Technologies (Canada) Inc</i>, 2008 ONCA 92</u>
27.	<u><i>Trico Developments Corporation v El Condor Developments Ltd</i>, 2020 ABCA 132</u>
28.	<u><i>Validus Power Corp et al and Macquarie Equipment Finance Limited</i>, 2023 ONSC 6367.</u>
29.	<u><i>Wallace & Carey Inc (Re)</i>, 2025 ABKB 750</u>

SCHEDULE A

SCHEDULE "A" – PROPOSED DRAFT ORDER

COURT FILE NUMBER 2301 - 08305

Clerk's Stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, RSC 1985, c C-
36, as amended

AND IN THE MATTER OF THE COMPROMISE OF
ARRANGEMENT OF WALLACE & CAREY INC.,
LOUDON BROS LIMITED, and CAREY
MANAGEMENT INC.

APPLICANT DIGIFLEX INFORMATION SYSTEMS INC.

DOCUMENT **ORDER**

ADDRESS FOR **Burnet, Duckworth & Palmer LLP**
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INFORMATION OF **Lawyer: Chelsea Nimmo / Florence Hogg**
PARTY FILING THIS Phone Number: (403) 260-0102
DOCUMENT Fax Number: (403) 260-0332
Email Address: cnimmo@bdplaw.com
File No. 79894-1

DATE ON WHICH ORDER WAS PRONOUNCED: February 5, 2026

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice Marion

UPON the Application (the "**Monitor's Assignment Application**") of KSV Restructuring Inc., in its capacity as the court-appointed Monitor with enhanced powers (in such capacity, the "**Monitor**") of Wallace & Carey Inc. ("**W&C**"), Loudon Bros Limited ("**Loudon**"), and Carey Management Inc. ("**CMI**" and collectively, the "**Companies**") for an order, among other things, assigning the DigiFlex License Agreements (as herein defined at Schedule "A") from W&C and/or Loudon to 7-Eleven Distribution Canada Corporation ("**SEDCC**") or its nominee (the "**Assignee**") (the "**Proposed Assignments**"); **AND UPON** the Application (the "**DigiFlex Stay Application**" and together with the Monitor's Application, the "**November Applications**") of DigiFlex Information Systems Inc. ("**DigiFlex**") for, among other things, an

order lifting the stay of proceedings (the "**Stay**") *vis a vis* DigiFlex; **AND UPON** the Monitor seeking advice and direction (the "**Advice and Direction Application**") regarding the Reasons for Decision of the Honourable Justice M.A. Marion dated December 15, 2025, under the citation *Wallace & Carey Inc. (Re)*, 2025 ABKB 750 (the "**Reasons**"); **AND UPON** DigiFlex bringing a Cross-Application in response to the Advice and Direction Application for an order, *inter alia*, declaring the DigiFlex License Agreements terminated upon the lifting of the Stay (the "**Termination Application**"); **AND UPON** having reviewed the Amended and Restated Initial Order of this Court pronounced June 30, 2023 (the "**ARIO**"); the Ancillary Order granted by the Honourable Justice Hollins dated August 23, 2023 (the "**Ancillary Order**"); the Consent Order with DigiFlex granted by this Court on December 17, 2024 (the "**DigiFlex Consent Order**"); the Monitor's Sixth Report to Court dated November 8, 2023; the Monitor's Fourteenth Report to Court dated December 13, 2024; the Monitor's Seventeenth Report to Court dated August 13, 2025 (the "**Seventeenth Report**"); the Monitor's Supplement to the Seventeenth Report to Court dated August 21, 2025 (the "**Supplement to Seventeenth Report**"); the Monitor's Second Supplement to the Seventeenth Report to Court dated September 11, 2025 (the "**Second Supplement to Seventeenth Report**"); the Monitor's Eighteenth Report to Court dated November 20, 2025 (the "**Eighteenth Report**"); the Monitor's Nineteenth Report to Court dated November 20, 2025 (the "**Nineteenth Report**"); the Affidavit of Joshua Buchanan sworn September 8, 2025; the Affidavit of Jennifer Allen affirmed November 12, 2025; the Affidavit of Jennifer Allen affirmed November 25, 2025; the Affidavit of Jennifer Allen affirmed February 2, 2026; the Affidavit of Jennifer Allen affirmed February 4, 2026; Affidavit of Mohamad Z. Mardukhi, affirmed November 14, 2025; the Affidavit of Mohamad Z. Mardukhi, affirmed November 25, 2025; the Confidential Affidavit of Mohamad Z. Mardukhi, affirmed January 30, 2026; the Affidavit of Mohamad Z. Mardukhi, affirmed February 2, 2026; the Affidavit of Service of Jennifer Allen affirmed November 26, 2025; the Affidavit of Service of Jennifer Allen affirmed [X], 2026; the Affidavit of Service of Angeline Gagnon, sworn November 26, 2025; and the Affidavit of Service of Angeline Gagnon, sworn [X], 2026; **AND UPON** hearing counsel for the Monitor, counsel for 7-Eleven Canada Inc. ("**SEC**") and SEDCC, and counsel for DigiFlex at the November Applications on November 27, 2025; **AND UPON** judgement of the November Applications being reserved until December 15, 2025; **AND UPON** hearing counsel for the Monitor, counsel for SEC and SEDCC, and counsel for DigiFlex at the Advice and Direction Application and the Termination Application on February 5, 2026; **AND UPON** being satisfied that it is appropriate to do so;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. This Order accompanies the Reasons. This Order is to be interpreted with reference to the Reasons.
2. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the ARIO or the Eighteenth Report.

SERVICE

3. Service of notice of the Monitor's Assignment Application, DigiFlex's Stay Application, the Monitor's Advice and Direction Application and DigiFlex's Termination Application and supporting materials are hereby declared to be good and sufficient, and time for service of the Monitor's Assignment Application, DigiFlex's Stay Application, the Monitor's Advice and Direction Application and DigiFlex's Termination Application are abridged to that actually given.

STAY

4. The Stay imposed under the ARIO, as extended by this Court from time to time, and specifically, the restrictions set out in paragraphs 15, 16, 17, 18, and 19 of the ARIO, are hereby lifted as against W&C and Loudon *vis a vis* DigiFlex to allow DigiFlex to pursue any rights or remedies it may have pursuant to its agreements with W&C and Loudon, including those under the DigiFlex License Agreements, effective as at 11:59 PM (Calgary time) on February 5, 2026 (the "**Stay Lift Date**"). The effective date of lifting the stay has been moved from February 15, 2026 to February 5, 2026, due to new evidence filed since the Reasons that demonstrates that W&C is no longer using the DigiFlex Software.
5. For greater certainty, nothing in this Order or Reasons:
 - (a) lifts the restrictions set out in paragraphs 15, 16 17, 18 and 19 of the ARIO (the "**Stay Restrictions**") as against CMI or the Monitor (including its counsel, employees, agents, or representatives); and
 - (b) prevents DigiFlex from applying to the Court in the future to lift the Stay Restrictions as against CMI or the Monitor (including its counsel, employees, agents or representatives), subject to the limitations of liability for the Monitor pursuant to paragraph 30 of the ARIO.

6. The ARIO, DigiFlex Consent Order, and any other orders in these proceedings are varied, to the extent necessary, to lift the Stay pursuant to paragraph 4 of this Order.
7. For greater certainty, with respect to the DigiFlex Consent Order:
 - (a) paragraph 3 of the DigiFlex Consent Order shall be amended as follows:

3. DigiFlex shall continue to provide maintenance services ("Maintenance Services") to Wallace & Carey and Loudon Bros Limited in the manner, at the rates and subject to the terms prescribed in their applicable Maintenance Agreement and subject to the terms of the ARIO, until 11:59 PM (Calgary time) on February 1, 2026, or as otherwise agreed upon in writing between the Monitor and DigiFlex.

~~until the later of:~~

~~(a) the expiration of the Stay Period, as may be extended by order(s) of this Court; and~~

~~(b) the expiration of the term for the Western Business (as defined in the TSA) set out in the TSA, subject to further extensions as permitted under the TSA or as otherwise ordered by the Court.~~

~~For greater certainty, in the event that the Stay Period is extended in the manner described in this paragraph 3, DigiFlex shall continue to provide Maintenance Services to Wallace & Carey in accordance with this paragraph pursuant to the Maintenance Agreement without further Order of this Court.~~

- (b) paragraph 5 of the DigiFlex Consent Order shall no longer be in effect as of 11:59 PM (Calgary time) on February 5, 2026.

DIGIFLEX'S TERMINATION APPLICATION

8. DigiFlex has the right to terminate the DigiFlex License Agreements, and the termination shall be effective as of February 5, 2026, at 11:59 PM.
9. Wallace & Carey, SEC and/or SEDCC must reinstate DigiFlex's access to the DigiFlex Software immediately, and by the latest, as of February 5, 2026, at 4:00 PM.
10. Wallace & Carey, SEC and/or SEDCC must shut down any use of the DigiFlex Software as of February 5, 2026 at 11:59 PM.
11. DigiFlex, or its counsel or its representatives, are permitted to enter the premises, on February 6,

2026, or shortly thereafter, where the servers with the DigiFlex Software are located, to remove the DigiFlex Software and any and all copies thereof.

12. The Monitor, in its capacity as Court-appointed Monitor of Wallace & Carey is required to, by February 6, 2026 at noon: (i) destroy and erase, or direct the destruction and deletion, of any and all copies of the DigiFlex Software, in whatever form or media (including, without limitation, all executable files as well as all associated source and object code), and including whether or not all such copies are stored locally on servers, including the W&C Server, or other systems owned or possessed by W&C, Loudon, 7-Eleven Inc., 7-Eleven Canada or SEDCC; (ii) destroy and erase, or direct the destruction and deletion of, any DigiFlex documentation related to the DigiFlex Software, including user and reference manuals, whether in hardcopy and electronic formats; and (iii) certify under oath or affirm to items (i), (ii), and also that the Monitor, W&C, Loudon, 7-Eleven Inc., 7-Eleven Canada, SEDCC, and/or any other person or entity has discontinued all use of the DigiFlex Software, including without limitation, all executable files as well as all associated source and object code.

THE MONITOR'S ASSIGNMENT APPLICATION

13. The portion of the Monitor's Assignment Application seeking dismissal of DigiFlex's Stay Application in its entirety (i.e., the relief sought in paragraph 1(a)(ii) of the Assignment Application) is hereby dismissed.
14. Given that the DigiFlex License Agreements will be terminated as February 5, 2026, at 11:59 PM, the Monitor's Assignment Application as it relates to the Proposed Assignment is moot.

THE MONITOR'S ADVICE AND DIRECTION APPLICATION

15. The following portions of the Monitor's Advice and Direction Application are dismissed:
 - (a) its request for a declaration that notwithstanding the lifting of the Stay, Wallace & Carey and Loudon are permitted to use the DigiFlex Software for any purpose (i.e., the relief sought in paragraph 1(b)(iv) of the Advice and Direction Application is dismissed).
 - (b) its request for a declaration that any judgment in favour of DigiFlex is subordinate to all existing priorities granted under orders in these CCAA proceedings, and is an unsecured claim that cannot be enforced until all priority claims have been satisfied (i.e., the relief sought in paragraphs 1(b)(ii) and 1(b)(iii) of the Advice and Direction Application is

dismissed).

COSTS

16. Each party shall bear its own costs pursuant to the DigiFlex Stay Application and the portion of the Monitor's Assignment Application for dismissal of the DigiFlex Application.
17. Costs relating to the Assignment Application regarding the Proposed Assignments are awarded to DigiFlex, to be paid by SEC and SEDCC. I reserve my decision on the quantum of costs, to be decided after the following procedure:
 - (a) Within 15 days from the date of this Order, DigiFlex shall provide to my office, and serve on SEC/SEDCC short submissions on the amount of costs it is entitled to (not exceeding 5 pages);
 - (b) Within 5 days from receiving DigiFlex's submissions, SEC/SEDCC may provide to my office, and serve on DigiFlex, short responding submissions (not exceeding 5 pages).

GENERAL

18. For greater certainty, any findings of fact stated in the Reasons are interim findings only and do not create a binding decision with respect to any disputed fact in any other proceeding.

SERVICE OF ORDER

19. Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same and the Reasons on:
 - i. the persons listed on the service list created in these proceedings;
 - ii. any other person served with notice of the application for this Order; and
 - iii. any other parties attending or represented at the application for this Order; and
 - (b) posting a copy of this Order and the Reasons on the Monitor's website established in connection with these proceedings, for no less than six months from the date of this Order; and service on any other person is hereby dispensed with.
20. Service of this Order and Reasons may be affected by facsimile, electronic mail, personal delivery

or courier.

Justice of the Court of King's Bench of Alberta

Schedule "A"

DigiFlex License Agreements

1. ProCLASS/LAZER/NEXUS Software License Agreement between DigiFlex and W&C executed on March 9, 2000;
2. CLASS Software License Agreement between DigiFlex and W&C executed by DigiFlex on June 27, 2003 and W&C on August 12, 2003;
3. ProCLASSB1 Business Intelligence Suite Software License Agreement between DigiFlex and W&C entered into on or about April 23, 2012 (according to Mohamad Mardukhi's November 14, 2025 Affidavit (the "MM Affidavit")) and executed by DigiFlex on August 19, 2013 (per copy in W&C files);
4. ProCLASS/CLASS/LAZER Software License Agreement between DigiFlex and Loudon entered into on February 18, 2013 (per the MM Affidavit);
5. ProCLASS/CLASS Software License Agreement Addendum between DigiFlex and Loudon dated May 8, 2014; and
6. ProCLASS/CLASS Software License Agreement Addendum between DigiFlex and Loudon dated June 6, 2014.