

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 **KSV RESTRUCTURING INC.**, in its capacity  
as Court-appointed Monitor of Wallace &  
Carey Inc., Loudon Bros Limited and Carey  
Management Inc.

DOCUMENT **BENCH BRIEF OF THE MONITOR**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY  
FILING THIS  
DOCUMENT

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TABLE OF CONTENTS

I. INTRODUCTION ..... 4

II. FACTS ..... 6

    A. Background ..... 6

    B. Relationship of Companies to DigiFlex..... 12

III. ISSUE ..... 15

IV. LAW AND ARGUMENT ..... 15

    A. It is Appropriate to Give the Monitor "Read-Only" Access without Requiring Further Maintenance Services or Maintenance Fees..... 15

        i. It is Consistent with Contractual Interpretation that the Maintenance Services Agreement Can Be Terminated Separately from the DigiFlex License Agreements and Maintenance Services Are Not Required..... 16

    2. AGREEMENT. Upon the terms and subject to the conditions herein set forth, DigiFlex agrees to provide to Customer and Customer agrees to accept the Maintenance Services. The Term of this Maintenance Agreement shall begin upon the installation of each Package into a production environment. However that this Maintenance Agreement will be automatically renewed for successive one year upon the terms to be agreed upon by the parties at the time of renewal unless termination in writing is given by either party to the other at least thirty (30) days prior to the expiration of the term hereof or any renewal in which case this Maintenance Agreement shall terminate at the end of such term or renewal. .... 18

    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 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 inadequate remedy. .... 18

    [...] 19

    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 and 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..... 19

    (ii) It is Inconsistent with the Purposes of the CCAA to Require the Monitor Pay Maintenance Fees ..... 21

V. CONCLUSION ..... 25

## I. INTRODUCTION

1. This brief is filed in support of an application (the "**Application**") by KSV Restructuring Inc. ("**KSV**") in its capacity as Court-appointed Monitor (in such capacity, the "**Monitor**") of Wallace & Carey Inc. ("**W&C**"), Loudon Bros Limited ("**Loudon**"), and Carey Management Inc. ("**CMI**", and together with W&C and Loudon, the "**Companies**"), for advice and directions in the form of an Order (the "**Lifting Stay Order**") for the applications heard by the Honourable Justice Marion on November 27, 2025 (the "**DigiFlex Hearing**") and his corresponding written decision dated December 15, 2025 (the "**Reasons**"), and in particular:
  - (a) declaring that the stay of proceedings (the "**Stay**") under the Amended and Restated Initial Order granted June 30, 2023 (the "**ARIO**") is lifted only as against W&C and Loudon *vis a vis* DigiFlex Information Systems Inc. ("**DigiFlex**"), and for greater certainty, the Stay is not lifted as against CMI, the Monitor, or its employees, representatives, or counsel;
  - (b) declaring that to the extent that DigiFlex pursues litigation as against W&C and Loudon, that any resulting judgment or claim in favour of DigiFlex:
    - (i) is subordinate to all existing priorities granted under orders in these CCAA proceedings (as defined herein), including the ARIO and the ancillary order granted by the Honourable Justice Hollins dated August 23, 2023 (the "**Ancillary Order**"); and
    - (ii) is unsecured;
  - (c) declaring that DigiFlex shall be restricted and stayed from taking any enforcement steps under any judgment until, and if, all priority claims have been satisfied; and
  - (d) declaring that notwithstanding the lifting of the Stay, W&C and Loudon are permitted to use the ERP Software (as defined herein) at no cost (unless maintenance services are otherwise required and in that circumstance at the daily rate under the contract for the service required) without the obligation to pay for continuing year-long services on a read-only basis, for any purpose related to the business and operations of W&C and Loudon, including for, but without limitation to, maintaining the historical database for the Monitor's purposes of meeting its statutory and other obligations.
2. This brief is further filed in response to the cross-application (the "**DigiFlex Cross-Application**") by DigiFlex filed January 29, 2026 which seeks, among other things, an order:

- (a) declaring that DigiFlex has the right to terminate the DigiFlex License Agreements (as defined herein) with the termination being effective as of February 16, 2026 at 12:00 AM, and accordingly:
    - (i) a declaration that DigiFlex is permitted to turn off the ERP Software affiliated with the DigiFlex License Agreements at 12:00 AM on February 16, 2026;
    - (ii) a declaration that DigiFlex, or its counsel or its representatives, are permitted to enter any premises, on February 16, 2026, or shortly thereafter, where the servers with the ERP Software are located, to remove the ERP Software and any and all copies thereof; and
    - (iii) a declaration that the Monitor is required to destroy and erase the ERP Software; or
  - (b) in the alternative, a declaration that DigiFlex is permitted to change the copies of the ERP Software affiliated with the DigiFlex License Agreements to be read-only, effective as of February 16, 2026 at 12:00 AM, provided that:
    - (i) the Monitor agrees to pay DigiFlex maintenance fees;
    - (ii) the Monitor respects the terms of the DigiFlex License Agreements, nothing that, only the Monitor may use the ERP Software on behalf of W&C and Loudon, and will not directly or indirectly give 7-Eleven Inc., 7-Eleven Canada Inc. ("**SEC**") or 7-Eleven Distribution Canada Corporation ("**SEDCC**") (a subsidiary of SEC) access to or use to the ERP Software; and
    - (iii) the Monitor testifies that the ERP Software will only be used in read-only mode to access historical databased= of W&C's and Loudon's information for the Monitor to comply with its statutory and reporting obligation.
3. As at the date of this brief, it is the Monitors understanding that the following issues will be unopposed at the Application:
- (a) the Stay shall not be lifted as it pertains to CMI, the Monitor, and its employees, representatives and counsel;
  - (b) that to the extent DigiFlex pursues litigation against W&C and Loudon, any resulting judgement or claim in favour of DigiFlex is subordinate to all existing priorities in these CCAA proceedings and that any such claim will be unsecured; and

- (c) that DigiFlex shall be restricted and stayed from taking any enforcement steps as against the Companies under any judgment until, and if, all priority claims have been satisfied.
4. The Monitor further understands that the request for termination of the DigiFlex License Agreements as against W&C and Loudon will not be sought, and that the only dispute is whether maintenance fees are required to be paid for read-only access to the ERP Software and if so, in what amount.
5. Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Nineteenth Report of the Monitor dated January 26, 2026.

## II. FACTS

### A. Background

6. On June 22, 2023, (the “**Filing Date**”) the Companies obtained protection from their creditors under the *Companies Creditors Arrangement Act*, RSC 1985, c. C-36 (the “**CCAA**”),<sup>1</sup> pursuant to an Initial Order (the “**Initial Order**”) of the Court of King’s Bench of Alberta (the “**Court**”). The ARIO was pronounced on June 30, 2023.<sup>2</sup>
7. Pursuant to an order issued by the Court on August 23, 2023, the Companies carried out a sale and investment solicitation process that resulted in a transaction (the “**SEC Transaction**”) between the Companies and SEC that was approved by the Court on November 17, 2023 pursuant to an approval and vesting order (the “**SEC Transaction Approval and Vesting Order**”) and other orders (together with the SEC Transaction Approval and Vesting Order, the “**SEC Transaction Orders**”).<sup>3</sup>
8. Pursuant to the SEC Transaction Orders, the Court, among other things:
- (a) approved a sale of certain of the Companies’ property, assets and undertakings to SEC;
  - (b) approved a transition services agreement (the “**TSA**”) among CMI, W&C, (CMI and W&C are referred to as the “**Debtors**” in the TSA), the Monitor and SEC, as more fully discussed in the Sixth Report of the Monitor dated November 8, 2023;
  - (c) appointed KSV as receiver of all of the assets, undertakings, and properties of certain subsidiaries of CMI (in such capacity, the “**Receiver**”); and

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<sup>1</sup> [Companies’ Creditors Arrangement Act, RSC 1985, c C-36](#) [“**CCAA**”].

<sup>2</sup> Nineteenth Report of the Monitor dated January 26, 2026 [“**Nineteenth Report**”] at para 1.0.1-1.0.2.

<sup>3</sup> Nineteenth Report at para 1.0.3.

- (d) granted a broad release of Patrick Carey ("**Mr. Carey**"), in his capacity as the present director of the Companies (the "**SAVO Release**"), which has the effect of releasing him from, among other things, personal liability as director of the Companies for tobacco taxes owed to the provincial and territorial authorities (the "**Provinces and Territories**").<sup>4</sup>
9. The purpose of the TSA was for the Debtors to continue to provide certain services to SEC, while SEC considered if and how to operate the Companies' wholesale distribution and logistics business (the "**Logistics Business**"). As provided in the TSA, and subject to the terms and conditions of the TSA, from and after 12:01 a.m. on November 19, 2023 (the "**Effective Closing Time**"), SEC is responsible for funding substantially all post-Effective Closing Time costs of CMI and W&C (the "**Debtors**") operations and is entitled to any revenue resulting therefrom.<sup>5</sup>
10. Pursuant to the TSA, the Debtors, at the cost of SEC, are required to continue to employ certain warehouse, logistics, administrative, and managerial staff to operate the business and provide the services described in the TSA to facilitate the wind-down and transition of the Logistics Business to SEC and/or SEDCC. Such services include the continued use of the enterprise resource planning software and related support services (the "**ERP Software**") provided by DigiFlex to the Companies. The uninterrupted provision of services by the Debtors to SEC pursuant to TSA was a key term of the SEC Transaction for which SEC paid consideration.<sup>6</sup>
11. On December 17, 2024, following a dispute with DigiFlex over its continued provisions of the ERP Software, the Monitor obtained a Court order (the "**DigiFlex Consent Order**"), among other things, requiring DigiFlex to continue to provide such services until the later of:
- (a) the expiration of the Stay under the ARIO, as may be extended by the Court; and
  - (b) the expiration of the term of the TSA (as amended and extended, the "**TSA Term**") for the W&C business in Alberta and British Columbia (the "**Western Business**").<sup>7</sup>
12. On February 21, 2025, the Court granted:
- (a) an approval and vesting order approving the sale of certain additional assets of W&C to SEDCC including accounts receivable, inventory, and certain equipment, furniture, and

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<sup>4</sup> Approval and Vesting Order granted by the Honorable Justice M.E. Burns on November 17, 2023.

<sup>5</sup> Nineteenth Report at para 2.1.2.

<sup>6</sup> Nineteenth Report at para 2.1.2 – 2.1.8.

<sup>7</sup> Nineteenth Report at paragraph 1.0.5.

fixtures located at warehouses in the Provinces of Saskatchewan and Manitoba (the “**SEDCC Transaction**”);<sup>8</sup> and

- (b) an order (the “**Initial Stay and Release Order**”), among other things:
    - (i) extending the Stay under the ARIO to and including August 20, 2025; and
    - (ii) approving releases in favour of Mr. Carey, in his capacity as the present director of the Companies, except from the Province of British Columbia (the “**TSA Release**” and together with the SAVO Release, the “**Release**”).<sup>9</sup>
13. On August 18, 2025, upon application of the Companies, the Court granted an order (the “**Second TSA Amendment Order**”):
- (a) extending the Stay to and including September 30, 2025; and
  - (b) approving the extension of the TSA Term to September 30, 2025, and the corresponding execution of a second amendment to the TSA.<sup>10</sup>
14. At the August 18, 2025 application, DigiFlex opposed the extension of the Stay and TSA Term. In its written reply submissions to the Court, DigiFlex requested, among other relief, that any license agreement between W&C and DigiFlex be terminated, that SEC be prohibited from using the ERP Software, and that SEC be ordered to pay a license fee invoice of \$3,230,000.00 plus interest. The requested relief and supporting evidence contained in the DigiFlex submissions did not comply with the procedural requirements set out in the *Alberta Rules of Court*, Alta Reg 124/2010, and DigiFlex was not represented by legal counsel.<sup>11</sup>
15. On August 26, 2025, the Court granted an order, upon application by SEC and SEDCC, which provided the Monitor with enhanced powers.<sup>12</sup>
16. On September 19, 2025, the Court granted an order (the “**Third TSA Amendment Order**”) which, among other things:
- (a) approved the extension of the TSA Term to February 15, 2026, and the corresponding execution of the Third TSA Amendment (as defined in the Third TSA Amendment Order); and

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<sup>8</sup> Approval and Vesting Order granted by the Honourable Justice M.J. Lema dated February 21, 2025, filed March 5, 2025.

<sup>9</sup> Order granted by the Honourable Justice M.J. Lema dated February 21, 2025, filed March 5, 2025.

<sup>10</sup> Nineteenth Report at para 1.0.8.

<sup>11</sup> Nineteenth Report at para 1.0.11.

<sup>12</sup> Nineteenth Report at para 1.0.9.

- (b) extended the Stay to and including February 15, 2026.<sup>13</sup>
17. Notwithstanding, the Third TSA Amendment Order was made without prejudice to DigiFlex's rights to bring an application seeking termination of the TSA or to otherwise commence proceedings against SEC, provided that:
- (a) DigiFlex shall comply with all applicable procedural requirements to bring any such application or commence any such proceeding; and
- (b) DigiFlex shall be represented by legal counsel in such application or proceedings.<sup>14</sup>
18. Accordingly, on November 13, 2025, DigiFlex filed an application (the "**DigiFlex Application**") seeking an order, among other things:
- (a) lifting the Stay in relation to W&C and Loudon such that it no longer applies to DigiFlex;
- (b) declaring the DigiFlex has no obligation to provide SEC or SEDCC access to the ERP Software, whether directly, or indirectly through W&C, or any associated software services to W&C, Loudon, SEC, or SEDCC, and that no Court orders or agreements in these CCAA proceedings require otherwise; and
- (c) awarding DigiFlex costs on the DigiFlex Application, on the highest possible scale.<sup>15</sup>
19. In response to the DigiFlex Application, on November 20, 2025, the Monitor filed an application (the "**Assignment Application**", and together with the DigiFlex Application, the "**November Applications**") seeking an order (the "**Dismissal and Assignment Order**"), among other things:
- (a) dismissing the DigiFlex Application; and
- (b) assigning W&C and/or Loudon's interests, as applicable, under the DigiFlex License Agreements (as defined herein) to SEDCC, pursuant to section 11.3 of the CCAA.<sup>16</sup>
20. On November 27, 2025, the Court heard the November Applications.<sup>17</sup>
21. On December 15, 2025, the Court issued the Reasons regarding the November Applications. Pursuant to the Reasons, among other things, the Court:

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<sup>13</sup> Order Approving Stay Extension and Third TSA Amendment granted by the Honourable Justice Feasby on September 19, 2025.

<sup>14</sup> Nineteenth Report at para 1.0.12.

<sup>15</sup> Nineteenth Report at para 1.0.13.

<sup>16</sup> Nineteenth Report at para 1.0.14.

<sup>17</sup> Nineteenth Report at para 1.0.15.

- (a) refused to lift the Stay immediately and rejected DigiFlex's request for declarations that it had no obligation to provide ERP Software access or services to W&C, SEC, or SEDCC during the current TSA Term;
- (b) lifted the Stay vis-à-vis DigiFlex effective February 15, 2026 at 11:59 p.m.;
- (c) adjourned the Monitor's relief requesting the assignment of the DigiFlex License Agreements to allow the parties to attempt to find a commercial solution for limited, post-February 15, 2026 access to the ERP Software solely for records retention, audit, and tax purposes;
- (d) invited the parties to seek procedural directions for further evidence and submission if no agreement is reached; and
- (e) ordered that each party bears its own costs with respect to the November Applications.<sup>18</sup>

22. Pursuant to the Reasons, the Court:

- (a) directed the Monitor's counsel to prepare the form of order with the proposed amendments to any CCAA order in these proceedings as required to reflect the Reasons;<sup>19</sup>
- (b) stated that "whether the Companies and SEC/SEDCC have in fact operated beyond the scope of what was approved in the TSA, or in breach of the [DigiFlex] License Agreements or copyright, is a matter to be determined by settlement or a trial process, not this interim, summary CCAA application";<sup>20</sup>
- (c) noted that DigiFlex did not seek an evidentiary process to explore in a concrete way exactly where, by whom and how the ERP Software is being used;<sup>21</sup> and
- (d) stated that if the Stay is lifted, "it is not clear that DigiFlex would be in a position to terminate the [DigiFlex] License Agreements" which would depend on whether the DigiFlex License Agreements were breached.<sup>22</sup>

23. An order reflecting the Reasons has not been submitted for execution to the Court at this time as the parties have been unable to come to an agreement on the terms of the Lifting Stay Order.<sup>23</sup>

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<sup>18</sup> Nineteenth Report at para 1.0.16.

<sup>19</sup> *Wallace & Carey Inc. (Re)*, 2025 ABKB 750 ["Reasons"] at para 128.

<sup>20</sup> Reasons at para 101.

<sup>21</sup> Reasons at para 98.

<sup>22</sup> Reasons at paras 104 – 106.

<sup>23</sup> Nineteenth Report at para 1.0.17.

Accordingly, the Monitor has filed the Application seeking advice and direction from the Honourable Justice Marion regarding the Reasons.

24. On January 28, 2026, counsel to DigiFlex sent a letter (the "**January 28 Letter**") to the Monitor's counsel, providing that, among other things:
  - (a) the Maintenance Services Agreement (as defined below) cannot be severed from the DigiFlex License Agreements, and that non-payment of Maintenance Services (as defined below) gave DigiFlex the right to terminate the DigiFlex License Agreements;
  - (b) confirmation as to whether the Monitor required "read-only" access or active access;
  - (c) requesting written interrogatories from the Monitor; and
  - (d) proposed revisions to the form of Lifting Stay Order as attached to the Application.<sup>24</sup>
  
25. On January 29, 2026, counsel to the Monitor responded to the January 28 Letter as follows:
  - (a) it was the Monitor's position that the DigiFlex License Agreements and Maintenance Services Agreement were independent of one another, and that the termination of the Maintenance Services Agreement does not terminate the Maintenance Services Agreement;
  - (b) requesting details on read-only access;
  - (c) advising that cross-examination on the Monitor's report would only be permitted in unusual circumstances; and
  - (d) addressing the proposed revisions to the form of Lifting Stay Order.<sup>25</sup>
  
26. On January 30, 2026, counsel to DigiFlex provided further information regarding read-only access and it was confirmed such access would be sufficient to meet the Monitor's statutory reporting obligations.<sup>26</sup>
  
27. On February 2, 2026, the Monitor's counsel received an email marked with prejudice from DigiFlex's counsel providing, among other things:

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<sup>24</sup> Affidavit of Josh Allen affirmed February 2, 2026 ["**Allen Affidavit**"], Exhibit "H"; January 28 Letter from BDP to Cassels.

<sup>25</sup> Allen Affidavit, Exhibit "J", January 29 Letter from Cassels to BDP.

<sup>26</sup> Allen Affidavit, Exhibit "K."

- (a) a request for agreement to the payment of maintenance fees, subject to inflation, in the amount of \$76,587.50/year for W&C and \$6,812.50/year for Loudon, or if upfront payment was made for the next six years a total of \$321,667.92 for W&C and \$37,012.50 for Loudon;
- (b) advising that it will be seeking costs at the Application; and
- (c) agreeing to the Monitor's section 5 in the draft Lifting Stay Order.<sup>27</sup>

28. In response, the Monitor's counsel responded via email on February 3, 2026, advising that:

- (a) the maintenance fees being requested were unjustified, and that services were not required for an ongoing period of six years;
- (b) the Monitor is prepared to pay for maintenance services, if required, at contract rates, which is consistent with the services being provided during a CCAA proceeding and pursuant to the ARIO; and
- (c) there is no justification for costs to be awarded, and all issues brought forth by the DigiFlex Cross-Application could have been addressed within the process as the Monitor brought an application seeking advice and direction.<sup>28</sup>

29. Again, DigiFlex's counsel replied reiterating its position that:

- (a) the maintenance fees requested on February 2 were reasonable and at a considerable discount; and
- (b) that they will be seeking costs as against SEC.<sup>29</sup>

**B. Relationship of Companies to DigiFlex**

30. DigiFlex and W&C have a long-standing business relationship spanning approximately 24 years whereby DigiFlex licenses to W&C and Loudon the ERP Software and provides them with maintenance and helpdesk support with respect to the ERP Software.

31. The ERP Software is required for supply chain management, financial reporting, and operational reporting. Without use of the ERP Software, the Monitor understands that it would be impossible to continue operating the Logistics Business. Notwithstanding its importance to the Logistics Business, the ERP Software is outdated, and the Monitor understands that SEDCC has been developing customized integration software (the "**Integration Software**") to enable data to be moved from the

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<sup>27</sup> Allen Affidavit, Exhibit "L".

<sup>28</sup> Secretarial Affidavit of Angeline Gagnon, sworn February 4, 2026, Exhibit "A".

<sup>29</sup> Secretarial Affidavit of Angeline Gagnon, sworn February 4, 2026, Exhibit "A".

Debtors' systems to the SEC/SEDCC systems. The Monitor understands that SEC and SEDCC are working to have the Integration Software fully operational by no later than the end of day on February 15, 2026.<sup>30</sup>

32. The following license agreements between DigiFlex, W&C and/or Loudon, as applicable, are the subject of this Application:<sup>31</sup>

- (a) ProCLASS/LAZER/NEXUS Software License Agreement between DigiFlex and W&C executed on March 9, 2000;
- (b) CLASS Software License Agreement between DigiFlex and W&C executed by DigiFlex on June 27, 2003 and W&C on August 12, 2003;
- (c) ProCLASSB1 Business Intelligence Suite Software License Agreement between DigiFlex and W&C entered into on or about April 23, 2012 (according to the Affidavit of Mohamad Mardukhi sworn November 14, 2025 (the "**MM Affidavit**"))<sup>32</sup> and executed by DigiFlex on August 19, 2013 (per copy in W&C files) ("the "**ProCLASSB1 License Agreement**");
- (d) ProCLASS/CLASS/LAZER Software License Agreement between DigiFlex and Loudon entered into on February 18, 2013 (per MM Affidavit);
- (e) ProCLASS/CLASS Software License Agreement Addendum between DigiFlex and Loudon dated May 8, 2014; and
- (f) ProCLASS/CLASS Software License Agreement Addendum between DigiFlex and Loudon dated June 6, 2014

(collectively, the "**DigiFlex License Agreements**").

33. The key terms of the DigiFlex License Agreements are, among others, the following:<sup>33</sup>

- (a) W&C and/or Loudon were granted a perpetual license to use the software subject to the DigiFlex License Agreements (the "**Perpetual License**") following the payment of the amounts required under the DigiFlex License Agreements;
- (b) there is no set term or expiration date for the DigiFlex License Agreements;
- (c) the DigiFlex License Agreements are not otherwise saleable to any third-party; and

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<sup>30</sup> Nineteenth Report at paras 2.1.8 - 2.2.1.

<sup>31</sup> Nineteenth Report at para 2.2.1.

<sup>32</sup> Affidavit of Mohamad Z. Mardukhi affirmed November 14, 2025 ["**MM Affidavit**"].

<sup>33</sup> Nineteenth Report at para 2.2.2.

- (d) the DigiFlex License Agreements could be assigned upon obtaining written consent of the other party, and such consent is not to be unreasonably withheld.
34. The Monitor understands that all amounts owing under the DigiFlex License Agreements were paid in full by W&C and/or Loudon when, or shortly after, they were entered into, and no monetary defaults exist under the DigiFlex License Agreements. As such, to the best of the Monitor's knowledge, W&C and/or Loudon hold the Perpetual License.<sup>34</sup>
35. Further, the ERP Software is maintained and supported by:
- (a) a Maintenance Agreement (the "**Maintenance Services Agreement**" attached to the ProCLASSB1 License Agreement as Schedule "A"), wherein Wallace & Carey agreed to pay, in advance, an annual fee for maintenance services (the "**Maintenance Services**") related to the ERP Software; and
  - (b) general IT help desk support services provided by DigiFlex which, pursuant to the MM Affidavit, were not tied to the ERP Software but were for general IT issues (the "**Help Desk Services**"). The Monitor understands that the Help Desk Services are not subject to a written agreement and paid upfront on an annual basis.<sup>35</sup>
- (collectively, the "**Ancillary DigiFlex Agreements**").
36. The Maintenance Services Agreement, attached as Exhibit B to the MM Affidavit, provides at Section 3 that "the customer shall pay an annual maintenance fee for services commencing upon installation of ProCLASS into a production environment. The maintenance fee shall be \$84,000.00 for 2 years paid in advance. Additional maintenance fees of 25% of the annual maintenance fee, will apply in the event that ProCLASS is installed in multiple branches on additional Server Systems."<sup>36</sup> Section 5 provide that the annual maintenance fee may be increased or decreased by DigiFlex so long as DigiFlex gives thirty days written notice.<sup>37</sup> Further, the Rate Schedule attached as Schedule B to the DigiFlex License Agreements provides the hourly rate for certain services is between \$90 to \$145 per hour (or \$675 to \$1087.50 per day), with a two-hour minimum for off-site rates or four hour minimum for on-site rates.<sup>38</sup> Again, these amounts may be increased by DigiFlex, pursuant to section 9 of the DigiFlex License Agreements, with at least thirty days notice in writing, and such

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<sup>34</sup> Nineteenth Report at para 2.2.2(a).

<sup>35</sup> Nineteenth Report at para 2.2.3.

<sup>36</sup> MM Affidavit, Exhibit B, Schedule A, s 3.

<sup>37</sup> MM Affidavit, Exhibit B, Schedule A, s 5.

<sup>38</sup> MM Affidavit, Exhibit B, Schedule B.

increases shall not exceed the percentage increase in the Consumer Price Index for the same period as published by Statistics Canada.<sup>39</sup>

37. During the TSA Term, DigiFlex has been paid \$755,593.39 (excluding GST) by W&C and/or Loudon for the continued use, maintenance, and support of the ERP Software, at rates which amounts are greater than what is prescribed under the Ancillary DigiFlex Agreements. The Monitor understands that no monetary defaults exist under the Ancillary DigiFlex Agreements.<sup>40</sup>

### III. ISSUE

38. The primary issue to be determined by this Honourable Court is whether it is appropriate for the Monitor to have "read-only" access of the ERP Software without requiring further Maintenance Services or maintenance fees, unless otherwise proven to be required.

### IV. LAW AND ARGUMENT

#### A. It is Appropriate to Give the Monitor "Read-Only" Access without Requiring Further Maintenance Services or Maintenance Fees

39. The CCAA confers broad discretion on the supervising judge to craft orders responsive to the particular circumstances of each case and to "meet contemporary business and social needs" in "real-time," pursuant to the discretionary authority granted to the Court under section 11.<sup>41</sup>

40. Section 11 of the CCAA states that:

“Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.” [emphasis added]<sup>42</sup>

41. Accordingly, the Court can exercise its discretion under section 11 when it "considers it appropriate in the circumstances." The Supreme Court of Canada provided guidance about whether and how

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<sup>39</sup> MM Affidavit, Exhibit B, s 9.

<sup>40</sup> Eighteenth Report of the Monitor dated November 20, 2025 ["**Eighteenth Report**"] at para 4.2.3.

<sup>41</sup> 9354-9187 *Quebec inc v Callidus Capital Corp*, [2020 SCC 10](#) ["*Callidus*"] at para 48.

<sup>42</sup> [CCAA](#), s 11.

this discretionary authority should be exercised in *Century Services Inc. v Canada (Attorney General)*,<sup>43</sup> describing the general principles as follows:

“The general language of the CCAA should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.”<sup>44</sup>

42. It is appropriate in the circumstances to make an order that does not require the Monitor to continue using Maintenance Services for "read-only" access to the ERP Software, and correspondingly not pay continuing maintenance fees, because:
- (a) it is consistent with contractual interpretation that the Maintenance Services Agreement can be terminated separately from the DigiFlex License Agreements, and subsequently, Maintenance Services are not required to be provided for read-only access under the DigiFlex License Agreements; and
  - (b) it is inconsistent with the purposes of the CCAA to compel the Monitor to continue paying for unreasonable Maintenance Services that are not required and provide no benefit to the estate.
    - i. **It is Consistent with Contractual Interpretation that the Maintenance Services Agreement Can Be Terminated Separately from the DigiFlex License Agreements and Maintenance Services Are Not Required**

43. In a letter dated January 28, 2026, DigiFlex’s counsel asserted that the Maintenance Services Agreement is inseparable from the DigiFlex License Agreements, and that non-payment of

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<sup>43</sup> *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#) ["*Century Services*"].

<sup>44</sup> *Century Services* at para 70.

maintenance fees entitles DigiFlex to terminate the DigiFlex License Agreements.<sup>45</sup> However, this position is incorrect.

44. Whether the DigiFlex License Agreements remain in effect following termination of the Maintenance Services Agreement, and thus determining whether Maintenance Services are required and must be paid for, must be determined through established principles of contractual interpretation. Those principles, as summarized at paragraphs 64–68 of the Reasons, are as follows:<sup>46</sup>

[64] The goal of contractual interpretation is to determine the objective intent of the parties at the time the contract was made through the application of legal principles of interpretation.

[65] Provisions must be interpreted in light of the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of the formation of the contract.

[66] Courts must consider the relevant surrounding circumstances, including the “objective evidence of the background facts at the time of the execution of the contract ... that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting.”

[67] Relevant background facts can include the genesis, aim or purpose of the contract, the nature of the relationship created by the contract, the nature or custom in the industry in which the contract was executed, antecedent agreements leading up to the contract, and even negotiations if they shed light on the factual matrix.

[68] “Surrounding circumstances” does not include the parties’ subjective intentions and cannot be used to add to, detract from, vary, or otherwise overwhelm the written words.

45. To the extent possible, contractual interpretation must give effect to all parts of the agreement such that no terms are interpreted to be redundant.<sup>47</sup> Additionally, commercial contracts should be interpreted in accordance with sound commercial principles, which in the absence of evidence of a bad bargain, do not yield an unrealistic result.<sup>48</sup>
46. Applying these principles, Maintenance Services are not required under the DigiFlex License Agreements for read-only access of the ERP Software because:

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<sup>45</sup> Allen Affidavit, Exhibit "H"; January 28 Letter from BDP to Cassels.

<sup>46</sup> Reasons at paras 64-68, citing *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, [2017 ABCA 157](#) ["IFP"]; *Sattva Capital Corp v Creston Moly Corp*, [2014 SCC 53](#); *Remington Development Corporation v Canadian Pacific Railway Company*, [2025 ABCA 244](#); *Tercon Contractors Ltd v British Columbia (Transportation and Highways)*, [2010 SCC 4](#); *Alberta Union of Provincial Employees v Alberta Health Services*, [2020 ABCA 4](#); *Talwandi Video Lab Inc v 1441419 Alberta Ltd*, [2024 ABCA 140](#); *SA v Metro Vancouver Housing Corp*, [2019 SCC 4](#); and *Heritage Property Corporation v Triovest Inc*, [2025 ABCA 64](#).

<sup>47</sup> *NEP Canada ULC v MEC OP LLC*, [2021 ABQB 180](#) at para 670.

<sup>48</sup> *IFP* at para 88.

- (a) the Maintenance Services Agreement and DigiFlex License Agreements each have substantially different and independent termination clauses;
- (b) neither agreement expressly states that termination of one agreement would result in the termination of the other; and
- (c) neither agreement expressly provides that Maintenance Services are required to use the Perpetual License, especially for the limited purpose of read-only access.

### **Termination Provisions**

47. The Maintenance Services Agreement expressly sets out its own termination mechanism. Section 2 provides that the "Maintenance Agreement" renews annually unless written notice of termination is delivered at least 30 days before the end of the term:<sup>49</sup>

**2. AGREEMENT.** Upon the terms and subject to the conditions herein set forth, DigiFlex agrees to provide to Customer and Customer agrees to accept the Maintenance Services. The Term of this Maintenance Agreement shall begin upon the installation of each Package into a production environment. However that this Maintenance Agreement will be automatically renewed for successive one year upon the terms to be agreed upon by the parties at the time of renewal unless termination in writing is given by either party to the other at least thirty (30) days prior to the expiration of the term hereof or any renewal in which case this Maintenance Agreement shall terminate at the end of such term or renewal.

48. Section 2 makes no reference to the DigiFlex License Agreements. When interpreted in accordance with its plain language and the agreement as a whole, section 2 has no bearing on the duration or termination of the DigiFlex License Agreements or the Perpetual License granted thereunder. DigiFlex provided notice of termination pursuant to this provision on January 16, 2026.<sup>50</sup> Although this notice should not have been issued while the Stay remains in effect (given paragraph 18 of the ARIO explicitly provides that a "contract, agreement, license, or permit" cannot be interfered with or terminated during the Stay), DigiFlex's reliance on the termination clause nonetheless demonstrates its acknowledgment of the clause's validity and its ability to stand independently from the DigiFlex License Agreements.
49. Conversely, the DigiFlex License Agreements have their own termination clause, at section 5 (the "**Termination Clause**") which reads as follows:<sup>51</sup>

**5. LICENSE TERMINATION.** If Customer breaches any of its obligations hereunder, or if the Customer becomes insolvent, files a petition in bankruptcy, or

<sup>49</sup> MM Affidavit, Exhibit B, Schedule A, s 2.

<sup>50</sup> Nineteenth Report at para 4.0.7 and corresponding BDP Letter dated January 16, 2026, attached at Exhibit P.

<sup>51</sup> Each of the DigiFlex License Agreements and each of the Maintenance Services Agreements attached as Schedule A thereto are substantially the same form.

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 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 inadequate remedy.

[...]

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 and 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.<sup>52</sup>

50. The termination clause of the DigiFlex License Agreements has already been interpreted by this Honourable Court as granting DigiFlex the right to terminate the DigiFlex License Agreements only in the event of a breach.<sup>53</sup> If DigiFlex intended that remaining a party to the Maintenance Services Agreement was an "obligation" under the DigiFlex License Agreements, this requirement should have been expressly stated. Accordingly, it would be commercially unreasonable to conclude that terminating the Maintenance Services Agreement constitutes a breach of the DigiFlex License Agreements, when no such requirement appears anywhere in either document.
51. In further support of the foregoing, breaches under the Maintenance Services Agreement are addressed exclusively within that agreement, without reference to or reliance on the DigiFlex License Agreements. Any such breaches result only in the termination of the Maintenance Services Agreement, not the DigiFlex License Agreements. For example:
- (a) section 4(A)(i) provides that "Digiflex's obligation to provide Maintenance Services shall terminate without notice to Customer if Customer shall fail to install the same release, or two previous updates, of the operating system as Digiflex [...]";<sup>54</sup> and
  - (b) section 5 provides that "In the event Digiflex should breach the terms of this Maintenance Agreement, and such breach not to be correct following thirty (30) days notice of such by

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<sup>52</sup> MM Affidavit, Exhibit B, s 5.

<sup>53</sup> Reasons at para 106.

<sup>54</sup> MM Affidavit, Exhibit B, Schedule A, s 4(A)(i).

Customer, Digiflex shall return to Customer fees paid annually in advance for Maintenance Services, calculated on a pro-rated basis."<sup>55</sup>

52. There is no language in the Maintenance Services Agreement indicating that termination of that agreement triggers termination of the DigiFlex License Agreements. On the contrary, the wording of both agreements confirms the parties' intention that the Maintenance Services Agreement may be independently terminated upon notice without disturbing either the perpetual nature or the termination provisions of the DigiFlex License Agreements.
53. The claim that a breach or termination of the Maintenance Services Agreement entitles DigiFlex to terminate the DigiFlex License Agreements represents:
  - (a) an improper attempt to circumvent the instructions of this Honourable Court as set out in the Reasons, as this Court has stated that a breach would need to be required to terminate the DigiFlex License Agreements and such a determination of breach would need to be proven by way of settlement or trial process, not an interim, summary CCAA application;<sup>56</sup> and
  - (b) an inappropriate attempt to extract unreasonable maintenance fees from the Monitor.
54. The only evidence that the Maintenance Services Agreement and DigiFlex License Agreements are linked is that of section 14 of the DigiFlex License Agreement, which provides that the schedules, one of which contains an unexecuted copy of the Maintenance Services Agreement, make the "Entire Agreement."<sup>57</sup> This is insufficient to establish any obligation to maintain Maintenance Services, where such obligation is never expressly provided for, especially in the circumstances of limited read-only access. Further, this clause is not enough to demonstrate that two separate agreements, each containing their own explicit termination clause, are inextricably linked and thus automatically terminate together. Rather, it demonstrates at best an intention to have the agreements operate in tandem express where they otherwise have clauses that conflict or operate independently, such as the termination clauses.
55. As the Maintenance Services Agreement is not contractually tied to the DigiFlex License Agreements, no maintenance fees are required for the Monitor to retain read-only access to the ERP Software. Any attempt by DigiFlex to retroactively characterize the Maintenance Services Agreement as inseparable from, or required under, the DigiFlex License Agreements, in the absence

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<sup>55</sup> MM Affidavit, Exhibit B, Schedule A, s 5.

<sup>56</sup> Reasons at paras 101 & 104.

<sup>57</sup> MM Affidavit, Exhibit B, s 14.

of contractual language supporting such a position, violates fundamental principles of contractual interpretation.

### **Maintenance Services**

56. Further, DigiFlex's assertion that non-payment of maintenance fees, particularly for services the Monitor does not wish to receive and which services are not required, constitutes a breach under the DigiFlex License Agreements, contradicts the parties' clearly expressed intentions. In particular, nothing within the DigiFlex License Agreements requires that Maintenance Services be used, or vice versa. DigiFlex is not providing services without compensation. To the contrary, if any services were shown to be required, the Monitor would pay any reasonable fees, as demonstrated consistently throughout these CCAA proceedings.<sup>58</sup>
57. The Maintenance Services provided by DigiFlex under section 4 of the Maintenance Services Agreement can be briefly summarized as: (a) maintaining operating system compatibility; (b) providing updates to the ERP Software; and (c) offering a remote help-line service.<sup>59</sup> Accordingly, as a matter of contractual interpretation, the Maintenance Services Agreement exists to provide optional, supplemental support services in addition to the rights granted under the DigiFlex License Agreements.
58. Accordingly, the Monitor submits that Maintenance Services are not required to maintain read-only access of the ERP Software, that termination of the Maintenance Services Agreement does not give DigiFlex to terminate the DigiFlex License Agreements, and that the Monitor is prepared to pay reasonable fees for maintenance services, if required.

(ii) **It is Inconsistent with the Purposes of the CCAA to Require the Monitor Pay Maintenance Fees**

59. In *Callidus*, the Court found that Canada's insolvency statutes pursue "an array of overarching remedial objectives", which include:<sup>60</sup>
- (a) providing for timely, efficient, and impartial resolution of a debtor's insolvency;
  - (b) preserving and maximizing the value of a debtor's assets;

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<sup>58</sup> Eighteenth Report at 4.2.3.

<sup>59</sup> MM Affidavit, Exhibit B, Schedule A, s 4.

<sup>60</sup> *Callidus* at para 40.

- (c) ensuring fair and equitable treatment of the claims against a debtor;
  - (d) protecting public interest; and
  - (e) balancing the costs and benefits of restructuring or liquidating the company.
60. In that context, orders that preserve necessary information access while avoiding unnecessary depletion of estate value best align with the CCAA's purposes. Requiring the estate to bear ongoing charges that provide no corresponding restructuring benefit, or that are disproportionate to the limited utility obtained, undermines value preservation and the equitable treatment of stakeholders.
61. The Monitor's need for access to the Companies' records is not in dispute. Section 24 of the CCAA provides that, for the purpose of monitoring the company's business and financial affairs, the Monitor shall have access to the company's property, including books, records, and data (including electronic data), to the extent necessary to adequately assess the company's business and financial affairs.<sup>61</sup> This statutory power is reiterated at paragraph 26(g) of the ARIO.<sup>62</sup>
62. In these circumstances, the Monitor has enhanced powers over the Companies' administrative and business operations pursuant to paragraph 3 of the Enhanced Powers Order. Accordingly, the Monitor must also ensure that corporate records are preserved for statutory retention periods. Those obligations include, among others:
- (a) section 230 of the *Income Tax Act* requires persons carrying on business to keep records and books of account in a form that permits taxes payable (or amounts that should have been withheld/collected) to be determined, generally for six years from the end of the last taxation year to which the records relate;<sup>63</sup>
  - (b) sections 98 and 286 of the *Excise Tax Act* similarly require persons who must pay or collect GST/HST to keep adequate records and books of account until the expiration of six years from the end of the relevant year;<sup>64</sup> and
  - (c) section 31 of *Tobacco Tax Act (AB)* requires that any wholesaler, importer, and retailer of tobacco in Alberta shall keep records and books of account, including an annual inventory until the expiration of 4 years from the end of the last fiscal year to which the records and books of account relate.<sup>65</sup> This is similarly reflected under section 18 of the *Tobacco Tax Act Regulation (BC)*, in which records and books of account are required to be kept for five

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<sup>61</sup> CCAA, s 24.

<sup>62</sup> Amended and Restated Initial Order dated June 30, 2023 ["ARIO"] at para 26(g).

<sup>63</sup> [Income Tax Act, RSC 1985, c 1 \(5<sup>th</sup> Supp\)](#), s 230(4).

<sup>64</sup> [Excise Tax Act, RSC 1985, c E-15](#), ss 98 and 286.

<sup>65</sup> [Tobacco Tax Act, RSA 2000, c T-4](#), s 31(5).

years in British Columbia<sup>66</sup> and section 58.08 of the *Revenue Collection Administration Regulations*, RRS c R-22.01 Reg 2 (Saskatchewan) provides that records retained for the purposes of tobacco tax collected under *The Tobacco Tax Act, 1998* shall be preserved for six years.<sup>67</sup>

63. Pursuant to the foregoing, the Monitor has a statutory duty to preserve and be able to produce records, while simultaneously meeting the objectives of the CCAA, and in particular, to maximize value for stakeholders. The Monitor's duty is not to subsidize continuing vendor revenue streams that confer no corresponding benefit to the estate.
64. Paragraph 19 of the ARIO provides that the Companies are entitled to the continued use of services provided that "the usual prices or charges for all such goods or services received after the date of this Order are paid by the [Companies] in accordance with the payment practices of the Companies, or such other practices as may be agreed upon by the supplier or service provided and each of the [Companies] and the Monitor, or as may be ordered by this Court."<sup>68</sup> Although the Stay is being lifted as against W&C and Loudon vis-à-vis DigiFlex, this paragraph of the ARIO reflects the core insolvency principles affirmed in *Callidus*. In particular, preserving and maximizing the value of a debtor's assets, while simultaneously treating stakeholders fairly.
65. DigiFlex's counsel has asserted in its February 2 and 3 correspondence that the fees requested represent a significant discount; however, there is no evidence that the requested fees correspond to the very limited-access required by the Monitor.<sup>69</sup> As previously stated, the Maintenance Services providable by DigiFlex under section 4 of the Maintenance Services Agreement can be briefly summarized as: (a) maintaining operating system compatibility; (b) providing updates to the ERP Software; and (c) offering a remote help-line service.<sup>70</sup> There is no reference made in the Maintenance Services Agreement to read-only mode, or that Maintenance Services are required to keep read-only access.
66. DigiFlex has not demonstrated that ongoing Maintenance Services resulting in further maintenance fees are necessary to keep read-only access available. Nor has DigiFlex demonstrated that the quantum of maintenance fees it now seeks in exchange for read-only access is commercially reasonable or proportionate to the limited functionality required. This is particularly so given that the

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<sup>66</sup> [Tobacco Tax Act Regulation, BC Reg 66/2002](#), s 18(2).

<sup>67</sup> [Revenue Collection Administration Regulations, RRS c R-22.01 Reg 2](#), s 58.08(1).

<sup>68</sup> ARIO at para 19.

<sup>69</sup> Secretarial Affidavit of Angeline Gagnon, sworn February 4, 2026, Exhibit "A".

<sup>70</sup> MM Affidavit, Exhibit B, Schedule "A", s 4.

Monitor's need for access is only intermittent and solely for the purpose of complying with statutory and other obligations over the next six years.

67. The only evidence adduced by DigiFlex at this time is that it is "standard practice" for the continued use of the ERP Software in read-only mode to require a maintenance fee be paid for the duration of such use.<sup>71</sup> DigiFlex asserts it would "be prejudiced to the extent that one of its customers could use its software, for free, without payment of maintenance fees."<sup>72</sup> However, DigiFlex does not identify any specific prejudice it would suffer, particularly given that: (i) the Monitor does not require any ongoing services; (ii) the Perpetual License has already been paid for in full; and (iii) DigiFlex has been well compensated throughout these CCAA proceedings.
68. Absent such evidence, which is the case here, compelling continued maintenance payments would be inconsistent with the CCAA's objectives, because it would:
- (a) divert estate resources to costs that are not shown to be required for the purposes of these CCAA proceedings;
  - (b) prejudice other creditors and stakeholders by decreasing estate funds to pay for services that have not been demonstrated to be required; and
  - (c) hinder the timely wind-down of these CCAA proceedings because any such arrangement requiring continued maintenance fees would have to account for the sporadic use of the ERP Software by the Monitor over a prolonged statutory retention period, which at most, is six years.
69. Pursuant to the foregoing, DigiFlex's request for an upfront payment of more than \$350,000 for six years is entirely unreasonable. DigiFlex is basing this quantum on what was paid during the TSA term, which was already well above what was agreed upon in contract, and for active services that were being provided.<sup>73</sup> Now, the Monitor requires only limited, read-only access, likely only a few times per year (if at all), to print reports and retain historical records. DigiFlex has not identified what services, if any, are necessary to provide this limited access or support. The Monitor remains willing to pay reasonable fees, in accordance with the agreements and ARIO, but it cannot justify paying a full maintenance fee for multi-year periods during which the system will not be used on a continuous or active basis.

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<sup>71</sup> Affidavit of Mohamad Z. Mardukhi affirmed January 30, 2026 ["**January MM Affidavit**"] at paras 27 -29.

<sup>72</sup> January MM Affidavit at para 29.

<sup>73</sup> Secretarial Affidavit of Angeline Gagnon, sworn February 6, 2026; Nineteenth Report of the Monitor

70. Accordingly, if the Court finds that Maintenance Services and maintenance fees are required for read-only access, any such arrangement must be proportionate and reasonable, reflecting the limited “read-only” purpose and avoiding imposing amounts so excessive that they unfairly prejudice other stakeholders. The CCAA’s remedial framework does not support an outcome where the estate is effectively forced to fund full maintenance for six years, potentially extending well beyond the conclusion of the CCAA proceeding, simply to satisfy record-retention obligations.

**V. CONCLUSION**

71. For the reasons set out herein, the Monitor respectfully requests that this Court grant the Lifting Stay Order and adjourn the DigiFlex Cross-Application regarding the termination of the DigiFlex License Agreement, or otherwise, dismiss the DigiFlex Cross-Application in its entirety.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 4<sup>th</sup> day of February, 2026.

**CASSELS BROCK & BLACKWELL LLP**

Per:   
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Jeffrey Oliver  
Counsel for the Applicant

**LIST OF AUTHORITIES****STATUTES AND REGULATIONS****Tab Authority**

1. [Companies' Creditors Arrangement Act, RSC 1985, c C-36](#)
2. [Income Tax Act, RSC 1985, c 1 \(5<sup>th</sup> Supp\)](#)
3. [Excise Tax Act, RSC 1985, c E-15](#)
4. [Tobacco Tax Act, RSA 2000, c T-4](#)
5. [Tobacco Tax Act Regulation, BC Reg 66/2002](#)
6. [Revenue Collection Administration Regulations, RRS c R-22.01 Reg 2](#)

**JURISPRUDENCE****Tab Authority**

7. [Wallace & Carey Inc. \(Re\), 2025 ABKB 750](#)
8. [9354-9187 Quebec inc v Callidus Capital Corp, 2020 SCC10](#)
9. [Century Services Inc. v Canada \(Attorney General\), 2010 SCC 60](#)
10. [NEP Canada ULC v MEC OP LLC, 2021 ABQB 180](#)
11. [IFP Technologies \(Canada\) Inc v EnCana Midstream and Marketing, 2017 ABCA 157](#)