

Court File No. BK-23-02975175-0031  
Estate File No. 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER  
THE LAWS OF ONTARIO**

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**MOTION RECORD  
(Distribution And Discharge Order and Sale Approval And Vesting Order)**

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October 4, 2023

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Lawyers for the Datatax Companies

**TO: THE SERVICE LIST**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER  
THE LAWS OF ONTARIO**

**SERVICE LIST**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER  
THE LAWS OF ONTARIO**

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# **TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER  
THE LAWS OF ONTARIO**

**NOTICE OF MOTION**

The Debtor, Datatax Business Services Limited (“**Datatax**” or the “**Company**”), will make a Motion to the Honourable Justice Cavanagh of the *Ontario* Superior Court of Justice (Commercial List) on October 11, 2023, at 11:00 AM

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

- In writing under subrule 37.12.1(1);
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference
- By video conference

at the following location: 330 University Avenue, Toronto, ON M5G 1R7  
(videoconference details to be provided)



**THE MOTIONS IS FOR:**A Distribution, Termination and Fee Approval Order, substantially in the form of the draft order located at Tab 4 of Datatax's Motion Record, providing for:

- (i) if necessary, the abridging the time for service, filing and hearing of the Notice of Motion and Motion Record and dispensing with further service thereof;
- (ii) following the closing of the transaction contemplated in the asset purchase agreement (the "**Stalking Horse APA**") between Datatax and 2872802 Ontario Inc. (the "**Stalking Horse Bidder**") dated August 11, 2023, (the "**Transaction**"), KPMG Inc. ("**KPMG**") in its capacity as proposal trustee of Datatax (in such capacity, the "**Proposal Trustee**"), is authorized and directed to make the distributions (collectively, the "**Distributions**") to creditors in accordance with the proposed scheme of distribution set forth in the Second Report of the Proposal Trustee, to be filed prior to the hearing of the motion (the "**Second Report**");
- (iii) amending the August 2023 Order such that the time within which Datatax is to make a proposal pursuant to section 62(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), and the corresponding stay of proceedings provided for in section 69 of the BIA (the "**Stay of Proceedings**"), will expire on the earlier of: (i) October 28, 2023 or (ii) the filing of a certificate by the Proposal Trustee certifying that, among other things, the Distributions have been made and the Proposal Trustee has completed the Remaining Matters (as defined in the Second Report) (the "**Termination Certificate**");
- (iv) following the Distributions and upon the filing of the Termination Certificate, the termination of Brent Houlden as a director of the Company and the termination

of Naveed Manzoor as Interim CEO of the Company (on behalf of FAAN Advisors Group Inc. (“**FAAN**”)) is authorized and approved and third party releases are granted in Houlden, Manzoor and FAAN’s favour;

- (v) vacating the Administration Charge, the DIP Charge and the D&O Charge (each as defined in the August 2023 Order) following the Distributions and the filing of the Termination Certificate;
- (vi) authorizing and empowering KPMG Inc. to act as the trustee in bankruptcy of Datatax;
- (vii) approving the fees and disbursements of the Proposal Trustee and its counsel, Bennett Jones LLP; and
- (viii) approving the First Report of KPMG dated August 16, 2023 and Second Report of KPMG (to be filed) and the activities of the Proposal Trustee described therein.

**THE GROUNDS FOR THE MOTION ARE:**

***Background***

2. The Motion Materials filed in support of the motion heard on August 17, 2023, comprehensively set out the circumstances which led to these proceedings as well as describing the Stalking Horse APA. They are not repeated herein.

***The SSP***

3. Since the August 2023 Order was granted, the Proposal Trustee, in collaboration with Datatax and their respective advisors, have worked diligently and in good faith to carry out the terms of the SSP in accordance with its terms. Pursuant to the SSP, the Stalking Horse APA was determined to be winning bid.

4. Another motion is being brought by the Company concurrently with this motion seeking an Approval and Vesting Order, which provides for, among other things, the approval of the Transaction and the Stalking Horse APA and authorizing and directing the Company and Proposal Trustee to take necessary steps to close the Transaction.

***Distribution of Priority Payables and Secured Creditors***

5. Upon the closing of the Transaction, Datatax will not have any assets or on-going business or operations, and, as a result, the Company will not be in a position to, and will not, be filing a proposal to its creditors. Accordingly, in order to minimize the costs of the proceedings, the Company respectfully requests that the Court grant the Distribution, Termination and Fee Approval Order at this time approving, among other things, the Distributions as set out in the Second Report, including to the secured creditors of the Company, Bank of Montreal and Fiera Private Debt Fund VI L.P.

6. The Company respectfully submits that the granting of the Distribution, Termination and Fee Approval Order at this time approving the Distributions proposed by the Proposal Trustee will minimize the costs of the proceedings, which will maximize the amount being returned to the creditors.

***Fee Approval***

7. It is also requested that fees of the Proposal Trustee and its counsel be approved at this time. Included in the Motion Record are affidavits affirmed by the Proposal Trustee and its counsel, filed in connection with the request for fee approval.

***Termination and Discharge of Houlden and Manzoor***

8. Brent Houlden (“**Houlden**”) and Naveed Manzoor (“**Manzoor**”) were appointed to roles at Datatax pursuant to the Order granted by Justice Cavanaugh on November 7, 2022 (the “**November 2022 Order**”) (Houlden as a director and Manzoor as interim CEO, on behalf of FAAN, of Datatax). Once the Proposal Trustee’s Termination Certificate has been distributed and filed with the Court, there will be no further steps to take in their capacities with Datatax. As Houlden and Manzoor’s appointments were approved by the November 2022 Order, it is appropriate that the Distribution, Termination and Fee Approval Order approve the termination of their roles with Datatax upon the Distributions and filing of the Termination Certificate. Further, it is appropriate that Houlden, Manzoor and FAAN be discharged from any liability arising from their roles with the Datatax Companies, except for such liability which arises from gross negligence or wilful misconduct on each of their parts, consistent with the releases provided to court-appointed officers in creditor enforcement proceedings.

***Termination of Charges***

9. Pursuant to the August 2023 Order, the Charges were granted with respect to the property of the Company. However, following the Distributions and the termination of these proceedings as proposed above, the Charges will no longer be necessary. In order to ensure that there is no conflict between the Charges and any charges or priority that the trustee in

bankruptcy may be entitled to, the Distribution, Termination and Fee Approval Order should provide that the Charges be terminated once the amounts owing in respect of such charges is paid and the Proposal Trustee's Termination Certificate is distributed and filed.

***Termination of Stay of Proceedings and Bankruptcy***

10. Pursuant to the August 2023 Order, the stay of proceedings was extended and will expire on October 28, 2023. However, to avoid the stay of proceedings extending beyond the closing date, it is appropriate to amend the stay provisions in paragraph 11 of the August 2023 Order, such that the stay of proceedings shall terminate on the earlier of: (i) October 28, 2023 or (ii) the filing of the Termination Certificate, and recognizing that following termination of the stay of proceedings. This will prevent a stub period where the stay of proceedings applies after closing or the filing of the Termination Certificate.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The affidavit of Brent Houlden, affirmed October 4, 2023;
- (b) The Second Report of the Proposal Trustee, to be filed;
- (c) The affidavit of Pritesh Patel, affirmed October **[X]**, 2023;  
and

- (d) Such further and other evidence as counsel may advise and the court may permit.

October 4, 2023

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Lawyers for the Datatax Companies

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED  
UNDER THE LAWS OF ONTARIO

Court File No. BK-23-02975175-0031  
Estate File No. 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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Lawyers for the Datatax Companies

# TAB 2



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER  
THE LAWS OF ONTARIO**

**NOTICE OF MOTION**

The Debtor, Datatax Business Services Limited (“**Datatax**” or the “**Company**”), will make a Motion to the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) on October 11, 2023, at 10:30 AM

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

- In writing under subrule 37.12.1(1);
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference
- By video conference

at the following location: 330 University Avenue, Toronto, ON M5G 1R7  
(videoconference details to be provided)

**THE MOTIONS IS FOR:**An Approval and Vesting Order, substantially in the form of the draft order located at Tab 5 of Datatax's Motion Record, providing for:

- (a) if necessary, abridging the time for service, filing and hearing of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;
- (b) approving the transaction (the "**Transaction**") contemplated in the asset purchase agreement (the "**Stalking Horse APA**") between Datatax and 2872802 Ontario Inc. (the "**Stalking Horse Bidder**") dated August 11, 2023, previously approved as the Stalking Horse bid by order of this Honourable Court dated August 17, 2023 (the "**August 2023 Order**");
- (c) sealing the Confidential Appendices (defined below) to the Second Report (defined below) until the Proposal Trustee's termination certificate (the "**Termination Certificate**") has been distributed and filed;
- (d) upon the filing of a certificate by KPMG Inc. (the "**Proposal Trustee's Vesting Certificate**") in its capacity as proposal trustee of Datatax ("**KPMG**" or the "**Proposal Trustee**"): the vesting all of the right, title and interest in the assets of Datatax set out in the Stalking Horse APA, including Farm Business Consultants Inc. ("**Farm**"), FBC Financial & Estate Planning Services Inc. ("**FBC Financial**") and Wheatland Accounting Services Ltd. ("**Wheatland**", together with Farm and FBC Financial, the "**Datatax Subsidiaries**", and the Datatax Subsidiaries, together with Datatax, the "**Datatax Companies**") to the Stalking Horse Bidder free and clear of and from any Encumbrances (as defined in the Approval and Vesting Order); and

- (e) upon the filing of the Proposal Trustee's Vesting Certificate, amending the August 2023 Order such that the stay of proceedings in favour of the Datatax Subsidiaries will expire on the earlier of: (i) October 28, 2023; and (ii) the filing of Proposal Trustee's Vesting Certificate.

## **THE GROUNDS FOR THE MOTION ARE:**

### ***Background***

2. The Motion Materials filed in support of the Motion heard on August 17, 2023, comprehensively set out the circumstances which led to these proceedings as well as describing the Stalking Horse APA. They are not repeated herein.

### ***August 2023 Order and SSP***

3. On August 17, 2023, the Court granted the August 2023 Order, which, among other things: (i) approved the sale process for the business and/or assets of the Datatax Companies (the "**SSP**"); and (ii) approved the Stalking Horse APA as the Stalking Horse bid for the SSP.

### ***The SSP***

4. Since the August 2023 Order was granted, the Proposal Trustee, in collaboration with Datatax and their respective advisors, has worked diligently and in good faith to carry out the terms of the SSP in accordance with its terms. In accordance with the SSP, the Proposal Trustee has managed all communications with prospective bidders, both before and after the receipt of bids, including to responding inquiries from prospective bidders and managing the data room for those prospective bidders who executed the required non-disclosure agreement.

5. The SSP set out the requirements that prospective bidders had to meet in order to be considered to be a “**Qualified Bid**” that could be considered by the Proposal Trustee and the Company:

- (a) *Deadline* – The bid had to be filed on or before the deadline of September 29, 2023 (the “**Bid Deadline**”);
- (b) *Deposit* – The SSP required that a cash deposit of not less than 10% of the offered purchase price be provided to the Proposal Trustee;
- (c) *Purchase Price* – The purchase price provided for in the bid could not be less than an amount offered under the Stalking Horse APA, plus: (i) an amount equivalent to the break fee of \$400,000; and (ii) a minimum overbid amount of \$150,000;
- (d) *Binding Offer* – The bid had to be a duly executed binding offer;
- (e) *Capacity to Close* – The potential bidder had to demonstrate an ability to close the transaction by the outside date of October 16, 2023; and
- (f) *Unconditional* – The bid had to be unconditional.

6. Despite the efforts of the Proposal Trustee, as of the Bid Deadline, no other Qualified Bids were received. As a result, the Stalking Horse Bidder was deemed to be the successful bid under the SSP.

7. Accordingly, the purchase price provided for under the Stalking Horse Bid represents the highest price realizable and the Stalking Horse Bid is the best possible transaction in the circumstances for the benefit of the Company’s stakeholders, including its creditors,

employees and clients. Accordingly, the Company requests that this Honourable Court grant the Approval and Vesting Order approving the Transaction and authorize and direct the Company and the Proposal Trustee to take the steps necessary to close the Transaction.

8. The Company also understands that the Proposal Trustee intends on filing certain appendices (the "**Confidential Appendices**") in their second report to be filed (the "**Second Report**"). The Confidential Appendices will contain sensitive topics that, if disclosed, could impact Datatax and its stakeholders if the Transaction does not close. As a result, the Company Approval and Vesting Order contemplates the sealing with the Confidential Appendices. As previously noted, the Confidential Appendices will include documents and information regarding the bidding process and the other bid that was received. Until such time as the Transaction is actually closed, it would be detrimental to the Company's efforts to implement a sale of its assets and would undermine the integrity of any sales process if such information was disclosed prior to the conclusion of these proceedings. Accordingly, the Company respectfully requests that the Court grant a sealing order over the Confidential Appendices until such time these proceedings are terminated as evidenced by the filing of the Termination Certificate.

9. Another motion is being brought concurrently with this motion seeking the Distribution, Termination and Fee Approval Order, which provides for, among other things, the distribution of funds from the Transaction to the secured creditors of the Company, and certain related relief.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The affidavit of Brent Houlden, affirmed October 4, 2023;

- (b) The Second Report of the Proposal Trustee, to be filed; and
- (c) Such further and other evidence as counsel may advise and the Court may permit.

October 4, 2023

**Tyr LLP**

488 Wellington Street West, Suite 300-302  
Toronto, ON M5V 1E3  
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Lawyers for the Datatax Companies

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OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED  
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SUPERIOR COURT OF JUSTICE  
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Proceeding commenced at Toronto

**NOTICE OF MOTION**  
(Motion for Approval and Vesting Order)

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Lawyers for the Datatax Companies

# TAB 3



Court File No. BK-23-02975175-0031  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
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THE LAWS OF ONTARIO**

**AFFIDAVIT OF BRENT HOULDEN**  
(affirmed October 4, 2023)

I, Brent Houlden, of the City of Toronto, in the Province of Ontario, AFFIRM:

**I. INTRODUCTION**

1. I am the sole director of each of Datatax Business Services Limited, (“**Datatax**” or the “**Company**”), Farm Business Consultants Inc. (“**Farm**”), FBC Financial & Estate Planning Services Inc. (“**FBC Financial**”) and Wheatland Accounting Services Ltd. (“**Wheatland**”, together with Farm and FBC Financial, the “**Datatax Subsidiaries**”, and the Datatax Subsidiaries together with Datatax, the “**Datatax Companies**”) and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records and filings of the Datatax Companies and have spoken with certain of the officers and/or employees of the Datatax Companies, as necessary, as well as representatives of the Proposal Trustee (defined below). Where I have relied upon such information, I verily believe such information to be true.

2. I swear this affidavit in support of two motions brought by Datatax seeking:

(1) an order (the "**Approval and Vesting Order**"), among other things, approving the Stalking Horse APA (defined below); and

(2) an order (the "**Distribution, Termination and Fee Approval Order**" and together with the Approval and Vesting Order, the "**Orders**"), among other things, authorizing and directing the Proposal Trustee to make the Distributions (defined below).

Separate Motion Records have been filed for each motion, and the Orders being sought are substantially in the form of the draft orders located at Tabs 4 and 5.

3. The proposed Approval and Vesting Order provides for, among other things, the following:

- (a) if necessary, abridging the time for service, filing and hearing of the Notice of Motion and Motion Record and dispensing with further service thereof;
- (b) approving of the transaction (the "**Transaction**") contemplated in the asset purchase agreement (the "**Stalking Horse APA**") between Datatax and 2872802 Ontario Inc. (the "**Stalking Horse Bidder**") dated August 11, 2023, which was previously approved to act as the stalking horse bid in the SSP (defined below) by Order granted by Justice Cavanagh on August 17, 2023 (the "**August 2023 Order**");

- (c) sealing the Confidential Appendices to the Second Report (each defined below) until the Termination Certificate (defined below) has been filed; and
  - (d) upon the delivery to the Stalking Horse Bidder of a certificate (the “**Proposal Trustee’s Vesting Certificate**”) by KPMG Inc. (“**KPMG**”) in its capacity as proposal trustee of Datatax (in such capacity, the “**Proposal Trustee**”), the vesting of all right, title and interest in the Datatax Companies to the Stalking Horse Bidder free and clear of all Encumbrances (as defined in the Approval and Vesting Order); and
  - (e) amending the August 2023 Order such that the stay of proceedings in favour of the Datatax Subsidiaries will expire on the earlier of:
    - (i) October 28, 2023; and
    - (ii) the filing of Proposal Trustee’s Vesting Certificate.
4. The proposed Distribution, Termination and Fee Approval Order provides for, among other things, the following:
- (a) if necessary, the abridging the time for service, filing and hearing of the Notice of Motion and Motion Record and dispensing with further service thereof;
  - (b) following the closing of the Transaction, authorizing and directing the Proposal Trustee to make the distributions (collectively, the “**Distributions**”) to creditors in accordance with the proposed scheme

of distribution set forth in the Second Report of the Proposal Trustee, to be filed prior to the hearing of the motion (the "**Second Report**");

- (c) amending the August 2023 Order such that the time within which Datatax is to make a proposal pursuant to section 62(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), and the corresponding stay of proceedings provided for in section 69 of the BIA (the "**Stay of Proceedings**"), will expire on the earlier of: (i) October 28, 2023 or (ii) the filing of a certificate by the Proposal Trustee certifying that, among other things, the Distributions have been made and that the Proposal Trustee has completed the Remaining Matters (as defined in the Second Report) (the "**Termination Certificate**").
- (d) following the Distributions and upon the filing of the Termination Certificate, the termination of Brent Houlden as a director of the Company and the termination of Naveed Manzoor as the interim CEO of the Company is authorized and approved and the third party releases contemplated therein are granted in our favour;
- (e) vacating the Administration Charge, the DIP Charge and the D&O Charge (each as defined in the August 2023 Order) following the Distributions and the filing of the Termination Certificate;
- (f) authorizing and empowering KPMG to act as the trustee in bankruptcy of Datatax;

- (g) approving the fees and disbursements of the Proposal Trustee and its counsel, Bennett Jones LLP ("**Bennett Jones**"); and
- (h) approving the Reports (defined below) and the activities of the Proposal Trustee described therein.

5. Datatax has acted and will continue to act in accordance with the SSP (defined below) in good faith and with due diligence toward completion of the Transaction.

## II. BACKGROUND

6. I previously affirmed an affidavit on August 15, 2023 (the "**August Affidavit**") in support of the Company's motion seeking, among other things, the approval of a sales solicitation process ("**SSP**") and the Stalking Horse APA, which motion was ultimately granted by Justice Cavanaugh (see, the August 2023 Order). My August Affidavit describes in detail the Datatax Companies and the circumstances that led to these proceedings, as well as describing the Stalking Horse APA and its benefits. I repeat and adopt the contents of my August Affidavit, and do not repeat that information herein.

7. A copy of my August Affidavit, without exhibits, is attached as **Exhibit "A"**. The August 2023 Order, including the SSP attached thereto, is attached as **Exhibit "B"**.

## III. SALES PROCESS<sup>1</sup>

8. Since the August 2023 Order was granted, the Proposal Trustee, Datatax and their respective advisors have worked diligently and in good faith to carry out the terms of the

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<sup>1</sup> Terms used but not otherwise defined in this section have the meanings ascribed to them in the SSP.

SSP in accordance with its terms. In accordance with the SSP, the Proposal Trustee has managed all communications with Potential Bidders, both before and after the receipt of bids, including responding inquiries from Potential Bidders and managing the data room for those Potential Bidders who executed the required non-disclosure agreement.

9. I am advised by Pritesh Patel of KPMG that the Proposal Trustee is of the position that the SSP was carried out in accordance with its terms and the August 2023 Order, is supportive of the relief being sought by the Company by the Approval and Vesting Order and the Distribution, Termination and Fee Approval Order and will be recommending that the Court grant the Orders in its Second Report, which report will provide greater details of its efforts undertaken during the SSP.

10. As detailed in my August Affidavit and the First Report of the Proposal Trustee dated August 16, 2023 (the "**First Report**" and together with the Second Report, the "**Reports**"), the SSP set out the minimum requirements that each Bid submitted in the SSP had to meet in order to be considered to be a "Qualified Bid" that would be considered by the Proposal Trustee and the Company (see paragraph 52(c) of the First Report). Those requirements included, but were not limited to, the following:

- (a) *Deadline* – The Bid had to be filed on or before the deadline of September 29, 2023 (the "**Bid Deadline**");
- (b) *Deposit* – The SSP required that a cash deposit of not less than 10% of the offered purchase price be provided to the Proposal Trustee;

- (c) *Purchase Price* – The purchase price provided for in the Bid could not be not less than the amount offered under the Stalking Horse APA, plus: (i) an amount equivalent to the break fee of \$400,000; and (ii) a minimum overbid amount of \$150,000;
- (d) *Binding Offer* – The Bid had to be a duly executed binding offer;
- (e) *Capacity to Close* – The Potential Bidder had to demonstrate an ability to close the transaction contemplated in the Bid by the Outside Date of October 16, 2023; and
- (f) *Unconditional* – The Bid had to be unconditional.

11. Despite the efforts of the Proposal Trustee, as of the Bid Deadline, no other Qualified Bids were received. As a result, the Stalking Horse Bidder was deemed to be the Successful Bid under the SSP.

12. Accordingly, the consideration provided for under the Stalking Horse APA represents the highest price offered for the Property and Business of Datatax and the Transaction contemplated in the Stalking Horse APA provides the best result in the circumstances. Accordingly, the Company respectfully is requesting that this Honourable Court grant the Approval and Vesting Order approving the Transaction and authorize and direct the Company and the Proposal Trustee to take the steps necessary to close the Transaction.

13. The Stalking Horse Bidder requested some changes to the closing mechanics of the Transaction. The requested changes do not impact the economics provided for under

the Stalking Horse APA, but rather only address the request that certain of the Company assets be transferred to a related-party entity of the Stalking Horse Bidder. The requested changes do not modify the purchase price, or the assets being acquired nor do the requested changes amend, supplement or modify any other material terms of the Stalking Horse Bid. The Company and the Stalking Horse Bidder are of the view that the requested changes can be implemented following the granting of the Approval and Vesting Order and prior to the Closing of the Transaction.

14. I understand that in connection with the Second Report, the Proposal Trustee intends on filing certain appendices (the "**Confidential Appendices**") that contain sensitive topics that, if disclosed, could impact Datatax and its stakeholders if the Transaction does not close. As a result, the Approval and Vesting Order contemplates the sealing with the Confidential Appendices. As previously noted, the Confidential Appendices will include documents and information regarding the bidding process and the other bid that was received. Until such time as the Transaction is actually closed, it would be detrimental to the Company's efforts to implement a sale of its assets and the undermine the integrity of any sales process if such information was disclosed prior to the conclusion of these proceedings. Accordingly, the Company respectfully requests that the Court grant a sealing order over the Confidential Appendices until such time these proceedings are terminated as evidenced by the filing of the Termination Certificate.



#### **IV. DISTRIBUTION AND CONCLUSION OF THESE PROCEEDINGS**

##### **A. Distribution of Priority Payables and Secured Creditors**

15. Upon the closing of the Transaction, Datatax will not have any assets or on-going business or operations and , as a result, the Company will not be in a position to file a proposal to its creditors. Accordingly, and in an effort to minimize the costs of the proceedings, the Company respectfully requests that the Court grant the Distribution, Termination and Fee Approval Order approving, among other things, the Distributions.

16. I am advised by Pritesh Patel of the Proposal Trustee and Naveed Manzoor, and it is my understanding that, the sales proceeds from the Transaction will be insufficient to repay, in full, the secured debt of the second-ranking secured creditor Fiera Private Debt Fund VI L.P. or any other subordinate creditors. Accordingly, it is my understanding and belief that once any amounts subject to the Charges (defined below) are paid, Bank of Montreal and Fiera Private Debt Fund VI L.P. are the only secured creditors who will receive any distribution from the sales proceeds. Accordingly, there is no distribution to any unsecured creditors contemplated in connection with the Distributions. I understand that further details in connection with the Distributions will be set out in the Second Report.

17. I am advised by Pritesh Patel of the Proposal Trustee that the Proposal Trustee has received a security opinion from its independent counsel, Bennett Jones, regarding the validity and enforceability of the security of Bank of Montreal and Fiera Private Debt Fund VI L.P.. I understand that the Second Report will provide further detail in that respect.

18. The Company respectfully submits that the granting of the Distribution, Termination and Fee Approval Order at this time to approve the Distributions will minimize the costs of the proceedings by obviating the need for future Court appearances which will maximize the amount being returned to the creditors.

### **B. Approval of Fees, Reports and Activities**

19. Once the Transaction closes and the Proposal Trustee makes the Distributions there will be no further steps for the Proposal Trustee to take other than certain minor administrative steps. In connection with the relief contemplated in the proposed Distribution, Termination and Fee Approval Order, the Company respectfully requests that the Court approve: (i) the fees disbursements of the Proposal Trustee and its counsel as set out in the fee affidavits to be appended to the Second Report; (ii) the Remaining Fees and Disbursements (as defined in the Second Report); and (iii) the Reports and the activities of the Proposal Trustee described therein .

### **C. Termination and Release of Brent Houlden and Naveed Manzoor**

20. As noted in my August Affidavit, my appointment as a director of Datatax was approved pursuant to the Order granted by Justice Cavanaugh on November 7, 2022 (the "**November 2022 Order**"). In addition, the appointment of Naveed Manzoor as the interim CEO, on behalf of FAAN Advisors Group Inc. ("**FAAN**") of Datatax was similarly approved. Once the Termination Certificate has been distributed and filed with the Court, there will be no further steps for me or Mr. Manzoor or FAAN to take in our capacities with Datatax. Given that our appointments derived from the November 2022 Order, it is respectfully submitted that it would be appropriate that the Distribution, Termination and

Fee Approval Order authorizes and approves the termination of the roles of myself and Mr. Manzoor with Datatax upon the filing of the Termination Certificate and provides a release to myself, Mr. Manzoor and FAAN in the nature of the release provided to court-officers involved with the creditor enforcement proceedings for our roles with the Datatax Companies.

#### **D. Termination of Charges**

21. Pursuant to the August 2023 Order, certain charges were granted over the property of the Company, namely the Administration Charge, the DIP Charge and the D&O Charge (together, the “**Charges**”). However, following the Distributions and the termination of these proceedings as proposed above, the Charges will no longer be necessary. In order to ensure that there is no conflict between the Charges and any charges or priority that the trustee in bankruptcy may be entitled to, it is respectfully submitted that that Distribution, Termination and Fee Approval Order also provide that the Charges be terminated once the amounts owing in respect of such Charges are paid to the relevant beneficiaries and the Termination Certificate is filed.

#### **E. Stay of Proceedings and Time to Make a Proposal**

22. Pursuant to the August 2023 Order, the time within which Datatax is to make a proposal pursuant to section 62(1) of the BIA, and the corresponding Stay of Proceedings, is set to expire on October 28, 2023. In an effort to avoid any further court appearances and conclude these proceedings in an orderly and efficient manner, the Company is proposing to terminate these proceedings by amending the August 2023 Order such that the time within which Datatax is to make a proposal pursuant to section 62(1) of the BIA,

and the corresponding stay of proceedings provided for in section 69 of the BIA, will expire on the earlier of: (i) October 28, 2023 or (ii) the filing of the Termination Certificate. (As noted above, it is proposed that the stay of proceedings with respect to the Datatax Subsidiaries will expire upon the earlier of October 28, 2023, and the filing of the Proposal Trustee's Vesting Certificate.)

23. It is my understanding that upon the expiration of the time within which Datatax is to make a proposal pursuant to section 62(1) of the BIA and the Stay of Proceedings, the Company will automatically be deemed to be bankrupt, and KPMG will then proceed to act as trustee in bankruptcy. As is described in greater detail in the Second Report, I understand that Fiera has agreed, in order to fund the administration of the bankruptcy, to allow the Proposal Trustee to maintain a reserve of funds to be held by it to administer the bankruptcy of the Company.

## **V. CONCLUSION**

24. As noted in August Affidavit, there is urgency to concluding the SSP and the closing the Successful Bid under the SSP. The Company has run out funding and was dependent upon DIP Financing to fund its cash needs. The DIP Financing was negotiated and provided on the basis that the sale under the SSP would be concluded on or before October 16, 2023, and that these proceedings will be concluded by October 28, 2023. That remains true to this day - the Company will have exhausted the DIP Financing as anticipated and does not have sufficient funding to keep operating should the proceedings continue. Given that no other Qualified Bid has surfaced, it is imperative that the Transaction close as quickly as possible and that the distributions and remaining steps

take place within the time frames that were contemplated at the time that August 2023 Order was granted.

25. The two motions seeking approval of the Approval and Vesting Order and the Distribution, Termination and Fee Approval Order are being brought at this time to conclude the SSP, seek approval of the Transaction for the benefit of the Datatax Companies and their stakeholders, distribute the sales proceeds and terminate these proceedings.

26. I swear this affidavit in support of the Company's two motions for the Approval and Vesting Order and the Distribution, Termination and Fee Approval Order.

**AFFIRMED BY VIDEO CONFERENCE** by Brent Houlden of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 4, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

DocuSigned by:  
*Shimon Sherrington*  
A50E0ED910CB408  
Shimon Sherrington  
Commissioner for Taking Affidavits

DocuSigned by:  
*Brent Houlden*  
46FD06840D7E48B  
Brent Houlden

This is **Exhibit "A"** referred to in the Affidavit of Brent  
Houlden affirmed October 4, 2023

DocuSigned by:

*Shimon Sherrington*

A56E6ED310CB489

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Shimon Sherrington  
Commissioner for Taking Affidavits  
(or as may be)

Court / Estate File No. 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER  
THE LAWS OF ONTARIO**

**AFFIDAVIT OF BRENT HOULDEN**  
(affirmed August 15, 2023)

I, Brent Houlden, of the City of Toronto, in the Province of Ontario, AFFIRM:

**I. INTRODUCTION**

1. I am the sole director of each of Datatax Business Services Limited, ("**Datatax**"), Farm Business Consultants Inc. ("**Farm**"), FBC Financial & Estate Planning Services Inc. ("**FBC Financial**") and Wheatland Accounting Services Ltd. ("**Wheatland**", together with Farm and FBC Financial, the "**Datatax Subsidiaries**", and the Datatax Subsidiaries together with Datatax, the "**Datatax Companies**") and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records and filings of the Datatax Companies and have spoken with certain of the officers and/or employees of the Datatax Companies, as necessary, and where I have relied upon such information, I verily believe such information to be true.

2. I am an experienced restructuring professional, who has led many urgent and critical restructuring assignments. I am a former senior partner at Deloitte, where I held

various leadership positions and was involved in a wide range of consultative assignments including various restructuring mandates and I am a Licensed Insolvency Trustee. Since my retirement from Deloitte, I have held leadership roles in the restructuring of various companies, including (but not limited to) GolfTown, Performance Sports (owner of Bauer sports equipment) and DealNet, a publicly traded company.

3. This affidavit is sworn in support of a motion brought by Datatax seeking an order substantially in the form of the draft order located at Tab 3 of the Motion Record, providing for:

- (a) Abridging the time for service of the Notice of Motion and Motion Record and dispensing with further service thereof;
- (b) Approving the SSP (defined below) and authorizing and directing KPMG Inc. in its capacity as proposal trustee of Datatax ("**KPMG**" or the "**Proposal Trustee**"), in consultation with Datatax and its advisors, to carry out the SSP and to take such steps and execute such documentation as may be necessary or incidental to the SSP;
- (c) Authority for Datatax and the Proposal Trustee to immediately commence the SSP;
- (d) Approving the asset purchase agreement (the "**Stalking Horse APA**") between Datatax and 2872802 Ontario Inc. (the "**Stalking Horse Bidder**") solely for the purpose of constituting the "**Stalking Horse Bid**" under the SSP;



- (e) Approving the DIP Facility and the DIP Charge (as defined below);
- (f) Approving an Administration Charge (as defined below);
- (g) Approving the D&O Charge (as defined below);
- (h) Extending the stay of proceedings to the Datatax Subsidiaries;
- (i) Extending the time for Datatax to file a proposal and corresponding stay of proceedings under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**") for forty-five days after the expiration of the initial automatic stay provided for under the BIA; and
- (j) Such further and other relief as the Court may deem just.

## **II. DATATAX'S BUSINESS AND CREDITORS**

### ***A. Datatax's Business***

4. Datatax is a company amalgamated under the laws of the Province of Ontario, which, through its subsidiaries, carries on the business of providing certain bookkeeping income tax and consulting services. Datatax currently holds all the issued shares in the Datatax Subsidiaries. A copy of the Corporate Profile Report for Datatax is attached as **Exhibit "A"**.

5. Each of the Datatax Subsidiaries are companies incorporated under the laws of the Province of Ontario.

6. Datatax's main offices are in London, Ontario and Calgary, Alberta. Datatax's registered head office is in Thornhill, Ontario, in the Greater Toronto Area.

### ***B. Liabilities***

7. As of August 14, 2023, Datatax has liabilities totalling approximately \$33,886,840.14. A listing of Datatax's creditors who are owed \$250.00 or more is attached as **Exhibit "B"**. Some of the most significant liabilities include (but are not limited to) the following:

- \$31,929,010 (as of July 15) plus accumulating interest and fees owed to Fiera (as defined below) under the Fiera Loan Agreement (as defined below), such amount owing constituting the "**Fiera Debt**".
- \$1,633,531.84 owed to Bank of Montreal ("**BMO**") under the BMO Loan Agreement (as defined below).

Not included in the list attached as Exhibit B is a \$3,500,000 promissory note owed to Steven Ibbotson ("**Ibbotson**") under the Ibbotson Promissory Note (as defined below).

### ***C. Sale of Datatax to the Murads and the Fiera Loan Agreement***

8. Datatax, as borrower, and Fiera Private Debt Fund VI L.P. ("**Fiera**"), as lender, entered into a credit agreement dated June 22, 2022 (the "**Fiera Loan Agreement**"). The purpose of the Fiera Loan Agreement was to finance the sale of Datatax from the previous owner of the company, Ibbotson, to members of the Murad family (though their respective holding companies) (the "**Murad Sale**"). The closing of the Murad

Sale transaction occurred concurrently with the entering into of the Fiera Loan Agreement. The Fiera Loan Agreement provides for a secured term facility up to \$34,300,000 to Datatax. The total amount currently owed by Datatax to Fiera under the Fiera Loan Agreement is the Fiera Debt. A copy of the Fiera Loan Agreement is attached as **Exhibit “C”**.

9. The obligations of Datatax to Fiera under the Fiera Loan Agreement were secured by, among other things:

- A securities pledge agreement dated June 22, 2022 granted by 997322 Ontario Inc. (“**997 Ontario**”) in favour of Fiera, a copy of which is attached as **Exhibit “D”**;
- A securities pledge agreement dated June 22, 2022 by 2394419 Ontario Limited (“**239 Ontario**”) in favour of Fiera, a copy of which is attached as **Exhibit “E”**; and
- A securities pledge agreement dated June 22, 2022 by 2774118 Ontario Inc. (“**277 Ontario**”), in favour of Fiera, a copy of which is attached as **Exhibit “F”**;

(hereinafter collectively, the “**Securities Pledge Agreements**”)

10. At the time the Fiera Loan Agreement was entered into each of 239 Ontario, 277 Ontario, and 997 Ontario was controlled by a member of the Murad family. Noah Murad was sole director of 239 Ontario (and later became a director of Datatax as well). Jacob

Murad was a director of 277 Ontario (and also later became a director of Datatax as well). Monica Murad was the sole director of 997 Ontario.

11. Following the closing of the Murad Sale, the corporate shareholders each held 1/3 of the outstanding shares of Datatax.

12. Each of the Securities Pledge Agreements provides Fiera with certain rights upon the occurrence of and during the continuance of a default under the Fiera Loan Agreement. Such rights include but are not limited to:

- Pursuant to section 7(1) of the Securities Pledge Agreements, suspending each of the Shareholders' rights to vote Datatax's Shares, with all such rights being vested solely and absolutely in Fiera;
- Pursuant to section 10(b) of the Securities Pledge Agreements, enforcing all other rights and remedies of a holder of the Datatax's Shares and other investment property as if Fiera were the absolute owner thereof; and
- Pursuant to section 13 of the Securities Pledge Agreements, having power of attorney over the Shareholders such that Fiera and its nominees or transferees are empowered to exercise all rights and powers of the Shareholders in and to the Collateral, including the ability to perform all acts of ownership with respect to the Collateral to the same extent as the Shareholders might do.

#### ***D. Ibbotson Note***

13. As part of the Murad Sale, Datatax also issued a promissory note on June 22, 2022, in favour of Ibbotson in the amount of \$3,500,000.00 (the “**Ibbotson Promissory Note**”). The Ibbotson Promissory Note is subordinate in priority to both the Fiera Debt and BMO Loan Agreement (defined below).

#### ***E. BMO Loan Agreement***

14. Datatax, as borrower, and BMO, as lender, entered into a credit agreement dated July 14, 2022 (the “**BMO Loan Agreement**”). The BMO Loan Agreement provides a revolving credit facility up to \$2,000,000.00 to Datatax. A copy of the BMO Loan Agreement is attached as **Exhibit “G”**.

#### ***F. Personal Property Security Registration***

15. Searches of the Personal Property Security Registration System (“**PPRS**”) as of August 14, 2023, indicates that the only registrations against the Datatax Companies are by Fiera, BMO, Ibbotson and registrations by equipment lessors. Copies of the PPRS results are attached as **Exhibit “H”**.

### ***III. EVENTS LEADING TO THE NOI PROCEEDINGS***

#### ***A. Datatax Financial Challenges***

16. Following the granting of the November 2022 Order (defined below), I, working with the Interim CEO, Naveed Manzoor, began the work of reviewing the financial

statements of the Datatax Companies. The audited financial statements of Datatax from June 23, 2022 to August 31, 2022 are attached as **Exhibit “I”**.

17. Since the acquisition on June 22, 2022 the Datatax Companies have experienced severe cash flow issues and have not been able to pay their bills when due. A copy of the actual cash flow totals from May 10 to August 14, 2023, and projected cash flow statements through August 14 to October 30, 2023 is attached as **Exhibit “J”**.

18. As of the week of July 31, 2023, the Datatax Companies were suffering a critical cash flow deficit, such that there were insufficient funds for payroll and other critical payments. As discussed below, an affiliate of Fiera agreed to provide the Datatax Companies with the critical Interim Facility (defined below) to cover their immediate cash needs. That arrangement also provided that if formal restructuring proceedings were commenced, Fiera would provide (conditional on certain terms) funding for the Datatax Companies during such restructuring proceedings.

19. Given the Datatax Companies' critical cash flow crisis and the results of the various efforts since November 2022 to find a purchaser or refinancing for the Datatax Companies (described below), Manzoor and I determined that the best value maximizing option was to accept the Interim Financing and, as requested by Fiera and Fiera Business (as defined below), accept the firm deal that is now available as the Stalking Horse Bid and proceed with a Court-approved public sale process under NOI proceedings pursuant to the BIA. In proceeding in this manner, Datatax was able to secure the critical financing that was immediately needed and secure the best-available

offer for the companies and their assets to ensure their continued operation while at the same time allowing for a public, Court-supervised sales process to determine if a superior bid was in fact available.

***B. Events Leading to the November 2022 Order and Control Over Datatax Shares***

20. Following the closing of the Murad Sale in June 2022, it was determined that a number of defaults had quickly arisen (or had already existed) under the Fiera Loan Agreement. The events of default are detailed in the affidavit of Russell French dated November 6, 2022, a copy of which is attached (without exhibits) as **Exhibit “K”** (the **“French Affidavit”**).

21. As a result of the various defaults and issues detailed in the French Affidavit, on September 26, 2022 Fiera issued a demand letter requesting full repayment of the amount advanced under the Fiera Loan (plus accruing costs), along with notices of default under section 244 of the BIA to each of 239 Ontario, 277 Ontario, and 997 Ontario. A copy of the demand letter and the notices is attached as **Exhibit “L”**. On October 21, 2022, Fiera, in accordance with its rights under the Securities Pledge Agreements, passed a shareholder resolution naming me as the sole Director of Datatax and removing Noah and Jacob Murad as directors (**“Fiera Shareholder Resolution”**).

22. Subsequently, in my capacity as sole Director of Datatax, I passed shareholder resolutions of Datatax, naming myself the sole Director of each of the Datatax Subsidiaries (together with the Fiera Shareholder Resolution, the **“Replacement**

**Director Resolutions**”). A copy of the Replacement Director Resolutions is attached as **Exhibit “M”**.

23. On October 31, 2022, I appointed Manzoor of FAAN Advisors Group Inc. as Interim Chief Executive Officer of Datatax to assist me in the restructuring of the Datatax Companies and to oversee the operations of Datatax and its subsidiaries.

24. Despite Fiera’s clear rights under the Securities Pledge Agreements to appoint and remove directors on events of default under the Fiera Loan Agreement, Noah and Jacob Murad, along with their mother Monica Murad in her capacity as President of 997 Ontario, signed a shareholders’ resolution on October 31, 2022, purporting to remove me as the sole director and purporting to name Noah and Jacob Murad as the directors of Datatax (the **“Murad Resolution”**). A copy of the Murad Resolution is attached as **Exhibit “N”**.

25. In response, on November 9, 2022, Fiera filed a Notice of Application under the *Personal Property and Security Act* (the **“November PPSA Application”**), seeking:

- (a) a declaration that Fiera’s exercise of its rights, pursuant to the Securities Pledge Agreements, to appoint myself as sole director of Datatax by way of the Fiera Shareholder Resolution, was valid and enforceable; and
- (b) a declaration that the Murad Resolution was of no force and effect.

A copy of the Notice of Application filed by Fiera for the November PPSA Application is attached as **Exhibit “O”**.



26. Ultimately, Noah and Jacob Murad consented to an order granting the relief sought by Fiera in the November PPSA Application (the “**November 2022 Order**”). A copy of the November 2022 Order granted by Justice Cavanagh is attached as **Exhibit “P”**.

27. Despite the granting of the November 2022 Order, the defaults under the Fiera Loan Agreement have not been cured or resolved. Accordingly, at present, the Fiera Debt due and owing. Datatax does not have the ability to pay repay the Fiera Debt and is therefore insolvent.

28. As confirmed by the November 2022 Order, it is Fiera, and not the Murads or their respective companies, that have the right to exercise control and the powers of the shares in Datatax.

29. In addition, another Court order has been granted that appears to limit the Murad’s rights to exercise any control or rights over the shares of Datatax. In particular, on November 23, 2022, Justice Myers granted an order appointing KSV Advisory Inc. as a receiver in aid of execution with respect to Noah Murad and others, which order also extends to 239 Ontario and 997 Ontario. Each of 239 Ontario, 997 Ontario, and Noah and Monica Murad consented to that order. A copy of order granted by Justice Myers is attached as **Exhibit “Q”**.

### ***C. Regularization of the Datatax Business***

30. Since Naveed Manzoor and I assumed our positions with Datatax, we have sought to regularize the business operations of the Datatax Companies. Those efforts

have included engaging the professionals necessary to review and restate its financial records (as noted above) and to make the operational changes necessary to regularize its business and to ready it for a potential sale.

31. As part of our mandate, we have considered and explored various restructuring alternatives to maximize the value of the business. These efforts have included discussions with Fiera and others (including Noah Murad) about the resolution of Fiera's claims under the Fiera Loan Agreement, exploring refinancing options, and canvassing potential buyers for Datatax's business. These efforts have not resulted in any other firm offer being received other than the Stalking Hores APA.

32. As noted above, Datatax has continued to experience negative cash flow and has insufficient cash flow and liquidity. As a result, starting in November, Datatax entered into a series of three deferral and acknowledgment agreements with Fiera, dated November 15, 2022, December 9, 2022 and April 14, 2023, that allowed Datatax to continue to operate between November and this summer (the "**Deferral and Acknowledgement Agreements**"). A copy of the Deferral and Acknowledgement Agreements is attached as **Exhibit "R"**. However, by the end of July 2023, Datatax did not have sufficient funds or liquidity to pay its obligations as they became due. By the week of July 31, 2023, the situation was critical and the company did not have sufficient funds to meet its payroll.

33. Accordingly, in order to ensure the continuity of the Datatax Companies' business, and to facilitate and orderly restructuring process under the BIA through the filing of a Notice of Intention to File a Proposal ("**NOI**"), Datatax negotiated and was able

to secure interim financing (the “**Interim Facility**”) from an affiliate of Fiera, Fiera FP Business Financing Fund, L.P. (“**Fiera Business**”). The Interim Facility is for a maximum principal amount of \$3,000,000, which included an initial tranche of \$750,000.00 (the “**Initial Tranche**”) that was paid by Fiera prior to the commencement of the NOI proceedings. The Initial Tranche was used to pay for, among other things, the companies’ payroll and other critical expenses. A copy of the term sheet for the Interim Facility is attached as **Exhibit “S”**.

34. The Interim Facility contemplated that Datatax would enter into the Stalking Horse APA with Ibbotson (described below) and proceed forthwith filing the NOI proceedings for the approval of the Stalking Horse APA and public Sales Solicitation Process (“**SSP**”) to determine whether or not a superior bid to the Stalking Horse APA could be obtained.

#### ***D. The Stalking Horse APA and DIP Financing***

35. The effort to canvass sale and restructuring options resulted in a determination that the best value maximizing option was a sale of Datatax to a purchaser free and clear of existing obligations and liabilities. The previous owner of Datatax, Ibbotson, has put forward the Stalking Horse Bid through the Stalking Horse Bidder. The Stalking Horse Bid ensures the continuity of the Datatax business and operations for the benefit of the Datatax Companies’ employees, vendors, customers and secured lenders. It also allows Datatax’s various stakeholders to participate in the SSP (as defined below) should they wish to do so. The following is a summary of the Stalking Horse APA for illustrative purposes, however the terms of the Stalking Horse APA itself govern.

36. Datatax and the Stalking Horse Bidder, a company controlled by Ibbotson, entered into the Stalking Horse APA on August 11, 2023. That agreement provides for the purchase of substantially all Datatax's assets or business, including the Datatax Subsidiaries on an 'as is, where is' basis. A copy of Stalking Horse APA (without Schedules) is attached hereto as **Exhibit "T"**.

37. The Stalking Horse APA contemplates that upon Datatax commencing NOI proceedings, it will seek Court approval of the SSP, pursuant to which potential purchasers could express interest in, conduct due diligence on, and submit bids for, Datatax's assets. A copy of the proposed SSP is attached as Schedule "A" to the draft order located at Tab 3 of the Motion Record.

38. As part of the Stalking Horse APA, the Stalking Horse Bidder has paid a non-refundable deposit, a refundable deposit and has offered to provide DIP financing as follows:

- a non-refundable deposit amount of \$200,000 (the "**Non-Refundable Deposit**"), which has been paid to Datatax's counsel upon the signing of the Stalking Horse APA and is available immediately to be used as a contribution to Datatax's restructuring costs;
- a refundable deposit in the amount of \$3,400,000, which has been paid to Datatax's counsel in escrow (the "**Refundable Deposit**");
- a portion of the Refundable Deposit, up to a maximum of \$2,500,000, will be used for interim/DIP financing (the "**DIP Facility**") upon Court approval.

The DIP Facility is refundable if the stalking-horse transaction does not close, but if the stalking-horse transaction does close, any amounts advanced under the DIP Facility will not be refunded or repaid.

39. The DIP Facility is to be secured by way of Court-ordered priority charge granted to the Stalking Horse Bidder to the assets, property and undertakings of Datatax in priority to all other charges except the Administration Charge (the "**DIP Charge**"). Upon the Court approving the DIP Charge, a portion (\$750,000) of the DIP Facility will be used to repay the Initial Tranche advanced by Fiera Business. The remainder amount of the DIP Facility (up to \$1,750,000) will be available to Datatax by way of weekly draws to be made in accordance with an agreed-to cash-flow statement.

40. The purchase price (the "**Purchase Price**") to be paid by the Stalking Horse Bidder to Datatax under the Stalking Horse APA consists of:

- the portion of the DIP Facility not utilized to pay the Initial Tranche or advanced to Datatax as part of the Weekly Draws, being \$1,000,000;
- the Non-Refundable Deposit of \$200,000;
- an amount equal to the Fiera Debt (\$31,929,010 as of July 15, 2023 plus accumulating interest and fees), plus interest calculated on a 7% per annum basis from July 15, 2023, until the closing date of the transaction;
- an amount up to \$2,000,000 and any BMO fees or costs greater than \$25,000 in connection with the full repayment of the BMO Loan Agreement; and

- the assumption by the Stalking Horse Bidder of the Ibbotson Promissory Note in the amount of \$3,500,000.

Upon the closing of the sales transaction, there will be a release of the obligations of under the DIP Charge and an assumption by the Stalking Horse Bidder of Datatax's liabilities (including additional warrants outstanding to Ibbotson and an employment contract relating to Ibbotson).

41. The Stalking Horse APA also provides for a \$400,000.00 break fee (the "**Break Fee**"), in recognition for the Stalking Horse Bidder's expenditure of time and money in acting as the initial bidder for Datatax, in the event a different bidder is selected as a result of the SSP.

#### ***E. The SSP***

42. I am advised by Pritesh Patel of KPMG, the Proposal Trustee, that the Proposal Trustee has reviewed the SSP and is supportive of the SSP and the Stalking Horse APA and will be filing a report in respect of same. I am further advised that the Proposal Trustee will be submitting a report that will provide information regarding the SSP in addition to the description below.

43. Within five days after the granting of the order, the Proposal Trustee, in consultation with Datatax, will prepare a list of potential bidders. These potential bidders will receive a process summary document describing the opportunity to purchase Datatax and inviting recipients to participate in the SSP.

44. In order to be classified as a Qualified Bid (as that term is defined in the SSP), a bid must meet certain minimum criteria, including that:

- the bid amount in aggregate equals at least:
  - (i) the Purchase Price;
  - (ii) the Break Fee; and
  - (iii) a minimum overbid amount of \$150,000.00
- the form of consideration for the proposed sale is in cash.
- the bid is submitted by the bid deadline of September 29, 2023 (assuming an order for this motion is granted on August 17, 2023).
- there is an irrevocable period for the bid, which must be last until at least the outside date of October 16, 2023.
- the bid is submitted on an 'as is, where is' basis.
- the form of the final bid is a final and binding transaction agreement based upon the Stalking Horse APA form.
- the bid provides for a cash deposit of 10% of the purchase price offered.

45. The Stalking Horse Bidder's bid is automatically a Qualified Bid.

46. To the extent that more than one Qualified Bid is submitted, the SSP provides for an auction to be conducted by the Proposal Trustee at which bidders would have the opportunity to continue bidding on Datatax's assets until the best bid is selected. In the

event that no other Qualified Bid is received other than the Stalking Horse Bidder's bid, no auction will take place and the Stalking Horse Bidder's bid would be declared the successful bid.

47. A sale of Datatax must proceed on an expedited basis at this time preserve any going concern value of Datatax. The SSP provides the provides the best possible outcome for Datatax's stakeholders, including employees, vendors and customers. Based upon the restructuring alternatives explored to date, it does not appear there is a better viable alternative to the SSP.

#### ***F. NOI Proceeding Commenced***

48. On August 14, 2023, Datatax filed a NOI under the BIA and commenced proposal proceedings. A copy of the Certificate of Filing of the NOI is attached as **Exhibit "U"**.

49. KPMG was appointed as Proposal Trustee under the proposal.

### **IV. CHARGES and EXTENSION OF STAY OF PROCEEDINGS**

#### ***A. Administration Charge***

50. To facilitate the NOI proceedings and the SSP, Datatax is also seeking a charge on the assets, property and undertakings of Datatax in priority to all other charges in the maximum amount of \$500,000 (the "**Administration Charge**") to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to



Datatax that are incurred in connection with services rendered to Datatax both before and after the commencement of BIA proposal proceedings.

51. In order for Datatax to be able to complete the NOI proceedings and SSP for the benefit of all stakeholders, Datatax needs to ensure that the required professionals will agree to continue in their respective mandates. Given that Datatax does not have the funding necessary to pay the fees, an Administration Charge is necessary to allow Datatax to continue the NOI proceedings and complete the SSP.

***B. D&O Charge***

52. Datatax is also seeking a charge on the assets, property and undertakings of Datatax in priority to all other charges except the Administration Charge and DIP Charge in the maximum amount of \$200,000 (the “**D&O Charge**”) to secure the liabilities that the Datatax Companies may incur during the NOI proceedings and which are or may become personal liabilities of the directors and officers of the Datatax Companies.

53. Given that the Datatax Companies do not have director and officer insurance, providing for the D&O Charge is necessary to ensure that the current directors and officers are willing and able to continue to so act until the completion of the SSP and the NOI proceedings. The D&O Charge is particularly appropriate given that the current director (Houlden) and officer (Manzoor) were appointed by the Court to such roles pursuant to the November 2022 Order to stabilize the operations and affairs of the Datatax Companies and, if necessary, implement such restructuring process as may be desirable or necessary.

### ***C. Stay Period Extension and Application to Datatax Subsidiaries***

54. The proposed SSP will run for a period longer than thirty days after the filing of the NOI. As such, an extension of the time to file a proposal in these proceedings will be required and for efficiency is being sought at this time. Datatax is requesting an additional forty-five-day extension after the initial thirty-day automatic stay provided under the BIA. The requested extension is consistent with and is necessary to facilitating an orderly conclusion of the SSP and minimize disruption to Datatax's stakeholders.

55. As most of the actual operations of Datatax occur through the Datatax Subsidiaries, Datatax also seeks the stay of proceedings to encompass the Datatax Subsidiaries. This will allow for the orderly completion of the SSP. Without such stay being extended to the Datatax Subsidiaries, the facilitation of the SSP and maximization of value for all of Datatax's stakeholders could be jeopardized.

56. Datatax has acted and will continue to act in accordance with the SSP in good faith and with due diligence toward completion of a transaction. Any creditors or other Datatax stakeholders will not be materially prejudiced by the proposed extension which is necessary to give effect to the SSP.

### **PART V - CONCLUSION**


57. Datatax seeks the Court's assistance in implementing an expedited and tailored approach to marketing Datatax's business under the SSP. A combined approval of the

SSP is supported by the facts as a reasonable and cost-effective method of dealing with Datatax's assets and commercial obligations.

**SWORN BY VIDEO CONFERENCE** by Brent Houlden of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on August 15, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



Shimon Sherrington  
Commissioner for Taking Affidavits



Brent Houlden

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED  
UNDER THE LAWS OF ONTARIO**

Court / Estate File No: 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF BRENT HOULDEN**

**Tyr LLP**

488 Wellington Street West, Suite 300-302  
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**Jason Wadden (LSO# 46757M)**

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**Shimon Sherrington (LSO# 83607B)**

Email: [ssherrington@tyrllp.com](mailto:ssherrington@tyrllp.com)  
Tel: 587.777.0367

Lawyers for the Datatax Companies

This is **Exhibit "B"** referred to in the Affidavit of Brent  
Houlden affirmed October 4, 2023

DocuSigned by:

*Shimon Sherrington*

A56E6ED310CB489

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Shimon Sherrington  
Commissioner for Taking Affidavits  
(or as may be)



Court File No. BK-23-02975175-0031  
Estate File No. 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 17<sup>TH</sup> DAY  
 )  
JUSTICE CAVANAGH ) OF AUGUST, 2023  
 )

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER  
THE LAWS OF ONTARIO**

**ORDER  
(Approval of SSP, Stalking Horse, DIP Financing, Charges and Stay Extension)**

THIS MOTION, made by Datatax Business Services Limited (“**Datatax**”), pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an order, among other things: (a) abridging the time for service of the Notice of Motion and Motion Record and dispensing with further service thereof; (b) approving the Sales Solicitation Process (“**SSP**”) attached hereto as Schedule "A" and authorizing and directing KPMG Inc. (the “**Proposal Trustee**”) in consultation with Datatax and its advisors, to carry out the SSP pursuant to the terms thereof and to take such steps and execute such documentation as may be necessary or incidental to the SSP; (c) approving the asset purchase agreement dated August 11, 2023 (the “**Stalking Horse APA**”) between Datatax and 2872802 Ontario Inc. (the “**Stalking Horse Bidder**”) solely for the purpose of acting as the stalking horse bid in the SSP; (d) approving the debtor in possession facility (the “**DIP Facility**”) to be provided to Datatax by the Stalking Horse Bidder, including the registration of a priority charge granted in favour of the Stalking

Horse Bidder (the "**DIP Charge**") over all present and future assets, properties and undertakings of Datatax (the "**Property**"); (e) approving a \$500,000 priority charge granted in favour of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to Datatax (the "**Administration Charge**") over the Property to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to Datatax; (f) approving a \$200,000 priority charge granted in favour of the directors and officers of Datatax and the Datatax Subsidiaries (as defined below) (the "**D&O Charge**") over the Property to secure the liabilities that Datatax or the Datatax Subsidiaries (as defined below) may incur during the Notice of Intention to File a Proposal proceedings which are or may become personal liabilities of the directors and officers of Datatax or the Datatax Subsidiaries; (g) extending the stay of proceedings to Farm Business Consultants Inc. ("**Farm**"), FBC Financial & Estate Planning Services Inc. ("**FBC Financial**") and Wheatland Accounting Services Ltd. ("**Wheatland**", together with Farm and FBC Financial, the "**Datatax Subsidiaries**"); and (h) extending the time for Datatax to file a proposal and granting a corresponding stay of proceedings (including for the Datatax Subsidiaries) pursuant to the BIA until October 28, 2023, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Brent Houlden affirmed August 15, 2023 and the Exhibits thereto (the "Houlden Affidavit"), and on reading the first report of the Proposal Trustee dated August 16, 2023 (the "**First Report**"), and on hearing submissions of counsel for Datatax, the Proposal Trustee, Fiera Debt Fund VI L.P. and those other parties present.

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Motion Record and the First Report is hereby abridged and validated so that this Motion is properly returnable today and hereby the requirement for any further service is dispensed with.

**SALES SOLICITATION PROCESS**

2. THIS COURT ORDERS AND DECLARES that (subject to any amendments thereto that may be made in accordance therewith) the SSP attached hereto as Schedule "A", including the "stalking horse" solicitation process set out therein, are hereby approved and accepted.

3. THIS COURT ORDERS that the Proposal Trustee, in consultation with Datatax and its advisors, is hereby authorized and directed to implement the SSP pursuant to the terms thereof and Datatax and the Proposal Trustee are authorized to take all steps and do all things reasonably necessary or incidental to implement the SSP.

4. THIS COURT ORDERS that each of Datatax and the Proposal Trustee, and their respective affiliates, officers, directors, partners, employees, advisors, counsel and agents shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the SSP, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or wilful misconduct of Datatax or the Proposal Trustee, as applicable, as determined by this Court in a final order that is not subject to appeal or other review.



**STALKING HORSE APA**

5. THIS COURT ORDERS that the Stalking Horse APA is hereby authorized and approved (with such amendments as Datatax and the Stalking Horse Bidder, with the consent of the Proposal Trustee, may deem necessary or desirable), solely for the purposes of being the Stalking Horse Bid under the SSP. For greater certainty, nothing herein approves the sale and vesting of any property described in the Stalking Horse APA to the Stalking Horse Bidder and the approval of any sale and vesting of any such property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse APA is the successful bid pursuant to the SSP.

**DIP FACILITY**

6. THIS COURT ORDERS that the DIP Facility as set out in the Stalking Horse APA is hereby approved, and Datatax is authorized to borrow and shall otherwise obtain financing under the DIP Facility from the Stalking Horse Bidder pursuant to the terms of the Stalking Horse APA and that Datatax and the Stalking Horse Bidder, with the approval of the Proposal Trustee, are permitted to enter into any other agreements required to implement the DIP Facility.

7. THIS COURT ORDERS that the Stalking Horse Bidder shall be entitled to the benefit of the DIP Charge on the Property, as security for the DIP Facility to a maximum amount of \$2,500,000, in accordance with the priority set out herein. The filing, registration or perfection of the DIP Charge shall not be required, and the DIP Charge shall be valid and enforceable for all purposes, including against any right, title or interest

filed, registered, recorded or perfected notwithstanding any such failure to file, register, record or perfect.

### **ADMINISTRATIVE CHARGE**

8. THIS COURT ORDERS that the Proposal Trustee, counsel to the Proposal Trustee, and counsel to Datatax shall be entitled to the benefit of the Administrative Charge on the Property, as security for their professional fees and disbursements to a maximum amount of \$500,000, in accordance with the priority set out herein. The filing, registration or perfection of the Administrative Charge shall not be required, and the Administrative Charge shall be valid and enforceable for all purposes, including against any right, title or interest filed, registered, recorded or perfected notwithstanding any such failure to file, register, record or perfect.

### **D&O CHARGE**

9. THIS COURT ORDERS that the directors and officers of Datatax and the Datatax Subsidiaries shall be entitled to the benefit of the D&O Charge on the Property, as security for any personal liability incurred by the directors and officers in their roles with Datatax or the Datatax Subsidiaries to a maximum amount of \$200,000, in accordance with the priority set out herein. The filing, registration or perfection of the D&O Charge shall not be required, and the D&O Charge shall be valid and enforceable for all purposes, including against any right, title or interest filed, registered, recorded or perfected notwithstanding any such failure to file, register, record or perfect.

## **PRIORITY**

10. THIS COURT ORDERS that the priority of the DIP Charge, Administrative Charge, D&O Charge and all existing security held by any creditor prior to the issuance of this Order, shall be as follows:

- i. First – the Administration Charge;
- ii. Second – the DIP Charge;
- iii. Third – the D&O Charge; and
- iv. Fourth – existing security interests in such priority as they currently have.

## **STAY OF PROCEEDINGS**

11. THIS COURT ORDERS that the time within which Datatax is to make a proposal pursuant to section 62(1) of the BIA, and the corresponding stay of proceedings provided for in section 69 of the BIA, is hereby extended in accordance with section 50.4(9) of the BIA up to and including October 28, 2023.

12. THIS COURT ORDERS that the stay of proceedings provided for under section 69 of the BIA is hereby extended to the Datatax Subsidiaries in accordance with section 50.4(9) of the BIA up to and including October 28, 2023.

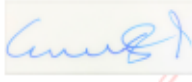
**GENERAL**

13. THIS COURT ORDERS that the Proposal Trustee is hereby authorized, directed and empowered to perform its functions and to fulfill its obligations under the SSP to facilitate the implementation of the SSP.

14. THIS COURT ORDERS that Datatax and the Proposal Trustee may, from time to time, apply to this Court for advice and directions in the discharge of their powers and duties hereunder and under the SSP.

15. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada and as against all Persons against whom it may otherwise be enforced.

16. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist Datatax and the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Datatax and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Proposal Trustee and Datatax and their respective agents in carrying out the terms of this Order.

 Digitally signed  
by Peter  
Cavanagh

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# Schedule "A"

## Sales Solicitation Process

## Procedures for the Sale Solicitation Process

On August 14, 2023, Datatax Business Services Limited ("**Datatax**") filed a notice of intention to make a proposal (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"). KPMG Inc. was named as the proposal trustee under the NOI (in such capacity, the "**Proposal Trustee**").

On August 17, 2023, the Superior Court of Ontario (Commercial List) in the City of Toronto (the "**Court**") granted an order (the "**SSP Order**") pursuant to the BIA, authorizing Datatax to undertake a sale solicitation process ("**SSP**") for the sale of its assets (the "**Property**") and business operations (the "**Business**") conducted through its operating subsidiaries, FBC Financial & Estate Planning Services Inc., Farm Business Consultants Inc., and Wheatland Accounting Services Inc. (collectively, the "**Opcos**"). The SSP will be conducted by the Proposal Trustee in the manner set forth herein.

Among other things, the SSP Order also: (a) approved the procedures set out in this Schedule (the "**Bidding Procedures**") for the solicitation of offers or proposals (each a "**Bid**") for the acquisition of all the Property and Business of Datatax, and (b) approved the form of asset purchase agreement entered into on August 11, 2023 between Datatax, as seller, and 2872802 Ontario Inc., as purchaser (the "**Stalking Horse Bidder**") (as same may be amended from time to time pursuant to its terms, the "**Stalking Horse Agreement**") as the "Stalking Horse Bid" for the purposes of the SSP, provided that the Stalking Horse Agreement and the transactions provided for therein must be submitted to the Court for consideration in a subsequent application upon completion of the SSP or upon termination thereof and the Stalking Horse Agreement being the Successful Bid (as defined below).

### **Bidding Procedures**

#### ***Opportunity***

1. The SSP is intended to solicit interest from qualified parties in an acquisition of all the Property and Business of Datatax, with a completion date of a transaction or transactions no later than Monday, October 16, 2023 (the "**Opportunity**").
2. The Stalking Horse Agreement constitutes a qualified Bid by the Stalking Horse Bidder for all purposes and at all times under this SSP and will serve as the Stalking Horse Bid for purposes of this SSP and these Bidding Procedures.

#### ***General Terms***

3. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning Datatax and the Business, the manner in which bidders may participate in the SSP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder and the requisite approvals to be sought from the Court in connection therewith.
4. The Proposal Trustee, in consultation with Datatax, may at any time and from time to time, modify, amend, vary or supplement the Bidding Procedures, without the need for obtaining an order of the Court or providing notice to Bidders, Qualified Bidders, or the Successful Bidder, provided that the Proposal Trustee determines that such modification, amendment, variation or supplement is expressly limited to changes that do not materially alter, amend or prejudice the rights of such Bidders (including the rights of the Stalking Horse Bidder, except with the authorization of the Stalking Horse Bidder) and that are necessary or useful in order to give effect to the substance of the SSP, the Bidding Procedures and the SSP Order. Notwithstanding the foregoing and for greater certainty, any modification to the dates and time limits indicated in the table contained in paragraph 4 herein will require the authorization of the Secured Lender, acting reasonably. The Proposal Trustee will post on the Proposal Trustee's website, as soon as practicable, any such modification, amendment, variation or supplement to the Bidding Procedures and inform the bidders impacted by such modifications.

5. In the event of a dispute as to the interpretation or application of the SSP Order or Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.
6. The Proposal Trustee, in consultation with Datatax, may, as it deems appropriate, consult with Fiera Private Debt Fund VI L.P. (the “**Secured Lender**”) throughout the SSP upon such assurances as to confidentiality as the Proposal Trustee may require.
7. Participants in the SSP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, the Auction and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

A summary of the key dates pursuant to the SSP is as follows:

Event	Timing
<p><b>1. Preparation</b></p> <p>Datatax to assemble due diligence information and set up VDR</p> <p>Proposal Trustee to prepare a Teaser Letter and NDA</p>	<p>In advance of Court approval of the SSP Order</p> <p>Thursday, August 17, 2023</p>
<p><b>2. Notice</b></p> <p>Datatax to publish notice of the SSP in <i>The Globe and Mail (National Edition)</i></p> <p>Proposal Trustee to distribute Teaser Letter and NDA to potentially interested parties</p>	<p>Within five (5) days following issuance of the SSP Order for Teaser Letter and NDA to be distributed.</p> <p>Tuesday, August 22, 2023</p> <p>Within five (5) business days following issuance of the SSP Order for notice to be published in <i>The Globe and Mail (National Edition)</i>.</p> <p>Thursday, August 24, 2023</p>
<p><b>3. Bid Deadline</b></p>	<p>43 days following issuance of SSP Order</p> <p>Friday, September 29, 2023</p>
<p><b>4. Notice to Qualified Bidders</b></p> <p>Proposal Trustee to notify each Bidder in writing as to whether its Bid constitutes a Qualified Bid</p>	<p>Within three (3) days following Bid Deadline</p> <p>Monday, October 2, 2023</p>
<p><b>5. Auction Date</b></p>	<p>Five (5) days following Bid Deadline</p> <p>Wednesday, October 4, 2023</p>
<p><b>6. Sale Approval Motion</b></p>	<p>Wednesday, October 11, 2023</p>

**7. Closing – Successful Bid**

Friday, October 13, 2023 or  
such earlier date as is achievable.

Anticipated deadline for closing of Successful Bid  
being the Target Closing Date

Monday, October 16, 2023

**8. Outside Date – Closing**

Outside Date by which the Successful Bid must  
close

***Solicitation of Interest: Notice of the SSP***

8. As soon as reasonably practicable, but, in any event, by no later than five (5) days after the granting of the SSP Order:
  - a) the Proposal Trustee, in consultation with Datatax, will prepare a list of potential bidders, including (i) parties that have approached Datatax or the Proposal Trustee indicating an interest in the Opportunity, (ii) strategic and financial parties who the Proposal Trustee, in consultation with Datatax, believe may be interested in purchasing all the Property and Business, and (iii) parties that showed an interest in Datatax and/or its assets prior to the date of the SSP Order i, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the "**Known Potential Bidders**"); and
  - b) the Proposal Trustee, in consultation with Datatax, will prepare a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SSP and inviting recipients of the Teaser Letter to express their interest pursuant to the SSP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Proposal Trustee and Datatax and their respective counsel which shall enure to the benefit of any purchaser of the Business or Property or any part thereof (an "**NDA**").
9. The Proposal Trustee will cause the Teaser Letter and NDA to be sent to each Known Potential Bidder by no later than five (5) days from the SSP Order and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Proposal Trustee as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.
10. As soon as reasonably practicable, but, in any event, by no later than five (5) business days after the granting of the SSP Order, the Proposal Trustee will arrange for a notice of the SSP and any other relevant information that Datatax, in consultation with the Proposal Trustee, considers appropriate to be published as soon as reasonably practicable after the date hereof in *The Globe and Mail (National Edition)*.

***Potential Bidders and Due Diligence Materials***

11. Any party who wishes to participate in the SSP (a "**Potential Bidder**") must provide to the Proposal Trustee (i) an NDA executed by it, (ii) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder, and (iii) any other information that the Proposal Trustee may reasonably request.
12. A confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by Datatax or by the Proposal Trustee to Potential Bidders that have executed the NDA. The VDR will be made available as soon as practicable. The Proposal Trustee may also, in consultation with Datatax, limit the access of any Potential Bidder to any confidential information in the VDR where the Proposal Trustee may also, in consultation with Datatax, reasonably determine that such access could negatively impact the SSP, the ability to maintain the confidentiality of the information, the Business or its value.



13. Without limiting the generality of any term or condition of any NDA between Datatax on the one hand, and any Potential Bidder or Bidder, on the other, unless otherwise agreed by the Proposal Trustee and Datatax or ordered by the Court, no Potential Bidder or Bidder shall be permitted to have any discussions with (a) any counterparty to any contract with Datatax or its subsidiaries, any secured creditor of Datatax, any current or former director, manager, shareholder, officer, member or employee of Datatax and its subsidiaries (or any of them), other than in the normal course of business and wholly unrelated to Datatax, the potential transaction, the confidential information, the SSP or the NOI, and (b) any other Potential Bidder or Bidder regarding the SSP or any bids submitted or contemplated to be submitted pursuant thereto. Notwithstanding the foregoing, where any such communications are agreed to with the Proposal Trustee's consent, such discussions shall be made in the presence of the Proposal Trustee.
14. A Potential Bidder that has executed an NDA will be provided a copy of the Stalking Horse Agreement, and any material amendments thereto, as soon as practicable.
15. Datatax, the Proposal Trustee, and their respective advisors make no representation or warranty as to the information contained in the Teaser Letter or otherwise made available pursuant to the SSP.

### **Formal Binding Offers**

16. Potential Bidders that wish to make a formal offer to purchase the Property and Business of Datatax (a "**Bidder**") shall submit a binding offer (a "**Bid**") that complies with all of the following requirements to the Proposal Trustee, which Bid shall be delivered by such Bidder by no later than 12:00 pm (Toronto Time) on September 29, 2023 or such later date as may be communicated by the Proposal Trustee to Potential Bidders via a Bid Deadline Letter (the "**Bid Deadline**").
17. The Bid will only be considered a "Qualified Bid" if the Bid complies at a minimum with the following:
  - a) it must be a duly executed binding offer ("**Binding Offer**") to acquire all or substantially all of the Property and Business of Datatax with a purchase price stated in Canadian Dollars;
  - b) the form of consideration for the proposed sale must be in cash;
  - c) it is received by the Bid Deadline;
  - d) is accompanied by a letter that confirms that the Binding Offer: (i) may be accepted by Datatax by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of (A) two "**Business Days**" (a day on which banks are open for business in Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario) after the date of closing of the Successful Bid; and (B) the Outside Date;
  - e) it clearly indicates that such proposal will at a minimum and on closing, provide net cash proceeds that are not less than the aggregate total of: (i) the total consideration under the Stalking Horse Agreement (being approximately \$40.7 million), plus (ii) an amount equivalent to the break fee of \$400,000, and (iii) a minimum overbid amount of \$150,000 (the amounts set forth in this paragraph 17.e), the "**Minimum Purchase Price**";
  - f) it must include a redline to the Stalking Horse Agreement;
  - g) it provides written evidence, satisfactory to the Proposal Trustee, in consultation with Datatax, of the ability to consummate the transaction within the timeframe contemplated by the SSP and to satisfy any obligations or liabilities to be assumed on closing of the transaction;
  - h) it contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before Friday, October 13, 2023, or such earlier date as is practical for the parties to close the contemplated transaction,

following the satisfaction or waiver of the conditions to closing (the "**Target Closing Date**") and in any event no later than Monday, October 16, 2023 (the "**Outside Date**");

- i) it is not subject to any financing condition;
- j) it is unconditional, other than upon the receipt of the Sale Approval Order(s) and satisfaction of any other conditions expressly set forth in the Binding Offer;
- k) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of consent, agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such conditions, along with information sufficient for the Proposal Trustee, in consultation with Datatax, to determine that these conditions are reasonable in relation to the Bidder;
- l) includes acknowledgments and representations of the Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Business in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities;
- m) it is accompanied by a deposit in the amount of not less than 10% of the total consideration on closing (the "**Deposit**"), which shall be payable to the Proposal Trustee and held in trust and dealt with in accordance with paragraph 32;
- n) it contains such other information as may be reasonably requested by the Proposal Trustee, in consultation with Datatax; and
- o) it does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder will be entitled to any such bid protections.

### ***Stalking Horse Agreement***

- 18. For greater certainty, the mutual releases provided for in the Stalking Horse Agreement are personal and specific to the Stalking Horse Bidder and should not be available to other Bidders, except at the sole discretion of the Secured Lender and Datatax.
- 19. For purposes of all other Bids and Overbids, the principal payments owing to the Secured Lender shall continue to accrue all interest, fees, and expenses as permitted under the secured debt facility.

### ***Assessment of Bids***

- 20. Following the Bid Deadline, the Proposal Trustee and Datatax will assess the Bids received. The Proposal Trustee, in consultation with Datatax, may designate the most competitive Bids that comply with the requirements set out herein to be "**Qualified Bids**". In performing such review and assessment, the Proposal Trustee and Datatax, may evaluate the following non-exhaustive list of considerations: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the bidder); (b) the claims likely to be created by such Bid in relation to other Bids; (c) the counterparties to the transaction; (d) the terms of transaction documents, including, if applicable, the proposed revisions to the Stalking Horse Agreement; (e) the closing conditions and

other factors affecting the speed, certainty and value of the transaction; (f) planned treatment of stakeholders, including employees; (g) the assets included or excluded from the Bid; (h) any restructuring costs that would arise from the Bid; (i) the likelihood and timing of consummating the transaction; (j) the capital sufficient to implement post-closing measures and transactions; and (k) any other factors the directors or officers of Datatax may, in exercising their business judgment, reasonably deem relevant.

21. Datatax and the Proposal Trustee shall be under no obligation to designate the highest or otherwise best Bid, or any Bid, as a Qualified Bid. Only Bidders whose Bids have been designated as Qualified Bids (such Bidders, being "**Qualified Bidders**") shall be eligible to participate in the Auction.
22. The Proposal Trustee shall cause each Bidder to be notified in writing as to whether its Bid constituted a Qualified Bid within three (3) Business Days of the Bid Deadline.
23. The Stalking Horse Agreement shall constitute a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder for all purposes under the SSP, including the Auction, notwithstanding anything to the contrary contained herein.
24. The Proposal Trustee, in consultation with Datatax and the Secured Lender, may waive compliance with any one or more of the requirements set out in these Bidding Procedures and deem such non-compliant Bids to be a Qualified Bid.
25. The Proposal Trustee and Datatax shall be entitled to discuss and negotiate the Bid prior to the Bid Deadline for purposes of amending or clarifying the terms and form thereof.
26. In the event that, following the expiry of twenty-nine (29) days after issuance of the SSP Order, being September 15, 2023, the Proposal Trustee concludes that there are no active participants in the SSP, the Proposal Trustee may terminate the SSP prior to the Bid Deadline. The Stalking Horse Bid would be deemed the Successful Bid without the requirement of holding the Auction, and Datatax will proceed to seek Court approval of the Stalking Horse Agreement as the Successful Bid.
27. If no Bids are designated as Qualified Bids, the Stalking Horse Bid shall be deemed the Successful Bid without the requirement of holding the Auction, and Datatax will proceed to seek Court approval of the Stalking Horse Agreement as the Successful Bid.

### **Auction**

28. The Auction will commence at a time to be designated by the Proposal Trustee, at 10:00 am (Toronto Time) on October 4, 2023, and may, in the discretion of the Proposal Trustee, be held virtually via videoconference, teleconference or such other reasonable means as the Proposal Trustee deems appropriate. The Proposal Trustee and Datatax will work in good faith with the parties entitled to attend the Auction to arrange for the Auction to be so held.
29. The Auction will be conducted in accordance with the procedures set forth in this paragraph:
  - a) Except as otherwise permitted in the Proposal Trustee's discretion, only Datatax, the Proposal Trustee, the Qualified Bidders, and the Secured Lender, and, in each case, their respective professionals and representatives, will be entitled to attend the Auction. Only Qualified Bidders (including, for greater certainty, the Stalking Horse Bidder) are eligible to participate in the Auction;
  - b) Prior to the Auction, the Proposal Trustee will identify, in consultation with Datatax, the highest and best of the Qualified Bids received, taking into account all factors that they reasonably deem relevant to the value of such bid, including, among other things, those considerations listed in paragraph 20, above. Such Qualified Bid will constitute the opening bid for the purposes of the Auction (the "**Opening Bid**"). Subsequent bidding will continue in minimum

increments valued at not less than \$150,000 cash in excess of the Opening Bid (each, an “Overbid”), or as otherwise declared by the Proposal Trustee during the Auction with the approval of Datatax;

- c) The Opening Bid shall be disclosed to all Qualified Bidders participating in the Auction. The Auction shall be conducted such that all Overbids will be made and received, on an open basis, and all Auction participants will be entitled to be present for all bidding with the understanding that the true identity of each Auction participant will be fully disclosed to all other Auction participants and that all material terms of each subsequent bid will be fully disclosed to all other Auction participants throughout the entire Auction;
- d) Except as otherwise set forth herein, the Proposal Trustee, in consultation with Datatax, may waive and/or employ and announce at the Auction additional rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are: (i) not inconsistent with the SSP Order, the SSP, the Bidding Procedures, the BIA, or any order of the Court issued in connection with the NOI; (ii) disclosed to each Qualified Bidder; and (iii) designed, in the Proposal Trustee's business judgment, to result in the highest and otherwise best offer;
- e) The Proposal Trustee may arrange for the actual bidding at the Auction to be transcribed or recorded. Each Qualified Bidder participating in the Auction will designate a single individual to be its spokesperson during the Auction;
- f) Each Qualified Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with Datatax or any other person regarding the SSP, that has not been disclosed to all other Qualified Bidders. For greater certainty, communications between the Stalking Horse Bidder and either Datatax or the Proposal Trustee with respect to and in preparation of the Stalking Horse Agreement, the SSP, the Bidding Procedures and other ancillary matters prior to the issuance of the SSP Order and the commencement of the SSP will not represent collusion nor communications prohibited by this paragraph;
- g) All Qualified Bidders will have the right, at any time, to request that the Proposal Trustee announce, subject to any potential new bids, the then-current highest and best bid and, to the extent requested by any Qualified Bidder, use reasonable efforts to clarify any and all questions such Qualified Bidder may have regarding the Proposal Trustee's announcement of the then-current highest and best bid;
- h) Each participating Qualified Bidder will be given reasonable opportunity to submit an Overbid at the Auction to any then-existing Overbids. The Auction will continue until the bidding has concluded and there is one remaining Qualified Bidder. At such time and upon the conclusion of the bidding, the Auction will be closed, and the final remaining Qualified Bidder will be the Successful Bidder;
- i) During the Auction, the Proposal Trustee, in consultation with Datatax, will:
  - i. review Overbids, taking into account all factors that they reasonably deem relevant to the value of such bid, including, among other things, those considerations listed in paragraph 21, above; and
  - ii. identify the highest or otherwise best Overbid received at any given time during the Auction, with the highest or otherwise best such bid or bids at the conclusion of the Auction being the Successful Bid, and the Qualified Bidder making such Bid the Successful Bid.
- j) Upon selection of a Successful Bidder, the Proposal Trustee will require the Successful Bidder to deliver, as soon as practicable, an amended and executed transaction document that reflects

their final bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Sale Approval Motion;

- k) The Proposal Trustee and Datatax will not consider any bids submitted after the conclusion of the Auction;
30. The Successful Bid will be selected by no later than 5:00 p.m. (Eastern Time) on October 5, 2023 and the completion and execution of definitive documentation in respect of the Successful Bid must be finalized and executed no later than October 6, 2023, which definitive documentation will be conditional only upon the receipt of the Sale Approval Order(s) and the express conditions set out therein and will provide that the Successful Bidder will use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as may be agreed to by the Proposal Trustee, in consultation with Datatax and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date.

### ***Sale Approval Motion***

31. Datatax will apply to the Court (the "**Sale Approval Motion**") for one or more orders: (i) approving the Successful Bid and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby; and (ii) granting a vesting order so as to vest title to any purchased assets in the name of the Successful Bidder (collectively, the "**Sale Approval Order(s)**"). The Sale Approval Motion will be held on a date to be scheduled by Datatax and confirmed by the Court upon application by Datatax.

### ***Deposits***

32. The Deposit(s):
- a) will, upon receipt from the Qualified Bidder(s), be retained by the Proposal Trustee and deposited in a non-interest-bearing trust account;
  - b) received from the Successful Bidder, will:
    - i. be applied to the purchase price to be paid by the applicable Successful Bidder, upon closing of the approved transaction; and
    - ii. otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid, provided that all such documentation will provide that the Deposit will be retained by Datatax and forfeited by the Successful Bidder, if the Successful Bid fails to close by the Outside Date, and such failure is attributable to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid; and
  - c) received from the Qualified Bidder(s) that are not the Successful Bid will be fully refunded, to the Qualified Bidder(s) that paid the Deposit(s) as soon as practical following the closing of the Successful Bid.

### ***Further Orders***

33. At any time during the SSP, Datatax, the Secured Lender or the Proposal Trustee may apply to the Court for advice and directions with respect to any aspect of this SSP including, but not limited to, the continuation of the SSP or with respect to the discharge of its powers and duties hereunder.

***Supervision of the SSP***

34. The Proposal Trustee shall oversee and conduct the SSP, in all respects, and, without limitation to that supervisory role, the Proposal Trustee will participate in the SSP in the manner set out in this SSP, the SSP Order, and any other orders of the Court, and is entitled to receive all information in relation to the SSP.
35. This SSP does not and will not be interpreted to create any contractual or other legal relationship between Datatax or the Proposal Trustee and any Potential Bidder, Bidder, Qualified Bidder, Successful Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with Datatax.
36. Without limiting the generality of preceding paragraph, the Proposal Trustee shall not have any liability whatsoever to any person or party, including, without limitation, any Potential Bidder, Bidder, Qualified Bidder, Successful Bidder, Datatax, or any other creditor or other stakeholder of Datatax, for any act or omission related to the process contemplated by this SSP. By submitting a Bid, each Bidder shall be deemed to have agreed that it has no claim against the Proposal Trustee for any reason whatsoever.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY*  
*ACT*, R.S.C. 1985, c. B-3, AS AMENDED OF DATATAX BUSINESS  
SERVICES LIMITED, A CORPORATION FORMED UNDER THE  
LAWS OF ONTARIO

Court File No. BK-23-02975175-0031  
Estate File No. 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

**ORDER**

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Lawyers for the Datatax Companies

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED  
UNDER THE LAWS OF ONTARIO**

Court File No. BK-23-02975175-0031  
Estate File No. 31-2975175

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

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**AFFIDAVIT OF BRENT HOULDEN**

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Lawyers for the Datatax Companies



**TAB 4**

Court File No. BK-23-02975175-0031  
Estate File No. 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

THE HONOURABLE	)	WEDNESDAY, THE 11 <sup>TH</sup>
	)	
JUSTICE CAVANAGH	)	DAY OF OCTOBER, 2023

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER  
THE LAWS OF ONTARIO**

**DISTRIBUTION, TERMINATION AND FEE APPROVAL ORDER**

**THIS MOTION**, made by Datatax Business Services Limited ("**Datatax**" or the "**Company**") for an order, among other things: (1) abridging the time for service of the Notice of Motion and Motion Record and dispensing with further service thereof; (2) approving the first report of KPMG Inc. ("**KPMG**") in its capacity as proposal trustee of Datatax (in such capacity, the "**Proposal Trustee**") dated August 16, 2023 (the "**First Report**"), the second report of the Proposal Trustee dated October **[X]**, 2023 (the "**Second Report**") and the activities of the Proposal Trustee referred to therein; (3) authorizing and directing the Proposal Trustee to make one or more distributions (the "**Distributions**") in accordance with the proposed distributions set out in the Second Report; (4) approving the fees and disbursements of the Proposal Trustee and its counsel; (5) terminating the positions of Brent Houlden ("**Houlden**") and

Naveed Manzoor (“**Manzoor**”) at Datatax; (6) declaring that Houlden, Manzoor and FAAN Advisors Group Inc. (“**FAAN**”) are released and discharged for any liability arising from their roles acting for the Datatax Companies (as defined below); (7) terminating the Administration Charge, the DIP Charge and the D&O Charge (all as defined in the August 2023 Order, defined below); (8) the amendment of paragraph 11 of the August 2023 Order with respect to the stay of proceedings with respect to Datatax; (9) authorizing and empowering KPMG to act as trustee in bankruptcy of Datatax; and (10) certain other related relief, was heard this day at 330 University Avenue, Toronto, Ontario, via a virtual hearing.

**ON READING** the affidavit of Brent Houlden, affirmed October 4, 2023 (the “**Houlden Affidavit**”), the Second Report, the affidavits of the Proposal Trustee and its counsel as to fees (the “**Fee Affidavits**”), and on hearing the submissions of Datatax, counsel for the Proposal Trustee, Fiera Debt Fund VI L.P., Bank of Montreal, and those other parties present:

1. **THIS COURT ORDERS** that the time for service, filing and hearing of the Notice of Motion, the Motion Record and the Report is hereby abridged and validated so that this Motion is properly returnable today and hereby the requirement for any further service is dispensed with.
2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meaning given to them in the Houlden Affidavit or the Report, as the case may be.

3. **THIS COURT ORDERS** that the First Report and the Second Report and the activities of the Proposal Trustee referred to therein be and are hereby approved; provided, however, that only the Proposal Trustee, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that that Proposal Trustee is hereby authorized and directed to make the Distributions in accordance with the proposed distribution set forth at paragraph [X] of the Second Report.

5. **THIS COURT ORDERS** that the fees and disbursements, including for greater certainty the Remaining Fees and Disbursements, of the Proposal Trustee and its counsel, as set out in the Second Report and the Fee Affidavits, be and are hereby approved.

6. **THIS COURT ORDERS AND DECLARES** that, following the Distributions and upon the filing of a certificate by the Proposal Trustee (the "**Termination Certificate**"), the positions of Houlden as a director and Manzoor as an interim CEO of Datatax shall be terminated effective immediately.

7. **THIS COURT ORDERS AND DECLARES** that following the Distributions and upon the filing of the Termination Certificate, Houlden, Manzoor and FAAN be released and discharged from any and all liability that Houlden, Manzoor or FAAN now have or may hereafter have by reason of, or in any way arising out of, their acts or omissions in relation to their roles acting for the each of Datatax, Farm Business Consultants Inc. ("**Farm**"), FBC Financial & Estate Planning Services Inc. ("**FBC Financial**") and Wheatland Accounting Services Ltd. ("**Wheatland**", together with Farm and FBC

Financial, the “**Datatax Subsidiaries**”, and the Datatax Subsidiaries together with Datatax, the “**Datatax Companies**”) pursuant to the order granted by the Honourable Justice Cavanagh dated November 7, 2022 in Court File No. CV-22-00689838-00CL, save and except for any gross negligence or wilful misconduct on the respective parts of Houlden, Manzoor or FAAN. Without limiting the generality of the foregoing, the Houlden, Manzoor and FAAN are hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within proceedings, save and except for any gross negligence or wilful misconduct on their respective parts.

8. **THIS COURT ORDERS** that following the Distributions, upon the filing of the Termination Certificate and upon the payment of all amounts owing in respect of the Administration Charge, the DIP Charge and the D&O Charge (all as defined in the Order granted by the Honourable Justice Cavanaugh on August 17, 2023, in these proceedings, the “**August 2023 Order**”), the Administration Charge, the DIP Charge and the D&O Charge shall be vacated and be of no further force and effect.

9. **THIS COURT ORDERS** that paragraph 11 of the August 2023 Order is amended such that the time within which Datatax is to make a proposal pursuant to section 62(1) of the *Bankruptcy and Insolvency Act* (Canada), and the corresponding stay of proceedings provided for in section 69 of the BIA, shall expire or terminate, as the case may be, on the earlier of: (i) October 28, 2023 and (ii) the filing of the Termination Certificate.

10. **THIS COURT ORDERS** that KPMG is authorized and empowered to act as trustee in bankruptcy of Datatax.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Company and the Proposal Trustee and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Company and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Company or the Proposal Trustee and their agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that this Order and all of its provision are effective as of 12:01 a.m. prevailing Eastern Time on the date hereof.

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**Schedule “A” – Form of Proposal Trustee’s Termination Certificate**

Court File No. BK-23-02975175-0031  
Estate File No. 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER  
THE LAWS OF ONTARIO**

**TERMINATION CERTIFICATE**

**RECITALS**

WHEREAS Datatax Business Services Limited (“**Datatax**”), which is the sole shareholder of all of the shares in Farm Business Consultants Inc. (“**Farm**”), FBC Financial & Estate Planning Services Inc. (“**FBC Financial**”) and Wheatland Accounting Services Ltd. (“**Wheatland**”, together with Farm and FBC Financial, the “**Datatax Subsidiaries**”, and the Datatax Subsidiaries, together with Datatax, the “**Datatax Companies**”) filed a Notice of Intention to File a Proposal (the “**NOI**”) on August 14, 2023, and appointed KPMG Inc. as the proposal trustee (in such capacity, the “**Proposal Trustee**”);

AND WHEREAS pursuant to an Order granted by the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 17, 2023 (the “**August 2023 Order**”), the Court approved, among other things, a sales solicitation process (“**SSP**”) and the asset purchase agreement between Datatax and 2872802 Ontario Inc. dated August 11, 2023, for the sole purpose of acting as the stalking horse bid in the SSP;

AND WHEREAS pursuant to the pursuant to an Order granted by the Honourable Justice Cavanagh dated October 11, 2023 (the “**Distribution, Termination and Fee Approval Order**”), the positions of Brent Houlden as a director and Naveed Manzoor as an interim CEO of Datatax are to be terminated, effective upon the filing by the Proposal Trustee of this certificate;

AND WHEREAS pursuant to the pursuant to the Distribution, Termination and Fee Approval Order, Brent Houlden, Naveed Manzoor and FAAN are to be released and discharged from any and all liability they may have by reason of, or in any way arising out of, their acts or omissions in relation to their roles acting for Datatax (and Farm Business Consultants Inc., FBC Financial & Estate Planning Services Inc. and Wheatland Accounting Services Ltd., such entities being the “**Datatax Subsidiaries**”), save except for gross negligence or wilful misconduct on the respective parts of Brent Houlden, Naveed Manzoor or FAAN, effective upon the filing by the Proposal Trustee of this certificate;

AND WHEREAS pursuant to the Distribution, Termination and Fee Approval Order, the Administration Charge, the DIP Charge and the D&O Charge (as defined in the August 2023 Order) are to be vacated and be of no further force and effect, effective upon the filing by the Proposal Trustee of this certificate;

AND WHEREAS pursuant to the Distribution, Termination and Fee Approval Order, paragraph 11 of the August 2023 Order was amended such that the time within which Datatax is to make a proposal pursuant to section 62(1) of the *Bankruptcy and Insolvency Act* (Canada), and the corresponding stay of proceedings provided for in



section 69 of the BIA, is to expire or terminate, as the case may be, on the earlier of:  
 (i) October 28, 2023 and (ii) the filing by the Proposal Trustee of this certificate; and

AND WHEREAS pursuant to an Order granted by the Honourable Justice Cavanagh dated October 11, 2023 (the “**Approval and Vesting Order**”), the confidential appendices (the “**Confidential Appendices**”) of the Second Report of the Proposal Trustee are to be sealed until the filing by the Proposal Trustee of this certificate.

**THE PROPOSAL TRUSTEE CERTIFIES** the following:

1. The Distributions contemplated at paragraph 4 of the Distribution, Termination and Fee Approval Order have been made.
2. The Receiver has completed the Remaining Matters in connection with the proposal proceedings as described in the Second Report.
3. This Certificate was delivered by the Proposal Trustee to the Company by delivery to the Company’s counsel, Tyr LLP, at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KPMG INC. , solely in its capacity as  
 proposal trustee of Datatax Business  
 Services Limited, and not in its personal  
 capacity**

Per: \_\_\_\_\_

Name:

Title:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED  
UNDER THE LAWS OF ONTARIO

Court File No. BK-23-02975175-0031  
Estate File No. 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**DISTRIBUTION, TERMINATION AND  
FEE APPROVAL ORDER**

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Lawyers for the Datatax Companies

# TAB 5

Court File No. BK-23-02975175-0031  
Estate File No. 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

THE HONOURABLE JUSTICE	)	WEDNESDAY, THE 11 <sup>TH</sup>
	)	
JUSTICE CAVANAGH	)	DAY OF OCTOBER, 2023

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER  
THE LAWS OF ONTARIO**

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Datatax Business Services Limited ("**Datatax**", or the "**Company**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between Datatax and 2872802 Ontario Inc. (the "**Purchaser**") dated August 11, 2023 and appended to the Second Report of the KPMG Inc. in its capacity as proposal trustee (in such capacity, the "**Proposal Trustee**") of Datatax dated October **[X]**, 2023 (the "**Report**"), and vesting in the Purchaser Datatax's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Brent Houlden affirmed October 4, 2023 (the "**Houlden Affidavit**"), the Report and such other materials filed in respect of this Motion, and on hearing the submissions of counsel for Datatax, the Proposal Trustee, Fiera Debt Fund VI L.P., Bank of Montreal, and those other parties present:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Report is hereby abridged and validated so that this Motion is properly returnable today and hereby the requirement for any further service is dispensed with.

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meaning given to them in the Houlden Affidavit or the Report, as the case may be.

3. **THIS COURT ORDERS AND DECLARES** that the Sale Agreement and the Transaction are hereby approved, with such minor amendments as Datatax and the Proposal Trustee may deem necessary. Datatax and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Proposal Trustee's Vesting Certificate**"), all of Datatax's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed

trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated August 17, 2023 (the "**August 2023 Order**"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Vesting Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that the Confidential Appendices to the Report shall be sealed and not form part of the public record until the filing of the Proposal Trustee's Termination Certificate.

7. **THIS COURT ORDERS** that nothing in this Order prevents a person from using any document protected hereunder, so long as that document is not obtained directly or indirectly, from the materials protected by this Order.

8. **THIS COURT ORDERS** that the stay of proceedings provided for at paragraph 12 of the August 2023 Order over Farm Business Consultants Inc., FBC Financial & Estate Planning Services Inc. and Wheatland Accounting Services Ltd., (such entities being the “**Datatax Subsidiaries**”) will terminate on the earlier of: (i) October 28, 2023; and (ii) the filing of Proposal Trustee’s Vesting Certificate.

9. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Vesting Certificate, forthwith after delivery thereof.

10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Proposal Trustee is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to Datatax's past and current employees (including, without limitation, the records pertaining to the past and current employees of Datatax’s subsidiaries. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Datatax.

11. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of Datatax and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Datatax;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Datatax and shall not be void or voidable by creditors of Datatax or its subsidiaries, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Company and the Proposal Trustee and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Company and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Company or the Proposal Trustee and their agents in carrying out the terms of this Order.



13. **THIS COURT ORDERS** that this Order and all of its provision are effective as of 12:01 a.m. prevailing Eastern Time on the date hereof.

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**Schedule "A" – Form of Proposal Trustee's Vesting Certificate**

Court File No. BK-23-02975175-0031  
Estate File No. 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER  
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER  
THE LAWS OF ONTARIO**

**PROPOSAL TRUSTEE'S VESTING CERTIFICATE**

**RECITALS**

WHEREAS Datatax Business Services Limited ("**Datatax**"), which is the sole shareholder of all of the shares in Farm Business Consultants Inc. ("**Farm**"), FBC Financial & Estate Planning Services Inc. ("**FBC Financial**") and Wheatland Accounting Services Ltd. ("**Wheatland**", together with Farm and FBC Financial, the "**Datatax Subsidiaries**", and the Datatax Subsidiaries, together with Datatax, the "**Datatax Companies**") filed a Notice of Intention to File a Proposal (the "**NOI**") on August 14, 2023, and appointed KPMG Inc. as the proposal trustee (in such capacity, the "**Proposal Trustee**");

AND WHEREAS pursuant to pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted by the Honourable Justice Cavanaugh on August 17, 2023 (the "**August 2023 Order**"), the Court approved, among other things, a sales solicitation process ("**SSP**") and the asset purchase agreement (the "**Stalking Horse APA**") between Datatax and 2872802 Ontario Inc.

(the “**Stalking Horse Bidder**”) dated August 11, 2023, for the sole purpose of acting as the stalking horse bid;

AND WHEREAS pursuant to an Order of the Court granted by the Honourable Justice Cavanaugh dated October 11, 2023 (the “**Approval and Vesting Order**”), the Court approved the Stalking Horse APA and provided for the vesting in the Stalking Horse Bidder of all of Datatax's the right, title and interest in and to the Purchased Assets (as defined in the Stalking Horse APA) free and clear of the Encumbrances (as defined in the Approval and Vesting Order), which vesting is to be effective upon the filing by the Proposal Trustee of this certificate confirming: (i) the payment by the Stalking Horse Bidder of the purchase price (the “**Purchase Price**”) for the Purchased Assets; (ii) that the conditions to closing as set out in the Stalking Horse APA have been satisfied or waived by the Stalking Horse Bidder, Datatax or the Proposal Trustee, as applicable; and (iii) the transaction (the “**Transaction**”) as contemplated under the Stalking Horse APA has been completed to the satisfaction of the Proposal Trustee; and

AND WHEREAS pursuant to the Approval and Vesting Order, paragraph 12 of the August 2023 Order was amended such that the stay of proceedings provided thereunder in favour of the Datatax Subsidiaries will terminate upon the earlier of: (i) October 28, 2023; and (ii) the filing of this certificate (if such stay of proceedings remains in force).

**THE PROPOSAL TRUSTEE CERTIFIES** the following:

1. The Stalking Horse Bidder has paid, and the Proposal Trustee has received, the Purchase Price for the Purchased Assets payable on the closing of the Transaction pursuant to the terms of the Stalking Horse APA;
2. The conditions to closing of the Transaction as set out in the Stalking Horse APA have been satisfied or waived by the Stalking Horse Bidder, Datatax or the Proposal Trustee, as applicable; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee to the Company and the Purchaser at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KPMG INC., solely in its capacity as  
proposal trustee of Datatax Business  
Services Limited, and not in its personal  
capacity**

Per: \_\_\_\_\_

Name:

Title:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED  
UNDER THE LAWS OF ONTARIO**

Court File No. BK-23-02975175-0031  
Estate File No. 31-2975175

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**

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Lawyers for the Datatax Companies

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED  
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Court File No. BK-23-02975175-0031  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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**MOTION RECORD**

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