

| | |
|---|--------------------|
| Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Leonard M. Shulman – Bar No. 126349 Melissa Davis Lowe – Bar No. 245521 SHULMAN HODGES & BASTIAN LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: LShulman@shbllp.com MLowe@shbllp.com <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Technology Solutions & Services, Inc. | FOR COURT USE ONLY |
|---|--------------------|

| | |
|---|---|
| UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION | |
| In re: TECHNOLOGY SOLUTIONS & SERVICES, INC., a California corporation, Debtor(s). | CASE NO.: 6:18-bk-18339-MH CHAPTER: 11 NOTICE OF SALE OF ESTATE PROPERTY |

| | |
|--|------------------------|
| Sale Date: 12/18/2018 | Time: 2:00 p.m. |
| Location: United States Bankruptcy Court, Courtroom 303, 3420 Twelfth Street, Riverside, CA 02501 | |

Type of Sale: ☒ Public ☐ Private **Last date to file objections:** 12/4/2018

Description of property to be sold: Approximately 9,000 non-working salvaged Lenovo computers, laptops and parts

Terms and conditions of sale: See attached Notice of Hearing

Proposed sale price: \$255,000.00, subject to overbids

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

Overbid procedure (if any): See attached Notice of Hearing

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

12/18/2018 at 2:00 p.m.

United States Bankruptcy Court

Courtroom 303

3420 Twelfth Street

Riverside, CA 92501

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

Leonard M. Shulman and Melissa Davis Lowe

Shulman Hodges & Bastian LLP

100 Spectrum Center Drive, Suite 600

Irvine, CA 926 18

Telephone: (949) 340-3400

Facsimile: (949) 340-3000

Email: LShulman@shbllp.com; MLowe@shbllp.com

Date: 11/27/2018

| | |
|--|--|
| <p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>Leonard M. Shulman – Bar No. 126349 Melissa Davis Lowe – Bar No. 245521 SHULMAN HODGES & BASTIAN LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: LShulman@shbllp.com; MLowe@shbllp.com</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Technology Solutions & Services, Inc.</p> | <p>FOR COURT USE ONLY</p> |
| <p style="text-align: center;">UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION</p> | |
| <p>In re:</p> <p>TECHNOLOGY SOLUTIONS & SERVICES, INC., a California corporation,</p> <p style="text-align: right;">Debtor(s).</p> | <p>CASE NO.: 6:18-bk-18339-MH CHAPTER: 11</p> <p>NOTICE OF MOTION FOR:</p> <p>Debtor's Motion for Order: (1) Approving the Sale of Lenovo Inventory Free and Clear of Liens Pursuant to Bankruptcy Code Section 363(b)(1) and (f) and Subject to Overbids and a Break-up Fee, Combined with Notice of Bidding Procedures, et al.</p> <p>(Specify name of Motion)</p> <p>DATE: 12/18/2018 TIME: 2:00 pm COURTROOM: 303 PLACE: 3420 Twelfth Street Riverside, CA 92501</p> |

1. TO (*specify name*): United States Trustee, Creditors, Parties in Interest, and their respective counsel
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the judge's self-calendaring procedures.

Date: 11/27/2018

SHULMAN HODGES & BASTIAN LLP
Printed name of law firm

/s/ Melissa Davis Lowe
Signature

Melissa Davis Lowe
Printed name of attorney

Leonard M. Shulman – Bar No. 126349
Melissa Davis Lowe – Bar No. 245521
SHULMAN HODGES & BASTIAN LLP
100 Spectrum Center Drive, Suite 600
Irvine, California 92618
Telephone: (949) 340-3400
Facsimile: (949) 340-3000
Email: LShulman@shbllp.com
MLowe@shbllp.com

Proposed Attorneys for Technology
Solutions & Services, Inc., Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION

In re

**TECHNOLOGY SOLUTIONS &
SERVICES, INC., a California
corporation,**

Debtor.

Case No. 6:18-bk-18339-MH

Chapter 11

**DEBTOR AND DEBTOR IN POSSESSION'S
MOTION FOR ORDER:**

- (1) APPROVING THE SALE OF LENOVO
INVENTORY FREE AND CLEAR OF
LIENS PURSUANT TO BANKRUPTCY
CODE § 363(b)(1) AND SUBJECT TO
OVERBIDS AND A BREAK-UP FEE,
COMBINED WITH NOTICE OF
BIDDING PROCEDURES AND
REQUEST FOR APPROVAL OF THE
BIDDING PROCEDURES UTILIZED;
AND**
- (2) GRANTING RELATED RELIEF;**

**MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF
FRED ANAVIM IN SUPPORT THEREOF**

Hearing

Date: December 18, 2018

Time: 2:00 p.m.

Place: Courtroom 303

3420 Twelfth Street

Riverside, CA 92501

| | <u>TABLE OF CONTENTS</u> | <u>Page</u> |
|------|---|-------------|
| I. | SUMMARY OF ARGUMENT | 4 |
| II. | BACKGROUND INFORMATION..... | 5 |
| A. | Case Commencement..... | 5 |
| B. | Sale of Substantially All of the Debtor's Assets | 5 |
| C. | Secured Creditors | 5 |
| D. | Terms of the Proposed Sale of the Assets | 5 |
| E. | Overbidding Procedures..... | 6 |
| F. | Tax Consequences of the Sale..... | 7 |
| III. | LEGAL BASIS FOR THE RELIEF SOUGHT | 8 |
| A. | The Court May Authorize the Sale When There is a Good Faith Purchaser | 8 |
| 1. | Sound Business Purpose..... | 8 |
| 2. | The Sale Serves the Best Interests of the Estate and Creditors | 9 |
| 3. | Accurate and Reasonable Notice..... | 9 |
| 4. | The Sale is Made in Good Faith..... | 10 |
| B. | The Proposed Sale Should be Allowed Free and Clear of Liens | 11 |
| C. | The Court May Approve the Bidding Procedures..... | 11 |
| D. | The Break-up Fee is Appropriate | 11 |
| E. | Waiver of Rules 6004 and 6006..... | 13 |
| IV. | CONCLUSION | 13 |
| | DECLARATION OF FRED ANAVIM..... | 15 |

TABLE OF AUTHORITIES

PAGE

CASES

| | |
|--|-------|
| <i>In re Continental Air Lines, Inc.</i> , 780 F.2d 1223 (5th Cir. 1986) | 8 |
| <i>In re Crowthers McCall Pattner, Inc.</i> , 114 B.R. 877 (Bankr. S.D.N.Y. 1990) | 8 |
| <i>In re Wilde Horse Enterprises, Inc.</i> , 136 B.R. 830 (Bankr. C.D. Cal. 1991) | 8, 10 |

STATUTES

| | |
|---------------------------------------|----|
| Bankruptcy Code Section 101(2) | 10 |
| Bankruptcy Code Section 101(31) | 10 |
| Bankruptcy Code Section 102(1) | 9 |
| Bankruptcy Code Section 363(b) | 8 |
| Bankruptcy Code Section 363(f) | 11 |
| Bankruptcy Code Section 363(m) | 10 |

RULES

| | |
|---|----|
| Federal Rule of Bankruptcy Procedure 2002(c)(1) | 9 |
| Federal Rule of Bankruptcy Procedure 6004 | 9 |
| Federal Rule of Bankruptcy Procedure 6004(h) | 13 |
| Federal Rule of Bankruptcy Procedure 6006(d) | 13 |
| Local Bankruptcy Rule 6004 | 9 |

1 **TO THE HONORABLE MARK D. HOULE, UNITED STATES BANKRUPTCY**
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND OTHER PARTIES-IN-**
3 **INTEREST:**

4 Technology Solutions & Services, Inc., a California corporation, the debtor and debtor in
5 possession herein (“Debtor”) brings this Motion for an Order: (1) Approving the Sale of Lenovo
6 Inventory Free and Clear of Liens Pursuant to Bankruptcy Code Section 363(b)(1) and (f) and
7 Subject to Overbids and a Break-up Fee, Combined with Notice of Bidding Procedures and Request
8 for Approval of the Bidding Procedures Utilized; and (2) Granting Related Relief (“Motion”) and
9 in support of the Motion submits the following:

10 **I. SUMMARY OF ARGUMENT**

11 The Debtor has received an offer to purchase approximately 9,000 non-working salvaged
12 Lenovo computers, laptops and parts (“Assets”) from IT Assets Partners, Inc. (“Buyer”) for the sum
13 of \$255,000.00 (“Purchase Price”) subject to overbids. A true and correct copy of the Asset
14 Purchase Agreement (“Agreement”) for the purchase is attached to the Declaration of Fred Anavim
15 (“Anavim Declaration”) as **Exhibit 1** and a list of the Assets to be sold is attached to the Anavim
16 Declaration as **Exhibit 2.**¹

17 The Assets are unencumbered but out of an abundance of caution, the Debtor seeks Court
18 approval for the sale free and clear of all liens, claims and encumbrances. The sale of the Assets
19 will result in proceeds of at least \$255,000.00 which will inure to the benefit of the Estate and its
20 creditors. In the event of an overbid (the Debtor has been contacted by multiple potentially
21 interested parties), the benefit to creditors will increase. If the sale is approved, the Estate will
22 receive funds to help provide for a meaningful distribution to unsecured creditors.

23 Thus, based on good business reasons, Court approval of the sale contemplated herein will
24 serve the best interests of the Estate and its creditors and must be granted as soon as possible so that
25 the Debtor do not lose this favorable business opportunity.

26
27
28 ¹ Exhibit 2 is a summary list of the Assets. The full, complete and detailed inventory list of over 100 pages can be
provided to any interested party upon request to Debtor’s counsel, Melissa Lowe, at 949-340-3400 or
mlowe@shbllp.com.

1 **II. BACKGROUND INFORMATION**

2 **A. Case Commencement**

3 The Debtor filed a voluntary petition for relief under Chapter 11 of the United States Code
4 Bankruptcy Code on October 2, 2018. This is a liquidating Chapter 11 case and on October 29,
5 2018, the Debtor filed its Disclosure Statement for Chapter 11 Liquidating Plan Proposed by the
6 Debtor and the related Plan.

7 No request for the appointment of a trustee or examiner has been made in this case and no
8 committee has been appointed.

9 **B. Sale of Substantially All of the Debtor's Assets**

10 The Debtor is a California corporation incorporated in 2003 and is a returns management
11 company specializing in high-volume remanufacturing of in-warranty and out-of-warranty
12 consumer electronics products.

13 Pursuant to an Order entered on October 24, 2018, the Court approved the Debtor's sale of
14 substantially all of its assets to Valu Tech Outsourcing, LLC ("Valu Tech"). The sale to Valu Tech
15 closed on November 1, 2018. Specifically excluded from the assets sold to Valu Tech were the
16 Assets which are the subject of this Motion.

17 **C. Secured Creditors**

18 The Debtor's only secured creditor was Bank of America ("BOA") pursuant to a Loan
19 Agreement entered into on June 13, 2013 and amended thereafter. BOA had a secured claim and
20 blanket lien against the Debtor's property and assets in a total amount of approximately
21 \$12,292,722.72 pursuant to the following UCC-1 filings: (1) UCC-1 filing No. 10-7248928778,
22 filed on October 20, 2010; (2) UCC-1 filing No. 11-7278989133, filed on July 29, 2011; and, (3)
23 UCC-1 filing No. 11-7283960592, filed on September 8, 2011.

24 BOA's lien was extinguished as a result of the sale to Valu Tech described above.

25 To the best of the Debtor's knowledge, there are no secured liens which attach to the Assets.

26 **D. Terms of the Proposed Sale of the Assets**

27 Subject to Court approval, the Debtor has received an offer from the Buyer for the purchase
28 of the Assets as set forth in the Agreement and summarized below:

| | |
|--|--|
| Buyer: | IT Asset Partners, Inc., a California corporation, or its assigns 8966 Mason Ave, Chatsworth, CA 91311 |
| Purchase Price: | \$255,000.00. \$20,000.00 deposit to be paid within two (2) business days after the due diligence period has run. |
| Due Diligence Period: | Buyer shall have until December 11, 2018 to complete its due diligence on the Assets. |
| Closing: | To occur within two business days following entry of an order approving the sale. |
| Assets Being Transferred: | All of Debtor's rights, title and interest in and to approximately 9,000 non-working salvaged Lenovo computers, laptops and parts as detailed in Exhibit 2 to the Anavim Declaration |
| Bankruptcy Court Approval | The sale is subject to notice to creditors and approval by the Bankruptcy Court. |
| Purchase Without Warranties | Purchase of the Assets will be on an as is-where is basis without warranties of any kind, expressed or implied, concerning the condition of the Assets or the quality of the title thereto, or any other matters relating to the Assets. |
| Free and Clear of Liens and Encumbrances | The Assets shall be delivered to the Buyer free and clear of all liens, claims and encumbrances. |
| Good Faith Finding | The proposed sale has been brought in good faith and has been negotiated on an "arms length" basis. The Debtor shall request such a finding pursuant to Bankruptcy Code Section 363(m) at the hearing on this Motion. |
| Waiver of Rule 6004(h) | The Debtor requests that the Court waive the fourteen-day stay of the order approving the sale of the Assets under Federal Rules of Bankruptcy Procedure 6004(h) such that the sale of the Assets can close as soon as possible after entry of the Court order approving the Motion and the Agreement. |

E. Overbidding Procedures

The Debtor has determined it would benefit the Estate to permit all interested parties to receive information and bid for the Assets instead of selling to the Buyer on an exclusive basis. Accordingly, in order to obtain the highest and best offer for the Assets, the Debtor is utilizing, and seeks Court approval of, the following bidding procedures ("Bidding Procedures"):

1. Potential overbidder(s) must bid an initial amount of at least \$270,000. Minimum bid increments thereafter shall be \$10,000. The Debtor shall have sole discretion in determining which overbid is the best for the Estate and will seek approval from the Court of the same.

2. Overbids must be in writing and be received by the Debtor and the Debtor's counsel, Shulman Hodges & Bastian LLP to the attention of Melissa Lowe on or before 4:00 p.m. PST on December 14, 2018.

1 3. Overbids must be accompanied by certified funds in an amount equal to ten percent
2 (10%) of the overbid purchase price.

3 4. The overbidder must also provide evidence of having sufficient specifically
4 committed funds to complete the transaction, or a lending commitment for the bid amount and such
5 other documentation relevant to the bidder's ability to qualify as the purchaser of the Assets and
6 ability to close the sale and immediately and unconditionally pay the winning bid purchase price at
7 closing.

8 5. The overbidder must seek to acquire the Assets on terms and conditions not less
9 favorable to the Estate than the terms and conditions to which the Buyer has agreed to purchase the
10 Assets.

11 6. All competing bids must acknowledge that the Assets is being sold on an "AS IS"
12 basis without warranties of any kind, expressed or implied, being given by the Debtor, concerning
13 the condition of the Assets or the quality of the title thereto, or any other matters relating to the
14 Assets. The competing bid buyer must represent and warrant that he/she is purchasing the Assets
15 as a result of their own investigations and are not buying the Assets pursuant to any representation
16 made by any broker, agent, accountant, attorney or employee acting at the direction, or on the behalf
17 of the Debtor. The competing bidder must acknowledge that he/she has inspected the Assets, and
18 upon closing of escrow governed by the Agreement, the competing buyer forever waives, for
19 himself/herself, their heirs, successors and assigns, all claims against the Debtor, its attorneys,
20 agents and employees.

21 7. If overbids are received, the final bidding round for the Assets shall be held at the
22 hearing on the Motion in order to allow all potential bidders the opportunity to overbid and purchase
23 the Assets. At the final bidding round, the Debtor or its counsel will, in the exercise of their business
24 judgment and subject to Court approval, accept the bidder who has made the highest and best offer
25 to purchase the Assets, consistent with the Bidding Procedures ("Successful Bidder").

26 8. At the hearing on the Motion, the Debtor will seek entry of an order, inter alia,
27 authorizing and approving the sale of the Assets to the Successful Bidder. The hearing on the
28 Motion may be adjourned or rescheduled without notice other than by an announcement of the
adjourned date at the hearing on the Motion.

9. In the event the Successful Bidder fails to close on the sale of the Assets within the
time parameters approved by the Court, the Debtor shall retain the Successful Bidder's Deposit and
will be released from his obligation to sell the Assets to the Successful Bidder and the Debtor may
then sell the Assets to the First Back-Up Bidder approved by the Court at the hearing on the Motion.

10. In the event of a successful overbid, whether an initial overbid or a subsequent
overbid, Buyer shall be paid a break-up fee of \$7,650 ("Break-Up Fee").

F. Tax Consequences of the Sale

The Debtor's previous accountant has advised that he does not believe any sales or income
taxes will be owed on the sale of the Assets.

///

///

///

1 **III. LEGAL BASIS FOR THE RELIEF SOUGHT**

2 **A. The Court May Authorize the Sale When There is a Good Faith Purchaser**

3 The Debtor, after notice and hearing, may sell property of the estate. 11 U.S.C. § 363(b).
4 The standards to establish are that there is a sound business purpose for the sale, that the sale is in
5 the best interests of the estate, i.e., the sale is for a fair and reasonable price, that there is accurate
6 and reasonable notice to creditors and that the sale is made in good faith. *In re Wilde Horse*
7 *Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722 F.2d 1063,
8 1069 (2d Cir. 1983). Business justification would include the need to close a sale to one of very
9 few serious bidders where an asset has been shopped and a delay could jeopardize the transaction.
10 *See, e.g., In re Crowthers McCall Pattner, Inc.*, 114 B.R. 877, 885 (Bankr. S.D.N.Y. 1990) (extreme
11 difficulty finding a buyer justified merger when buyer found). The Debtor's proposed sale of the
12 Assets meets the foregoing criteria.

13 **1. Sound Business Purpose**

14 The Ninth Circuit has adopted a flexible, case-by-case test to determine whether the
15 business purpose for a proposed sale justifies disposition of property of the estate under Section
16 363(b). *In re Walter*, 83 B.R. 14 (B.A.P. 9th Cir. 1988). In *Walter*, the Ninth Circuit, adopting
17 the reasoning of the Fifth Circuit in *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir.
18 1986), and the Second Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983), set forth the
19 following standard to be applied under Bankruptcy Code Section 363(b):

20 Whether the proffered business justification is sufficient depends on the
21 case. As the Second Circuit held in *Lionel*, the bankruptcy judge should
22 consider all salient factors pertaining to the proceeding and, accordingly,
23 act to further the diverse interests of the debtor, creditors and equity holders,
24 alike. He might, for example, look to such relevant factors as the
25 proportionate value of the assets to the estate as a whole, the amount of
26 lapsed time since the filing, the likelihood that a plan of reorganization will
27 be proposed and confirmed in the near future, the effect of the proposed
28 disposition on future plans of reorganization, the proceeds to be obtained
from the disposition vis-a-vis any appraisals of the property, which of the
alternatives of use, sale or lease the proposal envisions and, most
importantly perhaps, whether the asset is increasingly or decreasing in
value. This list is not intended to be exclusive, but merely to provide
guidance to the bankruptcy judge.

Walter, 83 B.R. at 19-20 (quoting *Continental*, 780 F.2d at 1226).

1 Here, the facts surrounding the sale of the Assets support the Debtor's business decision that
2 the proposed sale is in the best interest of the Estate and its creditors. The Debtor is no longer
3 operating and needs to sell the remainder of its assets which were excluded from the sale to Valu
4 Tech. The sale of the Assets will result in proceeds to the Estate of at least \$255,000.00 which will
5 help provide a meaningful distribution to unsecured creditors.

6 **2. The Sale Serves the Best Interests of the Estate and Creditors**

7 The Debtor believes that it would be in the best interest of the Estate and its creditors to sell
8 the Assets to the Buyer subject to overbids. The Debtor does not want to lose this beneficial business
9 opportunity. Thus, the Debtor has made a business decision that it is in the best interest of the
10 creditors of the Estate that this Motion be approved.

11 The Debtor respectfully submits that, if this Court applies the good business reason standard
12 suggested by the Second Circuit in *Lionel*, the sale should be approved.

13 **3. Accurate and Reasonable Notice**

14 It is expected that notice of this Motion will satisfy the requirements for accurate and
15 reasonable notice.

16 The notice requirements for sales are set forth in Federal Rules of Bankruptcy Procedure
17 ("FRBP") 6004 and 2002. The notice must include the time and place of any public sale, the terms
18 and conditions of any private sale, the time fixed for filing on objections and a general description
19 of the property. Fed. R. Bankr. P. 2002(c)(1).

20 In compliance with FRBP 2002 and Bankruptcy Code Section 102(1), the Debtor shall
21 provide notice of the proposed sale of the Assets to creditors and parties in interest. The Notice of
22 Motion will include, *inter alia*, a summary of the terms and conditions of the proposed sale, the time
23 fixed for filing objections, and a general description of the Assets in compliance with LBR 6004.
24 The Debtor submits that the notice requirements will have been satisfied, thereby allowing creditors
25 and parties in interest an opportunity to object to the sale. Hence, no further notice should be
26 necessary.

27 ///

28 ///

1 **4. The Sale is Made in Good Faith**

2 The proposed sale has been brought in good faith and has been negotiated on an “arms
3 length” basis.

4 The court, in *Wilde Horse Enterprises*, set forth the factors in considering whether a
5 transaction is in good faith. The court stated:

6 ‘Good faith’ encompasses fair value, and further speaks to the integrity of
7 the transaction. Typical ‘bad faith’ or misconduct, would include collusion
8 between the seller and buyer, or any attempt to take unfair advantage of
9 other potential purchasers. . . . And, with respect to making such
determinations, the court and creditors must be provided with sufficient
information to allow them to take a position on the proposed sale.

10 *Id.* at 842 (citations omitted).

11 In the present case, the negotiation of the proposed sale was an arms-length transaction.
12 Neither the Buyer nor any of the parties working on the Buyer’s behalf are (1) insiders of the Debtor
13 as the term “insider” is defined by Bankruptcy Code section 101(31), nor (2) affiliates of the Debtor
14 as the term “affiliate” is defined by Bankruptcy Code section 101(2). The Buyer has taken no action
15 to communicate with or discourage other bidders, if any, from making an offer to purchase the
16 Assets and the Buyer has taken no action to discourage or hinder the Debtor from adequately
marketing the proposed sale of the Assets.

17 In addition, Lenovo has advised Debtor’s counsel that it approves of the Buyer. Specifically,
18 Lenovo advises that it knows the Buyer and is comfortable that the Buyer will adequately remove
19 all personal information from the Assets before transferring or disposing of them and that the Buyer
20 will not cause any environmental issues in its disposition of the Assets.

21 As set forth in the Notice of the Motion, the creditors will have been provided with sufficient
22 notice of the sale. Accordingly, the sale is in good faith and should be approved. The Debtor
23 requests the Court make such a finding pursuant to Bankruptcy Code Section 363(m).

24 Thus, based on good business reasons, the Debtor submits that approval of the sale
25 contemplated herein will serve the best interests of the Estate and its creditors and should be granted
26 so that the Debtor do not lose this favorable business opportunity.

27 ///

B. The Proposed Sale Should be Allowed Free and Clear of Liens

Bankruptcy Code Section 363(f) allows a trustee or debtor in possession to sell property of the bankruptcy estate “free and clear of any interest in such property of an entity,” if any one of the following five conditions is met:

- (1) applicable non-bankruptcy law permits a sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest.

11 U.S.C. § 363(f).

The Debtor is not aware of any liens that attach to the Assets. Out of an abundance of caution, however, the Debtor requests that the sale be approved free and clear of all liens, claims and interests.

C. The Court May Approve the Bidding Procedures

Implementing the Bidding Procedures is an action outside of the ordinary course of the business. Bankruptcy Code Section 363(b)(1) provides that a trustee “after notice and hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Furthermore, under Bankruptcy Code Section 105(a), “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Thus, pursuant to Bankruptcy Code sections 363(b)(1) and 105(a), this Court may approve the Bidding Procedures, which assist the Debtor to obtain the best possible price on the best possible terms for the Assets.

D. The Break-up Fee is Appropriate

As a part of the proposed agreement with the Buyer for the purchase of the Assets, the Buyer has required that it be paid the \$7,650 Break-Up Fee (3% of the Purchase Price) in the event that an overbid situation occurs and the Buyer is not the Successful Bidder.

1 As stated by the court in *In re Financial News Network*, 126 B.R. 152 (D.C., S.D.N.Y. 1991)
2 at 154, “A break-up fee is an incentive payment to an unsuccessful bidder who placed the estate
3 property in a sales configuration mode . . . to attract other bidders to the auction.” In addition, as
4 stated by the District Court in *In re Integrated Resources, Inc.*, 147 B.R. 650, at 659-660 (D.C.,
5 S.D.N.Y. 1992).

6 Break-up fees are important tools to encourage bidding and to
7 maximize the value of the debtor’s assets. The usual rule is that if
8 break-up fees encourage bidding, they are enforceable; if they stifle
9 bidding they are not enforceable. In fact, because the directors of a
10 corporation have a duty to encourage bidding, break-up fees can be
11 necessary to discharge the director’s duties to maximize value. (citing
12 *CRTF Corp. v. Federated Department Stores, Inc.*, 683 F.Supp. 422,
13 441 (S.D. N.Y. 1988)).

14 Moreover, as stated in *In re 995 Fifth Avenue Assocs., L.P.*, 96 B.R. 24, 29 (Bankr. S.D.
15 N.Y. 1989):

16 Outside bankruptcy, the business judgment rule normally applies to
17 the board’s use of a defensive strategy, such as a break-up fee. . . . In
18 assessing the incentive effect of the break-up fee, a court should
19 determine whether the dollar amount of the fee is so substantial that
20 it has a chilling affect on other prospective bidders. In making this
21 determination, the court should consider whether the proposed
22 acquiror attracted other bidders or simply received a potential
23 windfall. Break-up fees and other strategies may be legitimately
24 necessary to convince a white knight to enter the bidding by providing
25 some form of compensation for the risks it is undertaking . . .

26 A break-up fee should constitute a fair and reasonable percentage of the proposed purchase
27 price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser.
28 When reasonable in relation to the bidder’s efforts and to the magnitude of the transaction, break-
up fees are generally permissible.

In this case, the Debtor readily acknowledges that a significant amount of time, effort and
expense will have been incurred by the Buyer in performing its due diligence and negotiating the
terms of the sale. The Break-Up Fee represents 3% of the Purchase Price. It is designed to
compensate the Buyer for the risks it is undertaking in the transaction, including the attorneys’ fees
and costs incurred by the Buyer in negotiating the purchase of the Assets, reviewing the moving
papers and any opposition thereto, and appearing at any hearing on this Sale Motion. More
importantly, the Break-Up Fee is only payable in the event that there is a successful overbid.

1 The Court should note that the Break-Up Fee is only payable in the event that the sale closes
2 and the Buyer is not the Successful Bidder, thereby distinguishing these facts from those presented
3 in *In re Hup Industries, Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992), wherein the court did not
4 approve the break-up fee arrangement when the party proposed to receive the break-up fee was to
5 receive the same regardless of the outcome of the proposed sale in the event overbidding took place.

6 Thus, the Trustee requests the Court approve the Break-Up Fee proposed to be paid to the
7 Buyer in the event the sale closes and the Buyer is not the purchaser.

8 **E. Waiver of Rules 6004 and 6006**

9 Notwithstanding the possible applicability of 6004 and 6006 of the Bankruptcy Rules or
10 otherwise, the Debtor requests the relief sought by this Motion be immediately effective and
11 enforceable upon entry of the order requested hereby. In order to allow the immediate realization of
12 value for the Assets, the Debtor requests that any order granting this Motion is effective immediately
13 and not subject to the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d).

14 **IV. CONCLUSION**

15 **WHEREFORE**, based upon the foregoing, the Debtor respectfully submits that good
16 cause exists for granting the Motion and requests that the Court enter an order:

- 17 1. Approving the Bidding Procedures set forth herein.
- 18 2. Authorizing the Debtor to sell the Assets to the Buyer pursuant to the terms and
19 conditions set forth in the Agreement.
- 20 3. Finding that notice of the transactions contemplated herein was good and sufficient
21 and was provided timely to all creditors and parties-in-interest.
- 22 4. Authorizing the sale of the Assets free and clear of all liens, claims and
23 encumbrances.
- 24 5. Authorizing the Debtor to sign any and all documents convenient and necessary in
25 pursuit of the sale of the Assets as set forth above including but not limited to, the Agreement.
- 26 6. Authoring payment of the Break-up Fee to the Buyer if it is not the successful bidder.
- 27 7. A determination by the Court that the Buyer is a good faith purchaser and is entitled
28 to the protections of Bankruptcy Code Section 363(m).

1 8. Waiving the fourteen day stay of the order approving the sale of the Assets under
2 Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d).

3 9. For such other and further relief as the Court deems just and proper under the
4 circumstances of this case.

5

6 Dated: November 27, 2018

Respectfully submitted,

7

SHULMAN HODGES & BASTIAN LLP

8

By: /s/ Melissa Davis Lowe
Leonard M. Shulman
Melissa Davis Lowe
Proposed Attorneys for Debtor and Debtor in
Possession

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

DECLARATION

DECLARATION OF FRED ANAVIM

I, Fred Anavim, declare as follows:

1. I am the Controller of Technology Solutions & Services, Inc., a California corporation, the debtor and debtor-in-possession (the “Debtor” or “TSSI”), and am one of the persons responsible for the administration of the Debtor. I have personal knowledge of the facts set forth herein and could, if called as a witness, competently testify thereto. I am also personally familiar with, and am custodian of, the records of the Debtor as they pertain to the financial records set forth herein. The records of the Debtor are made by employees or agents of the Debtor who report to me and who have a business duty to enter the records of the Debtor accurately and at or near the time of the event which they record.

2. I make this Declaration in support of the Debtor’s Motion for an Order: (1) Approving the Sale of Lenovo Inventory Free and Clear of Liens Pursuant to Bankruptcy Code Section 363(b)(1) and (f) and Subject to Overbids and a Break-up Fee, Combined with Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; and (2) Granting Related Relief (“Motion”). Unless otherwise noted, capitalized terms herein have the meaning as set forth in the Motion.

3. The Debtor is a California corporation incorporated in 2003 and is a returns management company specializing in high-volume remanufacturing of in-warranty and out-of-warranty consumer electronics products.

4. Pursuant to an Order entered on October 24, 2018, the Court approved the Debtor’s sale of substantially all of its assets to Valu Tech Outsourcing, LLC (“Valu Tech”). The sale to Valu Tech closed on November 1, 2018. Specifically excluded from the assets sold to Valu Tech were the Assets which are the subject of this Motion. The Assets to be sold include approximately 9,000 non-working salvaged Lenovo computers, laptops and parts summarized in **Exhibit 2** hereto.

5. The Debtor’s only secured creditor was Bank of America (“BOA”) pursuant to a Loan Agreement entered into on June 13, 2013 and amended thereafter. BOA had a secured claim and blanket lien against the Debtor’s property and assets in a total amount of approximately \$12,292,722.72 pursuant to the following UCC-1 filings: (1) UCC-1 filing No. 10-7248928778,

1 filed on October 20, 2010; (2) UCC-1 filing No. 11-7278989133, filed on July 29, 2011; and, (3)
2 UCC-1 filing No. 11-7283960592, filed on September 8, 2011. BOA's lien was extinguished as a
3 result of the sale to Valu Tech described above.

4 6. To the best of the Debtor's knowledge, there are no secured liens which attach to the
5 Assets.

6 7. The Debtor has found a buyer for the Assets on the terms set forth in the Asset
7 Purchase Agreement, a true and correct copy is attached hereto as **Exhibit 1**.

8 8. It is my opinion that the sale is in the best interest of the Estate and its creditors
9 because the sale will result in proceeds for the Estate of \$255,000.00, or more if there is an
10 overbidder. The Debtor does not want to lose this favorable business opportunity.

11 I declare under penalty of perjury under the laws of the United States of America that the
12 foregoing is true and correct.

13 Executed on November 27, 2018, at San Bernardino, California.

14 
15 Fred Anavim
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”), dated as of November __, 2018, is entered into by and between Technology Solutions & Services, Inc., a California corporation (“Seller” or “Debtor”), and IT Asset Partners, Inc., a California corporation (“Buyer”). Seller and Buyer are each sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS:

A. On October 2, 2018, Seller filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Central District of California, Riverside Division (the “Bankruptcy Court”), commencing Case No. 6:18-bk-18339-MH (“Bankruptcy Case”).

B. Pursuant to an Order entered on October 24, 2018, the Bankruptcy Court approved the Debtor’s sale of substantially all of its assets to Valu Tech Outsourcing, LLC (“Valu Tech”). The sale to Valu Tech closed on November 1, 2018. Specifically excluded from the assets sold to Valu Tech were the Purchased Assets which are the subject of this Agreement.

C. The Parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Purchased Assets approved by the Bankruptcy Court pursuant to Section 363 of Chapter 11 of Title 11 of the Bankruptcy Code.

In consideration of the mutual covenants, promises, agreements, representations and warranties contained in this Agreement, the Parties do hereby covenant, promise, agree, represent and warrant as follows:

ARTICLE I - PURCHASE AND SALE

1.1 Purchase and Sale of Assets. Subject to the terms and conditions of this Agreement, on the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, all of Seller’s rights, title and interest in and to the approximate 9,000 non-working salvaged Lenovo computers, laptops and parts as listed in Exhibit 1.1 hereto (the “Purchased Assets”).

1.2 Purchase Price.

(a) The aggregate consideration for the Purchased Assets shall be Two Hundred Fifty-Five Thousand Dollars (\$255,000.00) (“Purchase Price”).

(b) A deposit of Twenty-Five Thousand Dollars (\$25,000.00) (“Deposit”) shall be paid to the Debtor’s counsel’s client trust account by no later than two (2) business days after the due diligence period has run in immediately available, good funds.

(c) On the Closing, the Buyer shall pay the remainder of the Purchase Price to the Debtor in immediately available, good funds.

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

EXHIBIT 1

1.3 Due Diligence Period. Buyer shall have until December 11, 2018 to complete its due diligence of the Purchased Assets. After such period has expired, the Deposit will not be refunded to the Buyer unless it is not the successful bidder for the assets at the hearing on the Sale Motion (defined below).

1.4 Transfer Tax Obligations. All federal, state, local or foreign sales, use, transfer or similar taxes payable in connection with the sale of the Purchased Assets to Buyer, if any, shall be paid by Buyer to the appropriate taxing authorities as and when due.

ARTICLE II - CLOSING

2.1 Time, Date and Place. The closing of the purchase and sale of the Purchased Assets and the other transactions contemplated by this Agreement (referred to throughout this Agreement as the “Closing”) shall take place at the offices of Shulman, Hodges & Bastian LLP, 100 Spectrum Center Drive, Suite 600, Irvine, California 92618 or remotely via the exchange of executed documents and other deliverables by the Parties. The Closing shall be held within two (2) business days after the Sale Approval Order is entered by the Bankruptcy Court.

2.2 Deliveries at Closing. At the Closing the Buyer shall pay the remainder of the Purchase Price to the Seller in Good Funds and the Seller shall provide to the Buyer an executed Bill of Sale for the Purchased Assets in the form attached hereto as Exhibit 2.1.

2.3 Buyer's Obligation to Remove Purchased Assets. The Purchased Assets are located at Avenida Rosa Ma. Y Fuentes Avenue number 7050, within the Industrial Facility named Complejo Industrial Fuentes, in Ciudad Juárez Chihuahua. Buyer is solely responsible, at Buyer's cost and expense to pick-up and remove the Purchased Assets within five (5) business days of Closing. Buyer shall arrange with Seller a specific time for pick-up of the Purchased Assets and related logistical matters, concurrent with the Closing. All right, title, interest and risk of loss shall pass to the Buyer upon the Buyer's picking up the Purchased Assets.

2.4 Closing Costs. All expenses incurred by Seller or Buyer with respect to the consummation of the transaction contemplated by this Contract, are to be borne and paid exclusively by the Party incurring same.

ARTICLE III - REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as of the date hereof and as of the Closing each of the following

3.1 Authorization. Subject to approval of the Bankruptcy Court, Seller has the legal capacity, right, power, and authority to enter into this Agreement, perform its obligations hereunder, and consummation the transactions contemplated hereby. Subject to the approval of the Bankruptcy Court, Seller has the full right, power and authority to execute, acknowledge and deliver this Agreement, perform its obligations hereunder, and consummate the transactions contemplated hereby. Upon due execution hereof by Seller, this Agreement shall constitute, subject to the Bankruptcy Court's entry of the Sale Approval Order, and any other necessary order to close the sale of the Purchased Assets, the valid and legally binding obligations of Seller, enforceable against Seller in accordance with their respective terms and conditions, subject to

applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors' rights and general principles of equity.

3.2 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's, or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

3.3 Title to Purchased Assets. At the Closing, Seller will have, and subject to the Sale Approval Order will transfer to Buyer, good and valid title to, or the valid and enforceable right to use, the Purchased Assets.

3.4 Litigation; Decrees. There is no litigation, pending or, to the knowledge of Seller, threatened, that: (a) would reasonably be expected to have a material adverse effect on Seller, or (b) challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby.

3.5 Compliance with Laws. Seller has not received any written notice of, or been charged with, the violation of any law, except for any such violation that is not material to Seller.

ARTICLE IV - REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER

Buyer represents and warrants to Seller as of the date hereof and as of the Closing each of the following:

4.1 Organization, Good Standing, and Corporate Power. Buyer is duly organized, validly existing, and in good standing under the laws of the State of its formation. Buyer has the limited liability company power to enter into, execute and deliver this Agreement and to consummate the transactions contemplated hereby.

4.2 Authorization of Agreement. The execution and delivery of this Agreement and the performance by Buyer of its obligations and agreements under this Agreement have been duly and validly authorized by all necessary corporate actions. Buyer has taken all other corporate actions required on its part by law in order to consummate the transactions contemplated hereby.

4.3 Execution, Delivery and Performance. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of the Buyer and, subject to the approval of the Bankruptcy Court and the entry of the Sale Approval Order, is enforceable against the Buyer in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application which may affect the enforcement of creditors rights generally and by general equitable principles.

4.4 Effect of Agreement. The execution and delivery by Buyer of this Agreement, the purchase by Buyer of the Purchased Assets, the performance by Buyer of its obligations pursuant to the terms of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not, with or without the giving of notice or lapse of time, or both: (a) violate or conflict with any term of the articles of incorporation or other organizational documents of Buyer; (b) violate any provision of law, statute, rule, regulation or executive order to which Buyer or any of its assets or properties is subject which would have a material adverse effect on Buyer; or

(c) violate any judgment, order, writ or decree of any court or administrative body applicable to Buyer or any of its assets or properties.

4.5 Buyer's Closing Funds. On or before the Closing, Buyer shall have the necessary funds immediately available to consummate the transaction contemplated by this Agreement and there is no financing contingency with respect to Buyer's obligations in connection with this transaction.

4.6 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's, or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

4.7 Disclaimer of Warranties; "AS-IS AND WHERE-IS" Conveyance. BUYER WARRANTS AND ACKNOWLEDGES AND AGREES WITH SELLER THAT EXCEPT AS EXPRESSLY SET FORTH HEREIN BUYER IS PURCHASING THE PURCHASED ASSETS IN AN "AS-IS AND WHERE-IS" CONDITION WITH ALL FAULTS AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OF OR ON BEHALF OF SELLER. Seller acknowledges that Buyer has not relied and is not relying upon any information, document, sales brochure, due diligence, information package or other literature, map or sketch, projection, pro forma statement, representation, guarantee or warranty (whether express or implied, or oral or written, material or immaterial) that may have been given by or made by or on behalf of or omitted by Seller, its agents, representatives, consultants and/or attorneys with respect to the quality, nature, adequacy or physical condition of the Purchased Assets other than as expressly set forth herein. Buyer acknowledges that it is Buyer's responsibility to make such legal, factual and other inquiries and investigations as Buyer deems necessary, desirable or appropriate with respect to the Purchased Assets. Such inquiries and investigations may include, but shall not be limited to, the physical components of all portions of the Purchased Assets and the condition of the Purchased Assets. BUYER ACKNOWLEDGES, AND AGREES WITH SELLER THAT WITH RESPECT TO THE PURCHASED ASSETS, OTHER THAN AS EXPRESSLY SET FORTH HEREIN, SELLER HAS NOT AND DOES NOT AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR USE OR WITH RESPECT TO THE VALUE, PROFITABILITY OR MARKETABILITY OF THE PURCHASED ASSETS OR WITH RESPECT TO COMPLIANCE OF THE PURCHASED ASSETS WITH ANY ENVIRONMENTAL PROTECTION LAW, RULE OR REGULATION, ORDER OR REQUIREMENT INCLUDING THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE OR SUBSTANCE. This Article IV shall survive Closing.

ARTICLE V - CLOSING CONDITIONS

5.1 Seller's Conditions to Close. Seller's obligation to close the transactions contemplated hereby at the Closing shall be subject to the complete satisfaction and fulfillment of all of the following conditions precedent, any or all of which may be waived in whole or in part

by Seller (but no such waiver of any such condition precedent shall be or constitute a waiver of any covenant, promise, agreement, representation or warranty made by Buyer in this Agreement):

(a) All representations and warranties made by Buyer in this Agreement shall be complete and accurate at and as of the Closing;

(b) All covenants, promises and agreements made by Buyer in this Agreement and all other actions required to be performed or complied with by Buyer under this Agreement prior to or at the Closing shall have been fully performed or complied with by Buyer.

5.2 Buyer's Conditions to Close. Buyer's obligation to close the transactions contemplated hereby at the Closing shall be subject to the complete satisfaction and fulfillment of all of the following conditions precedent, any or all of which may be waived in whole or in part by Buyer (but no such waiver of any such condition precedent shall be or constitute a waiver of any covenant, promise, agreement, representation or warranty made by Seller in this Agreement):

(a) All representations and warranties made by Seller in this Agreement shall be complete and accurate at and as of the Closing;

(b) All covenants, promises and agreements made by Seller in this Agreement and all other actions required to be performed or complied with by Seller under this Agreement prior to or at the Closing shall have been fully performed or complied with by Seller;

(c) No fact, circumstance, occurrence, change, or event shall have occurred since the date of this Agreement that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on the Seller or Seller's ability to consummate the transactions contemplated hereby.

5.3 Mutual Conditions to Close. The obligations of the Parties to close the transactions contemplated hereby at the Closing shall be subject to the complete satisfaction and fulfillment of all of the following conditions precedent (to applicability of any or all of which to a Party may be waived in whole or in part by such Party (but no such waiver of any such condition precedent shall be or constitute a waiver of any covenant, promise, agreement, representation or warranty made by any other Party in this Agreement):

(a) The Bankruptcy Court shall have entered the Sale Approval Order as contemplated by and defined in Section 6.1 below; and

(b) No suit, action, or other legal proceeding that is not stayed by the Bankruptcy Court shall be pending before any governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated hereby, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of governmental authority having appropriate jurisdiction.

ARTICLE VI - BANKRUPTCY COVENANTS

6.1 Entry of Sale Approval Order. No later than five (5) business days after execution of this Agreement by the parties hereto, Seller shall file a motion reasonably acceptable to Buyer (the "Sale Motion") with the Bankruptcy Court seeking entry of an order which shall include the following provisions (the "Sale Approval Order"):

- (a) approving the terms and conditions of this Agreement and the sale of the Purchased Assets to Buyer;
- (b) holding that the sale of the Purchased Assets to Buyer shall be free and clear of all liens, claims, interests, and encumbrances, pursuant to 11 U.S.C. §363;
- (c) finding that notice of the transactions contemplated hereby and of the terms of this Agreement were good and sufficient and were provided timely to all creditors and parties-in-interest, including any and all creditors holding liens or encumbrances on the Purchased Assets;
- (d) authorizing and directing Seller to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement;
- (e) providing for overbids for the Purchased Assets at an initial overbid amount of \$270,000.00 and incremental bid amounts thereafter of \$10,000.00;
- (f) providing for a break-up fee of \$7,650.00 to the Buyer if it is not the successful bidder.

6.2 Substantial Contribution. Seller shall use its best efforts to cause the Bankruptcy Court to enter the Sale Approval Order.

ARTICLE VII - TERMINATION

7.1 Grounds for Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

- (a) by mutual written agreement of Buyer and Seller;
- (b) by Buyer, upon written notice to Seller, for any reason, if the due diligence period has not expired;
- (c) by Seller upon written notice to Buyer, if (i) Buyer has breached or failed to perform any of its covenants or other agreements contained in this Agreement or (ii) there exists a breach of any representation or warranty of Buyer contained in this Agreement;
- (d) by Buyer upon written notice to Seller, if (i) Seller has breached or failed to perform any of its covenants or other agreements contained in this Agreement or (ii) there exists a breach of any representation or warranty of Seller contained in this Agreement.

7.2 Effect of Termination. If any Party terminates this Agreement pursuant to Section 7.1, this Agreement shall be of no further force or effect and no Party shall have any liability to any other party hereunder; provided, however, that if the due diligence period has run, the Seller shall be entitled to retain the Buyer's Deposit.

ARTICLE VIII - MISCELLANEOUS

8.1 Assignment. This Agreement shall inure to the benefit of, and shall be binding upon the Parties, and each of them, and their respective successors, successor trustees, assigns, heirs, partners, agents, officers, corporations, partnerships, partners, shareholders, representatives, and each of them.

8.2 Amendment and Modification; Waiver. This Agreement may be amended and modified only by a written agreement signed by all of the Parties specifically acknowledging and approving of the modification.

8.3 Governing Law. This Agreement is made pursuant to, and shall be governed by and construed in accordance with, the laws of the State of California and the United States Bankruptcy Code. Should any dispute arise regarding this Agreement, the Bankruptcy Court shall have exclusive jurisdiction to resolve any such disputes. Further, if a dispute arises, such dispute may initially be resolved through any mediation program pending in the Bankruptcy Court.

8.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall have the same legal effect as delivery of an original signed copy of this Agreement.

8.5 Headings. The section and subsection headings contained in this Agreement are included for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

8.6 Severability. If any immaterial provision of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason, each such provision shall be severed from the remaining portions of this Agreement and shall not affect the validity and enforceability of such remaining material provisions.

8.7 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, terms, conditions and representations, written or oral, made by any of the Parties or their agents, concerning the matters covered by this Agreement.

8.8 Attorneys' Fees. In the event of any action or suit based upon or arising out of any alleged breach of any Party of any representation, warranty, covenant or agreement contained in this Agreement, the prevailing Party will be entitled to recover reasonable attorneys' fees and other costs of such action or suit from the non-prevailing Party.

8.9 No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto (except any permitted successors or assigns).

8.10 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

The Parties are signing this Agreement effective as of the date first written above.

SELLER:

**TECHNOLOGY SOLUTIONS &
SERVICES, INC.**

By: _____
Name: _____
Title: _____

BUYER:

IT ASSET PARTNERS, INC.

By: _____
Name: _____
Title: _____

Exhibit 1.1

Inventory of Purchased Assets

EXHIBIT 1

| LENOVO AsIs | QTY |
|--------------------|-------------|
| ALL IN ONE | 1232 |
| 18.5" | 9 |
| 19.5" | 113 |
| 20" | 5 |
| 21.5" | 427 |
| 23" | 238 |
| 23" | 67 |
| 23.8" | 107 |
| 27" | 254 |
| 29" | 12 |
| DESKTOP | 627 |
| EMPTY CASE | 351 |
| DKT | 276 |
| MONITOR | 61 |
| 19" | 2 |
| 19.5" | 2 |
| 21.5" | 16 |
| 22" | 2 |
| 23" | 17 |
| 23.8" | 12 |
| 24" | 1 |
| 27" | 7 |
| 28" | 2 |
| NOTEBOOK | 5621 |
| 10.1" | 226 |
| 11.6" | 1026 |
| 12.0" | 82 |
| 12.5" | 54 |
| 13.3" | 501 |
| 13.9" | 73 |
| 14.0" | 974 |
| 15.6" | 2489 |
| 17.3" | 164 |
| 8.0" | 19 |
| NO CONFIG | 13 |
| SMARTHPHONE | 67 |
| 10.1" | 39 |
| 6.4" | 1 |
| 6.98" | 3 |
| 8.0" | 24 |
| TABLET | 1437 |
| 10.1" | 837 |
| 10.3" | 1 |

| | |
|--------------------|-------------|
| 11.6" | 10 |
| 12.0" | 11 |
| 12.5" | 21 |
| 7.0" | 118 |
| 8.0" | 433 |
| 8.3" | 3 |
| 9.7" | 1 |
| NO CONFIG | 2 |
| NO CONFIG | 30 |
| NO CONFIG | 30 |
| Grand Total | 9075 |

Exhibit 1

Exhibit 2.1

Bill of Sale

EXHIBIT 1

Bill of Sale

THIS BILL OF SALE (this "Bill of Sale") is made and entered into as of _____, 2018, by and between Technology Solutions & Services, Inc., a California corporation ("Seller"), IT Asset Partners, Inc., a California corporation ("Buyer").

W I T N E S S E T H:

WHEREAS, Seller has agreed to sell, assign, convey, transfer and deliver, all of its right, title and interest in and to the Purchased Assets identified and defined in that certain Asset Purchase Agreement by and between Seller and Buyer, dated as of _____, 2018 (the "Purchase Agreement"), and Buyer has agreed to purchase and acquire such Purchased Assets from Seller.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Defined Terms. Capitalized terms which are used but not defined in this Bill of Sale shall have the meanings ascribed to such terms in the Purchase Agreement.
2. Assignment. Seller hereby sells, assigns, transfers and delivers to Buyer, all of its right, title and interest of every conceivable kind or character whatsoever, whether tangible or intangible, in and to the Purchased Assets. Seller covenants and agrees that it will at any time and from time to time do, execute, acknowledge and deliver any and all other acts, assignments, transfers, conveyances, powers of attorney or other instruments that Buyer reasonably deems necessary or proper to carry out the assignment and conveyance intended to be made hereunder. This Bill of Sale shall be binding upon Seller and its successors and assigns and shall inure to the benefit of Buyer and its successors and assigns.
3. Terms of the Purchase Agreement. The terms of the Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements and indemnities are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein.
4. Binding Effect; Assignment. This Bill of Sale and all of the provisions hereof shall be binding upon Seller and Buyer and their respective successors and permitted assigns.
5. No Third Party Beneficiary. Nothing in this Bill of Sale is intended to confer upon any other person except Buyer and Seller any rights or remedies hereunder or shall create any third party beneficiary rights in any person.
6. Governing Law. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of California (regardless of the laws that might otherwise govern under applicable principles of conflicts of law).

7. Construction. This Bill of Sale is delivered pursuant to and is subject to the terms of the Purchase Agreement. In the event of any conflict or ambiguity between the terms of the Purchase Agreement and the terms of this Bill of Sale, the terms of the Purchase Agreement shall control.
8. Counterparts. This Bill of Sale may be executed by the parties hereto individually or in any combination, in one or more counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. In the event that any signature to this Bill of Sale or any amendment hereto is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

IN WITNESS WHEREOF, this Bill of Sale has been duly executed and delivered as of the date first written above.

Seller:

TECHNOLOGY SOLUTIONS & SERVICES,
INC.

By: _____
Name:
Title:

Purchaser:

IT ASSET PARTNERS, INC.

By: _____
Name:
Title:

EXHIBIT 2

| LENOVO AsIs | QTY |
|--------------------|-------------|
| ALL IN ONE | 1232 |
| 18.5" | 9 |
| 19.5" | 113 |
| 20" | 5 |
| 21.5" | 427 |
| 23" | 238 |
| 23" | 67 |
| 23.8" | 107 |
| 27" | 254 |
| 29" | 12 |
| DESKTOP | 627 |
| EMPTY CASE | 351 |
| DKT | 276 |
| MONITOR | 61 |
| 19" | 2 |
| 19.5" | 2 |
| 21.5" | 16 |
| 22" | 2 |
| 23" | 17 |
| 23.8" | 12 |
| 24" | 1 |
| 27" | 7 |
| 28" | 2 |
| NOTEBOOK | 5621 |
| 10.1" | 226 |
| 11.6" | 1026 |
| 12.0" | 82 |
| 12.5" | 54 |
| 13.3" | 501 |
| 13.9" | 73 |
| 14.0" | 974 |
| 15.6" | 2489 |
| 17.3" | 164 |
| 8.0" | 19 |
| NO CONFIG | 13 |
| SMARTPHONE | 67 |
| 10.1" | 39 |
| 6.4" | 1 |
| 6.98" | 3 |
| 8.0" | 24 |
| TABLET | 1437 |
| 10.1" | 837 |
| 10.3" | 1 |

Exhibit 2

Exhibit 2 is a summary list of the Assets. The full, complete and detailed inventory list of over 100 pages can be provided to any interested party upon request to Debtor's counsel, Melissa Lowe, at 949-340-3400 or mlowe@shblp.com.

| | |
|--------------------|-------------|
| 11.6" | 10 |
| 12.0" | 11 |
| 12.5" | 21 |
| 7.0" | 118 |
| 8.0" | 433 |
| 8.3" | 3 |
| 9.7" | 1 |
| NO CONFIG | 2 |
| NO CONFIG | 30 |
| NO CONFIG | 30 |
| Grand Total | 9075 |

Exhibit 2