

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
TAXPAYER PROTECTION BUREAU

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In the Matter of an Investigation by

BARBARA D. UNDERWOOD  
Attorney General of the State of New York,

Assurance No.: 18-149

into

GROUND SERVICES INTERNATIONAL,  
INC.

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law § 63(12) into the contracting process at John Fitzgerald Kennedy Airport (“JFK Airport”) and the practice of certain individuals and businesses providing, or receiving, non-disclosed payments in return for business opportunities. This Assurance of Discontinuance (“Assurance”) contains the findings of OAG’s investigation and the relief agreed to by OAG and Respondent Ground Services International, Inc. (“GSI”) (collectively, the “Parties”).

**OAG’S FINDINGS**

1. GSI is a ground handling company that was founded in 2006 by Jeff Kinsella. GSI has operated at JFK Airport from 2007 to the present.
2. From 2007 to 2016, GSI expanded its business and won new contracts with its major customers British Airways and Terminal One Group Association L.P. (“TOGA”), while at the same time making undisclosed payments to the customers’ key

executives. This conduct was longstanding and compromised the integrity of business operations at JFK Airport.

3. In 2016, GSI was sold to dnata, one of the largest suppliers of combined air services worldwide. At the time dnata purchased GSI, it was unaware of the financial improprieties described herein.

*GSI Contracts with British Airways*

4. In 2007, GSI secured its initial contract for ground handling, with British Airways.

5. British Airways has always been GSI's largest customer.

6. British Airways leases Terminal Seven at JFK Airport from the Port Authority of New York and New Jersey ("Port Authority"), providing administration of, among other things, airport concessions and airport logistics (i.e., what airlines can use the gates, certain aspects of terminal security, and which companies service the terminal for things like ground handling and transportation). This arrangement entitled British Airways to select vendors and service providers at Terminal Seven, including ground handling services.

7. In addition to JFK Airport, GSI's business with British Airways included, but was not limited to, work at the following locations: Boston, Chicago, Newark, Philadelphia, Washington D.C., Austin, Houston, Orlando, Tampa, San Diego, and San Francisco.

8. Steve Clark, British Airways' Senior Vice President of Customer Service and Operations for North America & Asia Pacific, had an undisclosed 5% beneficial ownership interest in GSI at the same time GSI grew its business with British Airways.

9. From 2009 to 2016, GSI President Jeff Kinsella made payments to Mr. Clark through Danison Management LLC (another company controlled by GSI President Jeff Kinsella). The payments were made monthly and totaled over \$1.2 million during the relevant period.

10. Upon the successful sale of GSI to dnata in 2016, Mr. Clark received an additional payment of \$3.6 million from Danison Management LLC. The invoice accompanying this final payment indicated that the proceeds were for “Distribution – Sale of GSI & Metro (5% ownership stake).”

11. GSI did not disclose its payments to Mr. Clark, nor the fact that Mr. Clark had a financial stake in GSI, to any of dnata, British Airways, the Port Authority, or any other entity in the airline industry.

12. GSI acted deceptively, improperly, and compromised the integrity of business operations at JFK Airport by (i) its President Mr. Kinsella making undisclosed payments to Mr. Clark at the same time GSI conducted business with Mr. Clark’s employer, and (ii) granting Mr. Clark an undisclosed beneficial ownership interest in the company.

*GSI Contract with Terminal One Group Association for Work at JFK Airport*

13. TOGA is a partnership between four airlines (Air France, Japan Airlines, Korean Air, and Lufthansa) established to lease Terminal One at JFK Airport from the Port Authority, and to manage Terminal One’s operations.

14. In late 2013, TOGA decided to change ground handling suppliers. Edward Paquette was the Executive Director of TOGA.

15. Prior to a formal Request for Proposal being issued, Mr. Clark contacted Mr. Paquette to recommend GSI for the work at Terminal One based on his purported positive experiences with GSI in his role at British Airways.

16. GSI subsequently bid for, and won, the contract at Terminal One. GSI's contract with TOGA began in February 2015 and the contract became GSI's largest contract nationally.

17. From August 2015 to November 2016, GSI President Jeff Kinsella directed GSI and Danison Management LLC to make payments to TOGA's Executive Director Ed Paquette totaling \$640,000. These payments were made to Mr. Paquette's consulting company, Plane to Sea Consultant Inc., at a time when Mr. Paquette served as the Executive Director of TOGA and oversaw the TOGA-GSI contract at Terminal One.

18. In November 2017, Mr. Paquette pled guilty to the crimes of Commercial Bribe Receiving in the First Degree and Grand Larceny in the Second Degree relating to his conduct at JFK Airport as the Executive Director of TOGA, and also settled civil claims with OAG pertaining to violations of the New York False Claims Act and Executive Law 63(12). In his settlement with OAG, Mr. Paquette admitted the following:

- a. "In July 2015, Mr. Kinsella directed GSI to begin making secret monthly payments to Mr. Paquette's company, Plane to Sea Consultant Inc. Mr. Paquette did not disclose these payments, the existence of his company, or the existence of any financial relationship with GSI, to the TOGA Board of Directors. Paquette and GSI backdated the first payment from GSI to Plane to Sea Consultant Inc. to February 2015 - the same month the

contract between TOGA and GSI took effect. GSI paid Mr. Paquette a total of \$640,000 from 2015 through 2017. During this period and until his retirement, Mr. Paquette, as TOGA's executive director, oversaw performance and execution of the ground handling contract."

19. GSI's practice of making undisclosed payments to Mr. Paquette, directed by its President Jeff Kinsella, was improper and compromised the integrity of business operations at JFK Airport.

20. OAG finds that Respondent's actions described herein violate Executive Law 63(12).

21. Respondent admits paragraphs 1 through 20 above.

22. Respondent has agreed to this Assurance in settlement of the violations alleged above and to avoid the time, expense, and distraction of litigation.

23. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding against GSI for violations of Executive Law 63(12) based on the conduct described above from 2007 to 2016, provided that OAG expressly reserves all rights to bring a statutory proceeding against individuals and entities, other than GSI, involved in the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**RELIEF**

24. General Injunction: Respondent shall not engage, or attempt to engage, in violations of any applicable laws, including but not limited to Executive Law 63(12), and

expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 23, *supra*, in addition to any other appropriate investigation, action, or proceeding.

25. Programmatic Relief. Respondent agrees as follows:

- a. Respondent shall implement and maintain an Anti-Bribery and Corruption Policy and all management and other employees who have a significant role in Respondent's internal controls and/or procurement and bidding processes shall undergo annual training on the company's Anti-Bribery and Corruption Policy. The training shall specifically include instruction on the Port Authority's "Zero Tolerance Policy" governing gifts to Port Authority employees, and any other applicable Port Authority policies, guidelines, and/or guidance concerning issues relating to ethics, bribery, and corruption.
- b. Respondent shall require all full-time employees to disclose to the Company (i) any financial position they may hold in a customer of the Respondent, or (ii) any compensation they receive from any customer of the Respondent, for whatever reason.
- c. Respondent shall provide its employees opportunities to report suspected violations of the company's Anti-Bribery and Corruption Policy anonymously via either email or phone message. Respondent agrees to conduct an appropriate and thorough investigation of any reports of suspected violations of the company's Anti-Bribery and Corruption Policy.
- d. Respondent agrees to report any violations of its Anti-Bribery and Corruption Policy to the Port Authority Inspector General's Office.
- e. Respondent shall appoint a Chief Ethics and Compliance Officer ("GSI CECO") within the company to oversee ethics and integrity

issues. The GSI CECO shall report to the chief legal officer of dnata.

- f. Respondent shall engage an outside audit firm to perform annual external reviews of the company's financial statements. The report of this outside audit firm shall be presented directly to the Respondent's Board of Directors and shared with the Port Authority Inspector General's Office.
- g. Respondent shall implement an internal approval process for bids on new or expiring contracts in the United States that explicitly includes a deliberation of whether any conflicts of interest exist and/or whether the bid may violate the company's Anti-Bribery and Corruption Policy. The internal contract approval process shall involve the company's Chief Financial Officer attesting that he or she has reviewed the bid and, and to the best of his or her knowledge, no such conflicts or policy violations exist as a predicate for the bid being submitted.
- h. On an annual basis, Respondent shall affirm to the Port Authority Inspector General's Office that (i) the signatory has reviewed Respondent's internal controls and policies, and (ii) based on the signatory's knowledge, there were no material instances of non-compliance with any New York or federal laws or regulations, including all applicable anti-bribery and corruption laws. This affirmation shall be made by either the Chief Financial Officer or the Chief Executive Officer of the Respondent.
- i. Respondent will implement the relief described in this paragraph by February 1, 2019, and continue to implement the relief through February 1, 2022.
- j. Acceptance of this Assurance by OAG is not an approval or endorsement by OAG of any of Respondent's practices or procedures, and the Respondent shall make no representation to the contrary.

- k. Respondent expressly agrees and acknowledges that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 23, *supra*, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 20, pursuant to Executive Law § 63(15).
- l. The Parties agree that it would be difficult to value the damages caused by default in the performance of any obligation under this paragraph, and therefore agree that Respondent shall pay to the State of New York a stipulated penalty of \$20,000 for each and every such default occurring after February 1, 2019.
- m. Compliance with Other Obligations. In the event that Respondent reasonably believes that the performance of its obligations under any provision of this Assurance would conflict with any federal or state law or regulation that may be enacted or adopted after the effective date of this Assurance such that compliance with both this Assurance and such provision of law or regulation is not possible, Respondent shall notify the OAG promptly and the Parties shall meet and confer at their earliest convenience to attempt to resolve such conflict.

26. Record Keeping Requirements: Respondent shall retain all records relating to its obligations hereunder, including all Programmatic Relief until at least April 1, 2022. During that time, Respondent shall, upon thirty (30) days' written notice from the OAG or the Port Authority Inspector General's Office, provide all documentation and information necessary for OAG to verify compliance with this Assurance.



27. Monetary Relief: Respondent shall pay to the State \$12,300,000 in disgorgement of profits (the “Monetary Relief Amount”). Payment of the Monetary Relief Amount shall be made according to the following schedule:

- a. \$6,150,000 within 10 days of the effective date of this Assurance;
- b. \$3,075,000 within 120 days of the effective date of this Assurance;
- c. \$3,075,000 within 180 days of the effective date of this Assurance;

28. Payment shall be made by wire transfer.

### **MISCELLANEOUS PROVISIONS**

29. Subsequent Proceedings: In any subsequent investigation, civil action, or proceeding by the OAG to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 35, the Respondent expressly agrees and acknowledges:

- a. that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. that the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
- c. that any civil action or proceeding between parties to this Assurance must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

30. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to OAG the reasonable cost, if any, of

obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

31. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall cause this Assurance to be adopted in any such transfer agreement. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

32. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

33. Any failure by the Attorney General to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the Attorney General, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

34. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 18-149, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to:

Eugene Ingoglia, Esq.  
Allen & Overy LLP  
1221 Avenue of the Americas  
New York, NY 10020  
(212) 610-6369

Or in his/her absence, to the person holding the title of President of GSI.

If to the OAG, to:

Justin Wagner, Esq.  
Taxpayer Protection Bureau  
Office of the New York State Attorney General  
28 Liberty Street, 21<sup>st</sup> Floor  
New York, NY 10005  
(212) 416-8819

Or in his/her absence, to the person holding the title of Bureau Chief, Taxpayer Protection Bureau.

35. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Respondent and their counsel and OAG's own factual investigation as set forth in Findings, paragraphs (1) through (20) above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

36. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

37. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

38. To the extent further investigation or litigation relating to the Findings (paragraphs (1)-(20) above), proceeds against individuals or entities that are not Parties to or released by this Agreement, Respondent agrees to be available, upon reasonable

notice, to meet with attorneys or other representatives of the State either in person or by telephone, and to answer questions related to issues pertaining to the investigation or litigation. Respondent agrees that to the extent such investigation or litigation proceeds, if so requested or demanded by the State, the Respondent will make its current employees available to testify in subpoena hearings, depositions, and/or at trial, upon reasonable notice. Respondent also agrees to make available to the State, upon reasonable notice, documents or other materials relevant to any such investigation or litigation.

39. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

40. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

41. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

42. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

43. Respondent acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

44. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

45. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

46. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

The effective date of this Assurance shall be December 7, 2018.

BARBARA D. UNDERWOOD  
Attorney General of the State of New York

By:   
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Justin Wagner  
Assistant Attorney General  
Taxpayer Protection Bureau  
28 Liberty Street, 21<sup>st</sup> Floor  
New York, NY 10005  
(212) 416-8819

GROUND SERVICES  
INTERNATIONAL, INC.

By: Paul D Cole

Paul D. Cole  
Chief Financial Officer  
*Respondent*

STATE OF Florida )  
  ) SS.:  
COUNTY OF Seminole )

On this 6<sup>th</sup> day of December, 2018, Paul David Cole, known personally to me to be the Chief Financial Officer of GROUND SERVICES INTERNATIONAL, INC., appeared before the undersigned and acknowledged to me that he, as such officer and being authorized so to do, executed the within instrument for the purposes therein set forth, on behalf of the RESPONDENT, by his/her signature on the instrument as such officer.

Sworn to before me this 6<sup>th</sup> day of December, 2018

NOTARY PUBLIC



Amanda Thomas