

ATTORNEYS GENERAL OF THE STATE OF  
NEW YORK AND THE STATE OF NEW JERSEY

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In the Matter of

Assurance No. 24-075

**Investigation by**

**LETITIA JAMES,**

**Attorney General of the State of New York, and**

**MATTHEW J. PLATKIN,**

**Attorney General of the State of New Jersey, of**

**Planned Building Services, Inc.,**

**Planned Lifestyle Services, Inc.,**

**Planned Security Services, Inc., and**

**Planned Technologies Services, Inc.**

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York and the Office of the Attorney General of the State of New Jersey (collectively, “the OAGs”) have commenced investigations pursuant to state and federal antitrust law into the potential harm to competition caused by the use of restrictive provisions between competitors in various labor markets, including the building service contractor (“Contractor”) industry (“the Investigation”). As part of their investigation of Planned Building Services, Inc., Planned Lifestyle Services, Inc., Planned Security Services, Inc., and Planned Technologies Services, Inc. (collectively, “Planned”), the OAGs have specifically considered the harm to competition caused by agreements between Planned and its labor market competitors (“Competitors”)—including residential and

commercial properties (“Properties”). The OAGs, among other things, reviewed documents and information produced by Planned, such as contracts and communications between Planned and the Properties.

This Assurance of Discontinuance (“Assurance”) contains the findings of the OAGs’ investigation, and the relief agreed to by the OAGs and Planned (collectively, the “Parties”).

### **OAGs’ FINDINGS**

1. Planned is one of the largest building services contractors in the Tri-State Area.
2. Planned staffs and services residential and commercial properties in New York and New Jersey.
3. The labor market for employees who provide services to residential and commercial buildings, which includes both employees of building services contractors and employees who work directly for properties (“Employees”), is a relevant antitrust market. New York and New Jersey are both relevant geographic markets.
4. Contractors and Properties compete for employees on the basis of salaries, benefits, and career opportunities.
5. “No-poach Agreements” are agreements among two or more companies not to solicit, recruit or hire each other’s employees; these agreements can be written or verbal. In a well-functioning labor market, employers compete to attract the most valuable talent for their needs. No-poach Agreements reduce competition for employees and can disrupt the normal compensation-setting mechanisms that apply in labor markets, to the detriment of the affected employees who may be deprived of competitively important information and access to better job opportunities.

6. The OAGs have determined that Planned entered into No-poach Agreements with Properties in New York and New Jersey. The OAGs determined that these agreements reduced competition for employees between Planned and the Properties in New York and New Jersey.

7. The OAGs did not find any valid procompetitive justifications for these agreements.

8. The OAGs find that Planned's entry into No-poach Agreements with the Properties likely is in violation of the Donnelly Act, N.J.S.A. 56:9-3, Section 1 of the Sherman Act, and Section 63(12) of the New York Executive Law.

9. Planned enters into this Assurance for the purpose of resolving the OAGs' Investigation only. Planned neither admits nor denies the OAGs' findings above.

10. The OAGs find the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAGs are willing to accept this Assurance pursuant to Executive Law § 63(15) and N.J.S.A. 56:9-6, in lieu of commencing a statutory proceeding for violations of the Donnelly Act, Gen. Bus. Law § 340 et. seq., N.J.S.A. 56:9-3, the Sherman Act, § 1 (15 U.S.C. § 1), and Executive Law § 63(12) based on the conduct described above.

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

### **RELIEF**

11. Planned shall not engage in agreements restricting competition in the labor market with its Competitors, including but not limited to entering into, maintaining or enforcing any No-poach Agreements with any Competitor. Planned shall also not agree with any Competitor to in any way refrain from soliciting, recruiting, hiring or otherwise competing for Employees.

12. Planned will not enforce No-poach Agreements in any of its existing agreements with Competitors, and will terminate any ongoing No-poach Agreements with Competitors, whether written or verbal, within thirty (30) days of this Assurance.

13. Within fourteen (14) days of execution of this Assurance, Planned will, as necessary, update the language in its standard contracts with Properties to remove No-poach Agreements.

14. Planned will notify any Property with a current contract of the entry of this Assurance and provide them with a copy within fourteen (14) days of executing this Assurance.

15. Until the date when the OAGs notify Planned that the Investigation is concluded, Planned agrees to continue to provide full, complete and prompt cooperation with the OAGs in related OAG proceedings and actions, against any other Contractor.<sup>1</sup> Planned agrees to use its best efforts to secure the full and truthful cooperation of current officers, directors, employees and agents with the OAGs' Investigation and any related proceedings and actions against any other Contractor.

16. For ten (10) years following the date of this Assurance, Planned will promptly notify the OAGs if it learns of any violations of this Assurance. Descriptions of violations of this Assurance shall include, to the extent practicable, a description of any communications constituting the violation, including the date and place of the communication, the persons involved, and the subject matter of the communication.

17. For ten (10) years following the date of this Assurance, Planned will promptly notify the OAGs if it learns of any effort by another Contractor to enter into or enforce a No-poach Agreement.

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<sup>1</sup> For purposes of this paragraph 15 as well as paragraphs 17 and 18 of the AOD, the relevant list of Contractors shall be the list of contractors set forth in Respondents' response to Interrogatory 1, dated December 24, 2022.

18. Cooperation shall also include, but is not limited to, pursuant to subpoena: (a) voluntarily, and promptly, producing, to the extent permitted by law or regulation, all information, documents or other tangible evidence reasonably requested by the OAGs that relate to the OAGs' Investigation of Contractors; (b) promptly providing, on request, to the OAGs an oral proffer describing all material facts that are known or subsequently learned by Planned related to the OAGs Investigation of any Contractor No-poach Agreements; (c) working, if requested by the OAGs, to ensure that current Planned officers, directors, employees and agents attend, on reasonable notice and pursuant to subpoena, any proceedings (including but not limited to meetings, interviews, hearings, depositions, grand jury proceedings and trials) and answer completely, candidly, and truthfully any and all inquiries relating to the OAGs' Investigation of Contractors that may be put to such persons by the OAGs (or any deputies, assistants or agents).

19. The cooperation set forth herein is subject to Planned's right to withhold documents or testimony on the grounds of privilege, work-product or other legal doctrine, and Planned does not waive any privilege, work-product or other legal doctrine applicable to disclosure of information by cooperating with the OAGs' Investigation.

20. Acceptance of this Assurance by the OAGs is not an approval or endorsement by OAGs of any of Planned's policies, practices or procedures, and Planned shall make no representation to the contrary.

21. For ten (10) years following the date of this Assurance, Planned shall provide the OAGs with a certification affirming its compliance with the requirements set forth in this Assurance, to be submitted to the OAGs on December 1 of each year, starting on December 1, 2024. This certification shall be in writing and be signed by Planned. In any case where the

circumstances warrant, the OAGs may require Planned to file an interim certification of compliance upon thirty (30) days' notice.

22. All correspondence related to this Assurance must reference Assurance No. 24-075.

## MISCELLANEOUS

### Subsequent Proceedings:

23. Planned expressly agrees and acknowledges that the OAGs may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to Paragraph 29 and agrees and acknowledges that in such event:

a. any statute of limitations or other time-related defenses related to alleged violations of this Assurance are tolled from and after the effective date of this Assurance;

b. the OAGs may use statements, documents, or other materials produced or provided by Planned prior to or after the effective date of this Assurance in a subsequent investigation, civil action, or proceeding to enforce the Assurance;

c. any civil action or proceeding brought to enforce the Assurance must be adjudicated by the courts of the State of New York, and that Planned irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue;

d. a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15) and N.J.S.A. 56:9-6.

24. If a court of competent jurisdiction determines that Planned has violated the Assurance, Planned shall pay to the OAGs the reasonable cost, if any, of obtaining such

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

Effects of Assurance:

25. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Planned. Planned shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. Planned shall notify the OAGs at least 30 days prior to (a) the dissolution of Planned; (b) the acquisition, merger, or consolidation of Planned; or (c) any other change in Planned, including assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Assurance.

26. Nothing contained herein is intended to bind third parties or create any rights for third parties, including in any court of law.

27. Any failure by the OAGs to insist upon the strict performance by Planned of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAGs, 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 Planned.

Communications:

28. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 24-075, 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 Planned, to Fox Rothschild and persons holding the title of

CEO and VP, Human Resources. If to the OAGs, to the persons holding the titles of Bureau Chief, Antitrust Bureau, Deputy Bureau Chief, Antitrust Bureau, and Senior Enforcement Counsel, Antitrust Bureau.

Representations and Warranties:

29. The OAGs have agreed to the terms of this Assurance based on, among other things, the representations made to the OAGs by Planned and their counsel and the OAGs' own factual investigation as set forth in the Findings. Planned represents and warrants that neither it nor its counsel has made any material representations to the OAGs that are inaccurate or misleading. If any material representations by Planned or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAGs in their sole discretion.

30. No representations, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Planned in agreeing to this Assurance.

31. Planned represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Planned further represents and warrants that Robert Francis, as the signatory to this Assurance, is a duly authorized officer acting on behalf of Planned.

General Principles:

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

33. Nothing contained herein shall be construed to limit the remedies available to the OAGs in the event that Planned violates this Assurance after its effective date.

34. This Assurance may not be amended except by an instrument in writing signed on behalf of the OAGs and Planned.

35. 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 OAGs, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

36. Planned acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

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

38. 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.

39. This Assurance may be executed in multiple counterparts by the OAGs and Planned. All counterparts so executed shall constitute one agreement binding upon the OAGs and Planned, notwithstanding that the OAGs and Planned are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

40. The effective date of this Assurance shall be November 20, 2024.

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