

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into on this 6<sup>th</sup> day of March, 2023 (the “Effective Date”) by and among Spirit Airlines, Inc. (“Spirit”), JetBlue Airways Corporation<sup>1</sup> (“JetBlue,” and collectively with Spirit “Parties”) and the Attorney General of the State of Florida (“Attorney General”).

WHEREAS, JetBlue and Spirit have entered into an Agreement and Plan of Merger, dated July 28, 2022 (the “Merger Agreement”), under which JetBlue, through a wholly-owned subsidiary, will acquire all of the capital stock of Spirit (the “Merger”), forming, after the date that the acquisition closes (“Merger Closing Date”), a surviving company that will combine the assets of JetBlue and Spirit (“Merged Company”); and

WHEREAS, the Attorney General has been conducting an investigation into whether the Merger would violate federal antitrust laws, the Florida Antitrust Act, and the Florida Deceptive and Unfair Trade Practices Act; and

WHEREAS, the Parties have cooperated promptly and fully with the Attorney General, and the Attorney General is willing to accept the terms of this Agreement to resolve its ongoing inquiry into the proposed transaction; and

WHEREAS, to resolve the Attorney General’s concerns regarding the Merger, JetBlue and Spirit have agreed to a series of commitments set forth below that will be enforceable by the Attorney General under the laws of the State of Florida; and

WHEREAS, the Attorney General finds that the relief and other provisions contained in this Agreement are in the public interest of the State of Florida;

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<sup>1</sup> JetBlue Airways Corporation, for purposes of this definition, includes its successors, assigns, subsidiaries, divisions, parent corporation, and predecessors, and shall include the surviving entity of the Merger.

THEREFORE, the Parties agree to the following:

**TERM**

1. The term of this Agreement begins on the Effective Date and shall continue for seven (7) years following the date that the Merger closes (“Merger Closing Date”). This Agreement will automatically terminate if the Merger Agreement expires or is terminated; provided, however, to the extent JetBlue and Spirit enter into an amended or new merger agreement within two years from the Effective Date (in substantially the same form as contemplated by the original Merger Agreement) then this Agreement will apply and will not automatically terminate due to the expiration of the original Merger Agreement.

2. If the Attorney General believes that the Merged Company has violated the Agreement, the Attorney General may seek Court approval to extend the term of the Agreement.

**MINIMUM CAPACITY COMMITMENTS**

3. The Merged Company shall meet the following Minimum Capacity Levels<sup>2</sup> in the seven (7) years following the Merger Closing Date at the Fort Lauderdale-Hollywood International Airport (“FLL”) and the Orlando International Airport (“MCO”):

- a. FLL:<sup>3</sup>
  - i. Year 2: 110% of Combined Baseline Seat Capacity
  - ii. Year 4: 126% of Combined Baseline Seat Capacity

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<sup>2</sup> “Seat Capacity” for purposes of calculating Minimum Capacity Levels and the Combined Baseline Seat Capacity, and whether they have been met, will be extracted from the Department of Transportation’s carrier reported T-100 segment data, a public source for carrier reported information, no later than 30 days after it is published for domestic and international travel for the preceding 12 calendar months. Seat capacity will be calculated using arrival and departure (bidirectional) capacity. This definition applies to paragraphs 3 and 4 of this Agreement.

<sup>3</sup> The “Combined Baseline Seat Capacity” for FLL will be calculated by combining Spirit’s 2022 Seat Capacity at FLL with JetBlue’s 2019 Seat Capacity at FLL.

- iii. Year 6: 142% of Combined Baseline Seat Capacity
- iv. Year 7: 150% of Combined Baseline Seat Capacity

b. MCO:<sup>4</sup>

- i. Year 2: 110% of Combined Baseline Seat Capacity
- ii. Year 4: 126% of Combined Baseline Seat Capacity
- iii. Year 6: 142% of Combined Baseline Seat Capacity
- iv. Year 7: 150% of Combined Baseline Seat Capacity

4. Additionally, the Merged Company shall meet the following Minimum Capacity Levels in the seven (7) years following the Merger Closing Date for the combination of all Florida airports (other than FLL and MCO) in which either JetBlue or Spirit operated in 2022:<sup>5</sup>

- i. Year 2: 110% of Combined Baseline Seat Capacity
- ii. Year 4: 126% of Combined Baseline Seat Capacity
- iii. Year 6: 142% of Combined Baseline Seat Capacity
- iv. Year 7: 150% of Combined Baseline Seat Capacity

**ADDITIONAL NETWORK COMMITMENTS**

5. The Merged Company shall not exit (i) any non-seasonal, nonstop Florida route; (ii) or Florida airport that either JetBlue or Spirit serve as of March 2023. Notwithstanding the foregoing, the Merged Company's compliance with this commitment will be excused to the extent the Merged Company must make non-permanent reductions in flying occasioned by FAA

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<sup>4</sup> The "Combined Baseline Seat Capacity" for MCO will be calculated by combining Spirit's 2022 Seat Capacity at MCO with JetBlue's 2019 Seat Capacity at MCO.

<sup>5</sup> The "Combined Baseline Seat Capacity" for paragraph 4 will be calculated by combining Spirit's 2022 cumulative Seat Capacity at all Florida airports in which it operated in 2022 (excluding MCO and FLL) with JetBlue's 2022 cumulative Seat Capacity at all Florida airports in which it operated in 2022 (excluding MCO and FLL).

air traffic control capacity restrictions directly impacting Florida. The Merged Company will resume any interrupted service under this paragraph as soon as reasonably practicable.

6. The Merged Company shall not fund the Minimum Capacity Levels under this Agreement by shifting current or planned service away from other Florida markets.

7. Through at least the term of this Agreement, the Merged Company shall use reasonable efforts to provide nonstop service on the new Florida routes identified in response to Specification 38 (p. 69) of the Response of JetBlue Airways Corporation to the Antitrust Division of the U.S. Department of Justice's Request for Additional Information and Documentary Material, dated December 12, 2022 ("JetBlue Second Request Response").

8. Through at least the term of this Agreement, the Merged Company shall use reasonable efforts to provide nonstop service on the new Florida routes identified on pages 20–21 of the Joint Application of JetBlue Airways Corporation and Spirit Airlines, Inc., for Approval of Transfer of International Route Authorities, dated February 9, 2023.

9. Through at least the term of this Agreement, the Merged Company shall use reasonable efforts to increase the frequency of its service on all of the Florida routes identified in response to Specification 38 (pp. 69–70) of the JetBlue Second Request Response.

10. Through at least the term of this Agreement, the Merged Company shall use reasonable efforts to not decrease the frequency of its nonstop service on any of the Florida routes identified in response to Specification 39 (p. 72) of the JetBlue Second Request Response.

11. The parties acknowledge that Merged Company's ability to achieve the Minimum Capacity Levels and the Additional Network Commitments are subject to the Merged Company's access to airport infrastructure, including but not limited to the Broward County Aviation Department Master Plan. In the event that access to sufficient airport infrastructure at

any given airport prevents the Merged Company's achievement of the Minimum Capacity Levels and the Additional Network Commitments, the Merged Company shall use reasonable efforts to temporarily shift any lost Seat Capacity (the amount by which Seat Capacity is less than the relevant Minimum Capacity Levels) to a different Florida airport(s). The Merged Company will resume its obligations under this Agreement as soon as reasonably practicable and shall eliminate any deviations from the Minimum Capacity Levels.

### **EMPLOYMENT COMMITMENTS**

12. The Merged Company shall extend its "no furlough" policy to its Florida resident employees for at least five (5) years following the Merger Closing Date.

13. The Merged Company shall maintain all Florida facilities currently in use by either JetBlue or Spirit at their current employment levels or greater for at least five (5) years following the Merger Closing Date. Additionally, the Merged Company shall maintain all Florida facilities that are planned by either JetBlue or Spirit, including Spirit's planned future headquarters in Dania Beach, at their planned employment levels or greater for at least (5) years following the Merger Closing Date. The Merged Company shall maintain such employment levels through a substantially similar mixture of job types and compensation levels to those in place immediately preceding the Merger Closing Date. For the avoidance of doubt, neither Spirit nor the Merged Company are obligated to maintain Spirit's current headquarters facility in Miramar or employment at that facility after Spirit's planned future headquarters in Dania Beach is complete.

14. During the term of this Agreement, the Merged Company shall add at least 1,000 net new jobs to support expanded operations in South Florida. These jobs must be incremental to

JetBlue and Spirit's combined workforce in South Florida and can include new pilot or inflight (flight attendant) jobs if they are based in and live in Florida.

15. During the term of this Agreement, the Merged Company shall add at least 500 net new jobs to support expanded operations in the Orlando region. These jobs must be incremental to JetBlue and Spirit's combined workforce in the Orlando region and can include new pilot or inflight (flight attendant) jobs if they are based in and live in Florida.

16. Within three years following the Merger Closing Date, the Merged Company shall add at least 500 net new jobs to support expanded operations at additional Florida airports. These jobs must be incremental to JetBlue and Spirit's combined Florida workforce supporting Florida airports or other operations (aside from FLL and MCO).

17. The Merged Company shall not fund its commitments to Florida job growth in certain regions by moving or shifting jobs from other Florida regions. Additionally, third-party jobs that are currently outsourced by either JetBlue or Spirit that become insourced with the Merged Company (or vice versa) will not count towards the new job totals under this Agreement. In sum, the Merged Company must add at least 2,000 net new jobs in Florida. These jobs must be incremental to JetBlue and Spirit's current combined Florida workforce (inclusive of all labor currently used by JetBlue or Spirit, whether insourced or outsourced).

18. The Merged Company shall fill any Florida jobs that are lost through natural attrition or through other means in Florida.

19. As indicated in response to Specification 44 (p. 85) of the JetBlue Second Request Response, the Merged Company shall, at minimum, "extend its terms of employment, which include higher compensation[,] to all Spirit "front line" employees," including pilots, flight attendants, dispatchers, ramp service agents, passenger service agents, mechanics and airport

agents. Notwithstanding the foregoing, the Merged Company's compliance with this commitment will be subject to any limitations set forth in a collective bargaining agreement that covers any of the aforementioned front line work groups.

### **COMPLIANCE**

20. If the Attorney General has reason to believe the Merged Company is not in compliance with this Agreement, the Attorney General may request information from the Merged Company, pursuant to Civil Investigative Demand, that is reasonably necessary to verify compliance. The Merged Company shall be required to, consistent with Florida law, provide this information to the Attorney General within thirty (30) days of receipt of the Civil Investigative Demand.

21. The Merged Company shall supply reports and data to the Attorney General regarding the Minimum Capacity Levels, Additional Network Commitments, and Labor Commitments on an annual basis.

22. The Attorney General may hire, at the reasonable cost and expense of the Merged Company, such consultants as are reasonably necessary for the Attorney General to monitor the Merged Company's performance of the commitments under this Agreement. The consultant will be permitted reasonable access to the Merged Company's books and records.

### **ENFORCEMENT AND REMEDIES**

23. The Attorney General may take such action as necessary to enforce or interpret the provisions of this Agreement. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida. The Parties agree that venue for all matters or disputes arising out of this Agreement shall lie solely in the Second Judicial Circuit Court of the State of Florida.

24. The Parties agree that in any action to enforce the terms of this Agreement, a court shall have the authority to award equitable relief, including specific performance for the commitments required under this Agreement.

25. The Merged Company shall remit to the Attorney General \$500,000 for each percentage point by which the Merged Company breaches a Minimum Capacity Level. For example, if the Merged Company achieves 108% of the Combined Baseline Seat Capacity for MCO by the end of Year 2 (which requires 110% of the Combined Baseline Seat Capacity), the Merged Company will have breached its commitment by two percentage points and would therefore pay a penalty of \$1,000,000. Under this paragraph, the Merged Company shall not be required to pay more than \$75,000,000 in penalties for the term of this Agreement.

26. If the Merged Company breaches any of the Additional Network Commitments or Employment Commitments in this Agreement, the Merged Company shall remit to the Attorney General a penalty of \$100,000 for each violation. Under this paragraph, the Merged Company shall not be required to pay more than \$5,000,000 in penalties for the term of this Agreement.

27. As soon as practicable, but in no event longer than ten (10) days after the Effective Date of this Agreement, JetBlue shall pay to the Attorney General the amount of Three Hundred Thousand Dollars (\$300,000), not as a civil penalty, but to pay the costs of administration of the settlement, attorney's fees and costs incurred in the investigation of JetBlue, future monitoring expenses, and any other purpose permitted by Florida law in the sole discretion of the Attorney General. JetBlue shall pay the Attorney General an additional Seven Hundred Thousand (\$700,000) on the Merger Closing Date, not as a civil penalty, but to pay the costs of administration of the settlement, attorney's fees and costs incurred in the investigation of JetBlue, future monitoring expenses, and any other purpose permitted by Florida law in the sole



discretion of the Attorney General. Should the Attorney General incur fees, costs, or expenses exceeding \$700,000 in connection with the enforcement of this Agreement, the Attorney General may request such fees, costs, or expenses as part of an action brought in the Second Judicial Circuit Court of the State of Florida.

28. *Force Majeure*: the Merged Company shall not be deemed in violation of this Agreement if it fails to meet the Minimum Capacity Levels or Additional Network Commitments contained herein due to force majeure events including acts of God, war, acts of terrorism, sabotage, natural disaster (including hurricanes), strike, lockout, labor dispute, work stoppage, fire, serious accident, acts of a government authority, or epidemic, pandemic, or quarantine restriction. Should any such force majeure event necessitate capacity levels below the Minimum Capacity Levels or suspension of service as set forth in the Additional Network Commitments, the Merged Company will provide notice to the Attorney General as soon as reasonably practicable and, pursuant to Civil Investigative Demand, documentation of the circumstances necessitating capacity levels below the Minimum Capacity Levels or suspension of service as set forth in the Additional Network Commitments. The Merged Company will resume its obligations under this Agreement as soon as reasonably practicable and shall eliminate any deviations from the Minimum Capacity Levels or the Additional Network Commitments.

#### **ADDITIONAL TERMS**

29. If JetBlue and Spirit, or the Merged Company enter into a settlement agreement or consent decree providing remedies or commitments to the United States Department of Justice, the United States Department of Transportation, or any other state within the United States of America relating to the Merger, or if there are court-ordered remedies relating to the Merger, the

Attorney General, at her option, may amend this Agreement to incorporate any such remedies or commitments if they are different or greater (only to the extent affecting Florida) than the remedies and commitments provided under this Agreement.

30. This Agreement shall not have any effect on any claims, under federal or Florida law, brought by litigants other than the Attorney General against JetBlue, Spirit, or the Merged Company. JetBlue, Spirit, or the Merged Company shall not refer to this Agreement (or any of the commitments contained herein) in connection with any litigation brought against JetBlue, Spirit, or the Merged Company relating to the Merger. JetBlue, Spirit, or the Merged Company shall not introduce the Agreement (or any of the commitments contained herein) as evidence or use the Agreement as defense or an affirmative defense in connection with any litigation brought against JetBlue, Spirit, or the Merged Company relating to the Merger; provided, however, that if another party (other than JetBlue or Spirit) refers to the Agreement in litigation, or if it otherwise becomes relevant by means other than JetBlue or Spirit affirmatively raising it in litigation, then JetBlue may refer to the Agreement as necessary without violating this Agreement.

31. This Agreement shall not limit the authority of the Attorney General to bring an enforcement action in the future if the Attorney General believes the Merger has proven to be anticompetitive in purpose or effect.

32. This Agreement shall not have any effect on the Attorney General's action against JetBlue and American Airlines Group Inc. in the United States District Court for the District of Massachusetts, Case No. 1:21-cv-11558-LTS.

33. This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies, including rights as a third-party beneficiary. This Agreement is not

intended to create a private right of action on the part of any person or entity other than the parties hereto.

DATED: \_\_\_\_\_, 2023

ASHLEY MOODY  
Attorney General  
State of Florida

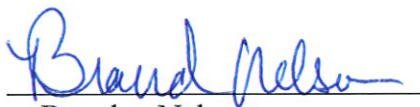
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*Counsel for State of Florida*

DATED: March 6, 2023

By:   
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*Counsel for JetBlue*

DATED: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Thomas Canfield

*Counsel for Spirit*

DATED: March 6, 2023

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