

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Postal Service (USPS), an independent establishment of the executive branch of the Government of the United States (collectively the "United States") and Delta Air Lines, Inc., a Delaware Corporation with principal executive offices in Atlanta, GA (Delta) (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Delta is an international airline incorporated in Delaware with its principal headquarters located in Atlanta, Georgia

B. USPS entered into contracts with Delta that required Delta to take possession of receptacles of United States mail at one of six domestic locations in the United States or at various Department of Defense and/or Department of State locations abroad and deliver that mail to numerous international destinations and/or domestic locations.

C. Beginning in 2009, Delta performed services for the USPS under the following contracts for the carriage of United States mail: 7GBTNS09B00001DL, 7GBTNS09B00002DL, 7GBTNS09B0000EDL, ICAIR121DL, ICAIR122DL, ICAIR151DL, ICAIR152DL (collectively the "ICAIR Contracts").

D. The United States contends that the ICAIR Contracts required as a condition of payment that Delta perform and submit delivery scans or other delivery information reflecting the time that Delta transferred possession of the United States mail

to foreign postal administrations or other intended recipients. The United States further contends that it has certain civil claims against Delta arising from its submission of certain delivery scans or other delivery information under the ICAIR Contracts during the period from April 1, 2010 through January 25, 2016. Specifically, the United States contends that, with respect to certain United States mail carried by Delta under the ICAIR Contracts, Delta knowingly created and submitted, and/or caused to be submitted, to the USPS delivery scans or other delivery information material to payment that falsely conveyed information about delivery, including the time that Delta transferred possession of the United States mail to foreign postal administrations or other intended recipients. The conduct described in this paragraph is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by Delta nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Delta shall pay to the United States \$10,500,000 (Settlement Amount), of which \$5,250,000 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice no later than 30 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States’ receipt of the Settlement Amount, the United States releases Delta, together with its current and former parent corporations;

direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, or the common law theories of breach of contract, payment by mistake, negligence, unjust enrichment, and fraud.

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Delta waives and shall not assert any defenses Delta may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

5. Delta fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Delta has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Delta, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

- (3) Delta's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Delta makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Delta, and Delta shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Delta shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Delta or any of its subsidiaries or affiliates from the United States. Delta agrees that the United States, at a minimum, shall be entitled to recoup from Delta any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Delta's books and records and to disagree with any calculations submitted by Delta or any of its subsidiaries or

affiliates regarding any Unallowable Costs included in payments previously sought by Delta, or the effect of any such Unallowable Costs on the amount of such payments.

7. This Agreement is intended to be for the benefit of the Parties only.

8. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

9. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

10. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Northern District of Georgia. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

13. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

14. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

15. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

16. This Agreement is binding on Delta's successors, transferees, heirs, and assigns.

17. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

18. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 06/29/2022

BY: Don Williamson

Don Williamson
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DELTA AIR LINES, INC.

DATED: June 27, 2022

BY:

Meg Taylor
Meg Taylor
Vice President, Chief Litigation Counsel
Delta Air Lines, Inc.

DATED: 6/27/2022

BY:

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