

# **CLASS ACTION SETTLEMENT AGREEMENT**

## **I.**

### **INTRODUCTION AND SUMMARY OF PROCEEDINGS**

1. This Class Action Settlement Agreement (the “Settlement Agreement”) is made and entered into on this 22nd day of January 2008 by and through each party’s counsel, as among the Plaintiffs (as defined below), on behalf of themselves and in their capacity as representatives of the Settlement Class (as defined below), World Airways, Inc. (“World Airways”) and Capitol Indemnity Corporation (“Capitol Indemnity”, and together with World Airways, the “Settling Defendants”).

2. On January 27, 2004, Dr. Obiora Anyoku, Dr. Azuka Anyoku, Faith Adepoju, Uche Ukwuoma, McLord Obioha, and Newman Nkwor (hereinafter the “Anyoku Plaintiffs”) filed a putative class action complaint in the United States District Court in the Eastern District of New York (No. 04-CV-0304) that named World Airways, Ritetime Aviation and Travel Services, Inc. (“Ritetime”) and O. Peter Obafemi as defendants.

3. On April 2, 2004, the Anyoku Plaintiffs and Inim Plaintiffs (as defined herein) filed Second Amended Class Action Complaints (attached hereto as Exhibit A). The Anyoku Plaintiffs added Capitol Indemnity as a defendant, incorrectly sued as Capital Indemnity Insurance Company. Capitol Indemnity previously issued a Public Charter Operator’s Bond (No. 60015448) (hereinafter the “Bond”) with a \$200,000 penal sum limit to Ritetime. Capitol Indemnity issued the Bond pursuant to the United States Department of Transportation Public Charter Regulations. In their pleading, the Anyoku Plaintiffs advanced a single count against Capitol Indemnity entitled “Action on Bond.” The Anyoku Plaintiffs claimed, among other things, that they have suffered damages in connection with Ritetime and/or World Airways

allegedly failing to provide transportation pursuant to certain Ritetime charter tickets that were not honored.

4. On May 20, 2004, the Plaintiffs filed a revised motion for class certification. In connection with their “Action on Bond” against Capitol Indemnity, the Anyoku Plaintiff class representatives sought to certify a “United States Passenger Class” under Fed. R. Civ. P. 23(b)(1)(B). The Court eventually granted class certification and certified a single class of both United States and Nigeria originating passengers.

5. On June 21, 2004, the Judicial Panel on Multidistrict Litigation established a MDL for the coordination and consolidation of pretrial discovery under the name: *In re Nigeria Charter Flights Litigation*, (No. 04-MD-1613). Pursuant to the Order, federal court cases pending in Illinois, New Jersey, Georgia, and the Southern District of New York were transferred to the Eastern District of New York.

6. The Settling Defendants deny any liability or wrongdoing, and further deny that the Plaintiffs or Settlement Class Members, as defined below, have any justifiable claim for relief or that they have any liability to the Plaintiffs or Settlement Class Members, and assert that they have numerous meritorious affirmative defenses to the Class Action Complaint advanced by the Plaintiffs and Settlement Class Members.

7. The Settling Defendants agree, for the purposes of settlement only, not to assert any affirmative defenses, and individual issues of liability, causation and damage.

8. Arm’s length settlement negotiations have taken place between Class Counsel and counsel for the Settling Defendants. This Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Settling Defendants and the Plaintiffs and Settlement Class Members, has been reached subject to the final approval of the Court.

9. Class Counsel have concluded, after substantial discovery and extensive investigation of the facts and law applicable to Plaintiffs' Class Action Complaints, and after carefully considering the circumstances of the actions and the substantial benefits that the Settlement Agreement provides, that it is in the best interests of the Settlement Class Members to enter into this Settlement Agreement in order to avoid the uncertainties of this complex litigation and to provide a benefit to the Settlement Class Members.

10. Class Counsel considers the Settlement with the Settling Defendants set forth herein to be fair, reasonable, adequate, and in the best interests of the Settlement Class Members.

11. The Settling Defendants have concluded, without conceding any wrongdoing or liability of any kind, that entering the Settlement Agreement is desirable in order to avoid the burden of defending protracted litigation, to put the Class Action Complaint and related liabilities to rest, and also to serve as an appropriate vehicle for the Settling Defendants to provide Plaintiffs and Settlement Class Members with the benefits provided for in this Settlement.

## II.

### DEFINITIONS

For purposes of this Settlement Agreement the following terms shall have the meanings set forth below.

12. "Anyoku Plaintiffs" means the individuals, including Dr. Obiora Anyoku, Dr. Azuka Anyoku, Faith Adepoju, Uche Ukwuoma, and Newman Nkwor, who filed a Second Amended Class Action Complaint in the United States District Court in the Eastern District of New York against the Defendants.

13. "Bond" means the Public Charter Operator's Bond (No. 60015448), with a

\$200,000 penal sum limit, issued by Capitol Indemnity to Ritetime in accordance with the United States Department of Transportation Public Charter Regulations.

14. “Capitol Indemnity” means Capitol Indemnity Corporation, incorrectly named as Capital Indemnity Insurance Company in the Second Amended Class Action Complaint.

15. “Claims” or “Claim” means all claims for recovery under this Settlement Agreement to be filed by the Claimants.

16. “Claimants” means individuals who submit claim forms pursuant to the terms of this Settlement Agreement.

17. “Class” means all individuals who are Settlement Class Members.

18. “Class Action Complaints” or “Complaints” means the Second Amended Class Action Complaints filed by the *Anyoku* Plaintiffs and the *Inim* Plaintiffs, copies of which are attached hereto as Exhibit A.

19. “Class Counsel” means the two lead counsel, Echeruo, Counsel, Attorneys at Law, LLP and Thacher Proffitt & Wood LLP, previously appointed by Chief United States District Judge Raymond J. Dearie.

20. “Class Action Settlement” or “Settlement” means the settlement set forth in this Settlement Agreement.

21. “Settlement Class Members” or “Settlement Class Member” means all individuals holding tickets purchased prior to January 31, 2004 for travel between the United States and Lagos, Nigeria on World Airways, who World Airways allegedly failed to transport on its aircraft as scheduled due to World Airways’ discontinuation of flight operations to and from Nigeria on or about December 28, 2003, and (i) who have not previously entered into a binding settlement with World Airways and (ii) whose claims have not been previously adjudicated in

other proceedings.

22. “Custodial Agent” means Zuckert, Scoutt & Rasenberger, L.L.P., once it has possession and control over the Fund.

23. “Class Representatives” means the individuals, including Dr. Obiora Anyoku, Dr. Azuka Anyoku, Faith Adepoju, Uche Ukwuoma, Newman Nkwor, Mabel Inim, Florence Bolaji Shonaiya and Julia Njoku .

24. “Court” means the United States District Court for the Eastern District of New York.

25. “Court Approval” means the Court’s order granting final approval of the Settlement Agreement, with no change except as agreed to by the Parties.

26. “Court Approval Date” means the date when Court Approval occurs.

27. “Fairness Hearing” means the hearing conducted by the Court to determine the fairness, adequacy and reasonableness of this Settlement Agreement under Fed. R. Civ. P. 23(e).

28. “Fairness Hearing Date” means the date on which the Fairness Hearing occurs.

29. “Final Judicial Approval” means the approval of the Settlement Agreement by the Court with no change except as agreed to by the Parties, and dismissal with prejudice of the Class Action Complaints, and such approval and dismissal becoming final by the exhaustion of either the time to appeal or all actual appeals filed, including petitions for a writ of certiorari to the United States Supreme Court. In the event that Court Approval is denied and the period for appealing this denial has expired without a successful appeal having been taken, Final Judicial Approval shall not be deemed to have been obtained.

30. “Final Judicial Approval Date” means the date on which Final Judicial Approval occurs.

31. “Inim Plaintiffs” means the individuals, including Mabel Inim, Florence Bolaji Shonaiya and Julia Njoku, who filed a Second Amended Class Action Complaint in the United States District Court in the Eastern District of New York against World Airways and Ritetime.

32. “Notice Period” means the ninety (90) days following the Final Judicial Approval Date.

33. “Notice Plan” means the Court-approved process by which the Plaintiffs shall distribute and publicize notice of the Settlement to Settlement Class Members.

34. “Parties” means Plaintiffs and the Settling Defendants.

35. “Plaintiffs” means the Inim Plaintiffs and the Anyoku Plaintiffs together.

36. “Preliminary Approval” means the Court’s order granting preliminary approval of this Settlement Agreement.

37. “Preliminary Approval Date” means the date on which the Court grants Preliminary Approval of this Settlement Agreement.

38. “Qualifying Class Member” means a Settlement Class Member who:

- (1) did not use all or part of a ticket for a flight on World Airways as part of the Ritetime flight program; and
- (2) did not receive reimbursement from World Airways or Ritetime or any of its employees or agents for the unused portion(s) of their tickets; and
- (3) did not receive alternative flight arrangements, provided for by World Airways or Ritetime or any of its employees and/or agents; and
- (4) has not already entered into a binding settlement agreement with Ritetime or World Airways; and
- (5) is presenting a claim against Ritetime, Capitol Indemnity or World Airways that has not previously been adjudicated in other proceedings.

39. “Qualifying Claimants” or “Qualifying Claimant” means those Qualifying Class Members who submit valid claim forms plus substantiating documentation within the time

period(s) specified by the Court.

40. “Qualifying Claims” or “Qualifying Claim” means those claims filed by Qualifying Claimants which are determined to be valid claims under the terms and conditions of this Settlement Agreement.

41. “Released Parties” means :

a) World Airways, including all of its past, present and future predecessors and successors in interest, parent companies, subsidiaries, affiliates, divisions, operating units, assigns, and related entities in which it has, or may have, an interest, together with each of their respective past, present, and future directors, officers, attorneys, employees, shareholders, affiliates, representatives, administrators, insurers, joint ventures and agents, including producing agents; and

b) Capitol Indemnity, including all of its past, present and future predecessors and successors in interest, parent companies, subsidiaries, affiliates, divisions, operating units, assigns, and related entities in which it has, or may have, an interest (including but not limited to Platte River Insurance Company, Underwriters Insurance Company, and Capitol Insurance Companies), together with each of their respective past, present, and future directors, officers, attorneys, employees, shareholders, affiliates, representatives, administrators, insurers, joint ventures and agents, including producing agents (including but not limited to Machean Enterprise, Inc.).

42. “Ritetime” means Ritetime Aviation and Travel Services, Inc.

43. “Settled Claims” means any and all Claims (as previously defined herein), debts, obligations, damages, liabilities, actions, proceedings, loss, and causes of actions, including assigned Claims, whether known or unknown, asserted or unasserted, direct or derivative,

whether accrued in whole or in part, regardless of the legal theory, by Settlement Class Members that without limitation and by way of example, arise out of the allegations in the Class Action Complaints, and all Claims for damages or remedies of whatever kind or character, known or unknown, including but not limited to those that relate to World Airways or Capitol Indemnity's Bond for:

- a) Claims presented in the Class Action Complaints;
- b) the unused portion of tickets purchased prior to January 31, 2004 for travel between the United States and Lagos, Nigeria on World Airways;
- c) personal injury and/or bodily injury, damage, death, fear of disease or injury, mental or physical pain or suffering, emotional or mental harm, or loss of enjoyment of life;
- d) loss of wages, income, earnings, and earning capacity, medical expenses, and doctor, hospital, nursing, and drug bills;
- e) loss of support, services, consortium, companionship, society or affection, or damage to familial relations, by spouses, parents, children, other relatives or "significant others" of Settlement Class Members;
- f) wrongful death and survival actions;
- g) medical screening and monitoring;
- h) injunctive and declaratory relief;
- i) consumer fraud, refunds, unfair business practices, deceptive trade practices, unjust enrichment, disgorgement, and other similar claims whether arising under statute, regulation, or judicial decision;
- j) compensatory damages, punitive, exemplary, statutory and other multiple damages or penalties of any kind including, without limitation, economic or business losses or disgorgement of profits;
- k) pre-judgment or post-judgment interest; and
- l) any other incidental or consequential damages not included above.

The Settled Claims also include all claims that have been presented or made, directly or indirectly, to the Settling Defendants by individual Ritetime Nigeria charter flight passengers,

and/or their attorneys, prior to the entry of this Settlement Agreement. Such additional claims, include, but are not necessarily limited to, any demand letters, correspondence, or any other appropriate medium for making a claim, sent to the Settling Defendants or their agents, prior to Plaintiffs filing their Second Amended Class Action Complaint on April 2, 2004.

Notwithstanding the foregoing, nothing herein shall preclude claims against O. Peter Obafemi and Ritetime.

44. “Settlement Class” means the individuals who fall within the definition of Settlement Class Members, as set forth in this Settlement Agreement.

45. “Settling Defendants” means World Airways and Capitol Indemnity.

46. “Settlement Fund(s)” or “Fund” means the \$5,700,000 paid by the Settling Defendants pursuant to this Settlement Agreement as a full and final resolution of the Settlement Class Members’ claims against the Settling Defendants.

47. “Settlement Administrator” means a person or entity to be agreed upon by the Parties and approved by the Court who shall administer providing notice to the Class as more fully defined in this Settlement Agreement.

48. “World Airways” means World Airways, Inc., as defined under “Released Parties” above.

### III.

#### GENERAL MATTERS

##### Compromise of Disputed Claims

49. This Settlement Agreement is a compromise of the litigation and is the product of

serious and extended negotiations between the Parties.

**No Admissions of Liability**

50. Nothing in this Settlement Agreement, nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Settlement Agreement, is intended to be, or shall be construed as or deemed to be, evidence of an admission or concession by the Settling Defendants of any liability or wrongdoing or of the truth of any allegations asserted by Plaintiffs against them, Ritetime, or O. Peter Obafemi and no such statement, transaction or proceeding shall be admissible in evidence for any such purpose except for purposes of obtaining approval of this Settlement Agreement in this or any other proceeding, or as otherwise provided herein.

**Release; Claims Subject to this Settlement Agreement**

51. Upon the Final Judicial Approval Date, each and every Plaintiff and Settlement Class Member shall unconditionally, fully and finally release and discharge forever the Released Parties from the Settled Claims and any liability arising therefrom. The Court shall enter an order fully and finally enjoining further prosecution of all claims released herein and ordering the dismissal of all state and federal court actions with prejudice. The Court shall also enter an order canceling and discharging the Bond.

52. Settlement Class Members agree to sign a release in favor of the Settling Defendants and to dismiss with prejudice any and all other actions they have initiated in connection with the Settled Claims.

53. The Parties hereby agree to request that the Court enter an order barring and enjoining, to the fullest extent permitted by applicable law, the commencement and prosecution of any contribution and/or indemnification claim or any other action by or on behalf of any Settlement Class Member or entity against the Settling Defendants or any other Released Party

for any and all claims, damages and or losses, including, without limitation, claims for reimbursement for payments made or to be made to or on behalf of any such Settlement Class Member of Ritetime Nigeria charter flight related claims, actions or injuries, or for expenses incurred in defending against any such claims, actions or proceedings. The Parties agree that the Settling Defendants and the other Released Parties shall be entitled to dismissal with prejudice of any and all claims against them by or on behalf of any Settlement Class Member that violate or are inconsistent with this bar.

54. Plaintiffs and Settlement Class Members covenant and agree not to hereafter seek to establish liability or assert claims against any of the Released Parties, in whole or in part, for any of the Settled Claims. The Parties specifically agree that the claims released herein extend to *all* claims of any kind or nature whatsoever, including but not limited to any and all Settled Claims, or claims which might be cognizable before any arbitrator, federal and/or state agency, and/or federal and/or state court or any court located in a jurisdiction outside the United States.

55. This Settlement Agreement will exhaust the full amount of Capitol Indemnity's Bond, and the Class Notice shall state that to the extent a passenger chooses to opt out of the Settlement, they will therefore be unable to recover from Capitol Indemnity. The Class Notice shall also state that any passenger who wishes to opt out of this Settlement must opt out with respect to both World Airways and Capitol Indemnity.

**Effective Date of Settlement Agreement**

56. Following signature of the Parties' representatives, this Settlement Agreement is effective on the Court Approval Date (the "Effective Date").

#### IV.

### COMPENSATION PROVIDED IN SETTLEMENT OF CLAIMS

#### Class Distribution Fund

57. Within 30 days of the Preliminary Approval Date, the Settling Defendants shall pay five million, seven hundred thousand dollars (\$5,700,000) in the Fund. Of that amount, World Airways or those acting on its behalf shall contribute \$5,500,000 and Capitol shall contribute \$200,000. The Fund shall be held and administered by the Custodial Agent pursuant to an escrow agreement in a form to be agreed upon by the Parties and approved by the Court. No disbursements, payments, advances, or other alienation of any value shall be made from the Fund except as provided herein.

58. The \$5,500,000 payment detailed in this section of the Settlement Agreement represents the full amount that World Airways or its insurers shall be obligated to pay under this Settlement Agreement. Under no circumstances shall World Airways or its insurers be required to pay in excess of \$5,500,000 as part of this Settlement.

59. The \$200,000 payment detailed in this section of the Settlement Agreement represents the full penal sum limit of Capitol Indemnity's Bond, and the total amount that Capitol Indemnity shall be obligated to pay under this Settlement Agreement and under the Bond. Under no circumstances shall Capitol Indemnity be required to pay in excess of \$200,000 as part of this Settlement.

60. All Settlement Funds shall be deemed to be *in custodia legis*, and shall remain subject to the jurisdiction of the Court, until such Settlement Funds are fully distributed to the Qualifying Claimants in connection with their Qualifying Claims or returned to the Settling Defendants, or upon further order(s) of the Court.

61. Neither the Settlement Fund nor any other funds provided by the Settling Defendants shall be used to pay the Class Representatives any special damages, or compensation, awarded by the Court for agreeing to serve as Class Representatives in this litigation.

**Settlement Class Members Qualifying for Payment from the Fund**

62. To qualify to receive payments under this Settlement an individual must be a Qualifying Claimant and present a Qualifying Claim. (As stated herein, a Qualifying Claimant must be a Settlement Class Member and must have met all of the other additional criteria set forth in the definition of a Qualifying Class Member).

**Distribution of the Fund to Qualifying Claimants**

63. Following the payment of certain costs outlined or anticipated under this Settlement Agreement, including any expenses and/or attorneys' fees approved by the Court, the balance remaining in the Fund shall be \$3,485,000. The Fund shall be distributed as follows:

- a) in the event there are two thousand fifty (2050) or fewer Qualifying Claimants, each Qualifying Claimant whose claim is approved shall be entitled to compensation in the amount of one thousand seven hundred dollars (\$1700); and
- (b) in the event there are more than two thousand fifty (2050) Qualifying Claimants, the \$3.485 million will be prorated accordingly, with each Qualifying Claimant whose claim is approved receiving less than \$1,700. For example, if there were 2,500 valid claimants, each would receive \$1,394.

To the extent that any Settlement Funds remain after payment to all Qualifying Claimants of the amounts provided for under this paragraph, World and its insurers shall be entitled to all money left in the Fund. For example, assuming there are 2,000 Qualifying Claimants, each Qualifying Claimant would receive \$1,700 and World and its insurers would receive a remitter

of \$85,000.

### **ATTORNEY FEES**

64. Class Counsel shall petition the Court for attorneys' fees, costs and disbursements to be awarded from the \$5,500,000 contributed by World Airways to the Settlement Funds. It is understood and agreed that the legal fees and expenses sought by Class Counsel are \$2,065,000, and the Settling Defendants agree that they will support the fee application by Class Counsel. Class Counsel have agreed among themselves that Thacher Proffitt & Wood LLP shall be first entitled to reimbursement of \$110,000 of costs and disbursements before division of the remaining \$1,955,000. Class Counsel's attorneys' fees and costs shall be paid within seven business days of the Court granting, whether in whole or in part, Class Counsel's motion for attorneys' fees. Class Counsel's fees shall be paid via wire transfer according to wire instructions to be provided by Class Counsel.

## **VI.**

### **SETTLEMENT APPROVAL AND NOTICE PROCEDURES**

#### **Preliminary Approval & Scheduling**

65. The Parties agree, as soon as practicable and within 30 days after execution of this Settlement Agreement, to jointly move the Court to find preliminarily that this Settlement is a fair and reasonable compromise of the Claims and appoint the Custodial Agent.

66. The Parties agree to, within 30 days after execution of the Settlement Agreement or such other time as agreed by the Parties or ordered by the Court, jointly move the Court to:

- (a) order that notice of the litigation be provided to Settlement Class Members;
- (b) appoint the Settlement Administrator;
- (c) declare that the content of the proposed notice and the mechanisms of communicating such notice meet the requirements of Fed. R. Civ. P. 23 and the

Due Process Clause with respect to all Settlement Class Members;

- (d) schedule, at least 30 days prior to the settlement hearing, a date by which any Settlement Class Member who objects to the terms of this Settlement Agreement may file written objections to this Settlement Agreement with the Clerk of the Court, and serve such objections on Class Counsel, World Airways and Capitol Indemnity; and
- (e) schedule a Fairness Hearing pursuant to Fed. R. Civ. P. 23(e) at which any Settlement Class Member, who meets other requirements established by the Court, may appear in order to object to the fairness, adequacy, or reasonableness of this Settlement Agreement or to any order or findings of the Court.

### **Objections to Settlement**

67. Any Settlement Class Member may object in writing to the terms of this Settlement Agreement. Unless the Court directs otherwise, all objections to the Settlement shall be submitted in writing to the Court, Class Counsel, and the Settling Defendants in a manner and time prescribed by the Court no less than 30 days in advance of the Fairness Hearing on the Settlement. Any objections not so submitted shall be waived. Anyone wishing to appear at the Fairness Hearing to object to the Settlement shall so specify in his or her written objections.

68. Settlement Class Members who do not file and serve timely written objections will not be permitted to present any objection to this Settlement Agreement at the Fairness Hearing. The filing and service of an objection to this Settlement does not affect the Settlement Class Member's right to submit a claim for recovery in accordance with the terms of this Settlement Agreement.

69. Should any objecting Settlement Class Member wish to recover a claim under this Settlement Agreement in the event his or her objections are not sustained, such Settlement Class Members must comply with the claims procedures set forth herein.

### **Notice Provisions**

70. Individual Notice. The Parties agree that the Settlement Class Members who can

be identified through reasonable effort should be given notice of the litigation and the Settlement in the form proposed by Class Counsel and the Settling Defendants, subject to any modifications ordered by the Court. After the Court gives Preliminary Approval of this Settlement Agreement, both the Settling Defendants and Class Counsel shall provide to the Settlement Administrator a list of the names of those individuals whom each Party believes may be Settlement Class Members based on information already in such Party's possession. The provisions concerning the Parties', Class Counsel's and the Settlement Administrator's respective duties related to identification of Settlement Class Members are described in Article VII of this Settlement Agreement.

71. Publication. After such time as the Court orders notice of this Settlement Agreement to be provided to Settlement Class Members, notice of this Settlement Agreement shall be published in the following form, subject to the Court's approval: (1) once in full page advertisements in ThisDay, Punch and African Abroad newspapers; once in half-page advertisements in ThisDay, Punch and African Abroad newspapers; and for one week on the internet site "nigeriaworld.com" ; (2) once in a press release issued through PR Newswire; (3) by Class Counsel on its internet site, "waaclassaction.com"; and (4) subject to Court approval, on the official website for the District Court of the Eastern District of New York.

72. Costs of Notice and Administration. World Airways or its insurers shall contribute not more than \$150,000 to cover or defray the costs of providing the notice to potential Settlement Class Members and administration of the settlement, including but not limited to the fees and expenses of the Settlement Administrator. This \$150,000 shall be used solely for the costs of providing notice and administration of the settlement, and other fees such as legal fees associated with settlement shall not be paid from the \$150,000 (except to the extent

Class Counsel or counsel for World Airways agree to play a role in settlement administration, as contemplated herein). To the extent the \$150,000 is not exhausted by the costs of providing notice and administration of the settlement, the remainder shall be remitted to World Airways or its insurers.

73. The Notice Period shall last for ninety (90) days after the Final Judicial Approval Date, upon approval from the Court. After 90 days have passed, the Settlement Class Members shall no longer be able to apply for compensation from the Fund.

## **VII.**

### **SETTLEMENT ADMINISTRATION PRIOR TO COURT APPROVAL OF THE SETTLEMENT AGREEMENT**

#### **Selection of Settlement Administrators**

74. Class Counsel and World Airways shall each provide an attorney or paralegal to administer the settlement, the cost of which shall be recovered from the \$150,000 provided for in paragraph 73. The responsibilities of such attorney or paralegal shall include but not be limited to reviewing claim forms and substantiating documentation to determine whether a Claimant is a Qualifying Claimant. Class Counsel and World Airways shall also agree upon a neutral party who will be empowered to resolve any disputes that arise concerning whether a Claimant is a Qualifying Claimant. Class Counsel and the Settling Defendants shall also agree upon a Settlement Administrator.

#### **Responsibilities Regarding Notice of Settlement Hearing**

75. The Settling Defendants and Class Counsel shall compile the reasonably available records in their possession regarding potential Settlement Class Members' identities and last known addresses. The Settling Defendants shall make reasonable efforts to determine Settlement Class Members' identity and last known address information reasonably available

from the records already in their possession. Subject to an appropriate confidentiality order by the Court, the Settling Defendants and Class Counsel shall provide the Settlement Administrator with the above-described records regarding potential Settlement Class Members.

76. In providing information to the Settlement Administrator, Class Counsel is acting exclusively as attorneys for the Class and counsel for the Settling Defendants are acting exclusively as attorneys for the Settling Defendants. Neither Class Counsel nor the Settling Defendants represent that the information provided to the Settlement Administrator is necessarily complete or accurate, or includes and/or reflects individuals who meet the criteria to be Settlement Class Members, Qualifying Class Members, or Qualifying Claimants.

77. Based on the materials provided by Class Counsel and the Settling Defendants, the Settlement Administrator shall mail individual notices in a form to be agreed by Class Counsel and the Settling Defendants and to be approved by the Court, to the last known address, if any, of each potential Settlement Class Member whose identity the Settlement Administrator can determine, with the return address of an agreed upon lock box address. The Settlement Administrator shall also prepare and provide to Class Counsel and the Settling Defendants, as soon as practicable after sending the notice, a list of all persons to whom notices were sent together with address information.

78. Within a reasonable time prior to the Settlement Hearing, the Settlement Administrator shall file its report with the Court. The report shall include, but not be limited to:

- (a) the steps taken by the Settlement Administrator to compile the list of potential Settlement Class Members to whom notice was mailed;
- (b) the list of potential Settlement Class Members to whom notice was mailed, and a list of potential class members for whom no known address could be determined (such lists to be filed under seal);
- (c) summary information regarding notices that have been returned as undeliverable;

- (d) the steps taken to comply with the publication requirements; and
- (e) a summary of the Settlement Administrator's costs and expenditures for the administration of the notice requirements.

A copy of the Settlement Administrator's report shall be provided to the Court and to Class Counsel and the Settling Defendants' Counsel.

### **Settlement Hearing**

79. The Parties shall jointly move the Court to approve this Settlement Agreement pursuant to Rule 23(b) and (e) of the Federal Rules of Civil Procedure.

## **VIII.**

### **ADMINISTRATION OF CLAIMS AND THE CLASS DISTRIBUTION SETTLEMENT FUND**

80. The Fund shall be held by the Custodial Agent, or such other person as the Court may appoint, under the continuing jurisdiction and supervision of the Court for the benefit of the Settlement Class Members. The Fund shall be held in an interest-bearing account.

### **Settlement Administration**

81. Settlement administration will be handled in the first instance by one representative from Class Counsel and one representative for World Airways. Potential Claims with supporting documentation will be mailed by Claimants to an agreed upon lock box address. At the end of the Notice Period, the representatives of World Airways and Class Counsel will each receive copies of the material submitted by Claimants. Both representatives shall review the documentation against the available records. Capitol Indemnity shall be provided with the results of the review process upon its completion. At the conclusion of this review process, if the representatives of World Airways and Class Counsel disagree as to the validity of a Claim, they will present that claim to the previously chosen neutral for resolution.

82. In carrying out its duties, the Custodial Agent shall act as a fiduciary with respect to handling, management, and distribution of settlement funds for the Qualifying Class Members, provided that the Custodial Agent shall be entitled to rely on (i) the information provided by Class Counsel, the Settling Defendants and the Settlement Administrator with respect to Settlement Class Members and (ii) the determinations of Class Counsel, World Airways and any neutral party selected by Class Counsel and World Airways with respect to the distribution of Settlement Funds to Qualifying Claimants.

83. As a condition of contracting to serve as, or otherwise accepting selection to perform their roles, the Settlement Administrator and the Custodial Agent shall each unequivocally agree in writing that they acknowledge, accept, and agree to all of the duties, responsibilities, and obligations specified in this Settlement Agreement and such other agreements as may be adopted pursuant to this Settlement Agreement.

**Information to be Utilized for Claims Processing**

84. The Parties recognize that information concerning potential Settlement Class Members may be incomplete or no longer available. The Settling Defendants shall provide the Settlement Administrator with reasonably available records containing information about potential Settlement Class Members necessary to implement this Settlement Agreement. Class Counsel shall provide the Settlement Administrator with information in their possession concerning the identity of potential Settlement Class Members necessary to implement this Settlement Agreement. The Settlement Administrator shall be entitled to rely on the information (a) provided by Class Counsel and the Settling Defendants, (b) obtained from third parties, (c) obtained from address databases normally utilized in the course of business, and (d) provided by potential Settlement Class Members if adequately documented. The Settlement Administrator is not required to conduct further searches for potential Settlement Class

Members.

**Miscellaneous Arrangements with Settlement Administrator and Custodial Agent**

85. There will be various documents prepared regarding the services to be provided by the Settlement Administrator relating to fees for services, such as a qualified settlement fund agreement and procedures. Such agreements shall be reviewed by Class Counsel and the Settling Defendants. These contracts or other documents shall be subject to approval by Class Counsel, the Settling Defendants and the Court.

**Reporting**

86. The Settlement Administrator and the Custodial Agent shall maintain complete and accurate records showing all receipts and disbursements and documenting their activities. The Settlement Administrator shall prepare reports and create and maintain all the records and information required by this Settlement Agreement and any subsequent agreement. All records and information of the Settlement Administrator and the Custodial Agent shall be made available for inspection at any reasonable time by Class Counsel, the Settling Defendants and such other person(s) as designated by the Court. The Settlement Administrator shall also provide a summary report at reasonable intervals to the Court, Class Counsel, and the Settling Defendants of the steps taken and progress made in claims administration. The Custodial Agent shall provide reports of disbursements to Capitol, World Airways and Class Counsel at reasonable intervals. All databases utilized by and/or developed by the Settlement Administrator shall be made available to Class Counsel and the Settling Defendants' Counsel. Within a reasonable time following approval of the Settlement Administrator's Final Report, the Settlement Administrator shall transfer to Class Counsel and the Settling Defendants all originals and all copies of the records, documents, and any other materials regarding Settlement Class Members. The Settling Defendants and their counsel shall have the right to be kept apprised as to the exhaustion of the

Settlement Fund. In this regard, the Settling Defendants shall, upon consultation with Class Counsel, have the right to conduct, at their own expense, an audit of the Claims, the Claimants, the Settlement Fund, and the conduct of any Settlement Administrator.

**Claim Requirements**

87. Only Qualifying Claimants, (or their representatives, guardians, attorneys-in-fact, trustees or representatives of their estate), who submit Qualifying Claims with substantiating documentation shall qualify to receive a payment from the Fund. The Court retains jurisdiction to determine the persons to whom a payment should be made in the event of a Settlement Class Member's death, dissolution of marriage, bankruptcy proceedings, garnishment proceedings, etc., in the event the neutral described in paragraph 74, for whatever reason, cannot make that determination.

**Disbursement to Settlement Class Members**

88. The Parties expressly disclaim that the Settling Defendants have any responsibility or liability for any distributions of the Settlement Funds or any reporting requirements that may relate thereto. The Parties further agree that no person shall have any claim against any of the Parties, their respective counsel, the Custodial Agent or the Settlement Administrator based on the distributions made substantially in accordance with this Settlement Agreement and any orders of the Court.

**Unclaimed Distributions and Funds Remaining**

89. Qualifying Claimants shall have no more than six (6) months from the date the disbursement is mailed to cash the disbursement check, except that in the event a Qualifying Claimant's check is returned to the Custodial Agent as undeliverable, additional efforts shall be made by the Settlement Administrator to locate the Qualifying Claimant (such as re-mailing to and/or contacting an emergency contact). The Custodial Agent shall only be obligated to re-mail

a check once.

90. If the Qualifying Claimant still cannot be located or, if, after re-mailing to a new address or emergency contact the disbursement check is not cashed within ninety days from the date of the second mailing (or a total of 180 days from the first mailing, whichever is later), these unclaimed settlement funds shall be paid back into the Fund.

### **Final Report**

91. Within a reasonable time after the check-cashing closing period discussed herein, the Settlement Administrator and the Custodial Agent shall submit final reports to the Court, under seal, with a copy to Class Counsel and the Settling Defendants. The report shall include, but not be limited to (1) the steps and procedures taken by the Settlement Administrator in complying with the Settlement Agreement, (2) the income received by the Fund, (3) the identity of each Qualifying Claimant and the amount disbursed to each, (4) the identity of Settlement Class Members whose distribution was unclaimed, and (5) the Custodial Agent's and the Settlement Administrator's costs and expenses.

92. Upon Court approval of the Final Report, at a time to be set by the Court, the Custodial Agent and the Settlement Administrator shall be relieved of performance of their administrative functions pursuant to this Settlement Agreement.

### **Resignation or Termination of the Settlement Administrator or Custodial Agent**

93. The Court shall have the authority upon the petition of Class Counsel or the Settling Defendants to suspend, terminate, and/or replace the Settlement Administrator. In the event of the Settlement Administrator's resignation or termination prior to completion of the disbursements to Qualifying Claimants, the Settlement Administrator shall provide the successor with an accounting and all records, files, and information in its possession or under its control concerning the claims processing and administration.

94. The Court shall have the authority upon the petition of Class Counsel or the Settling Defendants to suspend, terminate, or replace the Custodial Agent. In the event of the Custodial Agent's resignation or termination prior to completion of the disbursements to Qualifying Claimants, the Custodial Agent shall transfer the Fund to the successor and provide the successor with an accounting and all records, files, and information in its possession or under its control concerning the claims processing and administration.

95. By reviewing agreements or documents with the Settlement Administrator and the Custodial Agent, or in making recommendations, neither Class Counsel nor the Settling Defendants shall have any administrative duties concerning the Funds, including but not limited to investment, management, distribution, reporting, and accounting. Neither Class Counsel, the Settling Defendants nor the Settling Defendants' counsel are responsible for carrying out or supervising the Settlement Administrator's or the Custodial Agent's actions, obligations or duties, except that nothing in this paragraph shall diminish Class Counsel's responsibilities as counsel for Anyoku Plaintiffs, the Inim Plaintiffs and the Class. Class Counsel may make recommendations to the Settlement Administrator or the Custodial Agent, but only the Court has authority to approve or disapprove the Settlement Administrator's or the Custodial Agent's acts.

## **IX.**

### **PARTIES' COOPERATION**

96. Within thirty (30) calendar days after the execution of this Settlement Agreement, the Plaintiffs shall move the Court for an order granting Preliminary Approval of the Settlement and the Settlement Class. Prior to filing this motion, Class Counsel shall give the Settling Defendants a reasonable opportunity to review and comment on its content. The Settling

Defendants shall further have the right to file any additional papers they deem necessary to support Preliminary Approval, clarify their positions and otherwise protect their interests.

97. In accordance with the terms of this Settlement Agreement and the schedule established by the Court and before the Fairness Hearing, Plaintiffs shall move for Final Judicial Approval of the Settlement pursuant to Fed. R. Civ. P. 23(e). Prior to filing this motion, Class Counsel shall give the Settling Defendants a reasonable opportunity to review and comment on its content. The Settling Defendants shall further have the right to file any additional papers they deem necessary to support Final Judicial Approval, clarify their positions and otherwise protect their interests.

98. The Parties agree to cooperate (a) in presenting this Settlement to the Court, (b) to support its provisions at the Settlement hearing, (c) to draft and review Court orders, notices, forms, and other documents required by or necessary to effectuate this Settlement Agreement, (d) to draft and review documents/agreements with the Settlement Administrator and the Custodial Agent, (e) to timely provide information and records to the Settlement Administrator as required by this Settlement Agreement, (f) to timely provide such additional documents, information and records reasonably requested by the Settlement Administrator and the Custodial Agent to the extent reasonably necessary to carry out their tasks, (g) to minimize expenses, and (h) to do all other acts and duties assigned to each Party in this Settlement Agreement to effectuate and implement this Settlement. In the event of a disagreement with respect to the matters in this paragraph, the matters shall first be mediated before bringing the matter to the Court.

99. Plaintiffs, Settlement Class Members and Class Counsel covenant and agree to take all reasonable steps to assist the Released Parties in responding to any other action, demand,

or claim filed by any Settlement Class Members, other than parties who have opted out of the settlement, which assert claims similar to or arising from the events or occurrences described in the Class Action Complaint.

## **X.**

### **ARBITRATION AND MEDIATION**

100. For all matters in this Settlement Agreement which the Parties are required to arbitrate or mediate, the proceedings shall be conducted by Magistrate Judge Marilyn D. Go. The Parties may also arbitrate or mediate such other matters as they agree with Magistrate Judge Go. In the event that Judge Go is unable to serve and the Parties are unable to agree upon a substitute, one will be appointed by the Court.

## **XI.**

### **COURT'S AUTHORITY AND ENFORCEMENT**

101. The Court shall retain exclusive and continuing jurisdiction over the Parties, all Settlement Class Members, the Settling Defendants and the other Released Parties, and over the implementation of this Settlement Agreement with respect to the performance of the terms and conditions of the Settlement Agreement, to assure that all disbursements are properly made in accordance with the terms of the Settlement Agreement, and to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

## **XII.**

### **MISCELLANEOUS PROVISIONS**

#### **Entire Settlement Agreement**

102. This Settlement Agreement constitutes the entire agreement of the Parties concerning its subject matter, is intended to supersede all prior negotiations, understandings, and agreements, and there are no other written or oral agreements, understandings, representations or obligations that shall have any further force or effect. This Settlement Agreement represents a unitary whole and each and every term therein is an integral part of the entire Settlement Agreement.

#### **Choice of Law**

103. This Settlement Agreement shall be governed by, and construed and enforced in accordance with New York law, without regard to choice of law provisions. If, and to the limited extent that New York law is preempted, the Settlement Agreement shall be governed by, and construed and enforced in accordance with, federal law.

#### **Alteration and Modification**

104. This Settlement Agreement may not be altered or modified except by written instrument executed by Class Counsel and counsel to the Settling Defendants.

#### **Binding Nature of Agreement.**

105. This Settlement Agreement is binding upon, and shall inure to the benefit of, all Settlement Class Members and the Parties and their respective heirs, executors, administrators, successors, and assigns.

#### **Execution of Settlement Agreement**

106. This Settlement Agreement may be executed in several counterparts, each of

which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**No Additional Rights**

107. No provision of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Settlement Class Member, the Settling Defendants or Class Counsel.

**Limited Use of the Settlement Agreement**

108. The Parties shall not seek to introduce and/or offer the terms of the Settlement Agreement, any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Settlement Agreement, any statement in the notice documents delivered in connection with this Settlement Agreement, stipulations, agreements, or admissions made or entered into in connection with the Fairness Hearing or any finding of fact or conclusion of law made by the Court, or otherwise rely on the terms of this Settlement Agreement, in any judicial proceeding, except insofar as it is necessary to enforce the terms of the Settlement Agreement (or in connection with the determination of any income tax liability or insurance coverage proceeding of a Party).

This Settlement Agreement may be pleaded as a full and complete defense to any action, demand, or proceeding, that may be instituted, prosecuted, or attempted with respect to any of the Settled Claims.

If a Settlement Class Member who is not entitled to benefits hereunder seeks to introduce and/or offer any of the matters described herein in any proceeding, the restrictions of this section shall not be applicable to the Settling Defendants with respect to that Settlement Class Member.

**Mutual Preparation of Settlement Agreement**

109. None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

### **Headings**

110. The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement in any manner.

### **Class Counsel Authorization**

111. Class Counsel represent and warrant that they have the authority to enter into this Settlement Agreement on behalf of their respective clients.

### **The Settling Defendants' Corporate Power**

112. The Settling Defendants represent and warrant that they have all requisite corporate power and authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly and validly executed and delivered by Capitol Indemnity and World Airways and constitute their legal, valid and binding obligation.

### **No Third-Party Beneficiaries**

113. No provision of this Settlement Agreement is intended to create any third-party beneficiary to this Settlement Agreement.

### **Certification of Different Settlement**

114. In the event that the Court certifies a Settlement Class other than that

contemplated by this Settlement Agreement, the Parties reserve for themselves the right to modify this Settlement Agreement accordingly to reflect such certification.

**Notice to Parties**

115. Any notice, request, objection, instruction or other document required under this Settlement Agreement must be in writing and delivered personally or sent by overnight delivery or facsimile to the following persons:

a) If to Capitol Indemnity:

David M. Goldhaber, Esq.  
Sedgwick, Detert, Moran & Arnold LLP  
One North Wacker Drive, Suite 4200  
Chicago, Illinois 60606  
Tel: (312) 641-9050  
Fax: (312) 641-9530

b) If to World Airways:

Malcolm L. Benge, Esq.  
Zuckert Scoutt & Rasenberger LLP  
888 Seventeenth Street N.W.  
Washington, D.C. 20006  
Tel: (202) 973-7907  
Fax: (202) 342-0683

c) If to Class Counsel:

Ike O. Echeruo, Esq.  
Echeruo, Counsel, Attorneys at Law, LLP  
230 Park Avenue, Suite 864  
New York, New York 10169  
Tel: (212) 295-2189  
Fax: (212) 295-2121

**and**

John P. Doherty, Esq.  
Thacher Proffitt & Wood LLP  
Two World Financial Center  
New York, New York 10281  
Tel: (212) 912-7400

Fax: (212) 912-7751

**Assignment of Default Judgments to Settling Defendants**

116. Upon Final Judicial Approval and as consideration for this Settlement Agreement, the Plaintiffs agree to transfer and assign to the Settling Defendants all of the Plaintiffs' rights, title and interest in the default judgments issued by this Court against Mr. Obafemi on October 13, 2005, and against Ritetime on May 23, 2006.

**XIII.**

**TERMINATION**

117. Final Judicial Approval is a required event. The Parties shall have the option and discretion to terminate this Settlement Agreement in its entirety, or any portion thereof, if: (a) the Court, or any appellate court, denies or changes in any way any portion or term of this Settlement Agreement; or (b) the Parties do not obtain Final Judicial Approval.

118. Should this Settlement Agreement be terminated in its entirety, the Settlement Agreement shall become null and void, shall have no further force or effect; and all Parties herein shall be restored to their respective positions immediately before the execution of this Settlement Agreement.

119. In the event of termination, the Settlement Funds, including any amounts paid to Class Counsel for attorneys' fees, costs and disbursements prior to the date of such termination, shall be returned to the Settling Defendants within ten (10) business days.

IN WITNESS WHEREOF, the Parties, through their fully authorized representatives, have agreed to this Settlement Agreement.

DATED this 22<sup>nd</sup> day of January, 2008.

WORLD AIRWAYS, INC.

CLASS COUNSEL,  
on behalf of Anyoku Plaintiffs, individually and  
on behalf of the Class

By: \_\_\_\_\_

Malcolm L. Bengé, Esq.  
Zuckert Scoutt & Rasenberger LLP  
888 Seventeenth Street N.W.  
Washington, D.C. 20006  
Tel: (202) 973-7907  
Fax: (202) 342-0683

By: \_\_\_\_\_

John P. Doherty, Esq.  
Brendan E. Zahner, Esq.  
Thacher Proffitt & Wood LLP  
Two World Financial Center  
New York, NY 10281

Subscribed and Sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Notary Public

Subscribed and Sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Notary Public

CAPITOL INDEMNITY CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

David M. Goldhaber, Esq.  
Sedgwick, Detert, Moran & Arnold LLP  
One North Wacker Drive, Suite 4200  
Chicago, Illinois 60606

Ike O. Echeruo, Esq.  
Echeruo, Counsel, Attorneys at Law, LLP  
230 Park Ave, Suite 864  
New York, NY 10169

Subscribed and Sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Notary Public

Subscribed and Sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Notary Public