

DATED _____ 2017

DEED
ESTABLISHING THE KENYA AIRWAYS 2017
GROUP EMPLOYEE SHARE OWNERSHIP SCHEME (SUBJECT TO CMA APPROVAL)

between

KENYA AIRWAYS PLC

and

THOMAS OMONDI

and

DICK MURIANKI

COULSON HARNEY LLP

ADVOCATES

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PARTIES:

THIS DEED is made on 2017 between:

- (1) **KENYA AIRWAYS PLC**, a company registered in accordance with the laws of Kenya under registration number C 28.2005 with its registered office at Airport North Road, Embakasi, P.O. Box No. 19002 – 00501, Nairobi, Kenya (the “**Company**”);
- (2) **THOMAS OMONDI** of P. O. Box No. 19002 – 00501, Nairobi, Kenya; and
- (3) **DICK MURIANKI** of P. O. Box No. 19002 – 00501, Nairobi, Kenya,

(together, the “**Trustees**”).

WHEREAS

- A. The Company wishes to establish a scheme for the purpose of incentivising employees of the Company and its subsidiary companies through the holding of shares in the Company.
- B. The Company has paid to the Trustees the sum of Kenya Shillings 1,000 (the “**Original Sum**”) to be held by the Trustees and their successors as trustees for the time being of this Settlement subject to the following trust powers and provisions. The Trustees, by execution of this Deed, hereby confirm receipt of the Original Sum.
- C. The ESOS has been approved by the Capital Markets Authority and by the shareholders of the Company.
- D. Attached hereto in the Schedule are the Performance Shares Rules (as defined below) adopted as of the date hereof.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purposes of this Deed and in the Rules and the preamble above, unless the context requires otherwise:

- 1.1.1 **Board** means the Board of Directors of the Company or a Committee of the Board to which the Board has delegated responsibility for decisions concerning the ESOS;
- 1.1.2 **Company** means Kenya Airways PLC or any other corporation which as a consequence of any reconstruction or amalgamation succeeds to the whole of the Company’s undertakings;
- 1.1.3 **Capital Markets Authority** means the Capital Markets Authority established under the CM Act;
- 1.1.4 **CM Act** means the Capital Markets Act (Cap 485A) of the Laws of Kenya;
- 1.1.5 **Distribution Proceeds** means the net amount remaining after deduction of

any relevant tax on the Shares corresponding to the Units that are payable to a Unitholder by way of income earnings on his or her holding of Units under the ESOS;

- 1.1.6 **Eligible Employee** means an Eligible Employee as defined in or pursuant to the Rules;
- 1.1.7 **ESOS** means the Kenya Airways 2017 Group Employee Share Ownership Scheme as regulated by this Settlement and the P Rules;
- 1.1.8 **ESOS Regulations** means the regulations in Part IX of the Capital Markets (Collective Investment Schemes) Regulation 2001, as amended or superseded from time to time;
- 1.1.9 **Group** means the Company and each and every company which is for the time being or becomes a Subsidiary of the Company and the term “Group Company” shall mean any company that is a member of the Group;
- 1.1.10 **Listed** means admitted to listing on the Main Investments Market Segment of the NSE or on such other securities exchange where the Shares of the Company may from time to time be listed or traded;
- 1.1.11 **Normal Office Hours** means working hours from 8.00 a.m. to 5.00 p.m., Monday to Friday;
- 1.1.12 **NSE** means the Nairobi Securities Exchange;
- 1.1.13 **Official List** means the official list of the NSE, or of any other securities exchange on which the Shares of the Company are Listed;
- 1.1.14 **Performance Shares Rules** means the performance-based Share incentive scheme Rules set out in Schedule 1, as amended from time to time;
- 1.1.15 **Redemption Proceeds** means the proceeds of sale of Shares in respect of the corresponding Units that are redeemed or surrendered , less the costs and expenses incurred from the sale of such Shares;
- 1.1.16 **Register** means the register of Unitholders to be kept by or on behalf of the Trustees in accordance with clause 3 hereof;
- 1.1.17 **Rules** means (a) the Performance Shares Rules; and (b) the rules of such other Shares incentive Scheme as the Board may from time to time introduce for any cadre of employees of the Group, subject to the approval of the Capital Markets Authority and the Company in general meeting;
- 1.1.18 **Settlement** means the settlement created by this Deed;
- 1.1.19 **Shares** means ordinary shares in the capital of the Company;
- 1.1.20 **Subsidiary** means any company which is for the time being a subsidiary of the Company as defined in Section 3 of the Companies Act (No. 17 of 2015);

- 1.1.21 **Trustees** means the Trustees named herein or such other individual or trust corporation holding office as trustee for the time being of this Settlement and “Trustee” means each and any of the Trustees;
- 1.1.22 **Trust Fund** means the Original Sum and all property added thereby by way of further settlement, accumulation, capital accretion or otherwise (including interest, dividends and income on or provided by the Shares) and all property from time to time held by the Trustees upon the trusts of this Settlement;
- 1.1.23 **Trust Period** means the period of eighty (80) years beginning from the date hereof;
- 1.1.24 **Units** means the Units of the ESOS issued or to be issued to Eligible Employees pursuant to the applicable Rules;
- 1.1.25 **Unitholders** means Eligible Employees who hold one or more Units as a result of allocations made or the exercise of rights granted under the applicable Rules;
- 1.1.26 **Unitholder’s Account** means an entry in an account kept in the Register for the purposes of recording payments and receipts by and to each Unitholder.

1.2 **Interpretation**

- 1.2.1 In addition to the definitions in clause 1.1, unless the context requires otherwise:
- 1.2.1.1 the singular shall include the plural and vice versa;
- 1.2.1.2 a person includes reference to a body corporate or other legal entity;
- 1.2.1.3 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 1.2.1.4 any written law includes that law as amended or re-enacted or replaced from time to time;
- 1.2.1.5 any agreement or other document includes that agreement or other documents as varied or replaced from time to time;
- 1.2.1.6 a clause is to the relevant clause of this agreement;
- 1.2.1.7 any party include that party’s successors and assigns.
- 1.3 All the headings and sub-headings in this Settlement and Rules are for convenience only and are not to be taken into account for the purposes of interpreting it.

2. PRINCIPAL TRUST

During the Trust Period, the Trustees shall hold the Original Sum and all Shares purchased by, subscribed for or otherwise acquired by the Trustees and all other property, money or assets of the Trust Fund and shall stand possessed of such Shares, property, money and assets upon trust to give effect to the terms and conditions hereinafter contained.

3. UNITS

3.1 The Trustees shall create Units and shall issue Units to Eligible Employees in accordance with the terms of the applicable Rules, to be held by Eligible Employees subject to the applicable Rules.

3.2 Each Unit shall represent one Share of the Company.

3.3 The Board shall issue to the Trustees such number of Shares credited as fully paid up corresponding to the number of Units to be issued under clause 3.1 **provided that** the Company in general meeting shall have authorised the Board to make allotments generally in connection with the ESOS and that such authority has not expired.

3.4 At any time the notional value of a fully paid Unit shall be equal to the value from time to time of a fully paid Share of the Company, such value to be determined by the daily quoted closing price of a Share on the Official List.

3.5 Units shall be issued by or on behalf of the Trustees to Eligible Employees on (a) the basis of the allocation to Eligible Employees made by the Board pursuant to the Performance Shares Rules; or (b) the exercise of Eligible Employees' respective rights under the applicable Rules.

3.6 Each Unit shall rank *pari passu* to all other Units from time to time in issue, according to the amount paid up on the Unit.

3.7 Upon the Vesting of Units to an Eligible Employee, the Trustees shall enter that person's name in the Register as a Unitholder. The Register shall contain separate entries for each Unitholder and shall include the Unitholder's Account.

3.8 The Register shall contain details of such matters as the Trustees shall consider necessary for the proper administration of the trusts hereof and, *inter alia*, in particular shall specify:

3.8.1 the full name and address of a Unitholder;

3.8.2 the number of Units allocated or issued to each Unitholder;

3.8.3 the date on which each Unitholder was first entered in the Register;

3.8.4 the terms of allocation and of allotment of Units to each Unitholder;

3.8.5 the Vesting Date;

3.8.6 the Distribution Proceeds paid or payable to a Unitholder;

- 3.8.7 the Redemption Proceeds paid or payable to a Unitholder; and
- 3.8.8 the date of any partial or full redemption of Units held by a Unitholder.
- 3.9 The Register shall be open for inspection by the Company and any Unitholder or by any person authorised in writing by a Unitholder with the approval of the Trustees during Normal Office Hours.
- 3.10 Every Unitholder shall be entitled to be and shall be issued without charge with a non-transferable certificate or certificates of ownership representing his or her Units. Certificates shall be in a form approved by or on behalf the Trustees and each certificate shall be signed by or on behalf the Trustees. The Trustees shall issue or cause to be issued to Unitholders replacement certificates for any certificates that are lost or destroyed or mutilated upon application by a Unitholder, whereupon any certificate so replaced shall be cancelled. The Trustees may require a Unitholder whose certificate has been lost or destroyed to provide them with proof thereof to their satisfaction, and an indemnity in such form and with such content as the Trustees deem appropriate.
- 3.11 A Unitholder shall not be entitled to dispose of any Units or interest therein except by way of surrender or redemption in accordance with the provisions of the Rules. If a Unitholder at any time purports to assign, charge or otherwise dispose of any Units or interest therein contrary to the provisions of the Rules the Trustees shall not be affected with notice of any such assignment, charge or disposal which shall be null and void for all purposes.

4. POWERS AND AUTHORITIES

- 4.1 The Trustees shall have the following powers exercisable by them at any time from time to time during the Trust Period:
- 4.1.1 power, control and authority over the assets of the Trust Fund and over the business and affairs of the Trust Fund to the same extent as if the Trustees were the sole owner of the Shares and other assets in their own right, and to do all such acts and things as in their sole discretion and judgement are necessary or incidental thereto or desirable for the carrying out of any of the purposes of the Trust Fund or conducting the business of the Trust Fund;
- 4.1.2 subject to the prior consent of the Board, power by any deed or deeds to vary the terms of the Rules including, but without limitation, the terms of accumulation of the income of the Trust Fund and the terms and conditions attaching to redemption or surrender of Units;
- 4.1.3 unless otherwise provided by law the Trustees may grant or delegate to persons such authority as the Trustees in their sole discretion deem necessary or desirable for the management or administration of the ESOS. The Trustees may enter into a contract with such person relating to the authority, term of appointment, compensation and any other matters deemed desirable by the Trustees;

- 4.1.4 power to enter into any agreement or contract with the Company, the Unitholders or any third party, and (without prejudice to the generality of the above) to make amendments and variations pursuant to or in furtherance of any such agreement;
- 4.1.5 power to borrow money from the Company or any person on such terms as the Trustees at their absolute discretion shall think fit;
- 4.1.6 power to subscribe for, purchase and to sell Shares;
- 4.1.7 power to grant Units, rights and awards to Eligible Employees upon the terms and conditions laid down in the Rules, including the power to grant Units at a discount to the market value of the Shares;
- 4.1.8 subject to the prior consent of the Board, power to lend money, or provide any other kind of funding options, to Eligible Employees upon exercise of any options, grants or rights on such terms as the Trustees shall think fit;
- 4.1.9 power as regards any money for the time being subject to the provisions of this Settlement and requiring investment to invest or lay out the same in the purchase or otherwise in the acquisition of Shares with or without security in all respects and to place money on deposit with a reputable licensed commercial bank or other reputable licensed financial institution provided that the Trustees shall not be under any obligation to diversify the investments of the Trust Fund;
- 4.1.10 power to borrow or raise money for the purposes of acquiring Shares either with or without security;
- 4.1.11 power to grant security over some or all of the assets of the Trust Fund;
- 4.1.12 power to effect any mortgage or charge as collateral security for or to guarantee money payable in respect of any loan to a Unitholder upon such terms in all respects as the Trustees shall in their absolute discretion think fit;
- 4.1.13 power to exercise or refrain from exercising (either themselves or by proxy) the voting and other rights attached to the Shares that are subject to any of the trusts of this Settlement in any manner whatever and in particular (without prejudice to the generality of the above) to place the Company in administration or to wind-up under the Insolvency Act or to dissolve or join in insolvency proceedings or dissolving the Company;
- 4.1.14 power to put or leave any Shares of the Company in the name or names of any nominee (being a trust corporation) for the Trustees;
- 4.1.15 power to create, allot, issue, transfer, redeem, re-purchase, appropriate, partition or apportion Units in or towards satisfaction of any entitlements to Units under the Rules or the income thereof in such manner as the Trustees shall in their absolute discretion consider just according to the respective rights of the persons concerned and in accordance with the Rules and power

- to issue, sign and replace lost, destroyed or worn certificates for Units to Unitholders;
- 4.1.16 power to create and hold a reserve of Units for future allocation to Unitholders;
- 4.1.17 power to hold a reserve of Shares for future allocation to Unitholders under the terms of the Rules;
- 4.1.18 power at any time on giving written notice to each Unitholder to determine that each Unit shall be sub-divided or consolidated in accordance with any resolution passed by the Company for the sub-division or consolidation of Shares and any sub-division or consolidation of Units shall correspond with the sub-division or consolidation of the Shares;
- 4.1.19 power to accept or compel surrender of Units in accordance with the terms of the Rules and to accept redemption of Units and pay to a Unitholder the Redemption Proceeds arising from the sale of Shares corresponding to the number of Units held by a redeeming Unitholder;
- 4.1.20 power to transfer Shares to Unitholders upon redemption of Units in accordance with the terms of the Rules;
- 4.1.21 power to collect, sue for and receive all sums of money due to or becoming due to the Trust Fund and engage, prosecute, defend, compromise or abandon any actions suits, proceedings, disputes, claims, demands or other litigation relating to the Trust Fund;
- 4.1.22 power to apply for and obtain approval from the Capital Markets Authority for the ESOS and all the Rules from time to time approved by the Board, and to register the ESOS with relevant regulatory bodies and with any tax authority as required by law;
- 4.1.23 power to open accounts with any reputable stock brokerage firm to acquire or purchase Shares of the Company from time to time as may be required by the Rules of the ESOS and to permit any one or more of the Trustees to sign instructions on any such account in the names of the Trustees and generally to sign orders and authorities to any stock broker on behalf of the Trustees, provided that the Trustees shall not acquire or purchase any other securities under the ESOS other than the Shares of the Company;
- 4.1.24 power to open accounts with any reputable commercial bank or other reputable financial institution and to permit any one or more of the Trustees to sign cheques on any bank account in the names of the Trustees and generally to sign orders and authorities to any bank on behalf of the Trustees;
- 4.1.25 power to open accounts and maintain records with any entity authorised to provide registration, transaction records, custodian and depository systems in respect of securities listed at the NSE or any other recognised securities exchange; and

- 4.1.26 to do all such other acts and things as are incidental to the foregoing and to exercise all powers which are necessary or useful to carry on the business of the Trust and to promote any of the purposes for which the Settlement is formed and to carry out the provisions of this Settlement.
- 4.2 Subject to the Board's prior consent, the Trustees shall have power at any time or times during the Trust Period by instrument or instruments in writing to revoke or vary or add to any of the administrative provisions set out in sub-clause 4.1 above.
- 4.3 The Trustees shall have power during the Trust Period to delegate to any person at any time for any period and in any manner (including without prejudice to the generality of the foregoing by power of attorney) and upon any terms whatsoever all or any of the powers or discretions whether dispositive administrative or otherwise imposed on or given to the Trustees by this Settlement or by law or otherwise (including the management and administration of this Settlement) without being liable for any loss to the Trust Fund arising from the acts or defaults of any such person. For the avoidance of doubt nothing in this clause shall be construed so as to restrict the statutory power of the Trustees to delegate and for delegates to sub-delegate under the law.
- 4.4 The Trustees in addition to and without prejudice to all the powers vested in them by this Settlement or by law may exercise all or any of the same from time to time in such manner and to such extent as may seem to them to be desirable provided that in exercising their powers they shall not depart from the terms of the applicable Rules.

5. REDEMPTION OF UNITS

- 5.1 Upon the occurrence of any of the events contemplated by paragraph 7.1 or 7.2 of the Performance Scheme Rules, the Trustees shall, as soon as practicable, but subject to the provisions of paragraph 2 of the Performance Scheme Rules and/or as may be stated in any other Rules from time to time in force in respect of the ESOS, and subject also to clause 5.3 below, depending on the specific event giving rise to the right of redemption:
- 5.1.1 sell (all or part of) the Shares corresponding to the Units to be redeemed at the latest trading price of the Shares at the NSE at the time the Trustees make the order to sell the corresponding number of Shares and remit the Redemption Proceeds to the Eligible Employee;
- 5.1.2 pay the balance standing to the credit of the Unitholder's Account to the Unitholder either in cash, by electronic funds transfer or by cheque or by credit through the payroll account;
- 5.1.3 transfer, or procure the allotment by the Company of, such number of Shares as shall equal the number of Units allocated to or recorded in the Register against the Unitholder's name to the Unitholder and apply the balance (if any) standing to the credit of the Unitholder's Account in cash, by electronic funds transfer or by cheque or by credit through the payroll account to the Unitholder. In order to implement redemption, the Trustees may sell the

Shares corresponding to the Units redeemed.

- 5.2 The Trustees shall only allow redemption of Units by Unitholders in accordance with the applicable Rules and may, without limiting the foregoing, allow partial redemption and may satisfy redemption partly by cash payment and partly by transfer or allotment of Shares (as the instructions issued by an Eligible Employee shall require).
- 5.3 The Trustees may determine the time and date on which Units shall be redeemed and may suspend redemption if in their opinion conditions exist as a result of which disposal of Shares is impracticable or, the price of the Shares on the Official List is too low having regard to movements in the price of the Shares within the immediately preceding period of 30 days.

6. DISTRIBUTIONS TO UNITHOLDERS

- 6.1 The Company shall pay any dividends accrued on the Shares held by the Trustees to the Trustees, which dividends shall be deemed to constitute income of the Trust Fund. The Trustees shall be entitled to distribute dividends to the Unitholders in accordance with the provisions of this clause 6.
- 6.2 The Trustees may determine the date on which income of the Trust Fund shall be distributed to Unitholders provided that Distribution Proceeds shall be paid not later than 30 days following receipt by the Trustees of income on the Shares, whether in the form of interim dividends or final dividends or in any other manner received by them.
- 6.3 Distribution Proceeds shall be paid, less the amount (if any) determined by the Trustees to be withheld and applied as payment of any amount which remains unpaid on Units.
- 6.4 In addition to any distribution made to Unitholders pursuant to the provisions of clauses 6.1 and 6.2, the Trustees from time to time may distribute to Unitholders such other amounts of income as the Trustees may determine are available for allocation from the assets and investments of the Trust Fund. Such distribution shall be allocated to and amongst all the Unitholders holding Units at that time and shall be paid pro rata to the amounts paid up on Units held by a Unitholder.

7. CAPITAL REORGANISATIONS

- 7.1 In the event the issued share capital of the Company is increased pursuant to a bonus issue, scrip dividend or other form of capitalisation ("**Capitalisation Issue**") the Trustees may apply to exercise their rights in full to acquire additional Shares credited as fully paid to be held pursuant to the terms of this Settlement unless in the circumstances it is reasonable and in the best interests of the Unitholders for the Trustees to receive income in respect of the new Shares that are the subject of the Capitalisation Issue. Upon so doing, the Trustees shall issue new Units to Unitholders credited as fully paid up corresponding to the number of new Shares issued to the Trustees fully paid up pursuant to the Capitalisation Issue and pro rata to their

existing holdings of Units.

7.2 In the event of a rights issue of new Shares by the Company (“**Rights Issue**”) the Trustees shall make an offer in writing to each Unitholder to subscribe for additional Units pro rata to their existing holdings of Units and otherwise on the same terms and conditions as the Rights Issue including as to rights of renunciation and timetable for return of applications. The price for each additional Unit shall correspond to the offer price of the Shares in the Rights Issue. Unless by the closing date of the Rights Issue a Unitholder has notified the Trustees that it wishes to subscribe for additional Units the Trustees shall renounce their rights in respect of the corresponding number of Shares. Upon renunciation, the Trustees shall apply any proceeds of renunciation of the Shares in payment of as far as is possible of any unpaid balance outstanding of the price for Units held by the Unitholder and the balance (if any) shall be paid to the Unitholder as if it were Distribution Proceeds. If a Unitholder desires to exercise his rights to purchase additional Units he shall notify the Trustees by the closing date of the Rights Issue and pay in full for the Units.

7.3 In the event of any sub-division, consolidation or reduction or other variation in the share capital of the Company the Trustees shall make such *pro rata* adjustments to the number of Units as they consider appropriate in the circumstances.

8. **COMPANY’S COVENANTS, FEES AND EXPENSES**

8.1 The Company hereby covenants with the Trustees:

8.1.1 to observe the provisions of and perform its obligations under this Settlement;

8.1.2 to pay the expenses incurred in connection with the establishment, administration and management of the Settlement, including without limitation, the fees of any manager, registrar, auditor, advocate or valuer retained by the Trustees and commissions or charges levied by any stockbroker or regulatory body in connection with dealings in the Shares, and other advisers employed by or on behalf of the Settlement.

9. **TRUSTEES’ COVENANT**

9.1 The Trustees hereby covenant with the Company to:

9.1.1 manage and administer the Trust Fund on behalf and at the expense of the Company;

9.1.2 allocate, pay or provide for the payment of the benefits prescribed by the applicable Rules subject always to the Trust Fund being sufficient for the purpose; and

9.1.3 comply with the provisions of this Settlement.

10. TRUSTEES AND APPOINTMENT OF NEW TRUSTEES

- 10.1 Any individual or trust corporation (within the meaning of the Trustee Act (Cap.167) wherever resident may be appointed at any time to be a Trustee or provided that if such Trustees be individuals the number of the Trustees shall not be less than three (3) nor more than six (6), but acts done by the Trustees when they are more than six (6) or fewer than three (3) in number shall not be invalid for that reason alone.
- 10.2 The statutory power of appointing new Trustees shall apply to this Settlement and shall be vested in the Board.
- 10.3 The Board may at any time by deed remove a Trustee and any Trustee may at any time retire from the trusts hereof by giving not less than 30 days' notice in writing to the Company and to the remaining Trustees. The outgoing Trustee shall forthwith execute and do all such transfers or other acts or things that may be necessary for vesting the Trust Fund in the names of the new or continuing Trustees provided that in the case of a Trustee who shall have died or ceased to exist then such obligation shall be fulfilled by such Trustee's personal representative, liquidator or other representative at law. The outgoing Trustee shall deliver to the Company all documentation and information in its possession relating to this Settlement within ten (10) days of its removal.

11. RESTRICTIONS

- 11.1 Notwithstanding anything to the contrary expressed or implied, no discretion or power by this Settlement conferred on the Trustees or any of them shall be exercised and no provision of this Settlement shall operate directly or indirectly:
- 11.1.1 so as to cause any part of the income or capital of the Trust Fund to become payable to or applicable for the benefit of any person who is not a Unitholder (except to the Company pursuant to clause **Error! Reference source not found.** above);
- 11.1.2 so as to cause the trust now created to cease to be an employees' share ownership scheme;
- 11.1.3 so as to infringe the rule against remoteness of vesting;
- 11.1.4 so as to cause the ESOS to lose or forfeit or not qualify for any tax exemptions that are or may become available;
- 11.1.5 so as to allow the Trustees to purchase or sell immovable property owned by the Company, or underwrite or participate in the underwriting of the Shares or securities of the Company.

12. TRUSTEES' CHARGES AND REMUNERATION

- 12.1 Any of the Trustees who shall be a trust corporation or an individual engaged in any profession or business either alone or in partnership shall be entitled to charge and be paid and to retain all professional or other proper charges for any business done or

time spent or services rendered by it or his firm in connection with the trusts, powers and provisions of this Settlement.

12.2 All such remuneration shall be payable by the Company.

12.3 None of the Trustees holding any directorship or other office or employment or retainer in relation to the Company shall be accountable for any remuneration received in connection with such directorship, office, employment or retainer.

13. **LIABILITY FOR DEFAULT**

13.1 None of the Trustees shall be liable for the act, neglect, default, fraud or misconduct of an agent, officer, servant or other person employed by them or otherwise engaged or occupied in connection with the Trust Fund notwithstanding that it may not have been strictly necessary or expedient for any person to be so employed, engaged, occupied or by reason of any mistake or omission made in good faith or by reason of any other matter or thing except wilful fraud, negligence or wrong-doing on the part of a Trustee or Trustees.

13.2 None of the Trustees shall be liable to an Eligible Employee by reason of any fall in the value of Shares or for any losses or expenses arising from a reasonable refusal to redeem Units, sell Shares or otherwise act in accordance with the instructions or requests of an Eligible Employee.

14. **RECORDS**

In addition to the Register and the Unitholder's Account the Trustees shall keep or procure the keeping of records showing the total number of Shares held by the Trust Fund, the amount of commissions, fees and charges incurred in dealings with the Shares and all other assets, sums and investments held by them under this Settlement and a record of such other matters as are relevant to the management and administration of the Trust Fund. Unitholders shall be entitled upon request to the Trustees to a copy of his or her "folio" or a statement showing details of his or her records on the Register kept by or on behalf of the Trustees hereunder.

15. **AUDIT AND REPORTS**

15.1 The Trust Fund shall be audited by a reputable firm of certified public accountants ("**auditors**"). The first auditors shall be appointed by the Company and shall continue in office until they are removed by the Company, or resign.

15.2 The financial year of the ESOS shall end on 31st March in each year but if the Company's financial year end shall change to a date other than 31st March the Trustees shall amend the financial year end of the ESOS accordingly.

15.3 The Company, in consultation with the Trustees, shall fix the remuneration of the auditors from time to time which shall be payable by the Company.

15.4 The auditors shall review and audit annual financial statements of the Trust Fund and shall prepare a report thereon which shall be forwarded to the Trustees and the

Company but not to the Unitholders.

15.5 The Trustees shall at least once in every financial year prepare and send to each Unitholder a statement of the number of Units registered in his name on the Register, the amount (if any) to be paid by a Unitholder in respect of his holding of Units and the latest available valuation of his holding of Units which shall be made by reference to the bid value of a Share as described in clause 3.5 multiplied by the number of Units registered in the name of each Unitholder.

15.6 The Company shall make disclosure in its annual report of all Units issued to its employees and shall disclose the total value of the ESOS (including the total number of Shares purchased through the NSE and the number of Units created and issued under the Scheme). For purposes of this sub-clause, the Trustees shall provide the Company with all required information.

16. STANDARD OF CARE

16.1 The Trustees shall exercise their powers and carry out their functions hereunder honestly, in good faith and in the best interests of the Trust and the Unitholders and in this connection shall exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

16.2 The Trustees shall prepare and timeously dispatch all records, certificates, notices, accounts, summaries, declarations and statements required under the provisions of the ESOS Regulations, to be issued, served or sent, and signing and executing all certificates and all transfers of security.

17. WINDING-UP ON CERTAIN EVENTS

17.1 At the expiration of the Trust Period or on any date on which the Company shall be dissolved, wound-up or dispose of its undertaking (unless such winding-up or disposal be for the purpose of reorganisation or reconstruction of the Company) or at the expiry of twelve months' notice in writing given by the Company to the Trustees that it wishes to terminate the ESOS, the Trust Fund shall be wound-up and the trusts constituted by this Settlement shall determine. In such event the Trust Fund shall be wound-up in such manner as the Trustees think fit and as per the ESOS Regulations and the assets or income held by the Trust Fund shall be distributed to Unitholders pro rata to their holdings unless arrangements shall have been made for the assumption by a successor company employing the Unitholders of the rights and obligations of the Company and the continuation of the ESOS.

17.2 In the event of termination of the Settlement, the Trustees shall give no less than three (3) months' notice of intention to terminate to the Unitholders and the Capital Markets Authority.

18. LAW

This Settlement shall be deemed to have been made in Kenya and shall be interpreted in accordance with and governed by the laws of Kenya.

19. **VARIATION OF THIS SETTLEMENT**

The Company may by written deed add to or vary the terms of this Settlement and each of the Trustees from time to time shall adhere to the terms of this Settlement as so added to or varied.

20. **ARBITRATION**

20.1 If at any time hereafter any dispute, difference or question shall arise between the Company, the Trustees or a Unitholder concerning the construction meaning or effect of this Settlement or any clause or thing herein contained or the rights or liabilities of the parties or any of them under this Settlement or otherwise howsoever in relation to the Trust Fund then every such dispute or question shall be referred to arbitration by a single arbitrator appointed by agreement between the parties, and in default of such agreement within seven (7) days of the notification of any dispute by either party to the other then, upon application by either party, by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya, the result of which arbitration shall be final and binding upon all the parties. The seat of arbitration shall be Nairobi, and the arbitration proceedings shall be regulated by the provisions of the Arbitration Act in force in Kenya at the time of such arbitration or any law or instrument taking the place of such Act.

20.2 Nothing in this clause shall restrict either party's freedom to commence legal proceedings of any nature for the purposes of seeking preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of any arbitrator

21. **NOTICES**

21.1 Any notice under the provisions of this Settlement which is required to be given to or served upon:

21.1.1 the Trustees shall be delivered or addressed to the Trustees at the registered office for the time being of the Company or, if a trust corporation shall be the sole Trustee, at the place of business of such trust corporation;

21.1.2 All the correspondence to the Company shall be delivered or addressed to the Company at its registered office for the time being;

21.1.3 A Unitholder shall be delivered or addressed to the Unitholder at the address for the time being recorded in the Register.

21.2 Any notice shall be given in writing and shall be deemed to have been received on the next or following day if delivered by hand or at the time of successful transmission if sent by email or on the fifth day after posting by prepaid post and no means other than delivery, email or posting shall be employed for the service of any notice hereunder.

IN WITNESS whereof this Deed has been duly executed.

Sealed with the common seal of)

KENYA AIRWAYS PLC)

and delivered in the presence of:)

)

)

)

Director)

)

)

)

Director/Secretary)

)

Signature)

In the presence of :)

Witness:)

Name :)

Address :)

.....
THOMAS OMONDI

)

Signature)

In the presence of :)

Witness:)

Name :)

Address :)

.....
DICK MURIANKI