

This Preliminary Offering Circular and the information contained herein is subject to completion and amendment without notice. The securities described herein may not be sold in any offer to buy prior to the time that the Offering Circular is actually in final form. This document does not constitute an invitation to acquire, or an offer for subscription, purchase or otherwise of any shares, adventures or securities of the Issuer for the purposes of the Irish European Communities Transferable Securities (Stock Exchange) Regulations, 1992 or otherwise. This document does not comprise listing particulars meeting the requirements of the Irish European Communities (Stock Exchange) Regulations, 1994 that are intended nor has it been approved by the Irish Stock Exchange or delivered to the Registrar of Companies in Ireland. Under no circumstances shall this Preliminary Offering Circular constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful. The definitive terms of the transaction described in this document may only be distributed to persons in the United Kingdom to whom this Preliminary Offering Circular may be communicated in circumstances where Section 2(1)(f) of the Financial Services and Markets Act 2000 does not apply to the Issuer. This Preliminary Offering Circular may not be distributed to persons outside the United Kingdom other than persons to whom it may be distributed lawfully in accordance with any applicable securities laws.

The proceeds of the issue of the Notes will be invested in floating and/or fixed rate bonds (the "KfW Bonds") issued by Kreditanstalt für Wiederaufbau ("KfW"). The KfW Bonds will be deposited with Clearstream Banking AG, Frankfurt ("Clearstream, Frankfurt") acting as securities clearing agent and credited to a dedicated account which Bankgesellschaft Berlin AG, Berlin (the "Custodian" which expression includes its successors and permitted assigns) will maintain with Clearstream, Frankfurt on behalf of the Issuer pursuant to the Custody Agreement. The Issuer will enter into the Credit Swap Agreement with BGB as Protection Buyer. Under the Credit Swap Agreement, the Issuer will receive periodic payments on a quarterly basis in Euro from the Protection Buyer and will be required to make payments in Euro to the Protection Buyer upon the occurrence of a Credit Event (as defined in "DESCRIPTION OF THE CREDIT SWAP AGREEMENT") and subject to the satisfaction of certain conditions specified in the Credit Swap Agreement, such payments being made by reference to the performance of the Reference Obligations comprised in the Reference Portfolio. Amounts calculated by reference to the aggregate diminution in value of the obligations in the Reference Portfolio will be allocated initially to reduce the Outstanding Threshold Amount (which as at the Issue Date will be EUR[40,000,000]) and after the Outstanding Threshold Amount has been reduced to zero, to reduce *pro rata* and *pari passu*, first, the Note Principal Amounts (as defined in Condition 7.5) of the Class D Notes, second the Note Principal Amounts of the Class C Notes, third the Note Principal Amounts of the Class B Notes and fourth, the Note Principal Amounts of the Class A Notes in accordance with the terms and conditions of the Notes (the "Conditions"). Under the Put Option Agreement, the Issuer, or in certain circumstances, the Security Trustee, may put KfW Bonds to KfW at par in amounts sufficient for it to satisfy the Issuer's obligations under the Credit Swap Agreement and in respect of payments due under the Notes.

Interest on the Notes will be payable quarterly in arrear on the 20th day of February, May, August and November (each an "Interest Payment Date") or if such day is not a Business Day (as defined in Condition 7.5), on the next succeeding day which is a Business Day, unless such day would thereby fall to the next calendar month, in which case, the payment will be made on the immediately preceding Business Day. The first Interest Payment Date will be 20 [February 2003].

Each Class of Notes will bear interest on its Note Principal Amount on the first day of the relevant Interest Period (as defined below) at, in the case of the Class A Notes, EURIBOR (as defined in Condition 7.5) plus ●% per annum; in the case of the Class B Notes, EURIBOR plus ●% per annum; in the case of the Class C Notes, [EURIBOR plus] ●% per annum; and in the case of the Class D Notes, [EURIBOR plus] ●% per annum. The period from and including, the Issue Date to but excluding the first Interest Payment Date and each successive period from and including an Interest Payment Date to but excluding the next Interest Payment Date is an "Interest Period".

Each Class of Notes will be initially represented by a Temporary Global Note of the relevant class in bearer form (each a "Temporary Global Note") without Coupons attached, which will be exchangeable not earlier than 40 days after the Issue Date in accordance with the terms of that Temporary Global Note for a Permanent Global Note of the relevant class in bearer form without Coupons attached (each a "Permanent Global Note"). The Temporary Global Notes and the Permanent Global Notes are expected to be deposited with a common depository for Euroclear Bank S.A./N.V. as operator of the Euroclear System ("Euroclear") and Clearstream Banking, société anonyme ("Clearstream, Luxembourg") on the Issue Date. Save in limited circumstances, Definitive Notes will not be issued in exchange for the Temporary Global Notes or the Permanent Global Notes.

Each Class of Notes is expected to be rated by Moody's Investors Service Limited ("Moody's"), Fitch Ratings ("Fitch") and Standard & Poor's Rating Group, a division of the McGraw-Hill Companies Inc. ("S&P" and together with Moody's and Fitch, the "Rating Agencies"). It is a condition of the issue of the Notes that the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes are assigned Aaa, A1, Baa1 and Ba1 ratings respectively by Moody's, and AAA, A+, BBB+ and BB+ ratings respectively by Fitch and AAA, A+, BBB+ and BB+ ratings respectively by S&P.

**Each securities rating assigned to the Notes should be evaluated independently from each other securities rating assigned to the Notes and independently from similar ratings on other types of securities. A rating assigned to securities is not a recommendation to buy, sell or hold securities and may be subject to revision, suspension or withdrawal by the assigning rating organisation at any time.**

**THE NOTES WILL BE OBLIGATIONS OF THE ISSUER ONLY AND WILL NOT BE OBLIGATIONS OF, OR THE RESPONSIBILITY OF, ANY PERSON OTHER THAN THE ISSUER NOR WILL THEY BE GUARANTEED BY ANY PERSON. IN PARTICULAR, THE NOTES WILL NOT BE OBLIGATIONS OF, OR THE RESPONSIBILITY OF, OR GUARANTEED BY, ANY BGB**

ENTITY, THE PROTECTION BUYER, THE TRANSACTION ADMINISTRATOR, THE NOTE TRUSTEE, THE SECURITY TRUSTEE, THE MONITORING AGENT, DEUTSCHE BANK AG, KfW OR ANY OF THEIR RESPECTIVE AFFILIATES OR ANY OTHER PARTY TO THE TRANSACTION DOCUMENTS (AS DEFINED BELOW) OR ANY OTHER THIRD PERSON OR ENTITY (INCLUDING ANY GOVERNMENT ENTITY). FURTHERMORE, NO RECOURSE UNDER, OR WITH RESPECT TO, ANY OBLIGATION, COVENANT OR AGREEMENT OF THE ISSUER SHALL BE HAD AGAINST ANY INCORPORATOR, SHAREHOLDER, AFFILIATE, OFFICER, EMPLOYEE, AGENT OR DIRECTOR OF THE ISSUER.

The Issuer accepts responsibility for all information contained in this document other than the Note Trustee Information, the Trustee Information, the KfW Information, the Data Trustee Information, the Corporate Administrator Information, the Account Bank Information, the BGB UK Information and the BGB Information (each as defined below) (the "Issuer Information"). To the best of the knowledge and belief of the Issuer, the Issuer Information is in accordance with the facts and does not omit anything likely to affect the import of such information. The Note Trustee accepts responsibility for the information under "The Note Trustee" (the "Note Trustee Information"), the Trustee accepts responsibility for the information under "The Trustee" (the "Trustee Information"), KfW accepts responsibility for the information under "KfW" (the "KfW Information"), the Data Trustee accepts responsibility for the information under "The Data Trustee" (the "Data Trustee Information"), the Corporate Administrator accepts responsibility for the information under "the Corporate Administrator" (the "Corporate Administrator Information"), the Account Bank accepts responsibility for the information under "The Account Bank" (the "Account Bank Information"), Landesbank Berlin — Girozentrale — accepts responsibility for information under "BGB Entities — Landesbank Berlin — Girozentrale —" (the "LBB Information"), Bankgesellschaft Berlin (UK) Plc accepts responsibility for the information under "BGB Entities — Bankgesellschaft Berlin (UK) Plc" (the "BGB UK Information") and BGB accepts responsibility for the information under "The Transaction Administrator", "The Protection Buyer", "The Custodian", "Description of the Reference Portfolio" (including the "Summary Information as of Cut-off Date"), "Credit Underwriting Procedures" and "BGB Entities — Bankgesellschaft Berlin AG" (the "BGB Information"). To the best of the knowledge and belief of the Note Trustee, the Trustee, KfW, the Data Trustee, the Corporate Administrator, the Account Bank, Landesbank Berlin — Girozentrale —, Bankgesellschaft Berlin (UK) Plc and BGB respectively (having taken all reasonable care to ensure that such is the case), the Note Trustee Information, the Trustee Information, the KfW Information, the Data Trustee Information, the Corporate Administrator Information, the Account Bank Information, the LBB Information, the BGB UK Information and the BGB Information contained in this Offering Circular for which the Note Trustee, the Trustee, KfW, the Data Trustee, the Corporate Administrator, the Account Bank, Landesbank Berlin — Girozentrale —, Bankgesellschaft Berlin (UK) Plc and BGB, respectively, accepts responsibility is in accordance with the facts and does not omit anything likely to affect the import of such information.

Other than the information for which they have expressly accepted responsibility, none of the Arranger, the Lead Manager, the Note Trustee, the Trustee, KfW, the Data Trustee, the Corporate Administrator, the Account Bank, Landesbank Berlin — Girozentrale —, Bankgesellschaft Berlin (UK) Plc, BGB or their respective Affiliates has independently verified the information contained herein. Accordingly no representation or warranty, express or implied is or will be made and no responsibility or liability is or will be accepted by any of the Arranger, the Lead Manager, the Note Trustee, the Trustee, KfW, the Data Trustee, the Corporate Administrator, the Account Bank, Landesbank Berlin — Girozentrale —, Bankgesellschaft Berlin (UK) Plc, BGB, the Note Trustee or any of the their respective Affiliates as to the accuracy or completeness of any information contained herein.

None of the Issuer, the Trustee, the Note Trustee, any Paying Agent or the Agent Bank will have any responsibility for the performance by Euroclear, Clearstream, Luxembourg or Clearstream, Frankfurt or any other clearing system or of an accountholder of any such clearing system of its or their obligations under the rules and procedures governing any of the operations of any of the aforementioned.

**THE ISSUER HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "INVESTMENT COMPANY ACT"). THE NOTES HAVE NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). CONSEQUENTLY, THE NOTES MAY NOT BE OFFERED, SOLD, RESOLD, DELIVERED OR TRANSFERRED WITHIN THE UNITED STATES TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT), EXCEPT IN ACCORDANCE WITH THE SECURITIES ACT OR AN EXEMPTION THEREFROM AND UNDER**

**CIRCUMSTANCES DESIGNED TO PRECLUDE THE ISSUER FROM HAVING TO REGISTER UNDER THE INVESTMENT COMPANY ACT. THE NOTES WILL BE SUBJECT TO U.S. TAX LAW REQUIREMENTS. FOR A DESCRIPTION OF CERTAIN FURTHER RESTRICTIONS ON OFFERS AND SALES OF THE NOTES AND DISTRIBUTION OF THIS DOCUMENT, SEE "SUBSCRIPTION AND SALE" BELOW.**

*Any prospective purchaser of any Notes should ensure that it understands the nature of the Notes and the extent of its exposure to risk and that it considers the Notes to be a suitable investment in the light of its own circumstances and financial condition. Potential investors should consider the descriptions set out in this Offering Circular, the terms of the Transaction Documents and the factors set out in "Risk Factors", below. If any investor is in any doubt about the contents of this Offering Circular, they should consult their financial, legal or other professional advisers. None of the Arranger, the Lead Manager, the Trustee, the Note Trustee or the Transaction Administrator undertakes to review the financial condition or affairs of the Issuer or any other person during the life of the arrangements contemplated by this Offering Circular or to advise any investor or potential investor in the Notes of any information coming to the attention of any of the Arranger, the Lead Manager, the Trustee, the Note Trustee or the Transaction Administrator.*

*Neither the delivery of this Offering Circular nor any offering, sale or delivery of any Notes shall, under any circumstances, create any implication (i) that the information in this Offering Circular is correct as of any time subsequent to the date hereof or, as the case may be, subsequent to the date on which this Offering Circular has been most recently amended or supplemented, (ii) that there has been no change in the financial situation of the Issuer, the BGB Entities or KfW which is material in the context of the issue and offering of the Notes or with respect to the Reference Portfolio since the date of this Offering Circular or, as the case may be, the date on which this Offering Circular has been most recently amended or supplemented, or (iii) that any other information supplied in connection with the issue of the Notes is correct at any time subsequent to the date on which it is supplied or, if different, the date indicated in the document containing the same.*

*No person is authorised in connection with the issue, offering, subscription or sale of the Notes to give any information or to make any representation not contained in this Offering Circular and any information or representation not contained in this Offering Circular must not be relied upon as having been authorised by the Issuer, the Arranger, or the Lead Manager. Any subscription or purchase of Notes made by any person on the basis of statements or representations not contained in or inconsistent with the information contained in this Offering Circular shall be solely at the risk of such person. Neither the delivery of this Offering Circular nor any allotment or sale made in connection herewith shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer since the date hereof or that the information herein is correct as of any time subsequent to the date hereof.*

*This Offering Circular does not constitute an offer to sell or the solicitation of an offer to buy any of the Notes. It may not be used by any person in connection with any offer or solicitation in any jurisdiction or circumstances in which such offer or solicitation is unlawful. The distribution of this Offering Circular (or of any part thereof) and the offering and sale of the Notes in certain jurisdictions may be restricted by law. Persons into whose possession this Offering Circular (or any part thereof) comes are required by the Issuer, the Arranger and the Lead Manager to inform themselves about and to observe any such restrictions.*

*No action has been taken by the Issuer, the Arranger or the Lead Manager other than as set out in this Offering Circular that would permit a public offering of the Notes, or possession or distribution of this Offering Circular or any other offering material in any country or jurisdiction where action for that purpose is required. Accordingly, no Notes may be offered or sold, directly or indirectly, and neither this Offering Circular (nor any part hereof) nor any offering circular, prospectus, form of application, advertisement or other offering materials may be issued, distributed or published in any country or jurisdiction except in compliance with applicable laws, orders, rules and regulations, and each of the Issuer, the Arranger and the Lead Manager has represented that all offers and sales by it are made on such terms.*

*None of the Issuer, the Arranger or the Lead Manager has or assumes any responsibility for the lawfulness of the acquisition of the Notes by a prospective purchaser of the Notes, whether under the laws of the jurisdiction of its incorporation or the jurisdiction in which it operates (if different), or for compliance by that prospective purchaser with any law, regulation or regulatory policy applicable to it.*

*Neither this Offering Circular nor any of the contracts or documents referred to in this Offering Circular are subject to review or approval by the Central Bank of Ireland or by any other regulatory authority in Ireland other than the Irish Stock Exchange. The Notes may not lawfully be offered for sale to persons in Ireland except in circumstances where such offer constitutes an "offer" as described in Article 2(1) of Council Directive N°89/298/EEC of 17 April 1989.*



*The Issuer has not authorised any offer of the Notes to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995, as amended (the "POS Regulations"). Notes may not lawfully be offered or sold to persons in the United Kingdom except in circumstances which do not result in an offer to the public in the United Kingdom within the meaning of the POS Regulations and in compliance with section 21 of the Financial Services and Markets Act 2000.*

In the Netherlands, the Notes may only be offered, transferred, delivered or sold to individuals or legal entities who or which trade or invest in securities in the conduct of their profession or trade, which include banks, brokers, dealers, insurance companies, pension funds and other institutional investors, and commercial enterprises which regularly, as an ancillary activity, invest in securities.

**For a further description of certain restrictions on offerings and sales of the Notes and distribution of this Offering Circular (or of any part thereof) see "SUBSCRIPTION AND SALE".**

Certain monetary amounts and currency translations included in this Offering Circular have been subject to rounding adjustments; accordingly, figures shown as totals in certain tables may not be an arithmetic aggregation of the figures which precede them.

References in the Conditions to the aggregate principal amount of a Class of Notes are to their initial aggregate principal amount upon issue and do not reflect the Note Principal Amounts of such Notes as of any date after the date of this Offering Circular owing to Loss Allocation and/or amortisation in accordance with the Conditions applicable thereto.

In this Offering Circular references to "€" "euro" or "EUR" are to the single currency which was introduced in member states participating in the third stage of European Economic and Monetary Union as of 1 January 1999 (see "EXCHANGE CONTROLS"). Terms used herein are defined in the "MASTER DEFINITIONS SCHEDULE".

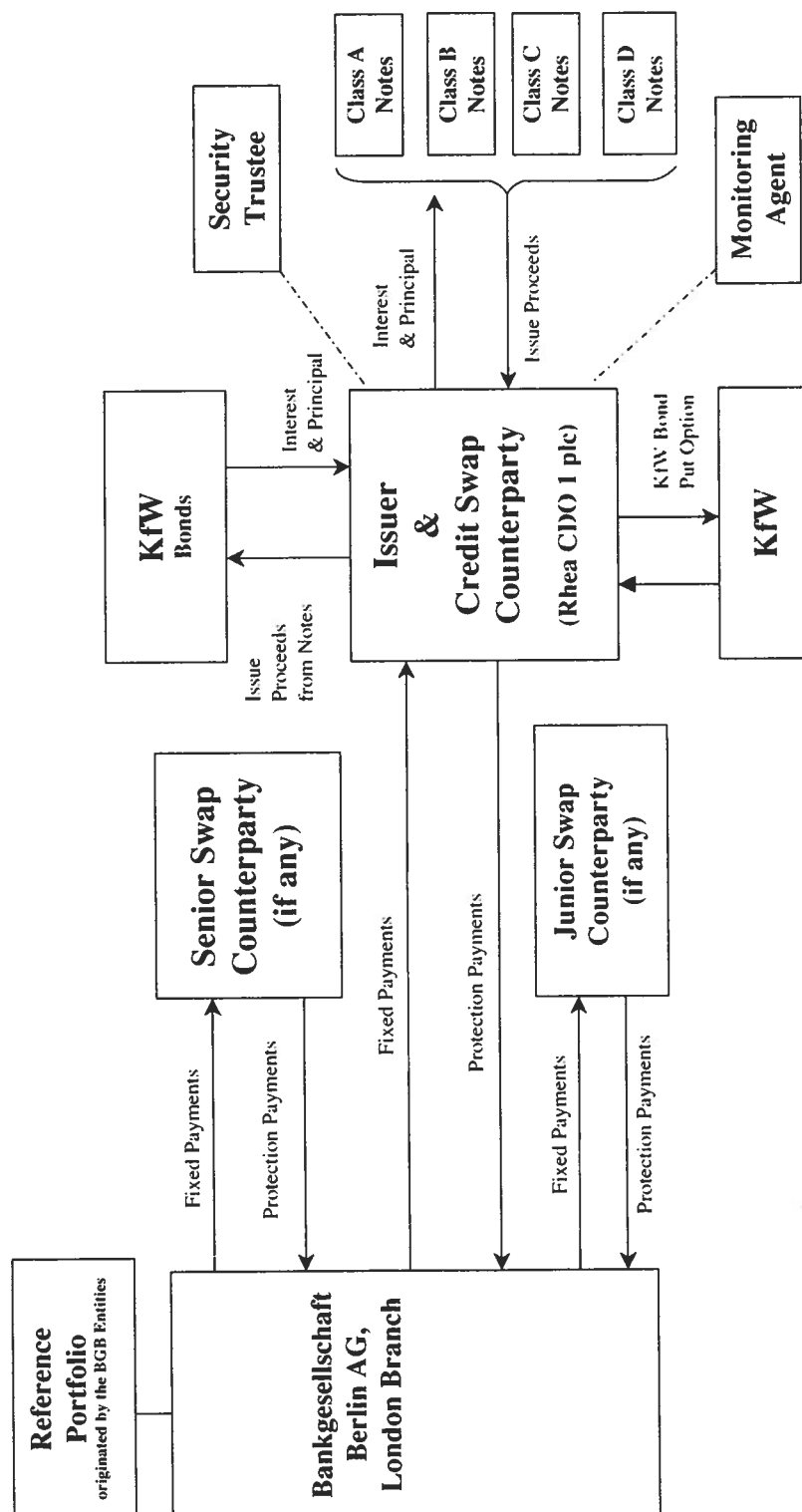
**In connection with the issue of the Notes, the Lead Manager may over-allot or effect transactions which stabilise or maintain the market price of the Notes at a level higher than that which might otherwise prevail for a limited period after the Issue Date. Such stabilising, if commenced, may be discontinued at any time, and must be brought to an end after a limited period. However, there may be no obligation on the Lead Manager to do this.**

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## Transaction Overview

This transaction overview is qualified in its entirety, and must be read together with, the further detailed information appearing elsewhere in this Offering Circular and in the documents referred to in "General Information" which are available for inspection — see "General Information". In the event of any inconsistency between this transaction overview and the information provided elsewhere in this Offering Circular and in the documents referred to in "General Information", the information provided elsewhere in this Offering Circular and in the documents referred to in "General Information" shall prevail.



## Summary of the Transaction

*The following summary is qualified in its entirety by, and must be read together with, the further detailed information appearing elsewhere in this Offering Circular, and in the documents referred to in "General Information" which are available for inspection (see "General Information").*

### Transaction Summary

#### Overview:

BGB in its capacity as Protection Buyer, is entering into one or more credit default swap transactions in relation to the performance of a portfolio of Reference Obligations, including partial obligations, originated or acquired by the business areas responsible for wholesale banking and debt financing activities of the BGB Entities, which obligations are comprised in the Reference Portfolio, as more particularly described below.

On the Issue Date, the Issuer will enter into the Credit Swap Agreement with the Protection Buyer, pursuant to which (i) the Issuer will receive quarterly payments in Euro from the Protection Buyer, which together with payments under the KfW Bonds (which the Issuer will purchase with the proceeds of the issue of the Notes) and under the Put Option Agreement, will be applied to meet the Issuer's obligations to pay principal and interest on the Notes and (ii) after the Outstanding Threshold Amount (which will initially be EUR[40,000,000]) has been reduced to zero, the Issuer will be required to make payments in Euro to the Protection Buyer calculated by reference to allocated Notional Losses in respect of the Defaulted Reference Obligations contained in the Reference Portfolio (such Notional Losses reflecting the diminution in the market value of the Reference Obligations following the occurrence of a Credit Event (See "DESCRIPTION OF THE CREDIT SWAP AGREEMENT")).

BGB may, but is not obliged to, enter into credit default swaps or similar transactions with other counterparties (a) in respect of Notional Losses which do not exceed the Outstanding Threshold Amount (such counterparty being the "Junior Swap Counterparty") and (b) in respect of Notional Losses in excess of the aggregate of the Note Principal Amounts of all the Notes and the Outstanding Threshold Amount (such counterparty being the "Senior Swap Counterparty") and together with the Junior Swap Counterparty (if any), the "Swap Counterparties".

#### Principal Characteristics of the Notes:

The Notes represent four tranches of risk in the Reference Portfolio in excess of the Outstanding Threshold Amount for an aggregate amount of EUR 236,000,000 and correspond to the risk taken by the Issuer under the Credit Swap Agreement of Notional Losses on the Reference Portfolio exceeding the Outstanding Threshold Amount. The first EUR[40,000,000] of Notional Losses will be allocated to the Outstanding Threshold Amount. Thereafter, the four tranches of risk are represented by (i) the Class D Notes, which represent the risk of total Notional Losses allocated to the Notes being between [EUR40,000,001] and [EUR 67,000,000]; (ii) the Class C Notes, which represent the risk of total Notional Losses allocated to the Notes being between [EUR67,000,001] and [EUR 78,000,000]; (iii) the Class B Notes, which represent the risk of total Notional Losses allocated to the Notes being between [EUR 78,000,001], and [EUR 128,000,000]; and (iv) the Class A Notes, which represent the risk of total Notional Losses allocated to the Notes and the Outstanding Threshold Amount being between [EUR 128,000,001] and [EUR 276,000,000].

The principal amount and, as a consequence of such reduction in the principal amount of the Notes, interest, payable to the Holders will be



reduced as a result of Notional Losses incurred with respect to the Reference Obligations. After the Notional Losses have been allocated to reduce the Outstanding Threshold Amount to zero, Notional Losses will be allocated (i) to reduce *pro rata* the Note Principal Amounts of the Class D Notes; (ii) when the Note Principal Amounts of the Class D Notes have been reduced to zero, to reduce *pro rata* the Note Principal Amounts of the Class C Notes; (iii) when the Note Principal Amounts of the Class C Notes have been reduced to zero, to reduce *pro rata* the Note Principal Amounts of the Class B Notes; and (iv) when the Note Principal Amounts of the Class B Notes have been reduced to zero, to reduce *pro rata* the Note Principal Amounts of the Class A Notes. See Condition 9 (Loss Allocation and Amortisation).

Subject to the prior rights of the Protection Buyer, the obligation of the Issuer to pay principal and interest under the Notes is, pursuant to the Trust Agreement and the Deed of Charge and Assignment, secured in favour of the Security Trustee for the benefit of itself and of the Holders by certain charges under German and English law — see “Collateral” below. Notwithstanding the Collateral, only the obligation of the Issuer to pay any amount of principal and interest determined to be due to the Holders in accordance with the Conditions, which may be reduced by the allocation of Notional Losses, will have the benefit of the security created pursuant to the Trust Agreement and the Deed of Charge and Assignment. See Condition 3 (Collateral) and “THE TRUST AGREEMENT”.

## **The Reference Portfolio**

### **Reference Portfolio:**

The Reference Portfolio will consist of Reference Obligations (as defined in the “MASTER DEFINITIONS SCHEDULE”). These include obligations and partial obligations, held by any of the BGB Entities at the time of its inclusion in the Reference Portfolio, for the payment of principal arising from certain drawn or undrawn but committed term or revolving Syndicated Loans and Bilateral Loans (including, in each case, Guaranteed Loans) and *Schuldscheine* (including Guaranteed *Schuldscheine*) to corporate borrowers and Bonds and Guaranteed Bonds issued by corporate issuers and Asset-Backed Securities and Guaranteed Asset-Backed Securities and, as described below, by way of Replenishment only, exposure to any of the aforementioned types of obligation in respect of which credit protection is sold to third parties under a credit default swap. The final maturity of each Reference Obligation falls on or before the seventh anniversary of the Issue Date. As of the Cut-off Date, the aggregate Notional Amounts of all Reference Obligations in the Reference Portfolio is approximately EUR [2,194,133,584]. Reference Obligations denominated in a currency other than Euro have been converted to Euro at the Notional Exchange Rate — See “DESCRIPTION OF THE REFERENCE PORTFOLIO”.

A Reference Obligation may be removed from the Reference Portfolio or a substitution may be made for certain Reference Obligations prior to the Issue Date. This may, notwithstanding compliance with the Eligibility Criteria and the Portfolio Criteria, result in changes to certain of the Reference Portfolio characteristics as of the Issue Date as compared to that of the “DESCRIPTION OF THE REFERENCE PORTFOLIO” set out in this Offering Circular as of the Cut-off Date — see “DESCRIPTION OF THE REFERENCE PORTFOLIO”.

### **Determination of Notional Losses:**

Notional Losses will be determined by the Transaction Administrator following the occurrence of a Credit Event (being Bankruptcy or Failure to Pay (as defined in the “MASTER DEFINITIONS SCHEDULE”)) with respect to a Reference Obligation and delivery of

a Credit Event Notice (including a Notice of Publicly Available Information or, if applicable, Qualified Credit Event Information) and will be reflected in a Valuation and Allocation Notice. Each Credit Event Notice, Valuation and Allocation Notice and Loss Allocation Report will be subject to review by the Monitoring Agent. See "THE TRUST AGREEMENT".

Where a Credit Event has occurred with reference to a Reference Obligation denominated in a currency other than Euro, the Loss Percentage will be calculated for that Defaulted Reference Obligation and will be applied to the Notional Amount to determine the Notional Loss in Euro. Thus, credit risk exposure is limited to that based on the Notional Amounts of such Reference Obligations and does not extend to any underlying foreign exchange risk.

**Reference Portfolio Servicing:**

The Transaction Administrator has made certain representations of compliance of the Initial Reference Portfolio with relevant Eligibility and Replenishment Criteria — see "TRANSACTION ADMINISTRATION DEED". It has further covenanted to give, and to procure that the other BGB Entities give, such time and attention and exercise such skill, care and diligence in the servicing of the Reference Obligations held by it (to the extent not sold or otherwise transferred) as they do in servicing assets other than Reference Obligations — see "THE TRUST AGREEMENT".

**Replenishment:**

The Transaction Administrator may, subject to the Eligibility and Replenishment Criteria, substitute a Replacement Reference Obligation for an existing Reference Obligation which is (i) prepaid or cancelled in whole or in part, (ii) which is an Ineligible Reference Obligation or (iii) which the Transaction Administrator has determined to replace, in its sole discretion, provided that the aggregate Notional Amounts of all such discretionary Replacement Reference Obligations does not exceed 5% of the Initial Portfolio Notional Amount. Replenishment may occur on each Replenishment Date from (and including) the Issue Date until (and including) the Replenishment Date immediately preceding the Scheduled Maturity Date, in accordance with the Transaction Administration Deed and is subject to the Replenishment Conditions being met. However, Reference Obligations may not be replenished when they mature in accordance with their anticipated legal maturities. See "TRANSACTION ADMINISTRATION DEED" — Clause 3 (Ineligible Reference Obligations and Replacement Reference Obligations)" and "TRANSACTION ADMINISTRATION DEED — Schedule 2 — Eligibility and Replenishment Criteria".

**Cut-off Date:**

[15 October 2002]

**Parties**

**Issuer:**

Rhea CDO 1 Plc, a public limited company incorporated with limited liability under the laws of Ireland, with registered number 345094 and having its registered office at 25/28 North Wall Quay, International Financial Services Centre, Dublin 1, Ireland. See "THE ISSUER".

**Corporate Administrator:**

Bankgesellschaft Berlin (Ireland) Plc, a public limited company incorporated with limited liability under the laws of Ireland with registered number 223796 and having its registered and principal office at 5 George's Dock, International Financial Services Centre, Dublin 1, Ireland. See "THE CORPORATE ADMINISTRATOR".

**Account Bank:**

Deutsche Bank AG, a financial institution established under German law, having its registered office at Taunusanlage 12, D-60325 Frankfurt am Main, acting through its London Branch at Winchester House,

1 Great Winchester Street, London EC2N 2DB, United Kingdom. See "THE ACCOUNT BANK".

**BGB Entities:**

Bankgesellschaft Berlin AG, London Branch, a joint stock company (*Aktiengesellschaft*) incorporated under German law for an unlimited period of time and registered in the Register of Companies of the local Court (*Amtsgericht, Commercial Register*) of Berlin-Charlottenburg under HRB 527 and having its registered office at Alexanderplatz 2, D-10178 Berlin, Federal Republic of Germany whose London branch (foreign company number FC 10824) was registered on 12 January 1994 with the Registrar of Companies of England and Wales.

Bankgesellschaft Berlin (UK) Plc, a public limited company incorporated with limited liability under the laws of England and Wales, with registered number 2984090 and having its registered office at 1 Crown Court, Cheapside, London EC2V 6LR, United Kingdom.

Landesbank Berlin — Girozentrale — London Branch.

See "THE BGB ENTITIES" and "DESCRIPTION OF THE REFERENCE PORTFOLIO".

**Protection Buyer and  
Transaction Administrator:**

Bankgesellschaft Berlin AG, London Branch. See "TRANSACTION ADMINISTRATION DEED".

**KfW:**

Kreditanstalt für Wiederaufbau, an institution incorporated under German public law having its registered office at Palmengartenstraße 5-9, D-60325 Frankfurt am Main, Federal Republic of Germany. See "KfW".

**Security Trustee and Monitoring  
Agent:**

Deloitte & Touche GmbH, Wirtschaftsprüfungsgesellschaft, a limited liability company incorporated under German law, with its registered office at Bahnstrasse 16, 40212 Düsseldorf, Federal Republic of Germany and registered with the local Court (*Amtsgericht, Commercial Register*) in the Düsseldorf Commercial Register under HRB 10482. See "THE TRUSTEE".

**Data Trustee:**

Ernst & Young AG Wirtschaftsprüfungsgesellschaft, a joint stock corporation company incorporated under German law with is registered office at Mittlerer Pfad 15, D-70499 Stuttgart, Federal Republic of Germany, and registered with the local Court (*Amtsgericht, Commercial Register*) in the Stuttgart Register under HRB 23194. See "THE DATA TRUSTEE".

**Note Trustee:**

Capita IRG Trustees Limited, a private limited company incorporated with limited liability under the laws of England and Wales with registered number 2729260 and having its registered office at Bourne House, 34 Beckenham Road, Beckenham, Kent BR3 4TU, United Kingdom and its principal place of business at Guildhall House, 81/87 Gresham Street London EC2V 7QE, United Kingdom. See "THE NOTE TRUSTEE".

**Principal Paying Agent and  
Agent Bank:**

Landesbank Berlin — Girozentrale — a financial institution established under German public law (*rechtsfähige Anstalt des öffentlichen Rechts*) constituted pursuant to the provisions of the *Gesetz zur Errichtung der Landesbank Berlin Girozentrale* on 1 October 1990, having its registered office at Bundesallee 171, D-10889 Berlin, Federal Republic of Germany acting through its London branch (foreign company number FC17728, registered with the Registrar of Companies of England and Wales on 12 January 1994).

**Irish Paying Agent:**

Bankgesellschaft Berlin (Ireland) Plc.

**Listing Agent:**

Bankgesellschaft Berlin (Ireland) Plc.

**Custodian:**

Bankgesellschaft Berlin AG

**Arranger:**

Bankgesellschaft Berlin AG, London Branch

**Lead Manager:**

Deutsche Bank AG

**The Notes**

**The Notes:**

EUR148,000,000 Class A Floating Rate Credit Linked Notes due 2009; EUR50,000,000 Class B Floating Rate Credit Linked Notes due 2009; EUR11,000,000 Class C Floating Rate[ / ● ] Credit Linked Notes due 2009 and EUR27,000,000 Floating Rate[ / ● ] Class D Credit Linked Notes due 2009.

**Issue Date:**

[ ● ] 2002

**Status of the Notes:**

Notes will constitute direct, limited recourse and secured (subject as described below and under "Collateral") obligations of the Issuer which rank *pari passu* amongst themselves within each class. The security interest of the Security Trustee for the benefit of itself and the Holders to secure payment of principal on the Notes is subject to the security interest of the Protection Buyer to secure the obligations of the Issuer to make Protection Payments to the Protection Buyer under the Credit Swap Agreement. The claims of the Holders of the Class A Notes will rank in priority to the claims of the Holders of the Class B Notes, the Class C Notes and the Class D Notes; the claims of the Holders of the Class B Notes will rank in priority to the claims of the Holders of the Class C Notes and the Class D Notes and the claims of the Holders of the Class C Notes will rank in priority to the Claims of the holders of the Class D Notes. (see "Collateral", "Loss Allocation", "Amortisation" and "Redemption" below and Condition 3 (Collateral), Condition 9 (Loss Allocation and Amortisation), and Condition 10 (Redemption and Purchase), and "THE TRUST AGREEMENT").

Due to potential principal reduction, the payment of principal of and, as a consequence of such reduction in the principal amount of the Notes, interest on, the Notes is conditional on the performance of the Reference Obligations (see "Loss Allocation" and "Amortisation" below and Condition 9 (Loss Allocation and Amortisation)). There can be no assurance that the Holders will receive the full principal amount of the Notes and interest thereon and, notwithstanding the Collateral, the obligations of the Issuer to pay principal under the Notes could even be reduced to zero as a result of losses incurred in respect of the Reference Obligations.

**Form and Denomination:**

The Notes will be issued in bearer form in the denomination of EUR 50,000 each. Upon issue, each Class of Notes will be initially represented by a Temporary Global Note representing the relevant Class of Notes in bearer form without Coupons attached, which will be exchangeable not earlier than 40 days after the Issue Date and in accordance with the terms of that Temporary Global Note, for a Permanent Global Note representing the relevant Class of Notes in bearer form without Coupons attached. The Temporary Global Notes and the Permanent Global Notes are expected to be deposited with a common depository for Euroclear and Clearstream, Luxembourg on the Issue Date. For so long as the Notes are represented by the Temporary Global Notes and/or the Permanent Global Notes, such Notes will be transferable in accordance with the rules and procedures for the time being of Euroclear and Clearstream, Luxembourg. The Temporary Global Notes and the Permanent Global Notes will only be exchanged for Definitive Notes in limited circumstances. See "SUMMARY OF THE PROVISIONS OF THE NOTES WHILE IN GLOBAL FORM".

**Collateral:**

Subject to prior security interests of the Protection Buyer in the KfW Bonds, the KfW Bond Transfer Claims, the Custody Principal Claims

and the Transaction Principal Account Claims, which prior security interests secure the obligation of the Issuer to make Protection Payments to the Protection Buyer under the Credit Swap Agreement, the obligation of the Issuer to pay principal and interest under the Notes is secured in favour of the Security Trustee for the benefit of itself and the ultimate benefit of the Holders by certain security interests created under (a) German law over the KfW Bonds and over certain present and future claims and rights under the KfW Bond Transfer Agreement, the Custody Agreement, the Trust Agreement and the Put Option Agreement and (b) under English law over the Transaction Principal Account Agreement, the Credit Swap Agreement, the Transaction Interest Account Agreement, the Note Trust Deed, the Paying Agency Agreement and the Subscription Agreement. The aforementioned security interests in favour of the Security Trustee also secure the Trustee Claims under the Trust Agreement. In addition, the present and future claims and rights of the Issuer to moneys standing to the credit of the Corporate Expenses Account (including the Issuer Costs Reserve Amount) and to payment by the Protection Buyer of Issuer Costs will be secured in favour of the Security Trustee on behalf of the Third Parties, including the Custodian, the auditors of the Issuer, the Principal Paying Agent, the Irish Paying Agent, the Listing Agent, the other agents and parties who may claim the payment of fees, costs and expenses against the Issuer for various reasons and, to the extent not paid directly by the Protection Buyer within 30 calendar days of the due date, the Trustee, the Data Trustee and the Note Trustee. The Security Trustee will not be granted any security over the Corporate Services Agreement.

Under the Trustee Claims, the Security Trustee has the right to demand from the Issuer that: (i) any principal payment obligations of the Issuer under the Notes be fulfilled, (ii) any interest payment obligations of the Issuer under the Notes be fulfilled, (iii) any other obligation of the Issuer under the Notes, the Trust Agreement or any other Transaction Document be fulfilled and/or (iv) upon the occurrence or, in the Security Trustee's reasonable professional judgement, expected occurrence of a Note Enforcement Event, that any payment owed under the Notes (whether principal or interest) be made to the Security Trustee for on-payment to the relevant Holders or, when insolvency proceedings have been instituted against the assets of the Security Trustee (or in the Security Trustee's professional judgment such institution is to be expected), to the Note Trustee.

The Security Trustee will hold all security interests charged to it pursuant to the Trust Agreement and the Deed of Charge and Assignment (other than the security interests held on behalf of Third Parties described above) for itself in relation to the Trustee Claims and as German law trustee (*Treuhänder*) for the benefit of the Holders (and, subject to certain limitations, also for the benefit of the Protection Buyer) irrespective of whether the claim that is the subject-matter of the charge or the charge itself is governed by German law, English law or any other law. See "THE TRUST AGREEMENT".

The proceeds resulting from the enforcement by the Security Trustee of the security interests held for its own benefit and the ultimate benefit of the Holders over, *inter alia*, the KfW Bonds and certain present and future claims and rights of the Issuer under the KfW Bond Transfer Agreement, the Custody Agreement, the Transaction Principal Account Agreement, the Credit Swap Agreement, the Trust Agreement and the Transaction Interest Account Agreement and the Put Option Agreement will be applied, first, *pro rata*, to the Holders of the Class A Notes, secondly, if all amounts due to the Holders of Class A Notes

have been fully satisfied, *pro rata*, to the Holders of the Class B Notes, thirdly, if all amounts due to the Holders of the Class B Notes have been fully satisfied, *pro rata*, to the Holders of the Class C Notes and, lastly, if all amounts due to the Holders of the Class C Notes have been fully satisfied, *pro rata*, to the Holders of the Class D Notes. See "THE TRUST AGREEMENT".

Notwithstanding the security created in favour of the Security Trustee for its own benefit and the ultimate benefit of the Holders, the amount of principal of and, due to potential principal reductions, interest on, the Notes may be reduced as a result of Notional Losses incurred with respect to the Reference Obligations. Only the obligation of the Issuer to pay any amount of principal and interest determined to be due to the Holders in accordance with the Conditions (which may be reduced by such Notional Losses) will have the benefit of the security.

**Limited Recourse:**

The Notes are limited recourse obligations of the Issuer. Recourse against the Issuer under the Notes is limited to the KfW Bonds, the proceeds of the sale or redemption of the KfW Bonds credited to the Custody Cash Account payments, if any, received by the Issuer under the KfW Bonds and the Credit Swap Agreement, and the balance from time to time standing to the credit of the Custody Cash Account, Transaction Principal Account and Transaction Interest Account. If the Collateral proves to be insufficient to pay any amounts due in respect of the Notes, the Issuer will have no other assets available to meet such insufficiency. If and to the extent that the proceeds of the realisation of the Collateral are exhausted, all claims against the Issuer in respect of such unpaid amounts will be extinguished.

**Interest:**

Payments of interest on the Notes will be made to the Holders quarterly in arrear, on each twentieth day of February, May, August and November or, if any such day is not a Business Day, on the next succeeding day which is a Business Day unless such day would thereby fall into the next calendar month, in which case the payment will be made on the immediately preceding Business Day (each an "Interest Payment Date"). The first Interest Payment Date will be on 20 February 2003.

On each Interest Payment Date, interest accrued at the applicable rate (see "Interest Rate" below and Condition 7.2 (Interest Rate) during the relevant Interest Period on the Note Principal Amount of the Notes of each Class of Notes as at the first day of the relevant Interest Period (but taking account of any Loss Allocation and/or Amortisation Payment made with respect to such Notes taking effect from that first day of that Interest Period) or, in the case of the first Interest Payment Date, the Issue Date will be payable as described herein. The Interest Period for all Classes of Notes will, in respect of the first Interest Payment Date, be the period commencing on (and including) the Issue Date and ending on (but excluding) the first Interest Payment Date and in respect of each subsequent Interest Payment Date be the period commencing on (and including) the immediately preceding Interest Payment Date and ending on (but excluding) such Interest Payment Date, with the final Interest Payment Date, subject to Condition 10.3 (Retention), occurring on the Redemption Date.

The amount of interest payable on the Notes may be reduced due to potential principal reductions as a result of Notional Losses incurred with respect to the Reference Obligations. See Condition 7 (Interest) and Condition 9 (Loss Allocation and Amortisation).

**Interest Rate:**

The interest rate (the "Interest Rate") on the Class A Notes, the Class B Notes [and], the Class C Notes [and the Class D Notes] will be determined by the Agent Bank on the second TARGET Business Day



immediately preceding the commencement of an Interest Period, or as the case may be, the Redemption Date in accordance with Condition 7.2.1 by reference to EURIBOR (as defined therein), plus:

- (a) in the case of the Class A Notes, a margin of [●]% per annum;
- (b) in the case of the Class B Notes, a margin of [●]% per annum;  
[and]
- [(c) in the case of the Class C Notes a margin of [●]% per annum.];  
and]
- (d) [in the case of the Class D Notes a margin of [●]% per annum.]

[The Interest Rate on the Class C Notes will be [●]% per annum.]

[The Interest Rate on the Class D Notes will be [●]% per annum.]

#### **Withholding Taxes:**

All payments in respect of the Notes and Coupons will be made without deduction for Withholding Taxes, save to the extent any deduction is required by law. If the Issuer becomes obliged to account for withheld or deducted Withholding Taxes, it will not be obliged to pay any additional amounts to Holders in respect of such withheld or deducted Withholding Taxes. In such circumstances, the Issuer has the option, but not the obligation, to redeem the Notes and if it exercises such option it will redeem the Notes at their Redemption Amount on the Optional Note Tax Redemption Date, subject to the provisions of Condition 10.3 (Retention). See Condition 10.8.1 (Optional Tax Call (Notes)), Condition 10.3 (Retention) and "TRANSACTION ADMINISTRATION DEED — Clause 2".

Payments under the KfW Bonds, the Credit Swap Agreement, the Put Option Agreement and the Custody Agreement will be made with deduction and withholding for or on account of taxes to the extent that any such deduction or withholding is required by law. None of the KfW Bonds, the Credit Swap Agreement, the Put Option Agreement or the Custody Agreement provides for gross-up payments in such circumstances. The Protection Buyer has the option, but not the obligation, under the Credit Swap Agreement to make compensatory payments in respect of any such deduction or withholding. If, however, the Issuer does not receive from the Protection Buyer a compensatory payment at least equal to the amount it would have received had no such deduction or withholding been required, it will, subject to Condition 10.3 (Retention), redeem each Class of Notes in whole at their respective Redemption Amounts on the Mandatory Tax Redemption Date.

See Condition 10.8.2 (Mandatory Tax Call (Collateral)) and Condition 10.3 (Retention).

#### **Loss Allocation:**

On any date on which the Note Principal Amount of any Note is to be reduced, it shall be reduced sequentially in the following order, first, to take account of any Loss Allocation in accordance with Condition 9.1 (Loss Allocation and Amortisation — Loss Allocation) and, second, to take account of any Amortisation Payment in accordance with Condition 9.2 (Amortisation).

On each Interest Payment Date, (a) the Integral Notional Loss (being the Aggregate Notional Loss on that Interest Payment Date rounded down to the nearest EUR1,000) or, (b) in the case of (i) an Interest Payment Date that is also a Redemption Date or (ii) a Loss Allocation which is made to the Outstanding Threshold Amount, the Aggregate Notional Loss, (in each case as determined on or before the ninth Banking Day immediately preceding that Interest Payment Date or Redemption Date (the "Loss Determination Date")) will be allocated first to reduce the Outstanding Threshold Amount to zero and then to

reduce the Note Principal Amounts of each Class D Note to zero, *pro rata* among the Class D Notes, then of each Class C Note to zero, *pro rata* among the Class C Notes, then of each Class B Note to zero, *pro rata* among the Class B Notes, then of each Class A Note to zero, *pro rata* among the Class A Notes.

For these purposes, the "Aggregate Notional Loss" is the sum (i) of all Notional Losses notified to the Issuer under a Loss Allocation Report on or prior to the relevant Loss Determination Date in respect of which a Positive Verification Notice or Amended Loss Allocation Report has been issued (and which have not previously been allocated or deferred) and (ii) the difference between the Aggregate Notional Loss as of a previous Loss Determination Date and the corresponding Integral Notional Loss deferred from that previous Loss Determination Date which has not previously been allocated, as more particularly defined in Condition 9.1.1.

Unless and until the Monitoring Agent notifies the rectification of the failure or breach, Aggregate Notional Losses and Integral Notional Losses may not be allocated if it is of the opinion that the Transaction Administrator's failure to perform its obligations under the Trust Agreement or the Transaction Administration Deed, the Protection Buyer's failure to pay Issuer Costs pursuant to the Trust Agreement or the Data Trustee's breach of its obligations under the Data Trust Agreement is materially prejudicial to Holders' and Swap Counterparties' interests and is not remediable or has not been remedied. Similarly, Aggregate Notional Losses and Integral Notional Losses may not be allocated for as long as the Issuer fails to maintain a trustee or trustees in respect of the Security Trustee (including the Monitoring Agent) or the Note Trustee (and in the latter case in the Monitoring Agent's opinion such default is materially prejudicial to the interests of the Holders).

Integral Notional Losses and Aggregate Notional Losses in respect of Ineligible Reference Obligations will not qualify for Loss Allocation and on being determined as such shall cease to constitute Integral Notional Losses or, as the case may be, the Aggregate Notional Losses. The allocation of Integral Notional Losses and Aggregate Notional Losses to any Note will not be affected by the invalidity or unenforceability of any other Note. If a Note remains outstanding after any other Note ranking equal or junior to it for the purposes of Loss Allocation is redeemed other than in accordance with Condition 10 (Redemption and Purchase), then each such redeemed Note shall be deemed to remain outstanding for the purposes of Loss Allocation in respect of such Note. See Condition 9 (Loss Allocation and Amortisation) and Condition 10 (Redemption and Purchase).

#### **Amortisation:**

If the Transaction Administrator, after consultation with the Protection Buyer, determines that the Portfolio Notional Amount (being the aggregate Notional Amounts of all Reference Obligations in the Reference Portfolio) is less than the sum of the aggregate Note Principal Amounts of all Classes of Notes (after taking account of any reduction in the Note Principal Amount of the Notes of a Class due to Loss Allocation or Amortisation Payments) and the Outstanding Threshold Amount it may, pursuant to the Transaction Administration Deed, deliver a Credit Protection Reduction Notice to the Issuer and the Trustee setting forth the reduction in the Portfolio Notional Amount in respect of which protection under the Credit Swap Agreement is no longer required.

Subject to the Notes not having been redeemed earlier in accordance with Condition 10.5 (Redemption at the Option of the Issuer due to

Regulatory Change), Condition 10.6 (Clean-up Call), Condition 10.7 (Optional Call) or Condition 10.8 (Tax Call) and to there being no Note Enforcement Event or Credit Protection Enforcement Event, the Issuer will, subject to Condition 10.3 (Retention), repay the Notes in the aggregate amount of Credit Protection Reductions contained in Credit Protection Reduction Notices notified on or before the Loss Determination Date immediately preceding any Interest Payment Date, but after giving effect to any Loss Allocation on such Interest Payment Date.

The Amortisation Payments shall be made to redeem, in this order sequentially, first, the Class A Notes *pro rata* among the Class A Notes then, after the Note Principal Amounts of each of the Class A Notes has been reduced to zero, the Class B Notes *pro rata* among the Class B Notes, then, after the Note Principal Amounts of each of the Class B Notes has been reduced to zero, the Class C Notes *pro rata* among the Class C Notes and then, after the Note Principal Amounts of each of the Class C Notes has been reduced to zero, the Class D Notes *pro rata* among the Class D Notes.

The Agent Bank will determine the principal amount to be redeemed in respect of each Note of any Class (the "Amortisation Payment") on any Interest Payment Date by dividing the aggregate amount of such Credit Protection Reductions by the number of Notes of that Class.

**Redemption — Scheduled  
Maturity:**

The Notes will be redeemed at their Redemption Amount on the Interest Payment Date falling in November 2009 (the "Scheduled Maturity Date") unless redeemed earlier as described herein, and subject to "Retention" as described below and in Condition 10 (Redemption and Purchase).

**Retention:**

If there are one or more Retained Reference Obligations (as described below) on the Loss Determination Date immediately preceding a Redemption Date, the Issuer will, on that Redemption Date, partially redeem any Retained Notes (being Notes to which Notional Losses, had they been determined, would have been allocated (taking into account any reduction of the Outstanding Threshold Amount) on that date in an amount equal to the aggregate of Potential Notional Losses) at an amount for each Note equal to the difference between its Note Principal Amount and its Deferred Principal Amount (the latter being its *pro rata* share of the Notional Losses that would be allocated to the Class of Notes if the Potential Notional Losses were Notional Losses), such difference being the "Partial Redeemed Amount". Following a Redemption Date or an Extended Redemption Date (being any of the consecutive Interest Payment Dates immediately following the first Redemption Date up to, and including, the Final Maturity Date), the Reference Portfolio shall consist only of the Retained Reference Obligations. On each Extended Redemption Date, the Issuer will redeem any Retained Notes at a Redemption Amount equal to the aggregate of the relevant Partial Redeemed Amounts on that date. This process will be repeated on each Extended Redemption Date until the earlier of the time that the Note Principal Amount of each Note has been reduced to zero and the Final Maturity Date. The Final Maturity Date will be the first to occur of (a) the fifth Extended Redemption Date and (b) the second Extended Redemption Date following the first to occur of (i) automatic early termination of the Credit Swap Agreement by reason of the insolvency of the Protection Buyer and (ii) the date following an early termination of the Credit Swap Agreement on which the amount standing to the credit of the Transaction Interest Account is less than the sum of the next two Fixed Amounts scheduled to be paid under the Credit Swap Agreement.

**Redemption pursuant to Tax or Regulatory Change, Clean-up Notice or Optional Termination by the Protection Buyer :**

A "Retained Reference Obligation" as more particularly defined in Condition 10.3 (Retention) includes: (i) any Defaulted Reference Obligation for which no Notional Loss has yet been determined; (ii) any Defaulted Reference Obligation in respect of which a Notional Loss has been determined, but which has not been verified or deemed to have been verified by the Monitoring Agent; and (iii) in case of a Redemption Date other than one falling on a BGB Early Termination Date any Reference Obligation (other than an Ineligible Reference Obligation) in respect of which there has occurred a Credit Event or a Potential Failure to Pay in relation to which it is still possible that the Transaction Administrator will be entitled to deliver a Credit Event Notice. See Condition 10.1 (Redemption Date and Redemption Amount), Condition 10.2 (Scheduled Maturity) and Condition 10.3 (Retention).

Subject to Condition 10.3 (Retention), the Issuer may redeem the Notes (all classes of Notes, but not some only, in whole but not in part) at their Redemption Amount, (which shall include accrued but unpaid interest up to the date of redemption) on the Interest Payment Date immediately following the date on which notice thereof has been given to the Holders, having given not less than twenty nor more than sixty days' notice to the Holders before that Interest Payment Date:

(i) because of the occurrence of certain tax or regulatory changes affecting the Issuer, the Bank and/or any BGB Entity;

(ii) because the Portfolio Notional Amount has been reduced to 10% or less of the Initial Portfolio Notional Amount; or

(iii) because of the exercise by the Protection Buyer on or after the third anniversary of the Issue Date of the option to terminate the Credit Swap Agreement.

See Condition 10.3 (Retention), Condition 10.5 (Redemption at the Option of the Issuer due to Regulatory Change), Condition 10.6 (Clean-up Call), Condition 10.7 (Optional Call) and Condition 10.8 (Tax Call)).

Subject to Condition 10.3 (Retention), if an Early Termination Date occurs under the Credit Swap Agreement (other than by reason of the Note Trustee giving a Note Default Notice) the Issuer will redeem the Notes at their Redemption Amount, together with accrued but unpaid interest on the Early Termination Date. See Condition 10.3 (Retention) and Condition 10.9 (Early Termination Date).

**Redemption on an Event of Default:**

Under the terms of the Note Trust Deed, the Note Trustee may, and if so requested in writing by the Holders of not less than 25% in aggregate of the Note Principal Amount of all Classes of Notes will, issue a Note Default Notice declaring all Classes of Notes to be due and repayable at their Redemption Amount (which shall include accrued but unpaid interest) at any time (subject to Condition 10.3 (Retention)) following the occurrence of an Event of Default. See Condition 12 (Events of Default)". Redemption of the Notes will take place on the Interest Payment Date immediately following the issue of a Note Default Notice, unless such notice is given less than seven Frankfurt Business Days prior to such Interest Payment Date, in which case, redemption shall take place on the second Interest Payment Date immediately following the issue of the Note Default Notice.

**Use of Proceeds:**

The Issuer will use the proceeds of the issue of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes to acquire the KfW Bonds which will be held for the account of the Issuer by the Custodian pursuant to the Custody Agreement.

The Issuer will apply payments received, *inter alia*, under the KfW Bonds, the Put Option Agreement and the Credit Swap Agreement towards the payment of principal and interest on the Notes subject always to such payments being applied in priority to meet the obligations of the Issuer to the Protection Buyer under the Credit Swap Agreement. On each Interest Payment Date payments of principal, if any, of, and interest on, each Class of Notes will be made, *inter alia*, from amounts standing to the credit of the Transaction Principal Account as to principal or, as the case may be, amounts standing to the credit of the Transaction Interest Account as to interest received by the Issuer from either the receipts of the Custodian under the KfW Bonds or from KfW under the Put Option Agreement as well as payments by the Protection Buyer to the Issuer under the Credit Swap Agreement into the Transaction Interest Account. On the Issue Date the Protection Buyer will deposit in the Corporate Expenses Account the Issuer Costs Reserve Amount. The Issuer will, in addition, receive the funds necessary from the Protection Buyer to pay all its on-going costs and expenses in respect of the Issuer Costs (which costs and expenses exclude any payments of interest or principal or compensatory amounts in respect of the Notes) under the Trust Agreement and will have access to the balance from time to time to the credit of the Corporate Expenses Account. The Protection Buyer will also bear (i) the fees and reasonable costs and disbursements of the Trustee, (ii) the fees, costs and disbursements of the Data Trustee and the Note Trustee and (iii) the fees of the Rating Agencies. See "THE TRUST AGREEMENT". The Issuer will be provided with funds necessary to cover all its initial costs and expenses from the Protection Buyer on or prior to the Issue Date.

**Rating:**

It is a condition of the issue of the Notes that:

The Class A Notes are assigned an Aaa rating by Moody's, an [AAA] rating by S&P and an AAA rating by Fitch;

The Class B Notes are assigned an A1 rating by Moody's, an [A+] rating by S&P and an A+ rating by Fitch;

The Class C Notes are assigned a Baa1 rating by Moody's, a [BBB+] rating by S&P and a BBB+ rating by Fitch; and

The Class D Notes are assigned a Ba1 rating by Moody's, a [BB+] rating by S&P and BB+ rating by Fitch.

**A rating ascribed to securities is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal by the Rating Agencies at any time.**

**Selling Restrictions:**

Subject to certain exceptions, the Notes are not being offered, sold or delivered within the United States or to U.S. persons. For a description of these and other restrictions on sale and transfer see "SUBSCRIPTION AND SALE".

**Listing:**

Application has been made to list the Notes on the Irish Stock Exchange.

**Settlement:**

It is expected that delivery of the Notes will be made on or about the Issue Date through the book-entry facilities of Euroclear and Clearstream, Luxembourg against payment therefor in euro in immediately available funds.

**Governing Law:**

The Notes are governed by English law. In addition, the Deed of Charge and Assignment, the Note Trust Deed, the Paying Agency Agreement, the Corporate Services Agreement, the Transaction Administration Deed, the Credit Swap Agreement, the Subscription Agreement, the Transaction Principal Account Agreement, the

## **The Credit Swap Agreement**

Transaction Interest Account Agreement and the Corporate Expenses Account Agreement are governed by English law. The Trust Agreement, the Data Trust Agreement, the Put Option Agreement, the Custody Agreement, the KfW Bond Transfer Agreement and the KfW Bonds are governed by German law.

On or prior to the Issue Date, the Issuer will enter into the Credit Swap Agreement with BGB in the form of a 1992 ISDA Master Agreement (Multicurrency — Cross Border) (including the Schedule thereto) and a Confirmation.

Under the Credit Swap Agreement, the Issuer will, as Protection Seller, provide credit protection to BGB, the Protection Buyer, in respect of the Reference Portfolio. Upon the occurrence of a Credit Event and the satisfaction of certain other conditions, the Issuer will be obliged to make Protection Payments on each Interest Payment Date on which a Notional Loss is allocated to the Notes. The Credit Events applicable to the Reference Obligations and/or Reference Entities comprising the Reference Portfolio are Failure to Pay and Bankruptcy. In return for the Issuer providing credit protection to BGB, BGB will be obliged to pay a fee, the Fixed Amount, to the Issuer on each Interest Payment Date.

The maximum liability of the Issuer under the Credit Swap Agreement will be the aggregate Note Principal Amount of all the Notes on the Issue Date. Notional Losses on the Reference Portfolio will initially be allocated by way of Aggregate Notional Losses to the Outstanding Threshold Amount until the Outstanding Threshold Amount has been reduced to zero.

Determination of the occurrence of Credit Events and Notional Losses and the allocation thereof are made by the Transaction Administrator pursuant to, and subject to material compliance (to the satisfaction of the Monitoring Agent) with, the Transaction Administration Deed and are verified by the Monitoring Agent pursuant to the Trust Agreement.

The Credit Swap Agreement will terminate, subject to ongoing rights in respect of or by reference to Retained Reference Obligations, on the later to occur of the Scheduled Maturity Date and the Final Maturity Date or, if earlier, the first date on which the Notes have been paid in full or the Note Principal Amounts of all Notes have been reduced to zero. The Credit Swap Agreement may also be terminated early — see “DESCRIPTION OF CREDIT SWAP AGREEMENT”.

## **The KfW Bonds and the Put Option**

### **The KfW Bonds:**

On the Issue Date, KfW, will issue EUR [●] floating rate notes bearing interest at a rate of EURIBOR minus [0.125]% per annum ([the “Floating Rate KfW Bonds”]) and EUR [●] fixed rate notes bearing interest at a rate of [●]% per annum (the “Fixed Rate KfW Bonds” and together with the Floating Rate KfW Bonds,] the “KfW Bonds”). The KfW Bonds will have a maturity that is eight and a quarter years from the Issue Date and interest payment intervals equal to the Interest Periods of the Notes.

See “THE KfW BONDS, THE KfW BOND TRANSFER AGREEMENT AND THE PUT OPTION AGREEMENT” and “DESCRIPTION OF THE TRANSACTION ACCOUNTS”.

### **The Put Option:**

Under the Put Option Agreement, KfW will on the Issue Date grant a Put Option in favour of the Issuer. Under the terms of the Put Option Agreement, prior to the delivery of an Enforcement Notice by the Security Trustee, the Issuer may request KfW to purchase a specified number of KfW Bonds from it at par value on any, or more than one,



Interest Payment Date or on any Redemption Date, provided always that where the Put Option is exercised after the seventh Frankfurt Business Day prior to an Interest Payment Date or Redemption Date, as the case may be, KfW will not be obliged to perform its obligations in respect of the Put Option until the immediately following Interest Payment Date, or Redemption Date, as the case may be. Pursuant to the Trust Agreement, proceeds from the exercise of the Put Option will be applied to meet the obligations of the Issuer to make Protection Payments to the Protection Buyer under the Credit Swap Agreement in respect of Integral Notional Losses or, as the case may be, Aggregate Notional Losses allocated on, and/or Amortisation Payments and/or the payments of Redemption Amounts to be made on, that Interest Payment Date, as the case may be. The Put Option may be exercised more than once.

The obligations of the Issuer to make Protection Payments to the Protection Buyer and to make payments of principal and interest under the Notes are secured by certain security interests granted in favour of the Protection Buyer and the Security Trustee respectively pursuant to the Trust Agreement. Following the delivery of an Enforcement Notice by the Security Trustee, the Security Trustee may exercise the Put Option. Pursuant to the Trust Agreement, the Custodian has undertaken that it will transfer moneys received representing principal to the Transaction Principal Account and moneys received representing interest to the Transaction Interest Account.

## **Trust Agreement**

### **The Trust Agreement:**

Pursuant to the Trust Agreement between the Issuer, BGB (as Custodian, Transaction Administrator and Protection Buyer), Deutsche Bank AG as Primary Purchaser, the Note Trustee and the Trustee, the Issuer will grant the security described under "Collateral" to the Security Trustee above.

In addition, the Monitoring Agent undertakes to monitor the performance by the Transaction Administrator of the Transaction Administration Obligations assumed by it in the Transaction Administration Deed.

Subject to matters where Verification (see below) is required, the Monitoring Agent will check only the plausibility of the information contained in the reports and other documents delivered to it pursuant to the Transaction Administration Deed and the Trust Agreement. It is not obliged to examine further such reports or other documents unless such plausibility check reveals a Transaction Administration Default, in which case, it will promptly notify the Note Trustee, the Transaction Administrator, the Issuer, the Rating Agencies and the Swap Counterparties and undertake such further reviews and other actions as it considers desirable or expedient to protect the Transaction Creditors. See "THE TRUST AGREEMENT" clause 10(2).

The Monitoring Agent will verify that information provided to it by the Transaction Administrator in connection with a Credit Event Notice, Valuation and Allocation Notice or Loss Allocation Report is substantially accurate and complete and whether all related procedures, guidelines and deadlines have been substantially complied with ("Verification").

The Monitoring Agent will verify a Credit Event Notice relating to a Reference Obligation or Reference Entity and will either deliver a Positive Verification Notice or initiate the Dispute Resolution Procedure. The Monitoring Agent will also verify a Valuation and Allocation Notice relating to a Defaulted Reference Obligation and

will either deliver a Positive Verification Notice or initiate the Dispute Resolution Procedure. In addition the Monitoring Agent will verify each Loss Allocation Report and will either deliver a Positive Verification Notice or initiate the Negotiation Process of the Dispute Resolution Procedure following which it will issue a Positive Verification Notice or an Amended Loss Allocation Report.

If in the process of Verification, the Monitoring Agent's determinations or conclusions are identical in all material respects to those of the Transaction Administrator and all related procedures, guidelines and deadlines have been complied with, it will issue a Positive Verification Notice following which all relevant determinations or conclusions will be deemed final and binding. If the Monitoring Agent disagrees with any determinations made by the Transaction Administrator it will initiate the Dispute Resolution Procedure.

Under the Dispute Resolution Procedure, a negotiated resolution or determination of an Expert by way of written certificate will be final and binding. If the Monitoring Agent fails to demand, or an Expert fails to deliver, an Expert's opinion (*Schiedsgutachten*) or certificate by the relevant deadline then, in the absence of manifest error on the part of the Transaction Administrator and unless the Monitoring Agent's or Expert's failure is caused by the Protection Buyer's failure to make payments under the Trust Agreement or the Data Trust Agreement, no Transaction Administrator Default will be deemed to have occurred and, if applicable, the Monitoring Agent will be deemed to have issued a Positive Verification Notice and Loss Allocation will be made on the basis of the relevant report prepared by the Transaction Administrator.

See "THE TRUST AGREEMENT".

## The Trust Agreement

*The following is the text of the main provisions of the Trust Agreement. The text is attached as Appendix B to the Conditions and constitutes an integral part of the Conditions — in case of any overlap or inconsistency in the definitions of a term or expression in the Trust Agreement and elsewhere in the Offering Circular, the definitions and expressions in the Trust Agreement will prevail. For the purposes of this Offering Circular, Schedules 1 and 2, which will contain form letters for the purposes of execution and Schedule 3, which will comprise the Deed of Charge and Assignment, have been omitted.*

This trust agreement (the “Agreement” as amended, restated, modified or superseded from time to time) is entered into on the Issue Date between Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft, Bahnstraße 16, 40212 Düsseldorf, Germany as security trustee (in which capacity, together with its successors and permitted assigns, the “Security Trustee”) and as monitoring agent (in which capacity, together with its successors and permitted assigns, the “Monitoring Agent” and in both capacities, the “Trustee”), Rhea CDO 1 plc, 25/28 North Wall Quay, International Financial Services Centre, Dublin, Ireland, (together with its successors and permitted assigns, the “Issuer”), Bankgesellschaft Berlin AG, London Branch, 1 Crown Court, Cheapside, London EC2V 6LR as protection buyer (in which capacity, together with its successors and permitted assigns, the “Protection Buyer”) and as transaction administrator (in which capacity, together with its successors and permitted assigns, the “Transaction Administrator”) (in both capacities, the “Bank”), Bankgesellschaft Berlin AG, Berlin head office, Alexanderplatz 2, D 10178 Berlin, Germany, as custodian (in which capacity, together with its successors and permitted assigns, the “Custodian”), Deutsche Bank AG, Winchester House, 1 Great Winchester Street, London EC2N 2DB (in which capacity, together with its successors and permitted assigns the “Primary Purchaser”) and Capita IRG Trustees Limited, Guildhall House, 81/87 Gresham Street, London EC2V 7QE (in which capacity, together with its successors and permitted assigns, the “Note Trustee”) and sets out, *inter alia*, certain rights and obligations (i) of the Protection Buyer and the Security Trustee in respect of the Collateral and (ii) of the Monitoring Agent in respect of certain determinations, calculations and actions of the Transaction Administrator in relation to the Reference Portfolio in connection with:

- (i) the proposed issue by KfW, on the Issue Date, of the KfW Bonds in bearer form (*Inhaberschuldverschreibungen*) to the Primary Purchaser;
- (ii) the proposed sale and transfer (*Übereignung*) of the KfW Bonds, on the Issue Date, by the Primary Purchaser to the Issuer pursuant to the provisions of the KfW Bond Transfer Agreement;
- (iii) the proposed pledge (*Verpfändung*) *inter alia* of the KfW Bonds, on the Issue Date, by the Issuer as pledgor (*Verpfänder*) to the Protection Buyer as primary chargee (*erstrangiger Sicherungsnehmer*) and the proposed transfer by way of security (*Sicherungsübereignung*) of the KfW Bonds to the Security Trustee as secondary chargee (*zweitrangiger Sicherungsnehmer*) pursuant to Clause 3 hereof;
- (iv) the proposed issue by the Issuer, on the Issue Date, of the following classes of credit linked notes upon the terms and subject to the Conditions:
  - [€148,000,000] Class A Floating Rate Credit Linked Notes due 2009 (the “Class A Notes”);
  - [€50,000,000] Class B Floating Rate Credit Linked Notes due 2009 (the “Class B Notes”);
  - [€11,000,000] Class C Floating Rate [ / ● % ] Credit Linked Notes due 2009 (the “Class C Notes”); and
  - [€27,000,000] Class D ● Floating Rate [ / ● % ] Credit Linked Notes due 2009 (the “Class D Notes”).
- (v) The Credit Swap Agreement between the Issuer as seller of credit protection and the Protection Buyer as acquirer of credit protection. Under the Credit Swap Agreement, the Issuer shall, subject to certain conditions specified in the Credit Swap Agreement, make certain credit protection payments to the Protection Buyer which credit protection payments shall equal any Aggregate Notional Losses or Integral Notional Losses (as applicable) allocated to reduce, *pro tanto*, the Note Principal Amount of the Notes in the following order:
  - (a) *pro rata* of the Class D Notes;
  - (b) *pro rata* of the Class C Notes,
  - (c) *pro rata* of the Class B Notes; and
  - (d) *pro rata* of the Class A Notes,as specified in Condition 9.1.2 and the Credit Swap Agreement.

(vi) The Junior Swap Agreement and the Senior Swap Agreement into which the Protection Buyer contemplates entering into with one or more protection sellers (the "Junior Swap Counterparty" and the "Senior Swap Counterparty", respectively and together the "Swap Counterparties") identified to the Trustee in a side letter delivered to the Trustee by the Protection Buyer on or about the Issue Date. Pursuant to the provisions of the Junior Swap Agreement, the Junior Swap Counterparty shall, subject to the conditions specified in the Junior Swap Agreement, make certain credit protection payments which credit protection payments are linked to any Notional Losses allocated to the Junior Swap. Pursuant to the provisions of the Senior Swap Agreement, the Senior Swap Counterparty shall, subject to the conditions specified in the Senior Swap Agreement, make certain credit protection payments which credit protection payments are linked to any Notional Losses allocated to the Senior Swap.

Each amount payable to the Protection Buyer under any of the Junior Swap Agreement, the Senior Swap Agreement or the Credit Swap Agreement (together the "Swap Agreements") is referred to as a "Cash Settlement Amount". For the purposes of this Agreement, as long as the Protection Buyer has not entered into a Junior Swap Agreement and/or Senior Swap Agreement, the Bank shall be deemed a Transaction Creditor in lieu of the Junior Swap Counterparty and/or the Senior Swap Counterparty, as applicable.

The term "financial statements" shall include non-consolidated and consolidated financial statements (if applicable), unless the context requires otherwise.

The terms "herein", "hereof", "hereto" or any similar term shall mean a reference to this Agreement (including its Schedules).

Unless specified otherwise, "promptly" or "immediately" shall mean without undue delay (*ohne schuldhaftes Zögern*).

References in this Agreement to a company, corporation or unincorporated body of persons shall be construed as including its successors and permitted assigns from time to time.

In this Agreement references to Schedules, Clauses and paragraphs shall be construed as references to, respectively, the Schedules, Clauses and paragraphs of this Agreement as amended, restated, modified or superseded from time to time. Any Part or Clause headings are only for convenience and shall not affect the construction hereof and expressions denoting the singular number only shall include the plural number and vice versa.

Capitalised terms used and not otherwise defined herein shall, unless the context requires otherwise, have the same meaning as given to them in the Master Definitions Schedule dated the date hereof and signed by Deutsche Bank AG, Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft, Rhea CDO 1 Plc, Bankgesellschaft Berlin AG, Capita IRG Trustees Limited, Landesbank Berlin — Girozentrale — , Bankgesellschaft Berlin (UK) Plc, Bankgesellschaft Berlin (Ireland) Plc and Kreditanstalt für Wiederaufbau and Ernst & Young AG Wirtschaftsprüfungsgesellschaft for identification purposes.

**NOW THEREFORE** the parties hereto agree as follows:

## **Part 1 General Provisions**

### *Clause 1. Trustee Duties*

(1) Unless explicitly set out in this Agreement, the Trustee is not obliged (i) to supervise the discharge by the Issuer, KfW, the Primary Purchaser, the Bank, the Custodian, the Note Trustee, or any Swap Counterparty of their respective payment or other obligations arising from any of the Transaction Documents or the Swap Agreements or (ii) to monitor the discharge by the Transaction Administrator of its duties specified in any Transaction Document, or (iii) to carry out duties which are the responsibility of the Issuer, KfW, the Primary Purchaser, the Bank, the Custodian, the Note Trustee, the Swap Counterparties or any other party. This Agreement, including the Schedules attached hereto, reflects the complete understanding of the parties hereto and there are no contractual obligations or other commitments of the Trustee, express or implied, that are not expressly set out herein.

(2) The Issuer hereby appoints the Trustee to act as trustee (*Treuhänder*) for the purposes of the Transaction and the Trustee accepts such appointment. The Trustee shall carry out the duties hereunder (the "Trustee Duties") and shall perform its tasks and functions as set out in this Agreement and hold and exercise all its rights under the Transaction Documents (other than payment claims under Clauses 18(1), 18(2), 19, 20 or 21 and further claims owned by the Trustee on his own behalf) as a trustee for the benefit of, and with particular regard to, the interests of the Transaction Creditors. The Trustee shall also, in a fiduciary

capacity, give due regard to and protect the rights of the Protection Buyer under the Transaction Documents (and in particular give full effect to Clause 4(4) and Clause 5, sub-paragraphs (a) and (d) hereof) to the extent that such rights of the Protection Buyer are compatible with the rights of the Transaction Creditors under the Transaction Documents or the Swap Agreements. In case of any conflict between the differing rights of the Transaction Creditors, the Trustee shall, subject to the other provisions hereof, give priority to the rights of the Senior Swap Counterparty, then to the rights of the Holders and, among the Holders, to the rights of the Holders holding the Class or Classes of Notes which then rank most senior for the purposes of Loss Allocation (provided that the Security Trustee shall treat all Holders of the same Class of Notes on a *pro rata* and *pari passu* basis), and lastly to the rights of the Junior Swap Counterparty. In the case of any conflict between the rights of the Protection Buyer and the Transaction Creditors, the Trustee shall, subject to Clause 4(4) and Clause 5, sub-paragraphs (a) and (d) and the other provisions hereof, give priority to the rights of the Transaction Creditors.

(3) The Trustee hereby irrevocably grants the Transaction Creditors full and unconditional rights as third party beneficiaries of the Trustee Duties and accordingly the Transaction Creditors have a direct, irrevocable and unconditional claim against the Trustee to demand that the Trustee perform the Trustee Duties (contract for the benefit of a third party pursuant to § 328 of the German Civil Code (*echter Vertrag zugunsten Dritter*)). The Trustee Duties are owed exclusively to the Transaction Creditors, unless stated or the context otherwise requires.

#### *Clause 2. Trustee Claims; Nature of Security Trusteeship; Accounts; Power of Attorney*

(1) Without prejudice to the Note Trustee's or the Holders' right to enforce any of their rights under the Notes, the Issuer hereby grants the Security Trustee separate and independent claims (the "Trustee Claims") as a result of which the Security Trustee may demand from the Issuer that: (i) any principal payment obligations of the Issuer under the Notes be fulfilled (the "Principal Trustee Claim"), (ii) any interest payment obligations of the Issuer under the Notes be fulfilled (the "Interest Trustee Claim"), (iii) any other obligations of the Issuer under the Notes, hereunder or under any other Transaction Document be fulfilled (the "Miscellaneous Trustee Claim") and/or (iv) if a Note Enforcement Event has occurred or the occurrence thereof is, in the reasonable professional judgment of the Security Trustee, to be expected, and insolvency proceedings have not been instituted against the assets of the Security Trustee (and, in the reasonable professional judgment of the Security Trustee, the institution of such proceedings is not to be expected), that payments owed under the Notes (whether principal or interest) be made to a special trust account of the Security Trustee with an Eligible Bank incorporated and operating through a branch in Germany (the "Trust Account"), for on-payment to the relevant Holders provided that if payments cannot be made due to insolvency procedures having been instituted against the assets of the Security Trustee (or because the Security Trustee reasonably expects such institution) payment owed under the Notes be made to the Note Trustee for on-payment to the relevant Holders. The Security Trustee shall hold all Trustee Claims and moneys standing to the credit of the Trust Account as trustee (*Treuhänder*) for the benefit of the Holders. A Principal Trustee Claim, Interest Trustee Claim or Miscellaneous Trustee Claim may be enforced separately from the Holders' claim in respect of the same payment or other obligation of the Issuer (each such claim of the Holders being a "Related Holder Claim") provided that the Issuer shall not be obliged to pay or perform more than 100% in respect of each payment or other obligation so that the satisfaction or discharge of a Related Holder Claim automatically causes the satisfaction or discharge of the corresponding Trustee Claim. In the case of any sum having been paid pursuant to (iv) above into the Trust Account, the Issuer and each relevant Holder shall have a claim against the Security Trustee for on-payment of any sum so paid into the Trust Account to each relevant Holder and each relevant obligation of the Issuer under the Notes shall only be discharged if, and to the extent, the Security Trustee has on-paid the relevant amount or amounts to the relevant Holders provided that any claim against the Issuer resulting from a failure of the Security Trustee to make such on-payments shall be subject to Clause 26(2) and provided further that the Security Trustee shall be discharged of all and any obligations to procure the on-payment of funds to the extent of payment of such sums to the Principal Paying Agent.

(2) The Trustee, in its capacity as Security Trustee, shall hold all security interests charged to it hereunder in respect of the Collateral as German law trustee (*Treuhänder*) for the benefit of the Holders (and, under and subject to the limitations of Clause 3, paragraph (2) (e), Clause 4(4) and Clause 5(a) and (d) the Principal Collateral also for the benefit of the Protection Buyer) irrespective of whether the claim being the subject-matter of the charge or the charge itself is governed by German law, English law or any other law. The Security Trustee undertakes to fully co-operate with the Note Trustee and to execute all instructions received from the Note Trustee. Notwithstanding anything herein to the contrary the Security Trustee shall not be liable for any act, failure to act or omission on its part if such acting, failure or omission arises from

compliance with such instructions save as the same may be the result of the Security Trustee's negligence, misconduct or wilful default. Without prejudice to the generality of the foregoing, the Security Trustee shall use reasonable efforts to ensure that such instructions are executed but shall be under no obligation to, and shall not be liable for its failure to, procure the execution of such instructions by third parties.

(3) No later than the Issue Date, the Trustee shall open the Trust Account. No later than on the Issue Date, the Issuer shall, for the purposes of the Transaction and on the basis of Required Provisions, open with the Custodian the Custody Account and the Custody Cash Account and open with the Account Bank a principal account (the "Transaction Principal Account"), an interest account (the "Transaction Interest Account"), and a corporate expenses account (the "Corporate Expenses Account") (which, together with the Transaction Principal Account and the Transaction Interest Account are referred to herein as the "Transaction Accounts"). The Custodian shall open, no later than the Issue Date, the Dedicated Account. "Dedicated Account" means a segregated securities and corresponding cash account opened by the Custodian with Clearstream, Frankfurt in favour of the Issuer ("*Treuhandkonto wegen Rhea CDO I PLC*"), with the account number 69049. The Issuer shall procure that, unless otherwise provided herein or instructed by the Trustee pursuant to this Agreement, all payments payable to the Issuer (i) by KfW in respect of principal under the KfW Bonds or (ii) in respect of proceeds of the sale of the KfW Bonds (excluding sale proceeds in respect of the KfW Bonds that represent accrued interest) under the Put Option Agreement or otherwise, shall be made to the Dedicated Account and, following crediting to the Dedicated Account be promptly paid by the Custodian by way of a bank transfer from the Dedicated Account to the Transaction Principal Account. If any principal or sale proceeds of the sale of the KfW Bonds (excluding sale proceeds that represent accrued interest) are paid to the Issuer in any way other than in accordance with the immediately preceding sentence, then the Issuer shall promptly procure for the crediting of such amounts of principal to the Transaction Principal Account.

(4) The Issuer shall procure that, unless otherwise provided herein or instructed by the Trustee pursuant to this Agreement, all payments payable to the Issuer (i) in respect of interest under the KfW Bonds or in respect of the payment of accrued interest in connection with the sale of the KfW Bonds, be made to the Dedicated Account and following crediting to the Dedicated Account, be promptly paid by the Custodian by way of a bank transfer to the Transaction Interest Account. The Issuer shall further procure that, unless otherwise provided herein or instructed by the Trustee, all credit protection fee payments received by the Issuer from the Protection Buyer in respect of Fixed Amounts be made by way of a bank transfer to the Transaction Interest Account. If (i) any interest payable under the KfW Bonds or accrued interest in connection with the sale of the KfW Bonds or (ii) any sum representing Fixed Amounts payable by the Protection Buyer is paid in any way other than in accordance with the two immediately preceding sentences, then the Issuer shall promptly procure for the crediting of such interest or fee payments to the Transaction Interest Account.

(5) The Issuer hereby irrevocably instructs the Custodian, except as set forth below, to pay into the Transaction Principal Account all principal redemption amounts received under the KfW Bonds and all proceeds (other than proceeds representing interest accrued on the KfW Bonds) of the sale of the KfW Bonds and to pay into the Transaction Interest Account all amounts of interest received under the KfW Bonds and all proceeds representing interest accrued on the KfW Bonds received in connection with the sale of the KfW Bonds. The Issuer further instructs the Protection Buyer to pay into the Transaction Interest Account all Fixed Amounts. The Custodian and the Protection Buyer hereby accept such instructions and it is agreed that these instructions can only be revoked with the explicit written consent of the Security Trustee.

(6) The Issuer, the Custodian, and the Protection Buyer agree that the Security Trustee may cancel the instructions pursuant to the immediately preceding paragraph upon the occurrence of a Note Enforcement Event or if, in the reasonable judgment of the Security Trustee, such cancellation is desirable or expedient to protect the interests of the Holders. In the event of any such cancellation, the Security Trustee shall promptly give notice thereof to the Custodian and the Protection Buyer (with a copy of such notice to the Issuer) and immediately upon receipt of such notice (i) the Custodian shall use reasonable endeavours to ensure that, with immediate effect, all and any payments received under or in respect of the KfW Bonds are made only to an account and/or in a manner as instructed by the Security Trustee, and (ii) the Protection Buyer shall use all reasonable endeavours to ensure that, with immediate effect, all Fixed Amounts are made only to an account and/or in a manner as instructed by the Security Trustee.

(7) The Issuer irrevocably and by way of security (to the extent permitted under applicable law) grants power of attorney to the Security Trustee, the Security Trustee being exempted from the restrictions of §181 of the Civil Code, to act on behalf of the Issuer with respect to all of the Issuer's rights under the Transaction Documents (except for any such rights vis-à-vis the Trustee) after the occurrence of a Note Enforcement



Event. This power of attorney shall automatically expire upon the effectiveness of the replacement of the Trustee by a successor trustee pursuant to Clause 22 (5). The Security Trustee shall use this power of attorney only for the purpose of implementing the Transaction after the occurrence of a Note Enforcement Event.

## **Part 2 Collateral and Security Trusteeship**

### *Clause 3. Initial Purchase and Depositing of KfW Bonds; Creation of Principal Collateral Charges, Interest Collateral Charges, Support Collateral Charges and Expenses Collateral Charges*

- (1) *Initial Purchase and Depositing of KfW Bonds.* On the Issue Date, immediately following the issue of the KfW Bonds to the Primary Purchaser, the Primary Purchaser shall sell and transfer full and unrestricted title to (*übereignen*) the KfW Bonds to the Issuer under the terms of the KfW Bond Transfer Agreement and, in connection with such transfer, the Custodian shall procure, for value the Issue Date, the deposit of the KfW Bonds in the Dedicated Account and their crediting to the Custody Account pursuant to the terms of the Custody Agreement.
- (2) *Securing of Principal Collateral.* The Issuer shall, as further specified in sub-paragraphs (a) to (c) below, and subject to sub-paragraph (e) below, charge the Principal Collateral (as subsequently defined) (i) to the Protection Buyer as first ranking continuing security for the due discharge by the Issuer of its present and future obligations to the Protection Buyer, whether actual or contingent, to make protection payments under or in connection with the Credit Swap Agreement (the "Credit Protection Obligations") and (ii) to the Security Trustee as secondary and subordinate continuing security for the due discharge by the Issuer of the Principal Trustee Claim and Related Holder Claims. "Principal Collateral" means (A) the KfW Bonds and (B) each of the following claims of the Issuer, present or future, actual or contingent: (i) all claims against the Primary Purchaser under the German law governed KfW Bond Transfer Agreement (the "KfW Bond Transfer Claims"), (ii) all claims against the Custodian under or in connection with the German law governed Custody Agreement for the delivery of the KfW Bonds, the on-payment of principal received under the KfW Bonds and the on-payment of any payments (other than payments representing accrued interest) received in respect of the sale of KfW Bonds (the "Custody Principal Claims") and (iii) all claims against the Account Bank in respect of moneys standing to the credit of the English law governed Transaction Principal Account (the "Transaction Principal Account Claims"). The Principal Collateral shall be charged as further specified in sub-paragraphs (a)-(e) below:
- (a) *The German Principal Contract Pledges.* The Issuer agrees with the Protection Buyer that the Issuer pledges (*verpfänden*) to the Protection Buyer the KfW Bond Transfer Claims and its present and future Custody Principal Claims, and, in order to perfect afore-agreed pledges (the "German Principal Contract Pledges"), the Issuer herewith notifies the Primary Purchaser and the Custodian that the German Principal Contract Pledges shall be valid against the Issuer for the benefit of the Protection Buyer until they are released by operation of law or otherwise.
- (b) *The KfW Bond Pledges.* The Issuer agrees with the Protection Buyer that, effective immediately after the receipt of the KfW Bonds in the Dedicated Account and their crediting to the Custody Account in accordance with paragraph (1) of this Clause 3, the Issuer pledges (*verpfänden*) the KfW Bonds (including, for the avoidance of doubt, the payment claims arising under the KfW Bonds against KfW) to the Protection Buyer pursuant to § 1205 paragraph 1, second sentence of the Civil Code.
- (c) *Ranking and Nature of German Primary Principal Charges.* The Issuer, the Protection Buyer and the Security Trustee agree that the German Principal Contract Pledges and the pledges over the KfW Bonds, as set forth in sub-paragraphs (a) and (b) above (the "German Primary Principal Charges") shall be first fixed charges in favour of the Protection Buyer as continuing security for the due discharge by the Issuer of its Credit Protection Obligations.
- (d) *German Secondary Principal Charges.* The Issuer agrees with the Security Trustee that, immediately after the perfection of the German Primary Principal Charges in accordance with sub-paragraphs (a) and (b) above (and in no event prior to such perfection), the Issuer shall pledge (*verpfänden*) to the Security Trustee its KfW Bond Transfer Claims and its present and future Custody Principal Claims (the "German Secondary Contract Pledges") and transfer to the Security Trustee by way of security (*Sicherungsübereignung*) its legal title to the KfW Bonds (such pledges and transfer of title by way of security creating the "German Secondary Principal Charges" in favour of the Security Trustee as chargee (*Sicherungsnehmer*)). The German Secondary Principal Charges shall constitute secondary continuing security by way of fixed charges in favour of the Security Trustee for its own benefit and the benefit of the Holders. To initiate the perfection of such German Secondary Principal Charges, the Issuer herewith irrevocably offers to the Security Trustee (A) to pledge (*verpfänden*) the KfW Bond Transfer Claims and the present and future Custody Principal Claims,

(B) the transfer of title to the KfW Bonds mentioned in the immediately preceding sentence and (C) the assignment of the Issuer's future claim to delivery (*Herausgabeanspruch*) against the Protection Buyer pursuant to § 1223 paragraph 1 of the Civil Code, which claim is subject to the release of the German Primary Principal Charge over the KfW Bonds, provided that the Security Trustee shall not be entitled to accept the offers mentioned in (A), (B) and (C) prior to the execution of this Agreement, the issuance of the KfW Bonds and the Notes and the crediting of the KfW Bonds to the Dedicated Account and any prior acceptance shall be null and void (*nichtig*). The acceptance by the Security Trustee shall be declared by way of a letter of acceptance in form and substance equal to the form of letter set out in Schedule 1 hereto (the "German Secondary Principal Charge Acceptance Letter"). Immediately following its receipt of the German Secondary Principal Charge Acceptance Letter, the Issuer will notify the Primary Purchaser and the Custodian of the pledge for the benefit of the Security Trustee of the Issuer's KfW Bond Transfer Claims and its present and future Custody Principal Claims by way of a letter in form and substance equal to the form of letter set out in Schedule 2 hereto (the "German Secondary Pledge Notification Letter"). The Custodian acknowledges that it holds possession in respect of the KfW Bonds for the Protection Buyer as long as the German Primary Principal Charges have not been released, and, after the release of the German Primary Principal Charges, that it shall hold possession in respect of the KfW Bonds for the Security Trustee as long as the German Secondary Principal Charges have not been released. The Issuer agrees that the Custodian shall only hold possession in respect of the KfW Bonds for the Issuer upon the full and unconditional release of the German Primary Principal Charges and the German Secondary Principal Charges.

(e) *English law claims — charge and assignment by way of security.* The Issuer, the Protection Buyer and the Security Trustee agree that the Issuer shall charge, by way of first fixed charge, to the Security Trustee any and all amounts standing to the credit of the Transaction Principal Account and assign by way of security, *inter alia*, the Transaction Principal Account Claims (such charge and security assignments creating the "English Principal Charge"). The English Principal Charge shall secure the Protection Buyer's claims against the Issuer to perform its Credit Protection Obligations and the Security Trustee's Principal Trustee Claim and the Related Holder Claims. The English Principal Charge shall, on the Issue Date, be created under the Deed of Charge and Assignment substantially in the form of deed of charge and assignment set out in Schedule 3 hereof. The Security Trustee will hold all rights resulting from the English Principal Charge, first and prior, as (German law) security trustee (*Sicherheitentreuhand*) on behalf of the Protection Buyer in respect of Credit Protection Obligations due but not yet discharged. The Security Trustee will also hold all rights resulting from the Deed of Charge and Assignment, second and subordinate, in its own right for the purpose of securing its Principal Trustee Claim and as (German law) security trustee (*Sicherheitentreuhand*) on behalf of the Holders in respect of the Related Holder Claims. If, in connection with the enforcement of the English Principal Charge, any conflict of interest arises between (i) the Security Trustee's obligations as security trustee on behalf of the Protection Buyer and (ii) the Security Trustee's rights as holder of the Principal Trustee Claim or its obligations as security trustee on behalf of the Holders, the Security Trustee shall, in the absence of manifest error, be entitled to rely on the advice obtained from reputable legal counsel (to be appointed with the consent of the Protection Buyer, such consent not to be unreasonably withheld or delayed) and there shall be no further obligations of the Security Trustee vis-à-vis the Protection Buyer if and to the extent the Security Trustee has acted in accordance with such advice obtained.

(3) *Securing of Interest Collateral.* The Issuer shall, as further specified in sub-paragraphs (a) and (b) below, charge the Interest Collateral (as subsequently defined) to the Security Trustee as continuing security by way of first fixed charge for the due discharge by the Issuer of the Interest Trustee Claim and the Related Holder Claim. "Interest Collateral" means the Issuer's present and future claims, actual or contingent, (i) against the Custodian for the on-payment of interest received by the Custodian under the KfW Bonds and for the on-payment of any sale proceeds of the KfW Bonds representing interest accrued on the KfW Bonds (the "Custody Interest Claims"), (ii) against the Protection Buyer for the payment of any Excess Enforcement Claims ("Excess Enforcement Claim" shall mean, from time to time, any claim of the Issuer against the Protection Buyer for the payment of a sum of money generated by the enforcement of the pledge over the KfW Bonds (as created pursuant to Clause 3(2)(b) hereof) for the benefit of the Protection Buyer pursuant to Clause 5(a) but only to the extent such sum exceeds, at the end of enforcement, the amount of Credit Protection Obligations then outstanding and represents accrued interest), (iii) against the Protection Buyer for the payment of Fixed Amounts ("Credit Protection Fee Claims") and (iv) against the Account Bank in respect of any moneys standing to the credit of the Transaction Interest Account (the "Transaction Interest Account Claims"). The Interest Collateral shall be charged as further specified in sub-paragraphs (a) and (b) below:

(a) *Securing of Custody Interest Claims and of Excess Enforcement Claims.* The Issuer and the Security Trustee agree that the Issuer shall pledge (*verpfänden*) to the Security Trustee its Custody Interest Claims and its Excess Enforcement Claim to secure the Interest Trustee Claim and the Related Holder Claims and both parties herewith consent to perfect such pledges with immediate effect. The Issuer hereby notifies the Custodian and the Protection Buyer that aforesaid pledges shall be valid against the Issuer for the benefit of the Security Trustee until they are released by operation of law or otherwise.

(b) *Securing of English law governed Credit Protection Fee Claims and Transaction Interest Account Claims.* The Issuer and the Security Trustee agree that the Issuer shall charge by way of first fixed charge to the Security Trustee any and all amounts standing to the credit of the Transaction Interest Account and assign by way of security to the Security Trustee, *inter alia*, the Credit Protection Fee Claims and the English law governed Transaction Interest Account Claims (such charge and security assignments creating the "English Interest Charges"). The English Interest Charges shall secure the Interest Trustee Claims and the Related Holder Claims. The English Interest Charges shall, on the Issue Date, be created under the Deed of Charge and Assignment substantially in the form of deed of charge and assignment set out in Schedule 3 hereof.

(4) *Securing of Support Collateral.* The Issuer and the Security Trustee herewith agree that, in order to secure the Principal Trustee Claim, the Interest Trustee Claim, the Miscellaneous Trustee Claim and the Related Holder Claims, the Issuer shall create a first fixed charge (to the extent not expressly secured otherwise) over all its rights, present and future, actual or contingent, (i) against any party (other than the Trustee) under this Agreement, (ii) against KfW under the Put Option Agreement and (iii) against the Note Trustee under the Note Trust Deed, against the Principal Paying Agent, Paying Agent and Agent Bank under the Paying Agency Agreement and against the Lead Manager under the Subscription Agreement (collectively the "Support Collateral") in favour of the Security Trustee for its own benefit and the benefit of the Holders through assignments by way of security, as further specified in sub-paragraphs (a) and (b) below.

(a) *Claims under this Agreement and the Put Option Agreement.* The Issuer and the Security Trustee agree that the Issuer herewith assigns with immediate effect to the Security Trustee by way of security (*Sicherungsabtretung*) its claims (i) against any party (other than the Trustee) hereunder (to the extent not expressly charged otherwise) and (ii) against KfW under the Put Option Agreement to secure the Principal Trustee Claim, the Interest Trustee Claim, the Miscellaneous Trustee Claim and the Related Holder Claims.

(b) *Claims under the Note Trust Deed, Paying Agency Agreement and Subscription Agreement.* The Issuer and the Security Trustee agree that the Issuer shall assign by way of security to the Security Trustee, *inter alia*, its property, assets and rights under the Note Trust Deed, Paying Agency Agreement and Subscription Agreement to secure the Principal Trustee Claim, the Interest Trustee Claim, the Miscellaneous Trustee Claim and the Related Holder Claims. The aforesaid assignment shall, on the Issue Date, be performed and perfected under the Deed of Charge and Assignment substantially in the form of deed of charge and assignment set out in Schedule 3 hereof.

(5) *Securing of Expenses Collateral.* The Issuer and the Security Trustee herewith agree that, in order to secure the Third Parties' claims against the Issuer under or in connection with their respective agreements with the Issuer or which have arisen by operation of law, the Issuer shall, as further specified in sub-paragraphs (a) and (b) below, create first fixed charges over the Expenses Collateral in favour of the Security Trustee for the benefit of the Third Parties on a *pro rata* and *pari passu* basis as continuing security for the due discharge by the Issuer of the Third Parties' claims under or in connection with their respective agreements with the Issuer or which have arisen by operation of law. "Expenses Collateral" means (i) the Issuer's present and future claims, actual or contingent, against the Account Bank in respect of any moneys standing to the credit of the Corporate Expenses Account (the "Corporate Expenses Account Claims") and (ii) the Issuer's present and future claims, actual or contingent, against the Protection Buyer under Clause 23 in respect of Issuer Costs ("Issuer Cost Claims").

(a) *Corporate Expenses Account Claims — charge and assignment by way of security.* The Issuer, the Protection Buyer and the Security Trustee agree that the Issuer shall charge by way of first fixed charge any and all amounts standing to the credit of the Corporate Expenses Account and assign by way of security, *inter alia*, the Corporate Expenses Account Claim to the Security Trustee for the benefit of the Third Parties which charge and assignment by way of security shall, on the Issue Date, be created under the deed of charge and assignment substantially in the form and substance equal to the deed of charge and assignment set out in Schedule 3 hereof.

(b) *Issuer Cost Claims — assignment by way of Security.* The Issuer, the Protection Buyer and the Security Trustee agree that the Issuer herewith, with immediate effect, assigns by way of security

(*Sicherungsabtretung*) to the Security Trustee for the benefit of the Third Parties all its claims against the Protection Buyer under clause 23 as to the payment of Issuer Costs.

The Security Trustee herewith acknowledges that it holds as (German law) security trustee (*Treuhänder*) the Expenses Collateral for the benefit of the Third Parties (*Vertrag zugunsten Dritter*) on a *pari passu* and *pro rata* basis in relation to their claims that have become due and payable in connection with the Transaction.

(6) [reserved]

(7) *Exercise of Rights relating to the Collateral.* The Issuer hereby agrees with the Protection Buyer and the Security Trustee that it shall not, without the consent of the Protection Buyer and the Security Trustee, exercise delivery or payment claims deriving from the Collateral save that for so long as neither a Credit Protection Enforcement Event nor a Note Enforcement Event has occurred or such authorisation and instruction is otherwise withdrawn, the Issuer is hereby authorised and instructed by the Protection Buyer and the Security Trustee to exercise delivery or payment claims deriving from the Collateral and apply the proceeds so generated in accordance with the payment provisions set out in the Transaction Principal Account Agreement and the Transaction Interest Account Agreement, but subject always to the Deed of Charge and Assignment. The Protection Buyer and the Security Trustee undertake to each other to notify, on the Issue Date, all obligors of aforesaid delivery or payment claims of the predescribed right of the Issuer to the extent such obligors are not a party to this Agreement. Immediately upon the occurrence of a Note Enforcement Event or a Credit Protection Enforcement Event the authorisation referred to above shall be deemed to have been revoked and the Issuer shall not thereafter exercise delivery or payment claims or deal with the Collateral except upon the express instructions of the Protection Buyer (if a Credit Protection Enforcement Event has occurred) and the Security Trustee (if a Note Enforcement Event has occurred). Without limiting the generality of the foregoing, if insolvency or similar proceedings including any preliminary proceedings (*Eröffnungsverfahren*) and analogous or similar proceedings are commenced in respect of the Issuer, or its assets, then, with effect immediately prior to such commencement, all and any authorisation of the Issuer to deal with the Collateral shall be deemed revoked.

(8) *Exercise of Rights relating to Expenses Collateral.* The Issuer hereby agrees with the Protection Buyer and the Security Trustee that it shall not be entitled to deal with or apply the Expenses Collateral without the prior consent of the Security Trustee save that for so long as neither a Credit Protection Enforcement Event nor a Note Enforcement Event has occurred or such authorisation and instruction is otherwise withdrawn, the Issuer is hereby authorised and instructed by the Security Trustee to apply the Expenses Collateral to the satisfaction, *pro rata* and *pari passu*, of the Third Parties in strict accordance with the terms of the Corporate Expenses Account Agreement and the Deed of Charge and Assignment. The Security Trustee undertakes to notify the Account Bank of the arrangement pursuant to the immediately preceding sentence. Immediately upon the occurrence of a Note Enforcement Event or a Credit Protection Enforcement Event or upon the expiry of the fifteen day grace period referred to in Clause 7 (A)(1) and without prejudice to the rights of the Security Trustee under the Deed of Charge and Assignment the authorisation referred to above shall be deemed to have been revoked and the Issuer shall not thereafter exercise delivery or payment claims or deal with the Expenses Collateral except upon the express instruction of the Security Trustee. Without limiting the generality of the foregoing, if insolvency or similar proceedings including any preliminary proceedings (*Eröffnungsverfahren*) and analogous or similar proceedings are commenced in respect of the Issuer or its assets, then, with effect immediately prior to such commencement, all and any authorisation of the Issuer to deal with the Expenses Collateral shall be deemed revoked.

(9) *Rights of the Protection Buyer and Security Trustee upon the occurrence of a Credit Protection Enforcement Event or Note Enforcement Event.* If (i) in respect of any Interest Payment Date the Security Trustee was obliged to perform the functions set out in Clause 4(4)(A) and Clause 4(4)(B) and if on the fourth Business Day following such Interest Payment Date Credit Protection Obligations (that were due and payable on such Interest Payment Date) remain, in whole or in part, outstanding (a "Credit Protection Enforcement Event"), the Protection Buyer (solely in respect of the German Primary Principal Charges) and the Security Trustee (solely in respect of the English Principal Charge), or, if (ii) an AET Early Termination Date occurs or the Security Trustee receives an ETD Notice from the Protection Buyer or the Issuer or a Note Default Notice from the Note Trustee ("Note Enforcement Event"), the Security Trustee, may (A) demand payment from or discharge by the Issuer of all or any part of the respective obligations for the protection of which the Protection Buyer and/or the Security Trustee (as applicable) has been granted security pursuant to Clause 3 and (B) issue an Enforcement Notice to KfW, the Primary Purchaser, the Custodian, the Account Bank or the other relevant obligors in respect of their obligation or obligations charged by the Issuer to the Security Trustee under Clause 3 confirming that a Credit Protection Enforcement Event or a Note Enforcement Event (as applicable) has occurred, that the notice constitutes an

Enforcement Notice, confirming the agreement in respect of which it is being given and that it is entitled to exercise the rights (originally granted to the Issuer) thereunder upon such giving of the Enforcement Notice.

#### *Clause 4. Liquidation of KfW Bonds*

- (1) All parties hereto agree that the KfW Bonds shall (and may only) be sold:
  - (a) for the sole purpose of meeting the Issuer's Credit Protection Obligations to the extent due or expected to be due on the Next Available Interest Payment Date or the Issuer's obligations in respect of the Principal Trustee Claim, the Interest Trustee Claim and Related Holder Claims to the extent due or expected to be due on the Next Available Interest Payment Date. "Next Available Interest Payment Date" shall mean the immediately following Interest Payment Date, unless such immediately following Interest Payment Date is nearer than seven Business Days, in which case the "Next Available Interest Payment Date" shall be the Interest Payment Date that falls directly after such immediately following Interest Payment Date; and
  - (b) to KfW pursuant to the Put Option Agreement unless KfW repudiates its obligations under the Put Option Agreement or KfW fails to comply with such obligations for any other reason in which case the KfW Bonds shall, in accordance with the instructions from the interested party, be sold in the open market. In this Agreement, "interested party" means (i) the Security Trustee if and to the extent the sale of KfW Bonds will be carried out to satisfy Principal Trustee Claims, Interest Trustee Claims and Related Holder Claims, or (ii) the Protection Buyer if and to the extent the sale of KfW Bonds will be carried out to discharge Credit Protection Obligations of the Issuer.
- (2) To the extent a KfW Bond is sold in the open market pursuant to the immediately preceding paragraph, any proceeds generated by such open market sales of up to (and including) the par value of any such KfW Bond shall be deemed sale proceeds representing principal and any proceeds in excess of that KfW Bond's par value shall be deemed to represent interest.
- (3) Subject to paragraph (4) below, the Issuer undertakes to the Security Trustee to initiate and perfect all sales of KfW Bonds in accordance with the provisions of Clause 4 (1) and (2) in a timely fashion (and in particular to send, no later than eight Frankfurt Business Days prior to the Next Available Interest Payment Date, an Exercise Notice to KfW and copies thereof to the Protection Buyer and the Security Trustee) and the Security Trustee shall demand compliance of the Issuer with the Issuer's obligations under this Clause 4 (3) as a result of the Miscellaneous Trustee Claim.
- (4) The Issuer, Protection Buyer and Security Trustee agree that, upon the occurrence of a Note Enforcement Event and prior to the occurrence of a Credit Protection Enforcement Event, the Security Trustee shall be instructed to promptly issue an Enforcement Notice to the Primary Purchaser in respect of the KfW Bond Transfer Claims (unless these have been fully satisfied), to KfW in respect of the Put Option under the Put Option Agreement, to the Custodian in respect of the Custody Principal Claims and to the Account Bank in respect of the Transaction Principal Account Claims and (A) use its best endeavours to sell as of the Next Available Interest Payment Date an appropriate amount of KfW Bonds (Clause 4(1)(a)) at par plus Interest Component, if any, to KfW under the Put Option Agreement (provided that the Security Trustee may appoint itself as Acting Party but not as Designated Counterparty, as those terms are defined in the Put Option Agreement, and that the Security Trustee shall not attempt to sell the KfW Bonds in the open market), (B) on or after the Next Available Interest Payment Date, use its best endeavours to apply (or cause the application of) the sale proceeds resulting from aforesaid exercise of the Put Option to the satisfaction of the Protection Buyer in respect of all outstanding Credit Protection Obligations and (C), only if all Credit Protection Obligations have been fully discharged, enforce the German Secondary Principal Charges pursuant to (and subject to the requirements set out in) Clause 5(b) and the English Principal Charge pursuant to (and subject to the requirements set out in) Clause 5(d) for the benefit of the Holders provided that the Security Trustee shall immediately cease to act under this Clause 4(4) upon the occurrence of a Credit Protection Enforcement Event.

#### *Clause 5. Enforcement and Distribution of Principal Collateral*

The Principal Collateral shall, as further specified in sub-paragraphs (a) to (d) below, be subject to enforcement (*Befriedigung aus den Sicherungsgegenständen*) for the benefit of the Protection Buyer upon the occurrence of a Credit Protection Enforcement Event and/or for the benefit of the Security Trustee and the Holders upon the occurrence of a Note Enforcement Event. When distributing any enforcement proceeds in respect of Principal Collateral to the Holders, the Security Trustee shall give full effect to the Holders' ranking by way of seniority set out in Clause 1 (2), fourth sentence (starting with the Holders holding the

Class or Classes of Notes which then rank senior for the purposes of Loss Allocation, the "Priority of Payment Principle") and pay the remainder, if any, to the Transaction Interest Account.

(a) *Enforcement of German Primary Principal Charges by Protection Buyer.* All parties hereto agree that, upon the occurrence of a Credit Protection Enforcement Event, and subject to the statutory enforcement conditions being fulfilled (*Pfandreife* pursuant to § 1228 paragraph 2 of the Civil Code), the Protection Buyer shall, to the extent of the Credit Protection Obligations outstanding, be entitled to enforce, at its own costs, the German Primary Principal Charges in accordance with the applicable provisions of the Civil Code.

(b) *Enforcement of German Secondary Principal Charges.* All parties hereto agree that, upon the occurrence of a Note Enforcement Event, the Security Trustee shall, subject to the procedures set out in Clause 4(4) having been given priority (*Vorschaltverfahren*) and subject to the Protection Buyer's prior right to enforce the German Primary Principal Charges pursuant to Clause 5(a), be entitled to sell the KfW Bonds in accordance with Clause 4(1) and (2) hereof, and apply the sale proceeds, and other available cash, if any, firstly to the discharge of its Principal Trustee Claims and Relevant Holder Claims by making payments to each relevant Holder (giving full effect to the Priority of Payment Principle) and secondly, after all claims of the Holders have been fully satisfied, to the payment of the remainder, if any, to the Transaction Interest Account.

(c) *Note Enforcement Event Notification.* The Security Trustee shall promptly notify the Bank, the Custodian, the Issuer and the Rating Agencies (i) of the occurrence of a Credit Protection Enforcement Event or Note Enforcement Event, as the case may be, and of the Credit Protection Obligations outstanding or the aggregate Note Principal Amount of the Notes, as applicable, and (ii) upon completion of enforcement in the case of a Note Enforcement Event of the allocation of proceeds to the relevant Class or Classes of Notes.

(d) *Enforcement of English Principal Charge.* The Security Trustee shall enforce the English Principal Charge, on behalf of and for distribution to the Protection Buyer, if a Credit Protection Enforcement Event has occurred and the Protection Buyer instructs the Security Trustee in writing to so enforce the English Principal Charge provided that the Security Trustee may enforce the English Principal Charge, on behalf of and for distribution to the Protection Buyer, in any manner which in its reasonable professional judgment, the Security Trustee thinks fit. The Security Trustee shall also (after giving full effect to the Protection Buyer's senior position in relation to the Holders and the Security Trustee pursuant to Clause 3(2)(e)) enforce the English Principal Charge for its own benefit and on behalf of and for distribution to the Holders provided that the Security Trustee may enforce the English Principal Charge in any manner which in its reasonable professional judgment and having due regard to the interest of the Holders, it thinks fit, and provided further that when distributing any enforcement proceeds to the Holders, the Security Trustee shall apply the Priority of Payment Principle.

#### *Clause 6. Enforcement and Distribution of Interest Collateral*

(1) Interest Collateral shall be subject to enforcement (*Befriedigung aus den Sicherungsgegenständen*) for the benefit of the Security Trustee and the Holders upon the occurrence of a Note Enforcement Event provided that the Security Trustee may enforce the Interest Collateral as, in its reasonable professional judgment and having due regard to the interest of the Holders, the Security Trustee thinks fit.

(2) The Security Trustee shall apply any enforcement proceeds resulting from the enforcement of the Interest Collateral to the satisfaction of its Interest Trustee Claim and the Related Holder Claims giving full effect to the Priority of Payment Principle and pay the remainder, if any, to the Corporate Expenses Account unless the enforcement of the Principal Collateral pursuant to Clause 5 hereof does not lead to the full satisfaction of the Holders in respect of principal in which case the remainder shall first be applied to the satisfaction of the Holders in respect of principal in analogous application of Clause 5 hereof before any residue is paid to the Corporate Expenses Account.

#### *Clause 7. Support Collateral Enforcement*

(1) The Support Collateral shall be subject to enforcement (*Befriedigung aus den Sicherungsgegenständen*) for the benefit of the Security Trustee and the Holders upon the occurrence of a Note Enforcement Event provided that the Security Trustee may enforce the Support Collateral in any manner which, in its reasonable professional judgment and having due regard to the interest of the Holders, the Security Trustee thinks fit and provided further that in respect of the Put Option Agreement, upon the occurrence of a Note Enforcement Event (but not prior to such an event), the Security Trustee shall (subject to Clause 4(4)) have



the unrestricted right to appoint itself as Acting Party and as Designated Counterparty (as these terms are defined in the Put Option Agreement).

(2) The Security Trustee shall apply all benefits resulting from the enforcement of the Support Collateral to the satisfaction of its Principal Trustee Claim, Interest Trustee Claim and Miscellaneous Trustee Claim and the Related Holder Claims.

#### *Clause 7A. Enforcement and Distribution of Expenses Collateral*

(1) The Expenses Collateral shall be subject to enforcement (*Befriedigung aus den Sicherungsgegenständen*) by the Security Trustee for the benefit of each Third Party if, following written demand by a Third Party and expiry of a fifteen day grace period, amounts due and payable by the Issuer in connection with the Transaction to such Third Party, remain unpaid.

(2) The Security Trustee shall distribute all enforcement proceeds resulting from the enforcement pursuant to Clause 7(A) (1), to the satisfaction of each relevant Third Party and, if the requirements of Clause 7(A)(1) are fulfilled in respect of more than one Third Party, on a *pro rata* and *pari passu* basis.

(3) If at the later of (i) the day which is two years and one day after the discharge of all claims under the Notes and (ii) the discharge of all actual or potential claims of all Third Parties there remain any moneys standing to the credit of the Corporate Expenses Account, the Issuer and the Security Trustee agree that such moneys are due and payable to the Protection Buyer.

#### *Clause 8. Representations and Warranties by the Issuer*

(1) The Issuer hereby represents and warrants to the Protection Buyer and the Security Trustee for the benefit of the Holders that prior to the creation of the pledge over the KfW Bonds to the Protection Buyer pursuant to Clause 3(2)(b) and the transfer by way of security of the KfW Bonds to the Security Trustee pursuant to Clause 3(2)(d), no lien, charge, security or other third party rights whatsoever to or in relation to the KfW Bonds will have been created save for certain market standard liens in favour of the operator of any clearing system by whom or through whom any KfW Bonds are held.

(2) The Issuer hereby represents and warrants to the Protection Buyer and the Security Trustee for the benefit of the Holders that, on the assumption that the notification requirements referred to in this Agreement are complied with, the German Primary Principal Charges and the German Secondary Principal Charges, constitute legal, valid, binding and enforceable security interests under German law.

#### *Clause 9. Misrepresentation*

In the event that any of the representations and warranties by the Issuer under Clause 8 proves to be wrong, untrue or misleading (regardless of negligence — *unabhängig von Verschulden*), the recipient or recipients of such misrepresentation may demand from the Issuer that the underlying defects causing such misrepresentation be, in accordance with the Security Trustee's reasonable determinations and instructions, promptly healed or remedied. Subject to Clause 26, full indemnification shall be paid by the Issuer to the Protection Buyer and/or the Security Trustee for the benefit of Holders suffering financial loss as a consequence of aforesaid misrepresentation provided that (i) such indemnification shall not exceed the payment shortfall experienced by the Protection Buyer or relevant Holders as a result of such misrepresentation and (ii) there shall be no compensation payable for consequential damages (*Folgeschäden*) and loss of profit (*entgangener Gewinn*).

### **Part 3 Monitoring**

#### *Clause 10. Monitoring Duties; Plausibility Checks; Verifications*

(1) The Monitoring Agent shall for the benefit of the Transaction Creditors monitor the performance by the Transaction Administrator of the various obligations (the "Transaction Administration Obligations") assumed by it under or in connection with the Transaction Administration Deed provided that no such monitoring obligations or duties (the "Monitoring Duties") shall arise unless explicitly set out in this Clause 10 or any other provision of this Agreement. It is the purpose of the Monitoring Duties to protect the Transaction Creditors against breaches or defaults by the Transaction Administrator in respect of its Transaction Administration Obligations or the inequitable (*Verstoß gegen Treu und Glauben*) exercise by the Transaction Administrator of its rights under the Transaction Administration Deed causing or potentially causing (i) the Holders to experience a negative impact on the quantity or timing of payments under the Notes or (ii) any of the Swap Counterparties to experience a negative impact on the quantity or timing of credit protection or other payments under the Junior Swap or the Senior Swap irrespective of whether such

payments are owed by the Swap Counterparties or the Protection Buyer (each such breach or inequitable exercise a "Transaction Administrator Default"). The Monitoring Agent shall, in the performance of its Monitoring Duties, give due regard to the interests of the Protection Buyer to the extent such interests are compatible with the interests of the Transaction Creditors. The Monitoring Agent shall also, for the benefit of the Transaction Creditors, duly enforce its rights against the Data Trustee under the Data Trust Agreement, including the right to substitute the Data Trustee if the Data Trustee breaches its obligations under the Data Trust Agreement and such breach constitutes a material reason (*wichtiger Grund*).

(2) Subject to paragraphs (5) and (6) below, the Monitoring Agent shall check only the plausibility of the Reference Portfolio Reports (as defined in Clause 6.1 of the Transaction Administration Deed) and of any other information or documents provided to it by the Transaction Administrator pursuant to or in connection with the Transaction Administration Deed and this Agreement taking into consideration all information available to it (*Plausibilitätsprüfung*). The Monitoring Agent shall complete each plausibility check no later than 5 Banking Days following receipt of the relevant information or document. If such plausibility check does not reveal any indication of a Transaction Administrator Default, the Monitoring Agent is not obliged to further examine such documents or information. If, on the basis of such plausibility check, the Monitoring Agent arrives at the conclusion that there is an indication of a Transaction Administrator Default, the Monitoring Agent shall, no later than 10 Business Days following receipt of the relevant information or document, notify the Note Trustee (who will not be obliged to take any further action in respect thereof unless otherwise directed by the Monitoring Agent), the Transaction Administrator, the Issuer, the Rating Agencies and each Swap Counterparty of such indication and shall conduct such further reviews and take such other actions, including the Dispute Resolution Procedures set out in Clause 11 as it, in its reasonable professional judgment, considers desirable or expedient to protect (i) the Holders from the risk of experiencing a negative impact on the quantity or timing of payments under the Notes or (ii) any of the Swap Counterparties from the risk of experiencing a negative impact on the quantity or timing of credit protection or other payments under the Junior Swap or Senior Swap (irrespective of whether such payments are owed by the Swap Counterparties or the Protection Buyer) resulting from a Transaction Administrator Default provided, for the avoidance of doubt, that aforesaid negative impact on the quantity or timing of payments can be caused by the existence of obligations that, in the absence of a Transaction Administrator Default, would not exist and by the non-existence of obligations that, in the absence of a Transaction Administrator Default, would exist.

(3) At the request of the Monitoring Agent (and as soon as reasonably practicable following such a request), the Transaction Administrator shall provide to the Monitoring Agent and its Advisers (as defined in Clause 17) such further information, access to its facilities and relevant documentation (and those of other BGB Entities) as the Monitoring Agent and its Advisers shall reasonably request to facilitate the plausibility checks or Verifications (as defined in paragraph (6) below).

(4) If the Monitoring Agent materially disagrees with any determinations or calculations made by the Transaction Administrator it shall promptly deliver to the Transaction Administrator, the Issuer, the Swap Counterparties and the Rating Agencies a notice (the "Dispute Notice") initiating a dispute resolution procedure (each a "Dispute Resolution Procedure") pursuant to Clause 11. Each Dispute Notice shall contain (i) a reasonably detailed summary of the relevant facts and circumstances, (ii) a reasonably detailed explanation of the extent and nature of its material disagreement with the relevant determination or calculation or other action or omission of the Transaction Administrator and (iii) reasons for such material disagreement.

(5) (a) *Verification of Credit Event Notices.* The Monitoring Agent shall verify each Credit Event Notice, in accordance with the provisions of this paragraph 5(a), sub-paragraphs (i)-(iv).

(i) The Monitoring Agent shall promptly after receipt of a Credit Event Notice undertake a Verification (as defined in paragraph (6) below) of the contents of the Credit Event Notice (and with particular regard to the occurrence of the Credit Event stated therein in respect of a Reference Entity or Reference Obligation and of the fulfilment of the Eligibility Criteria and Portfolio Criteria or the Replenishment Conditions (as applicable) at the time of inclusion of such Reference Entity/Reference Obligation into the Reference Portfolio) and shall, subject to sub-paragraph (iv) below, not later than the sixtieth Banking Day following that Credit Event Notification Date either (A) deliver a Positive Verification Notice in respect thereof or (B) initiate the Dispute Resolution Procedures set out in Clause 11 by issuing a Dispute Notice pursuant to paragraph (4) above. Such Dispute Resolution Procedures shall, notwithstanding anything to the contrary contained in Clause 11 below, be applied in accordance with the following sub-paragraph (ii) below.

(ii) Following the issue of a Dispute Notice, the Monitoring Agent shall enter into a Negotiation Process (as defined in Clause 11(1)) with the Transaction Administrator and, subject to sub-paragraph (iv) below, by no later than the twentieth Banking Day following the giving of the Dispute Notice shall either (A) deliver a Positive Verification Notice (as defined in paragraph (6)) with respect thereto if there has been a Negotiated Resolution as defined in Clause 11(1)) or (B) appoint an Expert in accordance with Clause 11(2) and sub-paragraph (iii) below shall apply.

(iii) The Monitoring Agent shall request that the Expert shall deliver a certificate containing its binding solution (the "Expert Credit Event Certificate") to the Monitoring Agent, subject to sub-paragraph (iv) below, by no later than the thirty-ninth Banking Day following the appointment of the Expert pursuant to Clause 11(2).

(iv) With effect from the commencement of an ETD Period the time limits as contemplated by sub-paragraphs (i)-(iii) above (but not the other stipulations of sub-paragraphs (i)-(iii)) as regards the Verification of Credit Event Notices, shall be adjusted as follows:

(A) if the Monitoring Agent receives or has received a Credit Event Notice, then the Monitoring Agent shall either deliver a Positive Verification Notice or issue a Dispute Notice (as contemplated by sub-paragraph (i) above) within a period being the shorter of (x) if applicable, the remainder of the period mentioned in sub-paragraph (i) above and (y) ten Banking Days following the commencement of the ETD Period;

(B) if the Monitoring Agent issues or has issued a Dispute Notice, then the Monitoring Agent shall either deliver a Positive Verification Notice or appoint an Expert (as contemplated by sub-paragraph (ii) above) within a period being the shorter of (x) if applicable, the remainder of the period mentioned in sub-paragraph (ii) above and (y) fifteen Banking Days following the commencement of the ETD Period; and

(C) if the Monitoring Agent appoints or has appointed an Expert, the Expert shall deliver an Expert Credit Event Certificate to the Monitoring Agent (as contemplated by sub-paragraph (iii) above) within a period being the shorter of (x) if applicable, the remainder of the period mentioned in sub-paragraph (iii) above and (y) twenty Banking Days following the commencement of the ETD Period.

If in the case specified in (C) the Expert was appointed prior to the commencement of the ETD Period, the Monitoring Agent shall immediately notify the relevant Expert of any shortening of the applicable period for the delivery of the Expert Certificate if, as a result of the application of the time limit set out in (C), the deadline for the delivery of the Expert Credit Certificate is accelerated.

(b) *Verification of Valuation and Allocation Notices.* The Monitoring Agent shall verify each Valuation and Allocation Notice in accordance with the provisions of this paragraph 5(b), sub-paragraphs (i)-(iv).

(i) The Monitoring Agent shall promptly after receiving a Valuation and Allocation Notice undertake a Verification (as defined in paragraph (6) below) of its content and shall, subject to sub-paragraph (iv) below, on or before the tenth Banking Day following the later of the Monitoring Agent's receipt of that Valuation and Allocation Notice and the end of the Initial Valuation Period, the Additional Valuation Period or Appraised Valuation Period, as the case may be, either (A) deliver a Positive Verification Notice in respect thereof or (B) initiate the Dispute Resolution Procedures by issuing a Dispute Notice pursuant to paragraph (4) above. The Dispute Resolution Procedures initiated with respect to that Valuation and Allocation Notice shall, notwithstanding anything to the contrary contained in Clause 11 below, be applied in accordance with the following sub-paragraph (ii) below.

(ii) The Monitoring Agent shall enter into a Negotiation Process (as defined in Clause 11(1)) with the Transaction Administrator and, subject to sub-paragraph (iv) below, by no later than the tenth Banking Day following the giving of the Dispute Notice shall either (A) deliver a Positive Verification Notice with respect thereto (as defined in paragraph (6)) if there has been a Negotiated Resolution (as defined in Clause 11(1)) or (B) appoint an Expert in accordance with Clause 11(2) and sub-paragraph (iii) below shall apply.

(iii) The Monitoring Agent shall request that the Expert deliver a certificate containing its final and binding determination to the Monitoring Agent (the "Expert Valuation Certificate"), subject to sub-paragraph (iv) below, by no later than the twentieth Banking Day following the appointment of the Expert pursuant to Clause 11(2).

(iv) With effect from the commencement of an ETD Period, the following time limits shall apply as regards the Verification of any Valuation and Allocation Notice and the time limits (but, for the avoidance of doubt, not the other stipulations) of sub-paragraphs (i) to (iii) shall not apply:

(A) after the receipt of a Valuation and Allocation Notice the time available to the Monitoring Agent to either deliver a Positive Verification Notice or issue a Dispute Notice (as contemplated by sub-paragraph (i) above) shall be limited to five Banking Days following the end of the Appraised Valuation Period (as contemplated in clause 4.1.3(d)(iii) of the Transaction Administration Deed);

(B) after the issuance of a Dispute Notice, the time available to the Monitoring Agent for either the delivery of a Positive Verification Notice or the appointment of an Expert (as contemplated by sub-paragraph (iii) above) shall be limited to five Banking Days following the issuance of such Dispute Notice; and

(C) after the appointment of an Expert, the time available to the Expert for the delivery of its Expert Valuation Certificate (as contemplated by sub-paragraph (iii) above) shall be limited to ten Banking Days following such appointment.

(c) *Verification of Loss Allocation Reports.* The Monitoring Agent shall verify each Loss Allocation Report in accordance with the provisions of this paragraph (c), sub-paragraphs (i) and (ii).

(i) The Monitoring Agent shall promptly after receiving a Loss Allocation Report (and provided that the Monitoring Agent receives such Loss Allocation Report on or before the Loss Allocation Notification Date) undertake a Verification (as defined in paragraph (6) below) of its content and shall either (A) promptly deliver a Positive Verification Notice in respect thereof or (B) no later than two Banking Days immediately succeeding the Loss Allocation Notification Date initiate a Negotiation Process by issuing a Dispute Notice pursuant to paragraph (4) above. The Negotiation Process initiated with respect to that Loss Allocation Report shall be governed by Clause 11 below, subject to the following sub-paragraph (ii) below.

(ii) The Monitoring Agent shall enter into a Negotiation Process (as defined in Clause 11(1)) with the Transaction Administrator and within four Banking Days immediately succeeding the Loss Allocation Notification Date and in no event later than the immediately following Loss Determination Date, the Monitoring Agent shall (provided that the Monitoring Agent has received the relevant Loss Allocation Report on the Loss Allocation Notification Date) either (A) deliver a Positive Verification Notice if there has been a Negotiated Resolution or (B) make a unilateral decision and deliver an amended Loss Allocation Report (the "Amended Loss Allocation Report") which shall be final and binding. For the avoidance of doubt, disputes in respect of Loss Allocation Reports shall be resolved without the appointment of an Expert (as defined in Clause 11(2)).

(d) The Monitoring Agent shall promptly deliver to the Issuer, the Transaction Administrator, the Swap Counterparties and the Rating Agencies a copy of each Positive Verification Notice, Valuation and Allocation Notice, Dispute Notice, Expert Credit Event Certificate, Expert Valuation Certificate, Loss Allocation Report or Amended Loss Allocation Report.

(6) "Verification" means the Monitoring Agent's (and the Expert's, if applicable) process of establishing (with final and binding effect) whether or not the information provided to the Monitoring Agent by the Transaction Administrator in or in connection with a Credit Event Notice, Valuation and Allocation Notice or Loss Allocation Report (as applicable) is substantially accurate and complete and whether all related procedures and deadlines have been substantially complied with (and to "verify" shall be construed accordingly) and a "Positive Verification Notice" is a written notice by the Monitoring Agent that its determination or conclusions in respect of that Verification are identical in all material respects to those of the Transaction Administrator and that all related procedures and deadlines (as set forth in Clause 4 of the Transaction Administration Deed) have been substantially complied with. If the Dispute Resolution Procedures are initiated in accordance with the terms of this Agreement, they shall become an integral part of the Verifications.

(7) Any plausibility check in relation to certain information or documents provided by the Transaction Administrator carried out by the Monitoring Agent pursuant to paragraph (2) of this Clause 10 shall be based on the facts existing at the time the information or documents were provided to the Monitoring Agent and any Verification of Credit Event Notices, Valuation and Allocation Notices or Loss Allocation Reports shall (save where paragraph 5 of this Clause 10 provides that the Eligibility Criteria, the Portfolio Criteria or Replenishment Conditions must be met at the time the relevant Reference Entity or Reference Obligation is included in the Reference Portfolio (which shall be the relevant time for the purposes of Verification) be based on the facts existing at the time the Monitoring Agent received the relevant Credit Event Notice or Valuation and Allocation Notice or Loss Allocation Report, as the case may be.

#### *Clause 11. Dispute Resolution Procedures; Appointment of Experts*

- (1) Prior to the appointment of an Expert pursuant to paragraph (2) of this Clause 11, the Monitoring Agent may, in its sole discretion but having due regard to the interests of the Transaction Creditors, (after having given reasonable prior written notice to the Swap Counterparties), by negotiation with the Transaction Administrator amicably seek a solution to the matter in relation to which the Transaction Administrator and the Monitoring Agent are in disagreement (the "Negotiation Process"). The resolution of the matter of disagreement by virtue of the Negotiation Process is referred to as "Negotiated Resolution". Subject to Clause 10(5)(a)(ii), Clause 10(5)(b)(ii), Clause 10(5)(c)(ii) or any other provision of any Transaction Document the period between (i) delivery of the relevant Dispute Notice and (ii) the end of the Negotiation Process (whether or not such negotiations end successfully) shall not exceed 10 Banking Days.
- (2) If no Negotiated Resolution can be realised within the specified period, and upon giving notice to the Transaction Administrator, the Monitoring Agent shall appoint an Eligible Neutral Party as expert (the "Expert") to resolve the disputed matter at its sole but reasonable discretion (*nach billigem Ermessen*). Any such Expert shall be selected by the Monitoring Agent in its reasonable discretion after prior written notice to the Swap Counterparties and after consultation with the Transaction Administrator, if practicable, having regard to the expertise and staff of the relevant Eligible Neutral Party, the nature of the dispute, potential limitations of access or of information pursuant to Clause 25 and the interests of the Transaction Creditors in a timely solution of the disputed issue. The appointment of each Expert is for the purpose of obtaining an expert opinion (*Schiedsgutachten*) and not for arbitration (*Schiedsvertrag*).
- (3) The Monitoring Agent shall promptly notify each of the Rating Agencies, the Note Trustee and the Swap Counterparties of the nature of any dispute and the appointment of an Expert.
- (4) Each of the Issuer, the Transaction Administrator and the Monitoring Agent shall (and, in the case of the Transaction Administrator, shall cause the relevant BGB Entity to), upon request of the Expert, provide the Expert with such information, documents and access as the Expert may reasonably require (and as soon as reasonably practicable following such a request) for the performance of its duties hereunder.
- (5) Any Negotiated Resolution arrived at pursuant to paragraph (1) above and any determination by way of a written certificate of an Expert will be final and binding. Subject to any other provision of any relevant Transaction Document, the Expert shall deliver such written certificate to the Monitoring Agent no later than 20 Banking Days following the request by the Monitoring Agent. The Monitoring Agent shall promptly deliver a copy of its own certificate as to such solutions or such certificate of the Expert, as the case may be, to the Issuer, the Transaction Administrator, the Swap Counterparties and the Rating Agencies.
- (6) For the avoidance of doubt, if the Monitoring Agent does not procure (or the Expert fails to deliver) an Expert's opinion or certificate by a deadline specified herein or otherwise (in the absence of manifest error or default on the part of the Transaction Administrator and unless such failure by the Monitoring Agent or Expert has been caused by the failure of the Protection Buyer to make payments due hereunder or by the Data Trustee to perform its obligations under the Data Trust Agreement) it shall be deemed that in relation to the relevant disputed matter no Transaction Administrator Default has occurred and, if applicable, the Monitoring Agent has issued a Positive Verification Notice.

#### **Part 4 Miscellaneous Provisions**

##### *Clause 12. Obligation of the Trustee to Act*

- (1) If on the basis of its checks pursuant to Clauses 10 and 11 the Trustee becomes aware that, due to any failure by the Issuer or the Bank to duly discharge or comply with their obligations under any of the Transaction Documents or the Swap Agreements, the interests of the Transaction Creditors are at risk, the Trustee shall promptly give notice thereof to the Bank, the Note Trustee, each Swap Counterparty (as applicable) and the Issuer thereof and, at its discretion and subject to paragraph (2) of this Clause 12, take or initiate any of the Dispute Resolution Procedures under this Agreement, appoint an Expert or take such other action which the Trustee, in its reasonable professional judgment, considers desirable or expedient to protect the interests of the Transaction Creditors.
- (2) The Trustee shall only be obliged to perform its Trustee Duties if and to the extent that:
- (a) it has no reason to doubt that its claims as to fees will be fully paid and it will be fully indemnified by the Protection Buyer or any other party to its satisfaction (either by reimbursement of costs or in any other way it deems appropriate) for all costs and expenses resulting from its activities (including fees for retaining an Expert or an Adviser (as defined in Clause 17) as well as fees and expenses of any third party retained in

accordance with Clause 16) and against all liability, obligations and attempts to bring any action in or out of court, (the "Indemnification Claim"); and/or

(b) the Protection Buyer has, upon the Trustee's request, made an adequate up-front payment to the Trustee in respect of any outstanding Indemnification Claim,

provided that any Indemnification Claim which shall be incurred or in respect of which payment is requested by the Trustee (i) in connection with or for a period of 3 months following the occurrence of an AET Early Termination Date or the giving of an ETD Notice and/or (ii) after the Scheduled Maturity Date, shall be deemed to be included in the amounts previously paid or advanced to the Trustee hereunder and provided further that in no event shall any failure of the Issuer or the Bank to make any payment due to the Trustee entitle the Trustee to withhold performance of any of its obligations vis-à-vis any of the Swap Counterparties.

#### *Clause 13. Representations and Warranties of the Trustee*

(1) The Trustee represents to the Issuer and the Bank (also for the benefit of the Transaction Creditors) that on the Issue Date it has the legal capacity, experience and staff to perform the duties ascribed to it hereunder and that, as of the Issue Date, no reason for terminating this Agreement pursuant to Clause 22 has occurred or can be reasonably expected to occur.

(2) The Trustee hereby confirms that on the Issue Date a final draft copy of each Transaction Document has been made available to it and that it is fully aware of their terms.

#### *Clause 14. Undertakings of the Bank and the Issuer*

(1) Unless all of the Issuer's obligations to the Holders have been fully discharged and the Swap Agreements have been terminated, the Bank shall:

(i) as soon as practicable after their publication provide the Trustee with two copies of its latest published annual audited financial statements and its published interim financial statements and make its latest published annual audited financial statements and the latest published interim financial statements available for inspection by the Transaction Creditors at the specified offices of the Bank and the Principal Paying Agent, if different;

(ii) permit and cause each of the other BGB Entities to permit, the Monitoring Agent, the Expert and their respective advisers to inspect its books and records and provide at its own cost all information and documentation required by the Monitoring Agent for the purposes of reviewing the Transaction Administrator's performance of its Transaction Administration Obligations and to make the relevant records available for inspection;

(iii) execute such additional documents and take such further action, at any time as the Trustee may reasonably consider necessary or appropriate to give effect to this Agreement or the Transaction Administration Deed;

(iv) notify the Trustee immediately if (i) it becomes aware that the Issuer cannot discharge in full any obligation to make payments of principal or interest under the Notes on any Interest Payment Date or the Issuer is in breach of any other obligations under the Transaction Documents, (ii) the Bank is in breach of any obligation under the Transaction Documents or the Swap Agreements;

(v) give such time and attention and exercise such skill, care and diligence in the servicing of the Reference Obligations (to the extent held and not sold or otherwise transferred by the relevant BGB Entity in accordance with the Transaction Documents) as it does in servicing assets other than Reference Obligations and procure that the other BGB Entities comply with such standard of care;

(vi) not substitute (and procure that no BGB Entity substitutes) a Servicer unless, as a consequence of such substitution, (i) the standard of services does not decrease, (ii) no obligation under the Transaction Documents is breached and (iii) in the professional judgment of the Bank, the interests of the Transaction Creditors are not adversely affected; and

(vii) not amend (and procure that no BGB Entity amends) contractual provisions of the Reference Obligations unless, on the assumption that the relevant Reference Obligation was eligible to be included in the Reference Portfolio at the Issue Date or on any Replenishment Date, as relevant, (a) such action would not result in the Reference Obligation ceasing to comply with the Eligibility Criteria and Portfolio Criteria or Replenishment Criteria (as applicable) or (b) the Trustee has given prior consent to such action.

- (2) Unless all of the Issuer's obligations to the Holders have been fully discharged the Issuer shall:
- (i) at all times (with the exception of the 30 Banking Days hereafter mentioned) procure the maintenance of the Transaction Accounts and all its cash with an Eligible Bank or Eligible Custodian on the basis of Required Provisions provided that if an existing Account Bank ceases to be an Eligible Bank, the Issuer shall within 30 Banking Days replace such Account Bank with an Eligible Bank selected after consultation with the Transaction Administrator;
  - (ii) at all times (with the exception of the 30 Banking Days hereafter mentioned) procure that the KfW Bonds be deposited with an Eligible Custodian provided that if an existing Custodian ceases to be an Eligible Custodian, the Issuer shall within 30 Banking Days replace such Custodian with an Eligible Custodian selected after consultation with the Transaction Administrator;
  - (iii) ensure that the Corporate Administrator, the Account Bank, the Custodian, the Note Trustee, the Principal Paying Agent, the Paying Agent, the Agent Bank and the Trustee are engaged on the basis of Required Provisions;
  - (iv) at all times use best endeavours to maintain its tax residence in Ireland and outside the United Kingdom and Germany and not establish a physical branch or agency or physical permanent establishment within the United Kingdom or Germany;
  - (v) at all times use all reasonable endeavours to minimise taxes and other costs arising in connection with its activities;
  - (vi) as soon as practicable after their publication provide the Trustee with two copies of its latest annual audited financial statements and make them available for inspection by the Transaction Creditors at the specified offices of the Bank and the Principal Paying Agent, if different;
  - (vii) execute such additional documents and take such further action as the Trustee may reasonably consider necessary or appropriate to give effect to this Agreement and to ensure the validity, binding effect and enforceability of the Transaction Documents to which it is a party;
  - (viii) notify the Trustee immediately if (a) it cannot discharge in full any obligation to make payments of principal or interest under the Notes on any Interest Payment Date, (b) the Protection Buyer, the Primary Purchaser or KfW or itself is in material breach of any other obligations under the Transaction Documents or the Swap Agreements to which it is a party, (c) legal proceedings are initiated against the Issuer which would reasonably be expected to effect adversely the Issuer's title to or interest in any of the KfW Bonds or (d) the occurrence of (a), (b) or (c) can be reasonably expected;
  - (ix) give the Bank and the Trustee at least 30 calendar days notice of its replacement of the Principal Paying Agent;
  - (x) comply with the applicable requirements of the Irish Stock Exchange; and
  - (xi) procure that, unless it has obtained the consent of the Rating Agencies, the balance at any particular time of the Transaction Interest Account and Transaction Principal Account with an Eligible Bank whose short term unsecured debt is rated lower than P-1 by Moody's, A-1+ by S&P and F1+ by Fitch shall not exceed 20% of the Note Principal Amounts of all Notes outstanding at that time.
- (3) The Issuer undertakes to the Trustee and the Bank to comply with Condition 6 (Covenants).

#### *Clause 15. Actions Requiring Consent*

If the Issuer, any of the Swap Counterparties or the Bank requests that the Trustee grant its consent under any of the Transaction Documents or the Swap Agreements, the Trustee may give, withhold or refuse the requested consent at its sole but reasonable discretion, having due regard to the interests of the Transaction Creditors.

#### *Clause 16. Third Party Delegation*

(1) The Trustee may delegate the performance of the Monitoring Duties (but not of its duties as Security Trustee pursuant to Part 2 (Clauses 3-9) hereof), in whole or in part, to agents (*Erfüllungsgehilfen*, § 278 of the Civil Code) if (A) such delegation is (i) expressly contemplated in any of the provisions of this Agreement or (ii) approved by the Rating Agencies and the Swap Counterparties in writing (such approval not to be unreasonably withheld or delayed and deemed to have been given if not expressly refused within 30 Banking Days) and (B) the Transaction Administrator confirms to the Trustee that the proposed delegation does not conflict with any regulatory, statutory or contractual confidentiality or banking secrecy duties of the



Transaction Administrator or any other BGB Entity (such confirmation not to be unreasonably withheld or delayed and deemed to have been given if not expressly refused within 30 Banking Days). For the avoidance of doubt, no Monitoring Duties may be delegated if the requirements in the immediately preceding sentence are not met.

(2) The Trustee shall promptly notify the Bank and the Rating Agencies of every instruction of a third party made pursuant to paragraph (1).

(3) In respect of the appointment of the Expert, the Trustee shall only be liable for the exercise of due care in the selection of the Expert (*Haftung für Auswahlverschulden*) and the Trustee shall not be liable for the actions or omissions of the Expert and § 278 of the Civil Code shall not apply regardless of whether the Expert's actions or omissions are caused by negligence (*grobe Fahrlässigkeit*) or wilful misconduct (*Vorsatz*).

#### *Clause 17. Advisers*

In connection with the performance of its duties as Security Trustee pursuant to Part 2 (Clauses 3-9) hereof and its Monitoring Duties, the Trustee shall have the right to seek information and advice from any Eligible Neutral Party and any reputable legal adviser (each of the foregoing, an "Adviser") for which he may incur costs at market prices provided that, where appropriate, the Trustee organises a tender prior to instructing any Adviser. The Trustee may rely on any advice obtained from any Adviser and shall not be liable for any negligence on the part of any such Adviser provided, however, that the Trustee shall be liable for the lack of due care in the selection of any Adviser (*Haftung für Auswahlverschulden*).

#### *Clause 18. Fees and Reimbursement of the Trustee, Data Trustee and the Note Trustee*

(1) For the performance of the Trustee Duties, the Protection Buyer (but not the Issuer) shall pay the Trustee a fee which shall be separately agreed between the Protection Buyer and the Trustee.

(2) The Protection Buyer (but, subject to Clause 23, not the Issuer) shall bear all reasonable costs and disbursements (including costs of Advisers) incurred, and pay all reasonable advances requested, by the Trustee in connection with the performance of the Trustee Duties, including the costs and disbursements in connection with the Dispute Resolution Procedures and the appointment of an Expert.

(3) The Protection Buyer (but, subject to Clause 23, not the Issuer) undertakes to all other parties hereto to pay all fees, costs and disbursements of the Data Trustee under the Data Trust Agreement, the Note Trustee under the Note Trust Deed and all relevant fees of the Rating Agencies (in each case including VAT and similar indirect taxes to the extent not recoverable by the relevant recipient in the ordinary course of business).

#### *Clause 19. Fees and Expenses of the Expert*

The Protection Buyer (but not the Issuer) shall reimburse the Trustee for all reasonable fees, costs, out of pocket expenses and disbursements (including costs of the Expert's advisers) payable by the Trustee to any Expert (in each case including VAT and similar taxes to the extent not recoverable by the Trustee in the ordinary course of business).

#### *Clause 20. Right to Indemnification*

The Protection Buyer (but not the Issuer) shall indemnify the Trustee against all losses, liabilities, obligations, actions in and out of court and costs and disbursements incurred by the Trustee (including VAT and any indirect taxes to the extent not recoverable by the Trustee in the ordinary course of business) in connection with this Agreement, unless such losses, liabilities, obligations, actions, costs and disbursements are incurred by the Trustee due to a breach of the standard of care provided for in Clause 24 or any other provision hereof.

#### *Clause 21. Stamp Duty; Taxes*

The Protection Buyer (but not the Issuer) shall pay or reimburse all stamp duties or registration charges (other than taxes imposed on, or calculated by reference to, the net income received or receivable (but not any sum deemed to be received or receivable) by such person and assessed on such person under the law of the jurisdiction in which it is incorporated or the jurisdiction(s) in which it is treated as resident for tax purposes) imposed on the Issuer or the Trustee in connection with the conclusion of this Agreement and the Protection Buyer (but not the Issuer) shall pay or reimburse the Trustee in respect of any indirect taxes, value added taxes or similar taxes, (other than taxes on the Trustee's overall income or profits), which are imposed now or in the future on any of the services rendered by the Trustee under this Agreement provided that the Protection Buyer (but not the Issuer) shall not have any obligations under this Clause 21 to the extent the Trustee can recover the relevant taxes in the ordinary course of its business.



*Clause 22. Termination; Replacement of Trustee; Trustee Insolvency*

- (1) Subject to paragraph (5) of this Clause 22, the Trustee may at any time resign from its office for any material reason (*aus wichtigem Grund*) provided that the Trustee shall not be entitled to separately resign from its office as Security Trustee pursuant to Part 2 (Clauses 3 to 9) or as Monitoring Agent pursuant to Part 3 (Clauses 10 and 11).
- (2) Subject to paragraphs (1) and (5) of this Clause 22, the Issuer shall be authorised and obliged to immediately terminate the appointment of the Trustee under this Agreement (which, for the avoidance of doubt, shall be a termination of its appointment in both its capacities as Security Trustee pursuant to Part 2 (Clauses 3 to 9) and as Monitoring Agent pursuant to Part 3 Clauses 10 and 11) and give prior written notice thereof to the Bank, the Note Trustee and each Swap Counterparty, if relevant, and upon such termination by the Issuer, the Trustee shall be obliged to immediately resign from its office if (i) the Issuer has any material reason (*wichtiger Grund*) for such termination or (ii) the Issuer and the Trustee are so instructed for a material reason (*wichtiger Grund*) by any of the Swap Counterparties or (iii) the Issuer and the Trustee are so instructed by (A) the Note Trustee or (B) any of the Rating Agencies.
- (3) For the avoidance of doubt, (A) a Formal Trustee Insolvency (as defined below) or (B) the Trustee's failure to pay its debts when due or (C) a Potential Downgrade (as defined below), shall be deemed a "material reason" for the purposes of paragraphs (1) or (2) of this Clause 22. "Formal Trustee Insolvency" means the institution of insolvency or similar proceedings in respect of the Trustee. "Potential Downgrade" means certainty or increased likelihood that the continued engagement of the Trustee in its capacity hereunder would result in the downgrading or withdrawal of the then current rating of any Class of Notes or the Senior Swap by any of the Rating Agencies including, without limitation, where any Class of Notes or the Senior Swap is put on review for possible downgrade by any of the Rating Agencies or any of them indicates that they are considering doing so.
- (4) In the event that the Issuer does not comply with its obligation pursuant to Clause 22 (2) or such non-compliance, in the reasonable opinion of the Bank, is imminent, the Bank shall appoint, if so instructed by the Note Trustee or any Swap Counterparty, a successor trustee and the provisions of paragraph (5) shall apply *mutatis mutandis*.
- (5) Any resignation by the Trustee and any termination of the appointment of the Trustee in accordance with Clause 22(1) to (4) or otherwise shall (unless the termination is imposed by mandatory provisions of general law) become effective only upon:
- (a) the appointment of an Eligible Neutral Party being also a reputable service provider which acts as trustee in the ordinary course of its business (other than an Expert or Adviser engaged hereunder) as successor trustee by the Issuer (in the case of Clause 22, paragraph (1), by the Trustee on behalf of the Issuer or in the case of paragraph (4) of this Clause 22, the Bank on behalf of the Issuer);
  - (b) a full transfer in respect of all rights, duties and obligations of the departing Trustee under the Transaction Documents (*Vertragsübernahme*) so that as of the date such transfer becomes effective, the successor trustee has rights, duties and obligations equivalent to those of the departing Trustee (immediately prior to the transfer) under the Transaction Documents provided that the departing Trustee's payment claims due to it under this Agreement and unpaid and all its obligations arisen prior to or in connection with the replacement but not fully discharged shall survive the transfer of rights, duties and obligations under this Agreement and shall not be transferred to or assumed by the successor trustee; and
  - (c) confirmation by the Rating Agencies that this transfer of rights, duties and obligations would not affect the then current rating of the Notes or that of the Senior Swap.
- (6) All costs incurred in connection with the replacement of the Trustee under this Agreement shall be borne by the Protection Buyer provided that to the extent the Trustee is responsible for the occurrence of a "material reason" (*wichtiger Grund*), the Protection Buyer shall be entitled, without prejudice to any additional rights, to claim damages or reimbursement from the Trustee.
- (7) The successor trustee appointed in accordance with Clause 22(5) shall promptly give notice of the appointment (including its identity and full address plus contact details) to the Issuer, the Bank, the Note Trustee and to the Swap Counterparties, respectively.
- (8) No later than the effective date of the transfer of rights, duties and obligations mentioned in Clause 22(5)(b), the departing Trustee shall provide the successor trustee with a reasonably detailed report regarding its performance and activity in connection with this Agreement, which obligation shall survive the termination of this Agreement.

(9) In the event of a Formal Trustee Insolvency all Trustee Claims shall automatically expire and the Issuer agrees that upon the occurrence of a Formal Trustee Insolvency it shall (i) enter into an analogous arrangement with a successor trustee under which it shall grant the successor trustee rights analogous to the rights granted to the Trustee hereunder and in particular claims analogous to the Trustee Claims and (ii) procure that the security created hereunder for the benefit of the Trustee is transferred to the successor trustee under Clause 22(5)(b).

(10) The Issuer and the Bank agree that each Holder and each Swap Counterparty shall be a third-party beneficiary (*echter Vertrag zugunsten Dritter*) of the Issuer's and the Bank's obligations under this Clause 22.

(11) Immediately upon the appointment of the successor trustee having become effective, the Issuer automatically grants, by way of security, a power of attorney to such successor trustee analogous to Clause 2 (7) hereof.

(12) In the absence of any prior termination for a material reason (*wichtiger Grund*), this Agreement and all rights and obligations arising hereunder shall unless explicitly provided to the contrary terminate upon the full and final discharge by the Issuer of all its obligations under the Notes and upon final termination of the Swap Agreements and all payment obligations thereunder.

(13) In the case of a resignation of the Trustee pursuant to Clause 22(1), the resigning Trustee shall use all reasonable efforts to appoint a replacement Trustee as set out in Clause 22(5).

#### *Clause 23. Issuer Costs*

(1) The Protection Buyer undertakes to pay to the Issuer (into the Corporate Expenses Account) on the Issue Date a EUR [●] non-refundable lump sum (the "Issuer Costs Reserve Amount") and no later than three Business Days after each Interest Payment Date and the payment required pursuant to Clause 23(2), the Issuer Costs for the immediately preceding Interest Period. "Issuer Costs" means, with respect to each Interest Period, the actual amount of all fees, costs and expenses plus indirect taxes in connection therewith (including indemnities, restructuring costs and expenses incurred in connection with the printing of Definitive Notes), including, without limitation, fees, costs, expenses (including indemnities and indirect taxes) of the Third Parties, in each case as incurred or to the extent of advances reasonably requested by the Issuer and all amounts of any such costs, expenses or advances previously incurred, requested or declared by the Issuer but not yet paid provided that, for the avoidance of doubt, Issuer Costs shall in no event include (i) any amounts payable by the Issuer otherwise than in connection with or resulting from its performance of the Transaction in accordance with the Transaction Documents, (ii) any amounts payable under the Notes, (iii) any amounts payable for the discharge of the Credit Protection Obligations, (iv) any amounts payable by the Protection Buyer to the Trustee, Note Trustee, Data Trustee and the Rating Agencies pursuant to Clause 18 to 21 hereof unless the Protection Buyer has failed to make a payment to the Trustee, Data Trustee or Note Trustee for 30 calendar days after it became due and (v) any amounts payable by the Issuer as a result of its non-compliance with any of the Transaction Documents, the Memorandum or Articles of Association of the Issuer or applicable law, or on account of profit related taxes, except, in each case, as expressly specified herein.

(2) On each Interest Payment Date the Issuer shall notify to the Protection Buyer, to the extent known, the amount of the Issuer Costs payable in respect of the immediately preceding Interest Period.

(3) Without prejudice to the provisions of paragraph (1), in the event that any amount of Issuer Costs becomes instantly due and payable or following the repayment of the Notes and no advance has been made in respect of such payment, the Protection Buyer shall, following the receipt of a written and specified request from the Issuer, within three Business Days, pay to the Issuer such amounts.

#### *Clause 24. Standard of Care; Extent of Liability*

(1) The Trustee shall exercise the standard of care expected from a prudent and reasonable business person (*Sorgfalt eines ordentlichen Kaufmanns*) and shall only be liable for any breach of its obligations under this Agreement if and to the extent it fails to meet such standard of care.

(2) Without prejudice to the provisions of paragraph (1), the Trustee shall not be liable for: (i) any action or omission of the Issuer, (ii) payment obligations due under the Notes, the Credit Swap Agreement, this Agreement, the Put Option Agreement, the KfW Bonds or the Reference Obligations failing to be legal, valid, binding and enforceable, or for the fairness or appropriateness of the provisions of the Conditions, the Transaction Documents (iii) a loss of documents relating to the Reference Portfolio and the Reference Obligations not attributable to the negligence of the Trustee, and (iv) the Transaction Administrator's breach of its obligations to submit any report or any other documents, information or to provide access and facilities to the Trustee or an Expert (v) any act or omission of the Data Trustee under the Data Trust

Agreement or of an Expert hereunder or (vi) any act or omission of a BGB Entity under the Credit Underwriting Procedures and/or Eligibility Criteria.

(3) The Trustee shall not be obliged to obtain insurance cover for the Collateral.

#### *Clause 25. Confidentiality and Banking Secrecy*

(1) The Trustee shall ensure that its auditors, each Expert and Adviser and each third party retained in accordance with Clause 16 shall treat as confidential any information concerning the Swap Counterparties, the Reference Entities and the Reference Obligations and the business operations of the BGB Entities obtained in connection with the performance of their respective duties for the purposes of the Transaction. The Trustee shall only disclose information concerning the Swap Counterparty, the Reference Entities and the Reference Obligations and the business operations of the BGB Entities obtained in connection with the Trustee's performance of its Trustee Duties (i) to its auditors, an Expert duly appointed under this Agreement or an Adviser or a third party retained in accordance with Clause 16 in each case to the extent that disclosure of such information is necessary for the performance of their duties in connection with the Transaction, (ii) if such information is or becomes generally known in a manner not attributable to the Trustee, (iii) if the Trustee is legally required to disclose such information or requested to do so by a competent public authority, (iv) if the disclosure of such information by the Trustee is legally permitted and necessary to enforce any of its rights hereunder or the Notes or the other Transaction Documents or (v) if such disclosure is reasonably requested by any of the Swap Counterparties to confirm any information received by them from the Protection Buyer, the Issuer or the Monitoring Agent hereunder or under or in connection with the Swap Agreements and the Swap Counterparties are bound by a duty of confidentiality at least equivalent to customary German banking secrecy obligations.

(2) The Trustee shall ensure that, prior to the relevant appointment taking effect, each Expert, each auditor and Adviser of the Trustee (other than qualified German lawyers (*Rechtsanwälte*), qualified German auditors (*Wirtschaftsprüfer*) and qualified German tax advisors (*Steuerberater*) bound by statutory confidentiality duties at least as strict as those in force at the Issue Date) and each third party retained by the Trustee in accordance with Clause 16, which is to perform any duty under or in connection with this Agreement, prior to the commencement thereof, signs a confidentiality undertaking in such form as the Trustee may, in its professional judgment, require having regard to the nature of the relevant matter, for the benefit of the Trustee, the Swap Counterparties and the BGB Entities to the effect that the Expert, the Advisers, the third party or auditor retained shall treat as confidential any information concerning the Reference Entities, the Reference Obligations, the Swap Counterparties and the business operations of the BGB Entities obtained in connection with the Transaction.

(3) The Trustee and all other parties hereto agree that to the extent of any conflict between (i) the Bank's contractual obligations hereunder or under any of the Transaction Documents (or those of the BGB Entities) and (ii) customary banking secrecy or confidentiality obligations, the latter shall prevail provided that the Bank shall have an obligation to do everything possible (and cause the BGB Entities to do everything possible) to provide the required data and information to the extent and in a way it does not (or the BGB Entities do not) breach aforesaid banking secrecy or confidentiality obligations.

#### *Clause 26. Limited Recourse and Non-Petition*

(1) Notwithstanding any other provision of this Agreement, in respect of any claims they might have against the Issuer in respect of fees, expenses or disbursements, the Third Parties shall have recourse only to the amounts received (or to be received) by the Issuer from the Protection Buyer pursuant to Clause 23 of this Agreement or moneys standing to the credit of the Corporate Expenses Account and excluding, in any event, the Collateral. The obligations of the Issuer to the Third Parties (if any) will not be obligations or responsibilities of, or guaranteed by, any other person or entity. The Issuer will have no assets available for payment of its obligations to the Third Parties hereunder other than the amounts received under Clause 23 of this Agreement and any balance standing to the credit of the Corporate Expenses Account (excluding, in any event, the Collateral) and claims of the Third Parties in respect of any final shortfall will be automatically extinguished and the failure to make any payment in respect of any such shortfall will in no event constitute default by the Issuer. No Third Party may take steps against the Issuer to recover any sum (representing fees and expenses) so unpaid and, in particular, no Third Party shall petition or take any other step or action for the winding up, examinership, liquidation or dissolution of the Issuer nor for the appointment of a liquidator, examiner, receiver or any other person in respect of the Issuer or its assets until the expiration of a period of two years and one day following payment of all amounts payable under the Notes provided that if the Trustee becomes aware that bankruptcy, insolvency or similar proceedings have been instituted or petition for the institution thereof has been held in any other jurisdiction by a party other than any of the

Transaction Creditors or the Third Parties, it shall take all necessary steps and actions to institute bankruptcy proceedings of the Issuer in Germany, England and and/or Ireland if, in the professional judgment of the Trustee, it is desirable or expedient to protect the interests of the Holders.

(2) The Protection Buyer, the Trustee (in respect of its Trustee Claims) and the Holders in respect of their Related Holder Claims shall have recourse only to the Collateral and for the avoidance of doubt shall have no recourse to the Expenses Collateral. The obligations of the Issuer to the Protection Buyer, the Trustee (in respect of its Trustee Claims) and the Holders in respect of their Related Holder Claims will not be obligations or responsibilities of, or guaranteed by, any other person or entity. The Issuer will have no assets available for payment of its obligations to the Protection Buyer, the satisfaction of the Trustee (in respect of its Trustee Claims) and the Holders (in respect of their Related Holder Claims) other than the Collateral and the claims of the Protection Buyer, the Trustee (in respect of its Trustee Claims) and the Holders (in respect of their Related Holder Claims) in relation to any final shortfall will be automatically extinguished and the failure to make any payment in respect of any such shortfall will in no event constitute default by the Issuer. None of the Protection Buyer, or the Trustee or the Holders may take steps against the Issuer to recover any sums owed to the Protection Buyer, the Trustee (in respect of its Trustee Claims) or the Holders in respect of their Related Holder Claims so unpaid, and, in particular, each of the Protection Buyer, the Trustee (in respect of its Trustee Claims) and the Holders in respect of the Related Holder Claims shall not petition or take any other steps or action for the winding up, examinership, liquidation or dissolution of the Issuer nor for the appointment of a liquidator, examiner, receiver or any other person in respect of the Issuer or its assets until the expiration of a period of two years and one day following payment of all amounts payable under the Notes provided that if the Trustee becomes aware that bankruptcy, insolvency or similar proceedings have been instituted or petition for the institution thereof has been held in any other jurisdiction by a party other than any of the Transaction Creditors or the Third Parties, it shall take all necessary steps and actions to institute bankruptcy proceedings of the Issuer in Germany, England and and/or Ireland if, in the professional judgment of the Trustee, it is desirable or expedient to protect the interests of the Holders.

#### *Clause 27. Communications*

(1) All notices to Holders shall be given pursuant to Condition 20 (Notices). All communications under this Agreement shall be made by e-mail, mail or by fax, provided that notices given by e-mail or fax shall promptly be confirmed by mail. For the avoidance of doubt, all mail to be delivered under or in connection with this Agreement shall be sent by reputable national or international couriers (as appropriate).

(2) Any communication under this Agreement shall be in English or in German with an English translation.

(3) Subject to written notification of any change of address, all notices under this Agreement to the parties set out below shall be directed to the following addresses:

(a) if to the Trustee:

Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft  
Bahnstrasse 16  
40212 Düsseldorf  
Germany

Attn: Geschäftsführung  
Tel: (+49) 211 8772 422  
Fax: (+49) 211 8772 9240

(b) if to the Issuer:

Rhea CDO 1 plc  
25-28 North Wall Quay  
IFSC  
Dublin 1  
Ireland

Attn: Company Secretary  
Tel: (+35) 31 649 2000  
Fax: (+35) 31 649 2649

(c) if to the Bank:  
Bankgesellschaft Berlin AG  
London Branch  
1 Crown Court  
Cheapside  
London  
EC2V 6LR

Attn: CDO Team  
Email: cdo@ibuk.bankgesellschaft.de  
Tel: (+44) 20 7572 6247  
Fax: (+44) 20 7572 6249

(d) if for the Custodian to the Custodian's administrative agent (*Erfüllungsgehilfe*):  
BankenService GmbH  
Unternehmensgruppe der Landesbank  
Berlin  
BS-GS 14  
Brunnenstrasse 111  
D-13355 Berlin

Attn: Volker Popp  
Email: volkerpopp@bankenservice.de  
Tel: (+49) 30 245 56962  
Fax: (+49) 30 245 56966

with a copy to:  
Bankgesellschaft Berlin AG London Branch

1 Crown Court  
Cheapside  
London  
EC2V 6LR

Attn: CDO Team  
Email: cdo@ibuk.bankgesellschaft.de  
Tel: (+44) 20 7572 6247  
Fax: (+44) 20 7572 6249

(e) if to the Note Trustee:  
Capita IRG Trustees Limited  
Guildhall House  
81/87 Gresham Street  
London  
EC2V 7QE

Attn: B D Needham  
Tel: (+44) 20 7600 6502  
Fax: (+44) 20 7600 6515

(f) if to S&P:  
Standard & Poor's Rating Group  
18 Finsbury Circus  
London EC2M 7BP  
United Kingdom

Attn: Structured Finance Surveillance Department  
Email: Simon.collingridge@standardpoors.com  
Tel: (+44) 207 826 3800  
Fax: (+44) 207 826 3890

(g) if to Moody's:

Moody's Investors Service Limited  
2 Minster Court  
Mincing Lane  
London EC3R 7XB  
United Kingdom

Attn: Structured Finance Monitoring  
Email: monitor.london@moodys.com  
Tel: (+44) 207 621 9068  
Fax: (+44) 207 772 5400

(h) if to Fitch:

Fitch Ratings Ltd.  
Eldon House  
Eldon Street  
London EC2M 7UA  
United Kingdom

Attn: European Structured Finance Surveillance  
Email: sfsurveillance@fitchratings.com  
Tel: (+44) 207 417 4222  
Fax: (+44) 207 417 6262

*Clause 28. Severability; Treatment of Defective Parts of Agreement*

(1) If any provision of this Agreement is or becomes invalid or unenforceable, in whole or in part, in any jurisdiction with respect to any party the remaining provisions shall remain unaffected thereby in that and any other jurisdiction. The parties agree to replace invalid or unenforceable provisions with valid and enforceable provisions which, taking into consideration the purpose and intent of this Agreement, have to the extent legally achievable the same economic effect as the invalid provisions. The preceding provisions shall apply *mutatis mutandis* to any lacunae (*Vertragslücken*) in this Agreement.

(2) Each party to this Agreement undertakes vis-à-vis each other party to fully co-operate and to take all actions that become necessary pursuant to paragraph (1) or for other reasons to implement this Agreement and the Transaction.

*Clause 29. Benefit of the Agreement*

Save as expressly provided herein, a person who is not a party to this Agreement has no right in accordance with § 328 of the Civil Code to enforce or to enjoy the benefit of any term of this Agreement.

*Clause 30. Amendments; Standard Business Terms*

(1) This Agreement can only be amended by written agreement of all parties hereto. The Trustee may only agree to any amendment with the prior consent of each of the Rating Agencies and, with respect to any amendment that in the sole discretion of the Trustee is not of a formal, minor or technical nature or corrects a manifest error and excluding amendments to the Schedules to this Agreement, the prior written consent of the Swap Counterparties.

(2) For the avoidance of doubt no standard business terms and conditions (*Allgemeine Geschäftsbedingungen*) of any party shall apply to the Transaction and in this respect it is agreed that no master agreement (*Rahmenvertrag*) used in accordance with national or international market practice shall constitute standard business terms and conditions (*Allgemeine Geschäftsbedingungen*).

*Clause 31. Governing Law; Place of Performance; Jurisdiction*

(1) This Agreement (other than the forms of deed of charge and assignment scheduled hereto) shall be governed by the laws of the Federal Republic of Germany.

(2) Place of performance for the obligations of all parties is Frankfurt am Main.

(3) Non-exclusive place of jurisdiction for any action or other legal proceedings arising out of or in connection with this Agreement shall be the District Court (Landgericht) in Frankfurt am Main (non-exclusive jurisdiction). The Issuer hereby submits to the jurisdiction of such Court. The Issuer hereby

appoints the Head of Legal Department, Bankgesellschaft Berlin AG, Alexanderplatz 2, D-10383 Berlin, Germany, as its agent who is authorised to receive service of process in relation to any legal proceedings initiated before a German Court.

*Clause 32. Conditions Precedent*

This Agreement and the rights and obligations hereunder are subject to the condition precedent that the KfW Bonds and the Notes shall have been issued.

*Clause 33. Counterparts*

This Agreement may be executed in one or more counterparts (including by fax). Each signed counterpart shall constitute an original. Schedules attached hereto constitute an integral part of this Agreement.

**IN WITNESS WHEREOF** this Agreement has been signed by the parties hereto on the date stated at the beginning hereof.

**REGISTERED OFFICE OF THE ISSUER**

**Rhea CDO 1 plc**  
25/28 North Wall Quay  
International Financial Services Centre  
Dublin 1  
Ireland

**THE ARRANGER**

**Bankgesellschaft Berlin AG, London Branch**  
1 Crown Court  
Cheapside  
London  
EC2V 6LR  
United Kingdom

**THE LEAD MANAGER AND ACCOUNT BANK**

**Deutsche Bank AG London**  
Winchester House  
1 Great Winchester Street  
London EC2N 2DB

**THE NOTE TRUSTEE**

**Capita IRG Trustees Limited**  
Guildhall House,  
81/87 Gresham Street  
London EC2V 7QE  
United Kingdom

**THE TRUSTEE AND MONITORING AGENT**

**Deloitte & Touche GmbH**  
**Wirtschaftsprüfungsgesellschaft**  
Bahnstraße 16  
D-40212 Düsseldorf  
Germany

**DATA TRUSTEE**

**Ernst & Young AG Wirtschaftsprüfungsgesellschaft**  
Mittlerer Pfad 15  
D-70499 Stuttgart  
Germany

**THE TRANSACTION ADMINISTRATOR AND  
THE PROTECTION BUYER**

**Bankgesellschaft Berlin AG,**  
**London Branch**  
1 Crown Court  
Cheapside  
London  
EC2V 6LR  
United Kingdom

**THE PRINCIPAL PAYING AGENT**

**Landesbank Berlin — Girozentrale —,**  
**London Branch**  
1 Crown Court  
Cheapside  
London  
EC2V 6LR  
United Kingdom



**THE CORPORATE ADMINISTRATOR,  
LISTING AGENT AND IRISH PAYING AGENT**

**Bankgesellschaft Berlin (Ireland) PLC**  
No. 5 George's Dock  
IFSC  
Dublin 1  
Ireland

**AUDITORS TO THE ISSUER**

**KPMG**  
5 George's Dock  
IFSC  
Dublin 1  
Ireland

**LEGAL ADVISERS**

*To the Issuer as to Irish law*

**A&L Goodbody Solicitors**  
International Financial Services Centre  
25/28 North Wall Quay  
Dublin 1  
Ireland

*To the Issuer, the Note Trustee and to the Bank  
as to English law*

**Norton Rose**  
Kempson House  
Camomile Street  
London  
EC3A 7AN  
United Kingdom

*To the Issuer as to German law*

**Baker & McKenzie**  
D-60311 Frankfurt am Main  
Germany

*To the Arranger as to German law*

**Odenbach Rechtsanwälte**  
Ferdinand-Maria-Str. 31  
D-80639 München  
Germany

*To the Lead Manager  
as to German law*

**Hengeler Mueller**  
Bockenheimer Landstraße 51  
D-60325 Frankfurt am Main  
Germany