

**เอกสารแนบ 5**

**หนังสือคำประกัน**

Allen & Overy LLP

**EXECUTION COPY**

**GUARANTEE IN RESPECT OF**

- **THE GUARANTEED BONDS OF EASY BUY PUBLIC COMPANY LIMITED NO. 1/2006 TRANCHE 1, DUE 2009**
- **THE GUARANTEED BONDS OF EASY BUY PUBLIC COMPANY LIMITED NO. 1/2006 TRANCHE 2, DUE 2009**

**between**

**ACOM CO., LTD.  
as Guarantor**

**and**

**TMB BANK PUBLIC COMPANY LIMITED  
as Bondholders' Representative**

16 February 2006

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**THIS GUARANTEE** is made on the 16 day of February 2006.

**BETWEEN**

- (1) **ACOM CO., LTD.** whose head office is located at 1-1, Marunouchi 2-chome, Chiyoda-ku, Tokyo 100-830, Japan (the **Guarantor**); and
- (2) **TMB BANK PUBLIC COMPANY LIMITED**, a company incorporated under the laws of Thailand whose office is at 3000 Phahon Yothin Road, Ladyao, Chatuchak Bangkok 10900, Thailand as Bondholders' Representative for itself and as agent for, and for the benefit of, the Bondholders.

**WHEREAS**

It is a condition precedent to the issue of Bonds that the Guarantor enters into this Guarantee.

**IT IS AGREED:**

**1. INTERPRETATION**

1.1 **Definitions:** In this Guarantee (including the recitals), except where the context otherwise requires:

**Bondholders' Representative Agreement** means the Appointment of Bondholders' Representative Agreement dated 16 February 2006 between the Issuer and the Representative;

**Bonds** mean Baht 2,784,000,000 Guaranteed Bonds of EASY BUY Public Company Limited No. 1/2006 Tranche 1, due 2009 and Baht 216,000,000 Guaranteed Bonds of EASY BUY Public Company Limited No. 1/2006 Tranche 2, due 2009;

**Bondholders** has the meaning given to it in the Terms and Conditions of the Bonds;

**Guaranteed Amount** means (i) principal and/or interest on the principal and, to the extent permitted by applicable law, on overdue interest and including any additional interest required to be paid under the Bonds pursuant to the Terms and Conditions, and all other amounts whatsoever which are expressed by the terms of the Terms and Conditions to become due and payable by the Issuer whether at maturity, upon redemption or otherwise; and (ii) all fees, remuneration, expenses, indemnity payments, interest and any other amount whatsoever payable by the Issuer to the Representative under the Bondholders' Representative Agreement. References to the Guaranteed Amounts include references to any part of them;

**Issue Date** means 22 February 2006;

**Issuer** means EASY BUY Public Company Limited (formerly known as SIAM A&C Co., Ltd.) or its successor or any company which may assume its obligations under or in connection with the Bonds at any time;

**Representative** means TMB Bank Public Company Limited as Bondholders' Representative or any successor as bondholders' representative in connection with the Bonds;

**Tax** means any present or future tax, impost, duty, levy or charge of a similar nature payable to or imposed by any supra-national, governmental, federal, state, provincial, local governmental or municipal taxing authority, body or official, whether in Japan or elsewhere (together with any related penalties, fines, surcharges and interest); and

**Terms and Conditions** mean the terms and conditions of the Bonds set out in the Information Memorandum submitted to the office of the Securities and Exchange Commission of Thailand on 6 January 2006 which may be amended or supplemented from time to time.

1.2 **Interpretation:** Except where the context otherwise requires, any references in this Guarantee to:

a **clause** shall be to a clause of this Guarantee;

a **term** defined in the Terms and Conditions shall have the same meaning in this Guarantee unless otherwise defined;

any **agreement** or **document** (including, without limitation, references to this Guarantee) shall be deemed to include references to a concession, contract, deed, franchise, licence, treaty or undertaking and to such agreement or other document as varied, supplemented, novated or replaced from time to time;

**persons** shall be deemed to be references to or to include, as appropriate, any corporation, association, partnership or other entity and includes their respective successors, transferees, assigns and any persons with whom they may at any time amalgamate; and

**winding up** includes bankruptcy and any procedure under any applicable law which is analogous to winding up or bankruptcy.

Headings and the table of contents are for ease of reference only.

## 2. GUARANTEE

2.1 The Guarantor hereby unconditionally and irrevocably:

(a) guarantees to the Representative (for itself and as agent and for the benefit of the Bondholders) the prompt payment by the Issuer on the due date of the Guaranteed Amounts in accordance with the Terms and Conditions and the Bondholders' Representative Agreement; and

(b) (as principal debtor and not merely as surety) undertakes to the Representative (for itself and as agent and for the benefit of the Bondholders) that, if and each time that the Issuer does not make payment of any amount of the Guaranteed Amounts in accordance with the Terms and Conditions or the Bondholders' Representative Agreement, as applicable, the Guarantor shall pay to the Representative (for itself, or, as applicable, as agent for and on behalf of the Bondholders) the amounts not so paid as if such payment were made by the Issuer.

2.2 The Guarantor acknowledges having received a copy of the Terms and Conditions and the Bondholders' Representative Agreement and confirms its acceptance of the provisions thereof.

2.3 The Guarantor hereby acknowledges and agrees that its obligations under this Guarantee shall be unconditional and irrevocable irrespective of the identity of the Issuer.

2.4 The Guarantor hereby unconditionally and irrevocably undertakes that its obligations under this Guarantee shall be assigned to its successor in the event of the Guarantor's merger with, acquisition by or consolidation with any other entity being corporate or otherwise.

### **3. CONTINUING GUARANTEE**

The guarantee constituted by this Guarantee shall be continuing and shall extend to the ultimate balance of the Guaranteed Amounts, regardless of any intermediate payment or discharge in whole or in part or performance in part.

### **4. DISCHARGE AND RELEASE**

4.1 The Guarantor may not amend or terminate this Guarantee without the consent of the Bondholders' Representative and a Bondholders' resolution approving such amendment or termination passed by Bondholders holding more than two-thirds (2/3) of the total principal amount outstanding of the Bonds held by the Bondholders attending the relevant meeting, in accordance with Condition 14.11 of the Terms and Conditions.

4.2 Subject to clauses 4.1 and 4.3, and provided the Guaranteed Amounts have been irrevocably paid in full, the Representative may for itself and on behalf of the Bondholders, at the request and cost of the Guarantor, discharge or release the Guarantor by written instrument signed by the Representative.

4.3 Any discharge or release referred to in clause 4.2 and any composition or arrangement which the Guarantor may effect with the Representative or the Bondholders shall be deemed to be made subject to the condition that it will be void if any payment, performance or security which the Representative or any Bondholder has received or may receive from any person in respect of the Guaranteed Amounts is set aside, refunded or reduced under any applicable law or proves to have been invalid. If such condition is satisfied, the Representative and the Bondholders shall be entitled to recover from the Guarantor on demand the value of such security or the amount of any such payment as if such discharge, release, composition or arrangement had not been effected.

### **5. WAIVER OF DEFENCES**

5.1 This Guarantee is intended by the parties to operate as a songai tanpo keiyaku under Japanese Law. Accordingly, the liabilities and obligations of the Guarantor under this Guarantee shall remain in force notwithstanding any act, omission, neglect, event or matter whatsoever whether or not known to the Guarantor, the Issuer, the Representative or the Bondholders (other than the irrevocable payment of the Guaranteed Amounts) and the foregoing shall apply, without limitation, in relation to:

- (a) anything which would have discharged the Guarantor (wholly or in part) whether as surety, co-obligor or otherwise or which would have afforded the Guarantor any legal or equitable defence;
- (b) any winding up, dissolution, reconstruction or reorganisation, legal limitation, disability, incapacity or lack of corporate power or authority or other circumstances of, or any change in the constitution or corporate identity or loss of corporate identity by, the Issuer or any other person; and
- (c) anything which renders the Issuer's obligations invalid or unenforceable under the Bonds and any defence or counterclaim which the Issuer may be able to assert against the Representative or any of the Bondholders.

5.2 Without limiting clause 5, none of the liabilities or obligations of the Guarantor under this Guarantee shall be impaired by the Representative or any Bondholder:

- (a) agreeing with the Issuer any amendment, variation, assignment, novation or departure (however substantial or material) of, to or from the Terms and Conditions or the

Bondholders' Representative Agreement so that any such amendment, variation, assignment, novation or departure (including any which may have been made before the signing of this Guarantee) shall, whatever its nature, be binding upon the Guarantor in all circumstances, notwithstanding that it may increase or otherwise affect the liability of the Guarantor;

- (b) releasing or granting any time or any indulgence of any kind to the Issuer or any third party (including, without limitation, the waiver of any conditions to the issue of the Bonds or any Event of Default), or entering into any transaction or arrangements whatsoever with or in relation to the Issuer and/or any third party;
- (c) taking, accepting, varying, dealing with, enforcing, abstaining from enforcing, surrendering or releasing any security, right of recourse, set off or combination or other right or interest held by the Representative or any Bondholder for the Guaranteed Amounts or in relation to the Terms and Conditions or the Bondholders' Representative Agreement in such manner as it or they think fit; or
- (d) claiming, proving for, accepting or transferring any payment in respect of the Guaranteed Amounts in any composition by, or winding up of, the Issuer and/or any third party or abstaining from so claiming, proving for, accepting or transferring.

## **6. REPRESENTATIONS AND WARRANTIES**

The Guarantor represents and warrants to the Representative on the Issue Date and on each Interest Payment Date (as referred to in the Terms and Conditions) with the reference to the facts and circumstances then exist as follows:

- (a) the Guarantor has been duly incorporated and is validly existing under the laws of the Japan with full power and authority to conduct its business and the Guarantor is able lawfully to execute and perform its obligations under this Guarantee;
- (b) the execution and delivery of the Guarantee by the Guarantor has been duly authorised by the board of directors meeting of the Guarantor and upon due execution and delivery the same will constitute legal, valid and binding obligations of the Guarantor enforceable in accordance with their respective terms subject to the laws of bankruptcy and other laws affecting the rights of creditors generally;
- (c) all consents and approvals of any court, government department or other regulatory body required by the Guarantor for the execution, delivery and performance of this Guarantee by the Guarantor have been obtained and are unconditional and in full force and effect before the date hereof;
- (d) upon issue this Guarantee will constitute a direct, unconditional and unsubordinated obligation of the Guarantor and will rank at least pari passu in right of payment with all other present and future unsecured obligations of the Guarantor, subject as described in this Guarantee;
- (e) no event has occurred in respect of the Guarantor which would constitute, after the issue of the Bonds, an event of default under the Bonds or which with the giving of notice or the lapse of time or other condition would constitute, after the issue of the Bonds, an event of default; and
- (f) the execution and delivery of this Guarantee by the Guarantor and the performance of the Guarantee will not:

- (i) infringe any law or regulation of Japan and are not contrary to the provisions of the constitutional documents of the Guarantor; and
- (ii) result in any breach of the terms of, or constitute a default under, any instrument, agreement or order to which the Guarantor is a party or by which it or its property is bound.

## **7. DEMANDS**

Demands under this Guarantee may be made from time to time, and the liabilities and obligations of the Guarantor under this Guarantee may be enforced, irrespective of:

- (a) whether any demands, steps or proceedings are being or have been made or taken against the Issuer; or
- (b) whether or in what order any security to which the Representative or any Bondholder may be entitled in respect of the Guaranteed Amounts is enforced.

## **8. RIGHTS SEVERAL**

The rights of the Representative and each Bondholder under this Guarantee shall be in all respects several. Any amount payable to a Bondholder under this Guarantee is a separate and independent obligation. It shall not be necessary for the Representative or any other Bondholder to be joined as an additional party in any proceedings by another Bondholder to protect or enforce its rights and interests under this Guarantee.

## **9. RANKING**

The Guarantor hereby unconditionally and irrevocably undertakes that its obligations under this Guarantee do and will rank at least *pari passu* with all its other present and future unsecured and unsubordinated debt obligations other than obligations in respect of national, provincial and local taxes and employees' remuneration and taxes and for certain other statutory exceptions.

## **10. TAXES**

All payments by the Guarantor of the Guaranteed Amounts, whether in respect of principal, interest or any other item, shall be made in full without any deduction or withholding in respect of any Taxes or otherwise unless the deduction or withholding is required by law. If such a deduction or withholding is required or if any deduction or withholding in respect of Tax or otherwise falls to be made by the Issuer or the Guarantor, the Guarantor hereby unconditionally and irrevocably undertakes that it:

- (a) shall ensure that the deduction or withholding does not exceed the minimum amount legally required;
- (b) shall forthwith pay to the Representative for itself or for the account of each Bondholder (as applicable) an additional amount calculated to ensure that the net amount received by that Bondholder (taking into account any deduction or withholding required on such additional amounts) will equal the full amount which would have been received by it had no such deduction or withholding been made;
- (c) shall pay to the relevant taxation or other authorities within the period for payment permitted by applicable law the full amount of the deduction or withholding (including any deduction or withholding from any additional amount paid pursuant to this clause); and



- (d) in the case of deduction or withholding, shall furnish to the Representative for itself or on behalf of each and every Bondholder concerned, within the period for payment permitted by the relevant law, either:
  - (i) an official receipt of the relevant taxation or other authorities involved in respect of all amounts so deducted or withheld; or
  - (ii) if such receipts are not issued by the taxation or other authorities concerned on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding.

## **11. CURRENCY INDEMNITY**

If the Representative or a Bondholder receives an amount in respect of the liability of the Issuer or the Guarantor in relation to the Bondholders' Representative Agreement or the Bonds or if that liability is converted into a claim, proof, judgement or order in a currency other than the currency (the **contractual currency**) in which the amount is expressed to be payable under the Bondholders' Representative Agreement or the Terms and Conditions:

- (a) the Guarantor shall indemnify the Representative or, as the case may be, the relevant Bondholder, as an independent obligation against any loss or liability arising out of or as a result of the conversion;
- (b) if the amount received by the Representative or, as the case may be, the relevant Bondholder, when converted into the contractual currency at a market rate in the usual course of its business, is less than the amount owed in the contractual currency, the Guarantor shall pay on demand to the Representative or, as the case may be, the relevant Bondholder, an amount in the contractual currency equal to the deficit; and
- (c) the Guarantor shall pay to the Representative or, as the case may be, the relevant Bondholder, concerned on demand any exchange or other costs and taxes payable incurred in connection with any such conversion.

## **12. NO SET-OFF OR COUNTERCLAIM**

All payments made by the Guarantor under this Guarantee shall be made without set-off or counterclaim.

## **13. INVALIDITY**

If any provision of this Guarantee becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

## **14. CHOICE OF LAW**

This Guarantee is governed by, and shall be construed in accordance with, Japanese law.

## **15. COUNTERPARTS**

This Guarantee may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

**16. JURISDICTION**

All the parties agree that the Tokyo District Court is to have exclusive jurisdiction to settle any disputes (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Guarantee or otherwise arising in connection with this Guarantee and for such purpose irrevocably submit to the jurisdiction of the Tokyo District court.

**IN WITNESS WHEREOF**, the parties have set their hands and seals on the date and year first above written.

**SIGNATORIES**

**SIGNED** by )  
For and on behalf of )  
**ACOM CO., LTD.** )  
as Guarantor ) \_\_\_\_\_

**SIGNED** by )  
For and on behalf of )  
**TMB BANK PUBLIC COMPANY LIMITED** )  
as Bondholders' Representative ) \_\_\_\_\_