

DEPFA BANK PLC, TOKYO BRANCH
(as Guarantor)

in favour of

TMB BANK PUBLIC COMPANY LIMITED
(As Agent for and on behalf of the Debentureholders)

GUARANTEE

in respect of the Baht 5,800,000,000 amortising and guaranteed
debentures of Gulf Cogeneration Company Limited

THIS GUARANTEE is made by way of deed on 26 April 2006.

BY:

- (1) **DEPFA BANK PLC, TOKYO BRANCH** (the “**Guarantor**”); in favour of
- (2) **TMB BANK PUBLIC COMPANY LIMITED** (the “**Debentureholders' Representative**”).

WHEREAS

- (A) The Debentureholders have agreed to subscribe for the Debentures that are to be issued by the Issuer.
- (B) In consideration of the Debentureholders to subscribe for the Debentures, the Guarantor has agreed to guarantee the obligations of the Issuer in respect of the Debentures.

1. DEFINITION

1.1 In this Guarantee:

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) when banks in Tokyo and Bangkok are open for general business;

“**Debenture Documents**” means together the Terms and Conditions and the DHR Appointment Agreement and “**Debenture Document**” means any one of them;

“**Default Interest Rate**” has the meaning given to it in the Terms and Conditions;

“**Debenture Interest Rate**” means (i) in respect of The Amortising and Guaranteed Debentures of Gulf Cogeneration Company Limited No. 1/2549 Series 1 Due B.E. 2552, the rate of 5.87 percent per annum; (ii) in respect of The Amortising and Guaranteed Debentures of Gulf Cogeneration Company Limited No. 1/2549 Series 2 Due B.E. 2554, the rate of 6.11 percent per annum; and (iii) in respect of The Amortising and Guaranteed Debentures of Gulf Cogeneration Company Limited No. 1/2549 Series 3 Due B.E. 2559, the rate of 6.64 percent per annum;

“**Debentureholders**” has the meaning given to it in the Terms and Conditions;

“**Debentures**” mean the Baht 5,800,000,000 amortising and guaranteed debentures of the Issuer divided into three tranches namely: (i) “The Amortising and Guaranteed Debentures of Gulf Cogeneration Company Limited No. 1/2549 Series 1 Due B.E. 2552”; (ii) “The Amortising and Guaranteed Debentures of Gulf Cogeneration Company Limited No. 1/2549 Series 2 Due B.E. 2554”; and (iii) “The Amortising and Guaranteed Debentures of Gulf Cogeneration Company Limited No. 1/2549 Series 3 Due B.E. 2559”;

“**DHR Appointment Agreement**” means the Debentureholders' Representative Appointment Agreement dated 26 April 2006 between the Issuer and the Debentureholders' Representative or the agreement appointing a substitute representative of Debentureholders (if any);

“**DHR's Fees and Expenses**” means the fees and expenses under the DHR Appointment Agreement, provided that such fees and expenses shall include only the Debentureholders' Representative's fees remaining unpaid by the Issuer in respect of only one year and those expenses incurred in relation to administrative matters (e.g. stamps for a letter of notice, cheques, etc.) and, for the avoidance of doubt, shall be exclusive of any legal fees and expenses incurred by a legal adviser;

“**Guaranteed Amounts**” means (a) the principal and/or interest on the principal, but excluding any additional interest (including, without limitation, the difference between the Debenture Interest Rate and the Default Interest Rate on the unpaid principal and interest), that is due and payable pursuant to Clause 10 of the Terms and Conditions and required to be paid under the Terms and Conditions; and (b) the DHR's Fees and Expenses, and references to the Guaranteed Amounts include references to any part of them;

“**Interest Payment Date**” has the meaning given to it in the Terms and Conditions;

“**Issuer**” means Gulf Cogeneration Company Limited or its successor or any company that may assume its obligations under or in connection with the Debentures at any time;

“**Relevant Jurisdictions**” means the Republic of Ireland and Japan;

“**SWIFT**” means Society for Worldwide Interbank Financial Telecommunication SCRL, Avenue Adele 1, B-1310 La Hulpe, Belgium;

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

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under this Guarantee; and

“**Terms and Conditions**” means the terms and conditions of the Debentures dated 26 April 2006 as set out in the final prospectus of the Debentures filed with the Office of the Securities and Exchange Commission of Thailand.

1.2 Construction unless a contrary indication appears any reference in this Guarantee to:

1.2.1 the “**Guarantor**”, “**Debentureholders’ Representative**”, or “**Debentureholders**”, or any other person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;

1.2.2 a “**Debenture Document**” or any other agreement or instrument is a reference to that Debenture Document or other agreement or instrument as amended or novated;

1.2.3 a “**person**” includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;

- 1.2.4 a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.5 a provision of law is a reference to that provision as amended or re-enacted; and
- 1.2.6 a time of day is a reference to Tokyo time.
- 1.3 **Headings:** Clause and Schedule headings are for ease of reference only.
2. **GUARANTEE**
- 2.1 The Guarantor irrevocably and unconditionally guarantees to the Debentureholders' Representative (for itself and as agent for and on behalf of the Debentureholders) the due and punctual payment of the Guaranteed Amounts by the Issuer on the due date thereof of the Guaranteed Amounts. The Guaranteed Amounts shall be paid by the Guarantor in Thai Baht subject to Clause 7.
- 2.2 The Guarantor agrees to pay interest on the unpaid amount under this Guarantee at the Debenture Interest Rate calculated from and including the due date of the payment under the Debentures until (but not including) the date on which such payment is made in full, provided that if the Guarantor does not make payment under this Guarantee on the due date specified herein, the Guarantor shall be liable to pay to the Debentureholders' Representative (for itself and as agent for and on behalf of the Debentureholders) interest on the unpaid amount at the Default Interest Rate per annum calculated from and including such due date to but excluding the actual payment date.
- 2.3 **Indemnity:** The Guarantor irrevocably and unconditionally agrees as a primary obligation to indemnify the Debentureholders' Representative (for itself and as agent for and on behalf of the Debentureholders) from time to time on demand from and against any loss incurred by the Debentureholders' Representative (for itself and as agent for and on behalf of the Debentureholders) as a result of any of the obligations of the Issuer under or pursuant to the Debenture Documents being or becoming void, voidable, unenforceable or ineffective as against the Issuer for any reason whatsoever, whether or not known to the Debentureholders' Representative or any Debentureholder, the amount of such loss being the amount which the Debentureholders' Representative (for itself and as agent for and on behalf of the Debentureholders) would otherwise have been entitled to recover from the Issuer.
3. **PRESERVATION OF RIGHTS**
- 3.1 **Independent Security:** The obligations of the Guarantor contained in this Guarantee shall be in addition to and independent of every other security which the Debentureholders' Representative (for itself and as agent for and on behalf of the Debentureholders) may at any time hold in respect of any of the Issuer's obligations under the Debenture Documents.
- 3.2 **No release:** Neither the obligations of the Guarantor contained in this Guarantee nor the rights, powers and remedies conferred in respect of the Guarantor upon the

Debentureholders' Representative (for itself and as agent for and on behalf of the Debentureholders) by this Guarantee or by law shall be discharged, impaired or otherwise affected by the winding-up, dissolution, administration or reorganisation of the Issuer or any other person or any change in its status, function, control or ownership.

3.3 **Void Settlement:** Any settlement or discharge given by the Debentureholders' Representative (for itself and as agent for and on behalf of the Debentureholders) to the Guarantor in respect of the Guarantor's obligations under this Guarantee or any other agreement reached between the Debentureholders' Representative and the Guarantor in relation to it shall be, and be deemed always to have been, void if any act on the faith of which the Debentureholders' Representative gave the Guarantor that settlement or discharge or entered into that agreement is subsequently avoided by or in pursuance of any provision of law.

3.4 **Claims against Guarantor:** The Debentureholders' Representative shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor by this Guarantee or by law:

3.4.1 to make any demand of the Issuer;

3.4.2 to take any action or obtain judgment in any court against the Issuer;

3.4.3 to make or file any claim or proof in a winding-up or dissolution of the Issuer;
or

3.4.4 to enforce or seek to enforce any security taken in respect of any of the obligations of the Issuer under the Debenture Documents.

3.5 **Indemnity/Subrogation Claims:** The Guarantor agrees that, so long as the Issuer is under any actual or contingent obligations under any of the Debenture Documents, the Guarantor shall not exercise any rights which the Guarantor may at any time have by reason of performance by it of its obligations under this Guarantee:

3.5.1 to be indemnified by the Issuer or to receive any collateral from the Issuer;
and/or

3.5.2 to claim any contribution from any other guarantor of the Issuer's obligations under the Debenture Documents; and/or

3.5.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Debentureholders' Representative or the Debentureholders under the Debenture Documents or of any other security taken pursuant to, or in connection with, the Debenture Documents by the Debentureholders' Representative.

4. **REPRESENTATIONS AND WARRANTIES**

4.1 **Representative:** The Guarantor represents that:

- 4.1.1 **Status:** The Guarantor is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation and has the power to own its assets and carry on its business as it is being conducted.
- 4.1.2 **Binding obligations:** The obligations expressed to be assumed by the Guarantor in this Guarantee are legal, valid, binding and enforceable obligations.
- 4.1.3 **Non-conflict with other obligations:** The entry into and performance by the Guarantor of this Guarantee and performance by the Guarantor of the transactions contemplated by this Guarantee do not and will not conflict with any law or regulation applicable to the Guarantor, or its constitutional documents or any agreement or instrument binding upon the Guarantor.
- 4.1.4 **Power and authority:** The Guarantor has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Guarantee and the transactions contemplated by this Guarantee.
- 4.1.5 **Validity and admissibility in evidence:** All Authorisations required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Guarantee and to make this Guarantee admissible in evidence in the Relevant Jurisdictions have been obtained or effected and are in full force and effect.
- 4.1.6 **Governing law and enforcement:** The choice of English law as the governing law of this Guarantee will be recognised and enforced in the Relevant Jurisdictions of the Guarantor and any judgment obtained in England in relation to this Guarantee will be recognised and enforced in the Relevant Jurisdictions.
- 4.1.7 **No filing or stamp taxes:** Under the laws of the Relevant Jurisdictions, all necessary filing, record or enrol with any court or other authority in the Relevant Jurisdictions of this Guarantee have been made and any stamp, registration or similar tax, to the extent required by law, has been paid on or in relation to this Guarantee or the transactions contemplated by this Guarantee.
- 4.1.8 **Pari passu ranking:** Its payment obligations under this Guarantee rank at least pari passu with the claims of the Guarantor's other unsecured and unsubordinated creditors, except for those obligations mandatorily preferred by law applying to companies generally in the Relevant Jurisdictions.
- 4.1.9 **No Immunity:** In any proceedings taken in the Relevant Jurisdictions in relation to this Guarantee, the Guarantor will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.
- 4.1.10 **Insolvency Proceedings:** No legal proceedings have been commenced (that have not been dismissed and are continuing) and no other legal action has been taken for the bankruptcy, reorganisation, liquidation, dissolution or winding-up of the Guarantor; or

- 4.1.11 **Admission of Insolvency:** the Guarantor has not admitted in writing its inability to pay its debts as they mature, or entered into or sought to enter into any scheme for the reorganisation, arrangement, composition or rescheduling of any of its debts, or entered into an assignment for the benefit of or a composition with its creditors, or assigned or transferred its assets or the right to manage its asset to any third party for the benefit of its creditors, or
- 4.1.12 **Insolvency Orders and Resolutions:** No order has been made by any court or governmental authority or resolution passed for the bankruptcy, reorganisation, liquidation, dissolution or winding-up of the Guarantor; or
- 4.1.13 **Enforcement of Security:** No distress, attachment, execution or other legal process has been levied or enforced and no person having security over assets of the Guarantor has taken possession of, or taken any action for or with a view to the appointment of a receiver, administrative receiver, trustee, custodian or similar officer in relation to any of the assets of the Guarantor with the consequence that such action or event may have a material adverse effect on the Guarantor.
- 4.1.14 **Credit Rating:** The long-term credit rating of the Guarantor as determined by Fitch Ratings is not less than AA-.
- 4.2 The representations of the Guarantor in Clauses 4.1.1 (*Status*) to Clause 4.1.13 (*Enforcement of Security*) shall be deemed to be repeated on each Interest Payment Date by referring to the facts and circumstances existing on such date.

5. PAYMENTS AND WITHHOLDINGS

- 5.1 **No Withholding:** 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.
- 5.2 **Withholding Tax:** If a deduction or withholding is required or if any deduction or withholding in respect of Tax or otherwise is required to be made by the Issuer or the Guarantor, the Guarantor hereby unconditionally and irrevocably undertakes that it:
- 5.2.1 shall ensure that the deduction or withholding does not exceed the minimum amount legally required;
- 5.2.2 shall forthwith pay to the Debentureholders' Representative for itself and for the account of each Debentureholder an additional amount calculated to ensure that the net amount received by that Debentureholder (taking into account any deduction or withholding required on such additional amounts) will equal the full amount which would have been received by it in respect of the Guaranteed Amounts had no such deduction or withholding been made;
- 5.2.3 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).

5.3 **Receipt:** If any deduction or withholding is made, Guarantor undertakes that it shall deliver to the Debentureholders' Representative, within the period for payment permitted by the relevant law, either:

5.3.1 an official receipt of the relevant taxation or other authorities involved in respect of all amounts so deducted or withheld; or

5.3.2 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.

5.4 **No Set-Off or Counterclaim:** All payments made by the Guarantor under this Guarantee shall be made without set-off or counterclaim.

6. CURRENCY

6.1 **Currency Conversion:** The Debentureholders' Representative may convert any money received or realised by it under or pursuant to this Guarantee which is not in the currency in which such sums are due and payable under the Debenture Documents from that currency into the currency in which such sum is due at the Debentureholders' Representative's spot rate of exchange for the time being for the relevant conversion.

6.2 **Currency Indemnity:** Except for the payment under Clause 7 hereof, if (i) the Debentureholders' Representative or a Debentureholder receives an amount in respect of the liability of the Guarantor under this Guarantee in a currency other than Thai Baht; or (ii) the Guarantor is required by any court or any authority to make payment under this Guarantee in a currency other than Thai Baht, the Guarantor shall make any additional payment (if required) in order to ensure that upon actual conversion of such payment into Thai Baht, the payment shall cover the full Guaranteed Amounts. The Guarantor shall pay to the Debentureholders' Representative or, as the case may be, the relevant Debentureholder, concerned on demand any exchange or other costs payable or incurred in connection with any such conversion.

7. PAYMENT IN YEN

7.1 Notwithstanding any provision herein or in the DHR Appointment Agreement or in the Terms and Conditions and/or the Debentures, if any payment obligation of the Guarantor under this Guarantee cannot be made in Thai Baht due to the imposition of foreign exchange control by the Bank of Thailand after the date of this Guarantee, the Guarantor shall promptly notify the Debentureholders' Representative (for itself and as agent for and on behalf of the Debentureholders) of the fact and that this Clause 7 (PAYMENT IN YEN) shall apply.

7.2 If notice is delivered to the Debentureholders' Representative pursuant to Clause 7.1 above (the "**Notice**"),

7.2.1 the Guarantor and the Debentureholders' Representative shall enter into negotiation in good faith for a period of not more than ten Business Days from

the date of the Notice (the "**Negotiation Period**") with a view to agreeing an appropriate applicable rate of foreign exchange between Thai Baht and Japanese Yen such that the Debentureholders' Representative would ultimately be able to make full payment of the Guaranteed Amounts in Thai Baht to the Debentureholders;

- 7.2.2 if no exchange rate is agreed pursuant to Clause 7.2.1, the Guarantor shall pay the Japanese Yen equivalent amount to the Thai Baht amount to be calculated by applying the exchange rate that appears as Telegraphic Transfer Buying Rate between Thai Baht and Japanese Yen on Reuters Screen Page "TTSB=J" (or such other page as may replace the "TTSB=J" page) at or around 10:00am (the "Relevant Time") on the first Business Day following the Negotiation Period (the "**Determination Date**") (if no such rate appears at the Relevant Time on the Determination Date, the quotation that appears on the relevant page on the Telerate Screen, if no such quotation appears on the Telerate Screen at the Relevant Time on the Determination Date, the quotation that appears on the web page of The Bank of Tokyo-Mitsubishi UFJ, Ltd. at the Relevant Time on the Determination Date) as the Telegraphic Transfer Buying Rate between Thai Baht and Japanese Yen.
- 7.3 The Guarantor shall, within 2 Business Days from the end of the Negotiation Period pay to the Debentureholders' Representative the Japanese Yen amount calculated by applying the exchange rate agreed under Clause 7.2.1 or the exchange rate specified in Clause 7.2.2 (as the case may be) at the Japanese Yen account separately designated by the Debentureholders' Representative with a bank which has a current account with the Bank of Japan through the BOJ-Net (Bank of Japan Financial Network System) Funds Transfer System (if not applicable, upon discretion of the Guarantor, through the most customary applied payment system that best suits such payment).
- 7.4 The date upon which the full amounts are irrevocably paid by the Guarantor to the Debentureholders' Representative at the time for the settlement of transactions in Japanese Yen pursuant to Clause 7.3 above shall be deemed to be the date upon which the Guarantor has fully performed all of its obligations under the Guarantee in respect of all such amounts relating to such payment.
- 7.5 After the Debentureholders' Representative's receipt of the Yen payment from the Guarantor as specified above, it shall be obliged to promptly make payment to the Debentureholders in Thai Baht as applicable in the amount equivalent to the Thai Baht payment obligation owing to the Debentureholders under this Guarantee.
8. **MISCELLANEOUS**
- 8.1 **Partial invalidity:** If at any time, any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Guarantee nor of such provisions under the law of any other jurisdiction shall in any way be affected or impaired thereby.

- 8.2 **Assignments and Successors:** The Debentureholders' Representative may at any time assign all or any of its rights and benefits under this Guarantee and this Guarantee shall remain in effect despite any amalgamation or merger (however effected) relating to the Debentureholders' Representative. References to the Debentureholders' Representative shall be deemed to include any assignee or successor in title of the Debentureholders' Representative and any person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Debentureholders' Representative under this Guarantee or to which under such laws the same have been transferred.
- 8.3 **Continuing Security:** The obligations of the Guarantor contained in this Guarantee shall constitute and be continuing obligations and shall not be considered satisfied by any intermediate payment or satisfaction of some, but not all of the payment obligations of the Issuer under the Debenture Documents and shall continue in full force and effect until final payment in full of all amounts owing by the Issuer under the Debenture Documents.
9. **NOTICES**
- 9.1 **Communications in writing:** Any communication to be made under or in connection with this Guarantee shall be made in writing and, unless otherwise stated, may be made by fax or letter or via "SWIFT" system.
- 9.2 **Address of Guarantor:** The address, fax number (and the department or officer, if any, for whose attention the communication is to be made) and SWIFT Bank Identifier Code ("**SWIFT BIC Code**") of the Guarantor for any communication or document to be made or delivered under or in connection with this Guarantee shall be as identified with its name below or any substitute address or fax number or department or officer as the Guarantor may notify to the Debentureholders' Representative (with such substitution taking effect five Business Days after the date that Debentureholder' Representative has received such notice).
- 9.3 **Address of the Debentureholders' Representative:** The address, fax number (and the department or officer, if any, for whose attention the communication is to be made) and SWIFT BIC Code of the Debentureholders' Representative for any communication or document to be made or delivered under or in connection with this Guarantee shall be as identified with its name below or any substitute address or fax number or department or officer as the Debentureholders' Representative may notify to the Guarantor (with such substitution taking effect five Business Days after the date that Guarantor has received such notice).

TMB BANK PUBLIC COMPANY LIMITED

Address: 3000 Phahonyothin Road,
Chatuchak, Bangkok 10900

Telephone: + 66 2230 6232

Facsimile: +66 2230 6093

SWIFT BIC Code: TMBKTHBK

Attention: Mr. Jittiwat Kantamala

- 9.4 **Delivery:** Any communication or document made or delivered to the Guarantor under or in connection with this Guarantee will only be effective:
- 9.4.1 (In respect of communications by fax) when received in legible form;
 - 9.4.2 (In respect of communications by letter) when it has been delivered at the relevant address or five Business Days after being deposited as registered air mail in the post postage prepaid in an envelope addressed to it at that address; or
 - 9.4.3 (In respect of communications via “SWIFT” system) when transmission thereof is confirmed.

However, a notice given in accordance with the above but received on a day that is not a Business Day or after 15:00 on any Business Day in the place of receipt will only be deemed to be given on the next Business Day in that place.

- 9.5 **English language:** Any notice given under or in connection with this Guarantee must be in English. All other documents provided under or in connection with this Guarantee must be in English or if not in English (and if so required by the Guarantor) accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

10. LAW AND JURISDICTION

- 10.1 **Law:** This Guarantee shall be governed by English law.
- 10.2 **Jurisdiction:** The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee (including a dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”). The Guarantor and the Debentureholders' Representative agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly will not argue to the contrary.
- 10.3 **Other agreed venues:** Clause 10.2 (*Jurisdiction*) is for the benefit of the Debentureholders' Representative (for itself and as agent for and on behalf of the Debentureholders) only. In addition to the courts of England, the Debentureholders' Representative may take proceedings relating to a Dispute in any courts in Japan or the Republic of Ireland. To the extent allowed by law, the Debentureholders' Representative may take concurrent proceedings in any one or more of the courts of England, Japan or the Republic of Ireland.
- 10.4 **Service of process:** Without prejudice to any other mode of service allowed under any relevant law, the Guarantor irrevocably appoints DEPFA BANK plc., London Branch of 105 Wigmore Street, London W1U 1QY United Kingdom (attention: Andrew Bride, Managing Director, Infrastructure Finance Unit) as its agent for service of process in relation to any proceedings before the English courts in connection with this Guarantee. The Guarantor agrees that failure by a process agent to notify the Guarantor of the process will not invalidate the proceedings concerned.

IN WITNESS WHEREOF this Guarantee has been executed as a deed by the Guarantor under its common seal this 26th April 2006.

PRESENT when the common seal of **DEPFA BANK plc** was affixed hereto:-

Dr. Frances Ruane
Director

Nicholas Pheifer
Authorised Signatory