Note 1: Notwithstanding subparagraph 9(a), in the event of an investment dispute between the Republic of Indonesia and an investor of another Party or the Republic of the Philippines and an investor of another Party, consent to the submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings shall be subject to a separate written agreement between the disputing parties. For greater certainty, the institution of proceedings, commencement of conciliation proceedings, or reference to arbitration under subparagraphs 7(a)(iii) and (iv) shall be governed by the applicable arbitration or conciliation rules. For the avoidance of doubt, the aforementioned separate written agreement applies only to the submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings.

Note 2: Notwithstanding subparagraph 9(a), in the case of an investment dispute between the Kingdom of Thailand and an investor of another Party or between another Party and an investor of the Kingdom of Thailand, the disputing Party consents to the submission of a claim to conciliation or arbitration set forth in paragraph 7, provided that the Kingdom of Thailand and the other Party had consented to submission of a claim to the conciliation or arbitration in existing international agreements to which both the Kingdom of Thailand and that other Party are parties. Such consent shall be subject to the same conditions and limitations as stipulated in such international agreements.

(b) The consent given under subparagraph 9(a) and the submission by a disputing investor of an investment dispute to conciliation or arbitration shall satisfy the requirements of:

(i) Chapter II of the ICSID Convention or the ICSID Additional Facility Rules, for written consent of the parties to an investment dispute; and

(ii) Article II of the New York Convention for an agreement in writing.

10. The submission of a claim to conciliation or arbitration under subparagraph 7(a)(ii), (iii), (iv) or (v) in accordance with the provisions of this Article shall be conditional upon:

(a) the submission of the claim to such conciliation or arbitration taking place within three (3) years from the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation referred to in subparagraph 6(a) causing loss or damage to the disputing investor or its covered investment;

(b) the disputing investor providing written notice, which shall be submitted at least ninety (90) days before the claim is submitted, to the disputing Party of the disputing investor’s intent to submit the claim to such conciliation or arbitration. The notice shall:

(i) specify either subparagraph 7(a)(ii), (iii), (iv) or (v) as the forum for dispute settlement and, in the case of subparagraphs 7(a)(ii) through (iv), whether conciliation or arbitration is being sought; and

(ii) briefly summarise the alleged breach of the disputing Party under this Chapter, including the Articles alleged to have been breached, and the loss or damage allegedly caused to the disputing investor or its covered investment; and