**Explanatory Note**

**Incorporating ESG Terms in Equity Investments**

Investors have been making in recent years, and will increasingly be making, commitments around environmental, social and/or governance (or ESG) factors to their investors and stakeholders. In order to meet those commitments, portfolio companies will be required to undertake corresponding ESG-related obligations as well as provide information to help investors to monitor compliance with such obligations. However, a standard set of terms for the documentation of such ESG-related obligations in an equity investment has not yet emerged in the market.

To help address this, and to help reduce transactional costs and the time taken in deal negotiations, the attached sample letter agreement sets out some examples of how ESG-related provisions can be incorporated in an investment by way of a share financing or convertible note financing in a Singapore company. These provisions supplement the general investor protections that are already in the market (e.g., director appointment rights, board observer rights, reserved matters, information rights), and seek to achieve the following objectives:

1. **Help ensure the accuracy of ESG-related information provided by the company to the investor during due diligence, if any**: This takes the form of representations and warranties given by the company and/or the founder(s) as to the accuracy and completeness of:
	1. any reports prepared by the company and provided to the investor during due diligence on ESG matters (e.g., ESG, CSR, sustainability and impact), and
	2. any information provided to third parties for purposes of obtaining any ESG certifications (e.g., B Corporation certification).

An example is set out in Clause 1 of the attached sample letter agreement.

1. **Help the investor to monitor the company's ESG-related performance and compliance with ESG-related obligations (as well as that of other producers and service providers in its supply chain, where applicable), and avoid greenwashing (i.e., where a business and/or its products or services are made out to be more sustainable than they actually are)**: This is achieved by way of reporting obligations, namely:
	1. an obligation of the company to provide an annual (or other periodic) report on its performance as evaluated against a set of agreed ESG metrics; if such ESG metrics are not yet available, the company shall work with the investor to develop and agree on such ESG metrics within an agreed timeframe. Such ESG metrics will need to be negotiated taking reference from the applicable ESG reporting standards, benchmarks and guidance then-available in the market, and tailored in accordance with, among other things, the ESG factors and metrics that the investor is focused on and wishes to track vis-à-vis the company, as well as the company's own circumstances (including its ability to meet those obligations). Having clearly defined and detailed metrics will help an investor better track the ESG performance of its investment, mitigate any potential reputational or financial risks and prevent greenwashing; and
	2. obligations to notify the investor of adverse events that may impact the company's ESG performance and/or inability to comply with its ESG-related obligations under the subscription agreement, shareholders' agreement and other relevant ancillary documents (collectively, the "**Transaction Documents**") in relation to the proposed investment.

Some examples are set out in Clause 2 of the attached sample letter agreement.

Some areas of ESG (such as anti-corruption and human trafficking) are already regulated, while others (such as emissions) will be regulated in the near future. In addition, investors are increasingly raising their expectations on the ESG practices and reporting obligations of their portfolio companies. By securing information through due diligence and information rights, an investor can not only ascertain and monitor the ESG performance of its portfolio company, it can also (and by extension) manage regulatory compliance risk in such company and any reputational risks arising from its investment therein.

1. **Protect against changes to the company's ESG mission or purpose**: In an impact investment, such a provision helps to align the investor's impact objectives and the company's mission or purpose by giving the founders and/or a class of shareholders approval rights over any change to the company's pre-agreed ESG mission or purpose as set out in the Transaction Documents and/or the company's constitution. An example is set out in Clause 3 of the attached sample letter agreement.
2. **ESG-related obligations**: This takes the form of affirmative or negative obligations by a portfolio company to comply with ESG-related obligations and standards. Such provisions, if included, tend to be negotiated taking reference from the applicable ESG reporting standards, benchmarks and guidance then-available in the market, and tailored depending on the specific requirements of the investor and the circumstances of the company. An example is set out in Clause 4 of the attached sample letter agreement.

To the extent not already incorporated in the Transaction Documents, other provisions may include:

(a) ESG-related pre-closing conditions and/or post-closing obligations to rectify gaps and shortcomings identified during the investor's ESG due diligence – this could include an obligation to develop ESG-related policies and internal controls (in the areas of diversity and anti-harassment, for example);

(b) for later-stage companies, linking key executives' compensation to ESG performance of the company. If such a feature is incorporated, there will need to be careful selection of meaningful ESG targets that are detailed, quantifiable and measurable and which are aligned with meeting investors' long term ESG goals; and/or

(c) for later-stage companies, the right of an investor to exit its investment in the company. Such rights tend to be heavily negotiated, but may include a right of the investor to, upon a material breach of the company's ESG-related obligations (as determined by an independent third-party expert), sell its shares to the company at a pre-determined price (original purchase price, fair market value, etc.) or, if the company is unable to purchase the shares, sell its shares to a third party free of any transfer restrictions.

The field of investing with an ESG focus continues to evolve, and this document is derived from observations of practices in various jurisdictions (including the EU, UK and USA) to-date. ESG covers a wide universe of issues, with each company having different ESG issues that are material to its business. The structure, type and terms of an investment can vary greatly depending on the business and commercial objectives of the investor, the company and other stakeholders in the transaction, regulatory considerations in the relevant jurisdictions, the area(s) of ESG that are material to the parties, and the investor's and the company's progress in their respective ESG journeys. An early-stage start-up is not likely to have the resources needed to immediately reach a high standard of ESG governance, KPI setting, and measuring and monitoring of ESG commitments. Similarly, an investor may be only just embarking on its own ESG journey, and still in the process of formulating requirements and establishing systems and resources to properly monitor the ESG compliance of its portfolio companies. Parties should be mindful of these considerations and make appropriate adjustments to the provisions of the attached sample letter agreement in their transactions.

[COMPANY LETTERHEAD][[1]](#footnote-3)

CONFIDENTIAL

**[*Date*]**

**[*Investor Name*]
[*Address*]**
Attention: **[●]**

Ladies and Gentlemen:

In consideration for the subscription by **[*Investor Name*]** (the "**Investor**") of **[●]** Series **[●]** Preference Shares (the "**Shares**") of **[*Company Name*]**, a private company limited by shares incorporated under the laws of Singapore (the "**Company**"), pursuant to the Subscription Agreement dated **[●]**, by and among the Investor, other investors and the Founders set forth on Schedule 1 thereto and the Company (the "**Subscription Agreement**"), the Company and the Investor agree to the terms of this letter agreement (this "**Letter**"). Terms used and not defined in this Letter shall have the meanings assigned to them in the Subscription Agreement (as amended from time to time) or the shareholders' agreement of the Company dated **[●]** (as amended from time to time, the "**Shareholders' Agreement**", and together with the Subscription Agreement, the "**Transaction Documents**"), as applicable.

# ESG Reporting. The Company represents and warrants to the Investor as of the date of this Letter and at the Completion Date that:[[2]](#footnote-4)

## the Company has made available to the Investor a true, correct and complete copy of **[that certain [*insert title of Company ESG report*][[3]](#footnote-5) dated [●] (the "ESG Disclosure")]** **[and] [its B Impact Assessment as submitted to B Labs(the "Assessment")] to the Investor[[4]](#footnote-6)]**;

## other than **[the ESG Disclosure] [and] [the Assessment] [, and as otherwise]** as set forth on Clause **[●]** of the Disclosure Schedule, the Company has not produced any reports, assessments, summaries or other written materials measuring and reporting on the Company's initiatives **[with respect to achieving the specific public benefits identified in its constitution];[[5]](#footnote-7) [and]**[[6]](#footnote-8)

## **[the information, data, statements and assertions set forth in the ESG Disclosure [and] [the Assessment] were true and correct in all respects as of the date of the ESG Disclosure [and] [the Assessment] [, respectively], and since such dates, the Company has not taken any action (or failed to take any action) that would render the information, data, statements and assertions set forth in the ESG Disclosure [or] [the Assessment] to be inaccurate in any material respect.]**

# ESG Measures and Performance Reporting.[[7]](#footnote-9)

# **[*Sample Provision A*]**

## **[The Company and the Investor hereby agree to [cooperate in good faith] [and] / [use commercially reasonable efforts] / [use best efforts] to mutually develop objective targets and metrics for measurement and reporting on ESG matters, which shall include:]** / **[The Company shall, upon good faith consultation with and subject to approval of the Investor, develop objective targets and metrics for measurement and reporting on ESG matters, which shall include:]**

## **[(i) [●] and (ii) [●]] / [each item set out in Schedule 1 hereto]**[[8]](#footnote-10)

## (the "**ESG Reporting Framework**").

## The Company shall submit the ESG Reporting Framework to the Board of Directors of the Company (the "**Board**") for adoption and approval beginning in calendar year 20**[●]** and the Company shall consult with the Investor in good faith on an annual basis regarding any suggested revisions to the ESG Reporting Framework initially submitted to it.

## The Company shall produce an annual report with respect to its performance as evaluated against the ESG Reporting Framework (the "**ESG Report**") within **[ninety (90)]** days after the end of **[the first] / [each]** fiscal year of the Company following the adoption of the ESG Reporting Framework. The ESG Report shall be developed by the Company in good faith consultation with the Investor and include, at a minimum, (i) a description of the objective targets and metrics described in sub-clause (a) above; (ii) an objective assessment of the Company's success in meeting such targets; and (iii) the Company's proposed actions to further achieve the applicable targets over the next one-year period. **[After the initial ESG Report, the Company shall use its [commercially reasonable efforts] / [best efforts] to produce an ESG Report in each subsequent calendar year.]** Each ESG Report shall be provided to the Investor as promptly as practicable following its production.[[9]](#footnote-11)

## **[The Company shall permit the Investor, upon prior appointment and during office hours, to visit and inspect and examine the Company's properties, books and records, and to discuss the affairs of the Company with its management, in each case, for the purposes of monitoring the Company’s compliance with its obligations hereunder[, provided that the Company shall not be required to provide such information if necessary to protect legal professional privilege or if it is a highly confidential trade secret].]**[[10]](#footnote-12)

## **[*Sample Provision B*]**

So long as the Investor holds at least **[●]** Shares (on a fully-diluted basis), the Company shall, and shall procure that its Subsidiary shall:

## within **[forty five (45)]** Business Days after the end of each fiscal year of the Company, provide a report to the Investor, wherein the Company **[provides] / [makes a good faith effort to provide]** reasonable detail regarding the Company's and each of its Subsidiaries' adherence to the ESG Principles (as defined below);[[11]](#footnote-13)

## within **[thirty (30)]** Business Days after the end of each fiscal year of the Company, provide a report to the Investor, wherein the Company **[provides] / [makes a good faith effort to provide]** reasonable detail regarding the Company's adherence to the following ESG targets:[[12]](#footnote-14)

### number of units of goods or services provided by the Company and each of its Subsidiaries;

### number of consumers of goods or services provided by the Company and each of its Subsidiaries that are (A) households; or (B) other micro and small businesses;

### number of women: (A) to whom products or services are sold by the Company and each of its Subsidiaries; (B) trained by the Company and each of its Subsidiaries with skills to work in **[*insert relevant business*]**; or (C) employed by the Company and each of its Subsidiaries;

### number of non-fatal occupational injuries incurred by employees, contractors and sub-contractors of the Company and its Subsidiaries;

### estimated income of consumers of goods or services provided by the Company and each of its Subsidiaries; and

### any CO2 or greenhouse gas emission reductions (e.g., in emissions by sources or an enhancement of removal by sinks) and related displacement of kerosene and/or diesel use achieved by the activities of the Company and each of its Subsidiaries; provided, that no reductions shall be reported to the extent converted into any offset credits or units generated thereby, unless and to the extent if so converted, the credits or units have been retired without allowing any other emissions of greenhouse gases to be offset;

## **[make a good faith effort to]** cooperate with reasonable requests from the Investor with respect to the Investor's ESG data collection efforts, including, without limitation, with respect to those ESG targets set forth under sub-clause (b) above and other ESG-related data of the Company;

## notify the Investor as soon as reasonably possible in writing of any material adverse publicity or of any allegation (including any criminal investigation) which could reasonably be considered to have a basis in fact of which it becomes aware in connection with or relating to non-compliance with the ESG Principles, specifying, in each case, the nature of the publicity or allegation and the measures the Company **[or any of its Subsidiaries]** is taking or plans to take to address the same, and thereafter keep the Investor informed of the ongoing implementation of those measures;

## notify the Investor as soon as reasonably possible, and in any event no later **than [ten (10) days]** after its occurrence, of any event which has or may reasonably be expected to have a material adverse effect on the ability of the Company **[or any of its Subsidiaries]** to comply with the ESG Principles, specifying the nature of the event, the likely or anticipated impacts arising therefrom and the measures the Company **[or any of its Subsidiaries]** is taking or plans to take in response; and thereafter keep the Investor informed at reasonable intervals of the ongoing implementation of those measures;

## notwithstanding general reporting requirements in relation to such matters, in the event of any (i) loss of life; (ii) material adverse effect on the environment; or (iii) material breach of law which has a material negative impact on the social and/or environmental KPIs set by the Company (if any) (each a "**Serious Incident**"), immediately provide a written report specifying in detail the material facts and circumstances relating to such Serious Incident to the Investor, provide any further information reasonably requested by the Investor, and take such action in relation to such Serious Incident as the Investor and the Company shall mutually agree;

## subject to applicable law or regulations, keep the Investor promptly informed of any events, discussions, notices or changes with respect to any criminal or regulatory investigation or action involving the Company **[or] / [,]** any of its Subsidiaries **[or any of their respective Representatives (as defined below)]**, and the Company shall reasonably cooperate with the Investor in an effort to avoid or mitigate any costs or any negative consequences that might arise from such investigation or action (including by providing the Investor with an opportunity to review written submissions in advance, attending meetings with authorities or regulators, coordinating and providing assistance in such meetings and, if mutually agreed between the Company and the Investor, making a public announcement of such matters); and

## subject to applicable law or regulations,[[13]](#footnote-15) notify the Investor promptly of any material change affecting any of the warranties of the Company regarding, or any material non-compliance of, Anti-Corruption and Anti-Bribery Laws, Anti-Money Laundering Laws, **[Sanctions] [and Export Controls]**.[[14]](#footnote-16)

## In this Clause 2:

### "**ESG Principles**" means the environmental, social and governance principles set out in Schedule 2 hereto[[15]](#footnote-17) **[;and**

### **"Representative" means, in respect of any person, any directors, employees, professional advisers, consultants, related corporations or affiliates of such person]**.

# **[In addition to the foregoing, the Investor may, from time to time and acting reasonably, request additional information regarding the Company, its businesses or operations and the Company shall provide the Investors with such other reasonable information within [10] days of the Investor requesting such information in writing[, provided that the Company shall not be required to provide such information if necessary to protect legal professional privilege or if it is a highly confidential trade secret].]**[[16]](#footnote-18)

# **[Protective Provisions.]**[[17]](#footnote-19) **[At any time that any [Ordinary Shares] / [Preference Shares] are outstanding, the Company shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, [(a)] [amend, remove, modify or alter [*insert defined term / cross-reference setting out the Company's purpose*]] [; or (b)] [effect any changes to the Company's corporate form,][[18]](#footnote-20) without (in addition to any other vote required by law, the Company's constitution or the Shareholders' Agreement) the written consent or affirmative vote of the holders of [*insert agreed majority threshold*] of the [Ordinary Shares] / [Preference Shares], given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect.]**

# **[*Alternative: For use if the applicable security is a promissory note.]***

# **[After the conversion of this Note, at any time that any [Ordinary Shares] / [Preference Shares] are outstanding, the Company shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, approve any change in the business purpose of the Company in such a manner that conflicts with [*insert defined term / cross-reference setting out the Company's purpose*] without (in addition to any other vote required by law, the Company's constitution or the Shareholders' Agreement) the written consent or affirmative vote of the holders of [*insert agreed majority threshold*] of the [Ordinary Shares] / [Preference Shares], given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect.]**

# ESG Obligations.[[19]](#footnote-21) The Company shall (and shall ensure that each of its Subsidiaries will) use its **[commercially reasonable efforts] / [best efforts]** to:

# **[*Sample Provision A – for early-stage companies*]**

## ensure that its business and operations and any use of the proceeds of the Investor's subscription of the Shares are in compliance with the ESG Principles;

## **[if requested by the Investor,]** deliver **[one-time] / [periodic]** staff training on the ESG Principles, so as to help ensure that staff of the Company and its Subsidiaries are able to identify, assess and manage its business and operations in compliance with the ESG Principles on an ongoing basis; and

## not amend the ESG Principles without the Investor's prior written consent, such consent not to be unreasonably withheld.

# **[*Sample Provision B – for later stage companies*]**

## ensure that any use of the proceeds of the Investor's subscription of the Shares is in compliance with the ESG Principles;

## adopt an internal monitoring and control system reasonably acceptable to the Investor to identify, assess and manage performance of its business and operations in compliance with the ESG Principles;

## in the case of a change of the scope of the business and operations of the Company and any of its Subsidiaries, engage in good faith consultation with the Investor and adopt a revised internal monitoring and control system reasonably acceptable to the Investor to identify, assess and manage any additional risks in respect of its compliance with the ESG Principles;

## periodically deliver staff training on the ESG Principles and its internal monitoring and control system referred to in sub-clause (b) above, so as to help ensure that the staff of the Company and its Subsidiaries are able to identify, assess and manage its business and operations in compliance with the ESG Principles on an ongoing basis;

## if the Company becomes aware that any of its or its Subsidiaries' customers or clients has undertaken operations in a manner that is inconsistent with the ESG Principles, as soon as reasonably practicable agree with the relevant customer or client, or require the relevant customer or client to undertake, as appropriate or necessary in the Company's reasonable opinion, corrective measures to remedy such inconsistency; and

## not amend the ESG Principles or its internal monitoring and control system referred to in sub-clause (b) above without the Investor's prior written consent, provided that such consent shall not be unreasonably withheld by the Investor.

# Miscellaneous.

## All notices required or permitted hereunder shall be in writing, delivered in accordance with Clause **[●]** of the **[Subscription Agreement] / [Shareholders' Agreement]** and shall be deemed effectively given upon meeting the conditions set forth in Clause **[●]** of the **[Subscription Agreement] / [Shareholders' Agreement]**.

## This Letter may be executed by the parties hereto in separate counterparts, each and all of which when so executed and delivered to the parties hereto by facsimile, or by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall be deemed an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto. Any party hereto may enter into this Letter by signing any such counterpart transmitted electronically, or by facsimile, or other electronic signatures (such as DocuSign or AdobeSign), and the receiving party hereto may rely on the receipt of such document so executed and delivered as if the original had been received. The parties hereto agree that such signatures executed by way of electronic means (such as DocuSign or AdobeSign) shall be recognised and construed as secure electronic signatures to the fullest extent under applicable law, and that the parties hereto accordingly shall deem such signatures to be original signatures for all purposes.

## This Letter shall be governed by, and construed in accordance with, the laws of Singapore.

## In the event of any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (the "**Dispute**"),

## **[OPTION 1: COURT]**

## **[the parties hereto irrevocably agree that the courts of Singapore are to have exclusive jurisdiction to settle any such Dispute.][[20]](#footnote-22)**

## **[OPTION 2: ARBITRATION]**

## **[the Dispute shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre[[21]](#footnote-23) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this Clause. This arbitration agreement shall be governed by Singapore law. The seat of the arbitration shall be Singapore. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English. The award shall be final and binding on the parties. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets.]**

## The parties hereto also agree that prior to the commencement of **[arbitration]/[litigation]** proceedings, a party hereto (the “**Requesting Party**”) may provide (but is not obliged to provide) written notice to the other party hereto (the “**Receiving Party**”) requesting to refer the Dispute to mediation in Singapore at the Singapore Mediation Centre ("**SMC**")(the "**Mediation Proposal**") in accordance with SMC’s Mediation Procedure for the time being in force.[[22]](#footnote-24) If the Receiving Party agrees to the Mediation Proposal, it shall provide its written confirmation to the Requesting Party (the “**Confirmation**”) within 14 days of receipt of the Mediation Proposal. The Mediation Proposal and the Confirmation shall together constitute the parties’ agreement to mediate at SMC(the “**Agreement to Mediate**”). For the avoidance of doubt, if no Confirmation is provided to the Requesting Party within 14 days of the Receiving Party’s receipt of the Mediation Proposal, the Receiving Party shall be deemed to have rejected the Mediation Proposal. Mediation shall be commenced by the submission by either of the parties of the Request for Mediation to SMC. Unless otherwise agreed by the parties hereto, the mediation shall be conducted by one mediator appointed by SMC, the mediation will take place in Singapore in the English language, and the parties hereto shall be bound by any settlement agreement reached. If neither party submits a Request for Mediation to SMCwithin 14 days of the Receiving Party’s receipt of the Confirmation or if the parties hereto are unable to resolve the Dispute through mediation within **[30 days]** of the submission of the Request for Mediation to SMC, the parties’ Agreement to Mediate will lapse unless otherwise agreed.

## Clauses **[●], [●] and [●]** of the **[Subscription Agreement] / [Shareholders' Agreement]** shall be deemed to have been incorporated into this Letter, *mutatis mutandis*, as if it has been set out herein in full.[[23]](#footnote-25)

## The rights, privileges and preferences set forth in this Letter are not transferable by any of the parties hereto; provided, however, that this Letter and the rights, privileges and preferences of the Investor set forth in this Letter may be assigned by the Investor, with the prior written consent of the Company which shall not be unreasonably delayed, to any of its Affiliates to which the Investor transfers all its Shares or any Ordinary Shares into which such Shares convert (or any security issued or issuable upon conversion or exchange thereof) in accordance with the terms set forth in the Company's governing documents.

## This Letter, together with the **[Transaction Documents]**,[[24]](#footnote-26) constitutes the entire agreement between the Company and the Investor as to the subject matter hereof, provided that in the event of any conflict between this Letter and the **[Transaction Documents]**, this Letter shall prevail.[[25]](#footnote-27)

## This Letter may be amended only by written agreement executed by the Company and the Investor.

[SIGNATURE PAGE(S) FOLLOW]

Please confirm that the above correctly reflects our understanding and agreement with respect to the foregoing matters by signing the enclosed copy of this Letter and returning such copy to the Company.

Very truly yours,

**[*COMPANY NAME*]**

By: **[●]**
Name: **[●]**
Title: **[●]**

Agreed and Accepted:

**[*INVESTOR NAME*]**

By: **[●]**
Name: **[●]**
Title: **[●]**

**Schedule 1**

**ESG Reporting Framework**

**Schedule 2**

**ESG Principles**

1. Drafting Note: Best practice is to include the applicable ESG provisions in this letter agreement in the Subscription Agreement or Shareholders' Agreement. A separate letter agreement should only be used when direct inclusion in either of those agreements is not possible e.g., if there is a commercial preference to keep the terms confidential between the Investor and the Company only. [↑](#footnote-ref-3)
2. Drafting Note: If an early-stage company is not in a position to produce an ESG Disclosure or a B Impact Assessment, an alternative would be to use the more generic "Information" warranty in the subscription agreement. [↑](#footnote-ref-4)
3. Drafting Note: To the extent appropriate in the circumstances, such ESG Disclosure may include a description of the systems, policies and/or controls that the Company has in place to help ensure compliance with its ESG commitments and prevent greenwashing. [↑](#footnote-ref-5)
4. Drafting Note: This only applies if the Company is a certified B Corporation. [↑](#footnote-ref-6)
5. Drafting Note: This may apply particularly for certified B Corporations. [↑](#footnote-ref-7)
6. Drafting Note: If appropriate in the circumstances, to address the risk of greenwashing in the Company's business, the parties may consider including a warranty as to any statements made by the Company to other parties on the ESG benefits and impact of its products and/or services. [↑](#footnote-ref-8)
7. Drafting Note: All of these obligations should be reviewed in light of the specific circumstances of the parties and the investment. If appropriate in the circumstances, the parties may consider requiring the Company to engage a third party with appropriate qualifications to verify the ESG Report referenced in Sample Provision A or the reports referenced in Sample Provision B, the costs of which may be borne entirely by the Company or shared between the Company and the Investor(s). Such an obligation would tend to be more feasible for a company that is in a later stage of growth and/or that has more resources, but not for an early-stage company. [↑](#footnote-ref-9)
8. Drafting Note: The metrics should be tailored to the Company (including its stage of growth) and the ESG metrics that the Investor wishes to track. Consider using a schedule to set out specific performance milestones and timeline. Also consider including a requirement to comply with any applicable mandatory ESG reporting or disclosure requirements in the relevant jurisdictions, or other third-party standards available in the market that are mutually agreed by the Company and the Investor such as those described in Drafting Note 11 below. As the ESG environment continues to evolve and mature, the scope of applicable requirements may change, and some may move from recommended guidance to mandatory requirements having the force of law. An investor or portfolio company that is less experienced in ESG issues may consider referring to such standards and disclosure frameworks whenever possible, and transition to more tailored frameworks and requirements when it is further along in its ESG journey. [↑](#footnote-ref-10)
9. Drafting Note: This would apply only if the first half of this sub-clause (b) requires that an ESG Report be delivered for the first fiscal year following the adoption of the ESG Reporting Framework. [↑](#footnote-ref-11)
10. Drafting Note: Insert if there is no general inspection right in the Shareholders' Agreement. On-site inspections may be considered onerous by certain companies. If feasible, consider adding restrictions on maximum number of inspections and visits per year or over the tenor of the investment. [↑](#footnote-ref-12)
11. Drafting Note: Similar to the ESG Reporting Framework described in Sample Provision A, these ESG Principles should be tailored to the Investor's desired principles in the context of the investment in areas such as diversity, workplace safety, sustainability of supply chain, the environment, etc., and the level at which the Company is able to achieve those elements. Parties could consider taking reference to third party standards and frameworks such as the UN Principles of Responsible Investing, the UN Sustainable Development Goals, The Ten Principles of the UN Global Compact, the Equator Principles' Environmental and Social Standards applicable to "Designated Countries", the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the criteria applicable to B corps, as well as guidance published by the International Sustainability Standards Board (<https://www.ifrs.org/groups/international-sustainability-standards-board/>) and the Task Force on Climate-Related Financial Disclosures (<https://www.fsb-tcfd.org/>). An investor or portfolio company that is less experienced in ESG issues may consider referring to such standards and disclosure frameworks whenever possible, and transition to more tailored frameworks and requirements when it is further along in its ESG journey. [↑](#footnote-ref-13)
12. Drafting Note: Clauses (i) – (v) reflect **sample ESG targets**. To provide another example, a set of ESG targets used in the technology space may address issues around (a) job quality (working conditions, talent retention, harassment, training, and benefits for temporary / non-contract staff); (b) diversity in workforce, senior management and board of directors; (c) supply chain oversight (which would be relevant for certain businesses such as outsourced manufacturing, agriculture and cleantech); (d) data privacy and security; and (e) emissions (scope 1, 2 and 3) and targets and opportunities to reduce emissions. The ESG targets must be tailored to the Company and the desired ESG targets of the Investor. [↑](#footnote-ref-14)
13. Drafting Note: This qualifier is required because there are restrictions on disclosing certain anti-money laundering issues (e.g. tipping-off). [↑](#footnote-ref-15)
14. Drafting Note: Consider notification in the event of the Company's breach of any anti-bribery, anti-corruption, anti-money laundering, sanctions or export control laws and regulations. The Investor may prefer not to have a notification right because knowledge of the event could result in the Investor acquiring ancillary legal obligations itself, even if notified of such event at the same time as the applicable regulator(s). [↑](#footnote-ref-16)
15. Drafting Note: See Drafting Note 11 above. [↑](#footnote-ref-17)
16. Drafting Note: Insert if there is no such right to request additional information in the Shareholders' Agreement. [↑](#footnote-ref-18)
17. Drafting Note: As noted in the Explanatory Note, in an impact investment, such protective provisions help to align the investor's impact objectives and the company's missions. Not applicable to an ESG investment where is no specific mission at hand. [↑](#footnote-ref-19)
18. Drafting Note: May be applicable if the Company is formed as an ESG-related entity (as required for the B Corp certification). [↑](#footnote-ref-20)
19. Drafting Note: All of these obligations should be reviewed in light of the specific circumstances of the parties and the investment. [↑](#footnote-ref-21)
20. Drafting Note: Parties may also wish to consider the Singapore International Commercial Court as a dispute forum and its website may be accessed at: <https://www.sicc.gov.sg/>. [↑](#footnote-ref-22)
21. Drafting Note: The Singapore International Arbitration Centre's website may be accessed at: <http://www.siac.org.sg/>. [↑](#footnote-ref-23)
22. Drafting Note: The Singapore Mediation Centre's website may be accessed at: <http://www.mediation.com.sg/>. The Singapore International Mediation Centre is another designated mediation service provider in Singapore, and its website may be accessed at: <http://simc.com.sg/>. [↑](#footnote-ref-24)
23. Drafting Note: Where appropriate, confidentiality, process agent and other boilerplate provisions from the Transaction Documents may be incorporated by reference herein. [↑](#footnote-ref-25)
24. Drafting Note: To confirm that the integration provision in the Subscription Agreement and Shareholders' Agreement includes any separate letter agreements. [↑](#footnote-ref-26)
25. Drafting Note: Include this sentence by default, but if company counsel seeks to remove, carefully review investment agreements to ensure no conflicts and that this letter supersedes any "notwithstanding" clauses, etc. [↑](#footnote-ref-27)