



**Rules for the Submission and Selection of Tenders  
for “VC Funds”  
(Financial Intermediaries)**

**Organiser:**

**PFR Ventures sp. z o.o.**

**on behalf of**

**PFR KOFFI Closed-End Investment Fund**

**Investments in development, expansion and growth  
PFR KOFFI FIZ**

**Warsaw, 9 March 2018**

## § 1.

### List of abbreviations and definitions

1.1 Unless defined otherwise, capitalised terms used in these Rules shall have the following respective meanings:

- **Advisory Committee** – an advisory body of the Managing Entity/VC Fund, consisting of Investors with the largest to the Declared Capitalisation of the VC Fund (including a representative of PFR KOFFI FIZ)<sup>1</sup>, giving opinions, including opinions on Investment Decisions taken by the Investment Committee of the Managing Entity/VC Fund, which has the competence set out in the Investment Agreement, related to the support and supervision of the investment process conducted by the Managing Entity, conflict of interest issues, compliance and other issues set out in the Investment Agreement; The Advisory Committee may operate as part of the Supervisory Board, the Board of Investors or other authority/body exercising control functions over the activities of the VC Fund.
- **Beneficiary / Bank Gospodarstwa Krajowego** – Bank Gospodarstwa Krajowego operating under the Act of 14 March 2003 on Bank Gospodarstwa Krajowego (Journal of Laws No 65, item 594, as amended), with its registered office in Warsaw, Al. Jerozolimskie 7, 00-955 Warsaw, REGON (statistical number):000017319, NIP (tax identification number): 525-00-12-372.
- **Business Day** – any day, Monday through Friday, other than a public holiday within the meaning of the Act of 18 January 1951 on public holidays (Journal of Laws of 2015, item 90, as amended).
- **Call/Call for Tenders** – a Call for Tenders process conducted pursuant to a Notice of Calls and on the basis of these **Rules**.
- **Call Organiser** – PFR Ventures sp. z o.o., on behalf of PFR KOFFI FIZ.
- **Call Rules/Rules/ Rules for the Submission and Selection of Tenders for “VC Funds”** – mean these Rules for the Submission and Selection of Tenders for VC Funds (Financial Intermediaries) under a project financed through the European Regional Development Fund under the Smart Growth Operational Programme 2014 – 2020, Priority Axis III: Support for innovation in enterprises, Measure 3.1. Funding of SMEs’ innovative activity using risk capital, Sub-measure 3.1.4. KOFFI - Konkurencyjny Ogólnopolski Fundusz Funduszy Innowacyjnych (Competitive Polish Innovative Fund of Funds).
- **Capital Company (Limited Partnership)** – a company within the meaning of Article 4 § 1 (2) of the Act of 15 September 2000 Commercial Companies Code (Journal of Laws No. 94, item 1037).
- **Carried Interest** – the success fee set out in the Investment Agreement, payable to the Managing Entity in case the VC Fund reaches a rate of return on Investment above the Hurdle

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<sup>1</sup> The Advisory Committee may also include a representative of other, smaller Private Investors.

Rate, due to the Managing Entity after all contributions made to the VC Fund/Declared Capitalization of the VC Fund, increased by the Hurdle Rate, have been returned.

- **Company (Eligible Undertaking, Portfolio Company)** – a Capital Company or a Limited Joint-Stock Partnership (in the case of Companies established outside the Republic of Poland, such Company should be operating its business in the form of “capital company” within the meaning of Article 2 (1) of Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital, or in a legal form similar to the legal structure of a Capital Company or a Limited Joint-Stock Partnership), which meets the definition criteria of an SME under Annex I to Regulation No 651/2014, and which at the time the investment proceeds are paid to it under an Investment made by the VC Fund is not a listed company within the meaning of Regulation No 651/2014, i.e. it is not listed on the official list of a stock exchange, except for multilateral trading platforms.
- **Conflict of Interest** – a conflict of interests as described in §13 of these Rules.
- **DDPA** – Detailed Description of the Priority Axes of the Smart Growth Operational Programme 2014-2020.
- **Declared Capitalisation of the VC Fund** – the target sum of Investors’ contributions and the Managing Entity’s contribution to the VC Fund set out in the Investment Agreement.
- **Eligibility Period** – the period of eligibility of expenditure under SG OP programme ending 31 December 2023.
- **Equity Investment** – the VC Fund’s contribution, made on a one-off basis or in tranches within a single Investment round, of capital to a Company in return for the respective equity interests in that Company.
- **Follow-on Investment** – the VC Fund’s additional Equity Investment or Quasi-equity Investment in a Company in which the VC Fund has already invested, after one or more previous rounds of risk finance Investment.
- **Investment** – an Equity Investment and/or quasi-equity Investment.
- **Investment Agreement** – an agreement made between (i) the Tenderer and/or the Managing Entity, selected through the procedure prescribed by the Call Rules and (ii) members of the Key Personnel/Team or entities controlled by them<sup>2</sup> and (iii) Private Investors and (iv) PFR KOFFI FIZ, in particular based on the terms and conditions set forth in §12 of the Call Rules. In the case that the VC Fund is established after the Investment Agreement is made between PFR KOFFI FIZ, the Managing Entity (which is to establish the VC Fund) and a Private Investor, the VC Fund shall join the Investment Agreement upon its establishment in accordance with the law applicable to the VC Fund concerned (but not later than the payment of the first amount of repayable financing provided by PFR KOFFI FIZ, the Managing Entity and Private Investors in compliance with the requirements set out in these Rules and in accordance with the terms and conditions of the Investment Agreement).

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<sup>2</sup> In the event contribution to the Declared Capitalisation of the VC Fund is made by members of the Key Personnel/Team in a different manner than by the Fund Manager

- **Investment Budget** – the value of the VC Fund’s Investment expenditure, i.e. the value of contributions by Private Investors, the Public Investor the Public Investor and the Managing Entity to the VC Fund, less the value of the Operating Budget and parts of the transactional and operational costs related to the VC Fund and the costs of establishing the VC Fund.
- **Investment Committee** – a unit organised within the Managing Entity/VC Fund, composed in particular of members of the Key Personnel as well as, optionally, additional external experts and consultants appointed by the Managing Entity, taking binding Investment Decisions concerning the VC Fund’s Investments.
- **Investment Decision** – the VC Fund’s decision concerning the implementation of Investment and exit from Investment in Portfolio Companies.
- **Investment Exit Period** – a 5-year period running from the end of the Investment Period (with an option to extend it with the consent of PFR KOFFI FIZ for 1 year or a maximum of 2 years (where no extension of the Investment Period is granted), but not beyond 31 December 2031),
- **Investment Period** – a period of 5 years from the conclusion of the Investment Agreement (with an option to extend it with the consent of PFR KOFFI FIZ by 1 year, but not beyond 31 December 2023),
- **Investment Policy (Investment Strategy)** – a document submitted by the Tenderer, containing the components listed in Appendix 3 to the Rules.
- **Investors** – Public Investors and Private Investors.
- **Key Personnel** – key persons designated by the Tenderer, who have the appropriate experience, expertise and knowledge in the management of investment activities, and knowledge of the venture capital market, who lend credence to the implementation of the VC Fund’s Investment Strategy, meeting the criteria set forth in these Rules (including the persons designated by the Tenderer who meet the specific criteria set out in Section 12 of these Rules).
- **KOFFI Programme** – a project financed through the European Regional Development Fund under the Smart Growth Operational Programme 2014 – 2020, Priority Axis III. Support for innovation in enterprises, Measure 3.1. Funding of SMEs’ innovative activity using risk capital, Sub-measure 3.1.4. KOFFI - Konkurencyjny Ogólnopolski Fundusz Funduszy Innowacyjnych (Competitive Polish Innovative Fund of Funds).
- **Managing Entity** – a legal entity or natural persons responsible for the implementation of the Investment Policy and management of the VC Fund’s investment portfolio, i.e.:
  - (i) natural persons who compose the internal managing body of the VC Fund (e.g. the management board of the company which, after its establishment and selection under the Call procedure will be the VC Fund)<sup>3</sup>, or

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<sup>3</sup> Explanation: Under the Call procedure, Tenders may also be submitted if the VC Fund – as at the date of Tender submission – has not yet been established (subject to the terms and conditions set out in these Rules). In such a situation, the Tender should be submitted by the entity which is to manage such VC Fund or partners which are to be responsible such VC Fund.

- (ii) a legal person that constitutes the external managing body of the VC Fund (e.g. the general partner in a limited joint-stock partnership, which partnership, after its establishment and selection under the Call procedure will be the VC Fund), or
- (iii) an independent third-party enterprise, authorised under the legislation of a Member State to manage the VC Fund's investment activities in whole or in part (e.g. the body to manage the investment portfolio, in whole or in part, of the investment fund, which, after its establishment and successful selection under the Call procedure will be the VC Fund).<sup>4</sup>
- **Notice of Calls** – a notice concerning the initiation of the Call as published on the Website.
  - **Operating Budget** – all planned management and operating costs of the VC Fund incurred from the VC Fund management fees, including in particular: unrealized Investments preparation costs (including among others costs of due diligence of prospective Portfolio Companies, transaction documentation, and other transaction costs), labour costs of the Team, including the Key Personnel, other personnel of the VC Fund, administrative costs related to activity of the Managing Entity, business trip costs, other third-party services, and other costs.
  - **Limited Joint-Stock Partnership** – a partnership within the meaning of the Act of 15 September 2000 Commercial Companies Code (Journal of Laws No. 94, item 1037, as amended).
  - **PFR KOFFI FIZ** – PFR KOFFI Fundusz Inwestycyjny Zamknięty Aktywów Niepublicznych (PFR KOFFI Closed-End Investment Fund of Non-public Assets) entered in the register of investment funds kept by the District Court in Warsaw, 7th Civil Registry Department, under number RFI 1452, through which Bank Gospodarstwa Krajowego implements the fund of funds within the meaning of Regulation No 1303/2013, set up for the purposes of implementing an equity-based financial instrument provided for in SG OP, whose part of investment portfolio (subject to selection and investment in VC Funds) will be managed by PFR Ventures, under authorisation of the Polish Financial Supervision Authority, and whose sole participant is, and will remain throughout the term of the Investment Agreement, the Beneficiary.
  - **PFR TFI** – PFR Towarzystwo Funduszy Inwestycyjnych BGK S.A. (former: Towarzystwo Funduszy Inwestycyjnych BGK S.A.), an investment fund company with its registered office at ul. Ludna 2, 00-406 Warsaw, entered in the register of entrepreneurs of the National Court Register, kept by the District Court for the Capital City of Warsaw in Warsaw, 12th Commercial Department of the National Court Register, under number KRS 0000486060.
  - **PFR Ventures** – PFR Ventures sp. z o.o. with its registered office at ul. Książęca 4, 00-498 Warsaw, entered in the register of entrepreneurs of the National Court Register, kept by the District Court for the Capital City of Warsaw in Warsaw, 12th Commercial Department of the National Court Register, under number KRS 0000533101, being the entity managing a part of the PFR KOFFI FIZ investment portfolio.

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<sup>4</sup> Explanation: Under the Call procedure, Tenders may also be submitted if the VC Fund – as at the date of Tender submission – has not yet been established (subject to the terms and conditions set out in these Rules). In such a situation, the Tender should be submitted by the entity which is to manage such VC Fund.

- **Private Investor** – an entity (natural or legal person) that: (i) has been approved by PFR KOFFI FIZ under the Call procedure, (ii) under the Investment Agreement, makes Investments in the VC Fund through resources other than public funding as defined in the Act of 27 August 2009 on public finance, irrespective of their ownership, and (iii) is independent (as at the date of the first Investment) of the Company, i.e. is neither a member nor a shareholder of the Company, in which the VC Fund will invest, irrespective of its ownership<sup>5</sup>, and is independent of the Managing Entity, (iv) bears the full risk of Investments; Where an Investment is made through an investment vehicle, the term “Private Investor” is also deemed to also include (i) an entity that exercises ultimate control (i.e. ultimate beneficial owner) over such investment vehicle and (ii) all intermediate entities in the structure of that investment vehicle.
- **Public Investor** – PFR KOFFI FIZ and other investors who do not fall within the definition of “Private Investor”.
- **Quasi-equity Investment** – quasi-equity investment within the meaning of §2 (2) of the Risk Finance Regulation,<sup>6</sup> made by the Financial Intermediary in a Company.
- **Regulation No 651/2014** – Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.06.2014, p. 1).
- **Regulation No 480/2014** – Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.
- **Regulation No 1303/2013** – Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.
- **SG OP** – Smart Growth Operational Programme 2014 – 2020.

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<sup>5</sup> Independence between the Investor and the Portfolio Company is maintained in the case of Private Investors being natural persons, acting as business angels, as well as in the case of Private Investors, acting as institutional investors, also when these investors are shareholders of the Portfolio Company before making the investment by the VC Fund.

<sup>6</sup> Risk Finance Regulation in this regard refers to the definition of Regulation No 651/2014. “Quasi-equity Investment” within the meaning of Article 2 (66) of Regulation No 651/2014 means a type of financing that ranks between equity and debt, carrying a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which are unsecured in the event of bankruptcy of such undertaking. Quasi-equity Investments can be structured as debt, unsecured and subordinated, including mezzanine debt, and in some cases convertible into equity, or as preferred equity.

- **SG OP Resources** – part of the VC Fund’s Investment Budget from (i) the contribution of PFR KOFFI FIZ and (ii) the contribution of Private Investors in the amount equivalent to the resources of PFR KOFFI FIZ.
- **SME** – has the meaning as defined in Annex 1 to Regulation 651/2014.
- **Team** – a team appointed by the Tenderer, composed of members of the Key Personnel, any other members of the Investment Committee and additional persons who have the necessary background and experience to carry out the investment activities of the VC Fund, dedicated to carrying on the operations of the VC Fund through the VC Fund or the Managing Entity, bound to maintain professional market standards in accordance with the guidelines of Invest Europe, ILPA or other equivalent organisations of the VC market<sup>7</sup>.
- **Tender** – a Tender submitted by the Tenderer under the Call for Tenders, including the documents mentioned in Section 8.6. of the Rules.
- **Tenderer** – the VC Fund or the Managing Entity intending to set up the VC Fund, which has submitted a Tender under a Call for Tenders based on these Rules.
- **Venture Capital Fund** (also referred to as “**Financial Intermediary**” or “**VC Fund**”) – an entity selected or established under the procedure laid down in the Call Rules, which is a closed-end investment fund of non-public assets, a Capital Company, a Limited Joint-Stock Partnership, or a collective investment institution established abroad (or, in the case of entities with their registered office outside of the Republic of Poland, an entity having its legal form similar to the legal structure of a closed-end investment fund, a Capital Company or a Limited Joint-Stock Partnership, respectively), in each case based within the territory of a Member State of the European Union or the European Free Trade Association (EFTA) or a country that is a member of the European Economic Area (EEA), whose sole business is to raise funding from investors in order to invest the same in accordance with the VC Fund’s approved Investment Policy and the terms set out in these Rules.
- **Website** – the website of PFR Ventures.

## § 2.

### Legal basis

2.1 This Call is conducted on the following legal bases:

2.1.1 Regulation No 1303/2013,

2.1.2 Regulation No 480/2014,

2.1.3 Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002

2.1.4 Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme

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<sup>7</sup> e.g. Invest Europe – “Professional Standards Handbook” or ILPA – “Private Equity Principles”

contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data,

2.1.5 Act of 27 August 2009 on public finance (Journal of Laws No 157, item 1240, as amended),

2.1.6 Act of 27 May 2004 on investment funds and the management of alternative investment funds (Journal of Laws of 146, item 1546, as amended).

### **§ 3.**

#### **Purpose of the Call**

- 3.1 The Call is issued under a project financed through the European Regional Development Fund under the Smart Growth Operational Programme 2014 – 2020, Priority Axis III. Support for innovation in enterprises, Measure 3.1. Funding of SMEs' innovative activity using risk capital, Sub-measure 3.1.4. KOFFI - Konkurencyjny Ogólnopolski Fundusz Funduszy Innowacyjnych (Competitive Polish Innovative Fund of Funds).
- 3.2 The Beneficiary of the project is Bank Gospodarstwa Krajowego.
- 3.3 The Call procedure is operated by PFR Ventures, acting on behalf of PFR KOFFI FIZ. PFR Ventures is a specialised entity managing part of the investment portfolio of PFR KOFFI FIZ under the agreement referred to in Article 45a (1) of the Act on investment funds and managing alternative investment funds (Journal of Laws No 146, item 1546), made between PFR Ventures and PFR TFI.
- 3.4 The purpose of the Call is to select VC Funds that will (i) contribute the most to the achievement of the main objective related to the implementation of the KOFFI Programme, as referred to in §3.1 above, which is to ensure the necessary financing of Companies at the development, expansion and growth stage, and (ii) ensure sound financial management, transparency, sustainability and financial viability of the above-mentioned objective of the KOFFI Programme.
- 3.5 VC Funds selected or established as a result of Tender selection under the Call by PFR KOFFI FIZ shall be responsible for selecting and making Investments in Companies at the development, expansion and growth stage in accordance with the VC Fund's Investment Strategy, based on repayable financing by PFR KOFFI FIZ, the Managing Entity and Private Investors provided: (i) in the amounts and on the terms set out in these Rules, (ii) in accordance with the terms and conditions set out in the Investment Agreement and (iii) in compliance (as relevant and adequate for VC Funds) with the provisions of Regulation No 480/2014 (in particular Article 7, Article 13 and Article 14 of Regulation No 480/2014), Regulation No 1303/2013 (Title IV), applicable to VC Funds and the principles of their Investment activity.

### **§ 4.**

#### **Allocation of public funds for the Call**

- 4.1 The amount of funding intended to provide financing to VC Funds (Investment Budget of the Programme) shall be PLN 301,008,046,00 (in words: three hundred and one million eight thousand and forty-six zlotys) under the Call for VC Funds for the KOFFI Programme.
- 4.2 PFR KOFFI FIZ reserves the right to change the amount allocated to support Tenderers under the Call, referred to in §4.1 above.

## § 5.

### Term Sheet of the Call

The Term Sheet of the Call is provided in Appendix 9 to the Call Rules (“Term Sheet”).

## § 6.

### General provisions concerning the Call

- 6.1 Tenders in response to the Call may be submitted from 15 November 2017 to 31 December 2020 by 24:00 hours Central European Time (CET) or until the funds of PFR KOFFI FIZ are depleted, i.e. until the working day following the day on which PFR KOFFI FIZ posts information on the Website that allocation has been exceeded.
- 6.2 Following the depletion of funds available through PFR KOFFI FIZ, i.e. after agreements are signed with Tenderers for a total amount equal or exceeding the Investment Budget of the Programme, the Call Organiser shall have the right to close the Call by notice on the Website.
- 6.3 If the sum of the PFR KOFFI FIZ Fund’s contributions as part of Declared Capitalisations of VC Funds resulting from submitted Tenders exceeds the amount allocated to the Investment Budget of the KOFFI Programme, the Organiser shall have the right to announce, by a notice posted on the Website, the suspension of the receipt of Tenders. Resumption of the Call for Tenders shall be announced by a notice on the Website.
- 6.4 Any Tenders submitted after the Call closing date or after Call closure is announced due to the depletion of funds or after suspension of receipt of Tenders is announced, shall not be assessed.
- 6.5 The Tenderer may submit only one Tender through the Call. In the event that more than one Tender is submitted by the Tenderer, only the Tender submitted first shall be considered unless the Tenderer withdraws such previously submitted Tender.
- 6.6 Tenders shall undergo a two-stage assessment process.
  - 6.6.1 **Stage one:** In Stage One, Tenders shall undergo:
    - (i) assessment for meeting the Access Criteria set forth in § 9.1 of these Rules, and
    - (i) merit-based assessment, according to the Tender assessment criteria set forth in § 9.2 of these Rules.
  - 6.6.2 **Stage Two:** Stage Two: Tenders qualified for Stage Two (meeting the requirements of Section 6.6.1) shall undergo an in-depth economic and legal due diligence.
- 6.7 Tenders in response to the Call for Tenders shall be submitted at the Tenderer’s sole cost and risk (in particular, PFR KOFFI FIZ and/or PFR Ventures shall not be obliged to pay any fees to Tenderers related indirectly or directly to a Tender submitted).
- 6.8 Any claims the Tenderer may have, including claims for damages in respect of the submission of the Tender under the Call, the progress of the Call and its results, shall be excluded. Until the execution of the Investment Agreement, PFR KOFFI FIZ and/or PFR Ventures shall not be bound by the selection of the Tender, in particular, any claims that the Tenderer may have in respect of the course of

negotiations related to the Investment Agreement or non-conclusion of the Investment Agreement following the selection of the Tender concerned, shall be excluded.

- 6.9 In justified cases, PFR KOFFI FIZ may modify the wording of the Rules at any time. PFR KOFFI FIZ shall publish the modified wording of the Rules on the Website and notify the Tenderers who have already submitted their Tenders under the Call of the changes, by sending a notice of modification to such Tenderers by electronic mail to the Tenderer's electronic mail address from which the Tender has been sent, while setting a time limit for supplementing or submitting a new Tender.
- 6.10 At each stage of the Tender examination and analysis process, PFR KOFFI FIZ and/or PFR Ventures may request the Tenderer to provide explanations regarding the content of the Tender submitted and to submit additional documents necessary to duly analyse the Tender
- 6.11 During the Call for Tenders, PFR KOFFI FIZ, PFR Ventures and the Tenderer may communicate with each other using means of direct remote communication. Where PFR KOFFI FIZ, PFR Ventures or the Tenderer uses means of direct remote communication, any statements, documents, notices, materials, files, etc. provided via these means of communication shall be deemed to have been effectively delivered when delivery thereof has been confirmed with a signature of the authorised person, by electronic mail, save that in the case of transmission of statements, requests, notices and information via electronic mail, the message shall be deemed delivered when dispatched by the sender (in the event the sender does not receive a response from the recipient's mail server stating the reason of failure to deliver the message sent to the addressee's mailbox) or via the Tenderer's individual electronic account set up on the web platform shared for this purpose, available at <https://www.pfrventures.pl/pl/fundusze/6/pfr-koffi-fiz/>

## **§ 7.**

### **Conditions for participation in the Call for Tenders**

- 7.1 Under the Call, Tenders for VC Funds shall be assessed, submitted by:
- 7.1.1 a VC Fund, subject to §7.2, or
- 7.1.2 the Managing Entity intending to establish a VC Fund – in a situation where, at the time of submission of the Tender, the VC Fund has not yet been established in accordance with the law applicable to the VC Fund concerned, subject to §7.3.
- 7.2 Where the Tender is submitted by a VC Fund, it must be formally established in compliance with the governing law of its place of registration;
- 7.2.1 In the case of a VC Fund in the form of limited joint-stock partnership, the VC Fund must be a partnership registered in the KRS (Polish National Court Register), and the Managing Entity must be established in compliance with the governing law of the place of its registration and be registered in a register of ASI ( Alternative Investment Company) managers or be authorised by the relevant Member State to pursue business as an alternative investment fund manager.
- 7.2.2 In the case of a VC Fund in the form of a Capital Company, the VC Fund: (i) is a company registered in the KRS (Polish National Court Register) and entered on the list of managers as an internally managed ASI ( Alternative Investment Company), (ii) is a company in organisation.

- 7.2.3 In the case of a VC Fund in the form of a closed-end investment fund, the VC Fund has been formally established (registered in the Register of Investment Funds) and the application was filed by an investment fund company which manages the closed-end investment fund concerned or the entity to which the investment fund company has entrusted to intends to entrust the management and running of affairs of the open-end investment fund concerned.
- 7.2.4 In the case of the VC Fund established in the form of collective investment institution based outside the territory of the Republic of Poland, such VC Fund should be established in accordance with the governing law of its place of registration.
- 7.3 Where the Tender is submitted by the Managing Entity:
- 7.3.1 In the case of a Managing Entity which is to be an external manager of the VC Fund established in the form of limited joint-stock partnership, the Managing Entity must be established in compliance with the governing law of the place its registration, and the VC Fund does not have to be formally established at the time of Tender submission, or may be formally established but may not be entered in the KRS (Polish National Court Register) except where prior to entry of the VC Fund in the KRS, the Managing Entity has obtained a relevant entry in the register of alternative investment companies.
- 7.3.2 In the case of a Managing Entity which is to be an internal manager of the VC Fund established in the form of Capital Company, the VC Fund does not have to be formally established at the time of Tender submission, or may be formally established but may not be an entity entered in the KRS.
- 7.3.3 In the case of a Managing Entity that is to be VC Fund manager established in the form of a closed-end investment fund, the Managing Entity must be an investment fund company or other entity to which the investment fund company has entrusted to intends to entrust the management and running of affairs of the open-end investment fund concerned (which is to be the VC Fund).
- 7.3.4 In the case of the VC Fund Managing Entity in the form of collective investment institution based outside the territory of the Republic of Poland, such Managing Entity should be established in accordance with the governing law of its place of registration.
- 7.4 No Tender may be submitted by a Tenderer who is subject to public collective insolvency proceedings for the purpose of rescue, adjustment of debt, reorganisation or liquidation within the meaning of Article 1 (1) (without the last sentence) of Regulation (EU) No 2015/848 or is in difficulty within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01).
- 7.5 No Tender may be submitted by a Tenderer who is subject to the obligation to return state aid pursuant to a decision of the European Commission or decision of an authorised national body, declaring such aid to be illegal and/or inconsistent with the internal market.
- 7.6 Tenders must be submitted by Tenderers established or to be set up in compliance with the requirements regarding the form and stages of setting up an Alternative Investment Company in accordance with the requirements of the Act of 27 May 2004 on investment funds and the management of alternative investment funds (Journal of Laws of 146, item 1546, as amended).

## § 8.

### Tender

- 8.1 The Tender shall be prepared in accordance with the requirements set out in these Call Rules.
- 8.2 The Tender should be sent only in the electronic version via the Tenderer's individual electronic account set up by the Tenderer signing up on the web platform available at: <https://www.pfrventures.pl/pl/fundusze/6/pfr-koffi-fiz/>. The maximum total size of files attached as part of the Tender through the Tenderer's individual account must not exceed 1000 MB. Within three (3) Business Days of receipt of a Tender by PFR Ventures, the details of the acronym assigned to the Tender shall be available through the Tenderer's individual account and it shall be sent by PFR Ventures via electronic mail (to the email address stated by the Tenderer in the Tender).
- 8.3 The Tender shall be prepared in Polish or in English. Documents drawn up in English should be submitted together with a translation into Polish. In case of discrepancy, the Polish version shall prevail.
- 8.4 The following documents should be attached to the Tender in electronic form, using the means of direct remote communication, e.g. via e-mail, VDR (Virtual Data Room) system or through the Tenderer's individual account on the web platform provided for the purpose, available at <https://www.pfrventures.pl/pl/fundusze/6/pfr-koffi-fiz/> (following documents available at <https://www.pfrventures.pl/pl/fundusze/6/pfr-koffi-fiz/>):
- 8.4.1 **Appendix 1: Tender Identification Form** *(in the form of Appendix 1 to the Call Rules),*
  - 8.4.2 **Tenderer's Key Personnel Verification Form** *(in the form of Appendix 2 to the Call Rules),*
  - 8.4.3 **Tenderer's Investment Strategy** *(in the form of Appendix 3 to the Call Rules),*
  - 8.4.4 **List of the Tenderer's Potential Investment Projects** *(in the form of Appendix 4 to the Call Rules),*
  - 8.4.5 **Tenderer's Statement** *(in the form of Appendix 5 to the Call Rules),*
  - 8.4.6 **Statement by Member of the Tenderer's Key Personnel** *(in the form of Appendix 6 to the Call Rules),*
  - 8.4.7 **Statement by Team Member Making a Contribution as Part of Declared Capitalisation** *(in the form of Appendix 7 to the Call Rules),*
  - 8.4.8 **Private Investor's Statement (Natural Person/Legal Person)** *(in the form of Appendix 8(i) or 8(ii) to the Call Rules)(if applicable),*
- 8.5 The Organiser is authorised to request documents other than those mentioned above if such documents are necessary to properly evaluate the Tender.
- 8.6 In the case of a positive merit-based assessment of the Tender, referred to in § 11.2 of the Rules, the Tenderer shall be required to submit to the address of PFR Ventures, in written form, the original appendices listed in Section 8.4, provided that the appendices submitted in writing should be identical in content with the appendices submitted in electronic format in the manner specified in Section 8.4. In case of discrepancy, documents submitted in electronic format shall prevail.
- 8.7 The Call Organiser shall inform the Tenderer in writing, in accordance with Section 8.14 of the Call Procedure, of the results of merit-based assessment of the Tender and the need to submit the

- appendices in accordance with Section 8.6. Submission of the original appendices in writing is a condition for the Call Organiser to proceed with due diligence process of the Tender.
- 8.8 The Call Organiser, on every step of the Tender evaluation, shall have the right to request the Tenderer to:
- 8.8.1 correct any typing and computational errors in the Tender, or
  - 8.8.2 change or fill any gaps in the Tender (e.g. provide missing or incomplete forms or original appendices/forms in writing in accordance with Section 8.6 of the Rules) or
  - 8.8.3 clarify any discrepancies in the Tender.
- 8.9 The Tenderer shall be required to fill gaps within seven (7) Business Days of the date the notice to fill gaps is dispatched by PFR Ventures (such notice to be sent by electronic mail to the email address stated by the Tenderer in the Tender or through the Tenderer's individual account made available on the web platform for submission of Tenders), by sending the Tender documents as required in the notice. PFR Ventures shall be authorised to extend the period allowed for filling gaps in the Tender at the Tenderer's justified request.
- 8.10 The Tender may be withdrawn at any time during the Call for Tenders, provided that such withdrawal of the Tender is made via the Tenderer's individual account on the web platform. The Tender shall be considered withdrawn upon the effective withdrawal of the Tender via the Tenderer's individual account on the web platform. At the Tenderer's request, PFR Ventures shall confirm the receipt of information on Tender withdrawal.
- 8.11 A Tenderer who has withdrawn a Tender submitted through the Call for Tenders may resubmit the Tender via the Tenderer's individual account on the web platform during the Call for Tenders period on the terms and conditions referred to in § 8 of these Rules, subject to § 6 of hereof.
- 8.12 In case of submissions made through electronic channels, the application of Article 66<sup>1</sup> §1 - §3 of the Act of 23 April 1964 – Civil Code (Journal of Laws of 2017, item 459, as amended), shall be excluded, with the proviso that PFR Ventures shall confirm (in electronic format) to the Tenderer concerned, at the latter's request, the receipt of the Tender in electronic format.
- 8.13 Submission of the Tender shall operate as acceptance of the provisions of the Rules by the Tenderer.
- 8.14 During the Call, the Call Organiser and the Tenderer may communicate with each other using means of direct remote communication – email, through the Tenderer's individual account made available on the platform for the submission of Tenders, or by fax. Where this form of communication is used, any statements, documents, files, etc. shall be deemed to have been effectively delivered when delivery thereof has been confirmed by email or by fax. Where statements, applications or documents are submitted by electronic mail, they shall be deemed to have been delivered at the time the message was dispatched by the sender (unless the sender has received a response from the recipient's mail server containing a message describing the cause for failure to deliver the message sent to the addressee's mailbox).
- 8.15 Submission of a Tender which is incomplete or does not comply with the requirements specified set forth in this Section shall result in the exclusion of the Tender from further qualification proceedings (such Tender shall not be eligible for further assessment), unless the Tenderer fills the gaps or improves the errors within the time limit referred to in Section 6.9.

- 8.16 Any claims the Tenderer may have, including claims for damages in respect of the submission of the Tender under the Call, the progress of the Call and its results, shall be excluded. Until the execution of the Investment Agreement, the Call Organiser shall not be bound by the selection of the Tender; in particular, any claims that the Tenderer may have in respect of the course of negotiations related to the Investment Agreement or failure to conclude the Investment Agreement following the selection of the Tender concerned, shall be excluded.
- 8.17 The Tenderer shall be bound by the Tender until the date of entering into the Investment Agreement or until the date the Tenderer is informed of the exclusion of its Tender at any stage of the Tender assessment process, or until the date of completion, with no effect, of negotiations on entering into the Investment Agreement, without entering into the Investment Agreement with the Tenderer concerned, or until the Tender is withdrawn by the Tenderer.

## **§ 9.**

### **Tender assessment process**

#### **9.1 Access Criteria.**

Prior to the merit-based assessment, the Call Organiser shall check if the Tender meets the Access Criteria set forth in § 11.1. Failure to meet any of the Access Criteria shall result in exclusion of the Tender. An excluded Tender shall not be subject to further assessment.

#### **9.2 Analysis of merit-based conditions.**

9.2.1 The Call Organiser shall perform a merit-based analysis of Tender by referring to the list of quality criteria set forth in § 11.2 of these Rules, awarding points under each criterion based on an internal Tender scorecard.

9.2.2 As part of the merit-based analysis of Tenders, the Call Organiser may invite the Tenderer to present its Tender.

9.2.3 In the course of the merit-based analysis of Tenders, the Call Organiser shall have the right to demand that the Tenderer provide explanations concerning the content of the Tender it has submitted if they prove necessary for the correct assessment of the Tender.

9.2.4 The Call Organiser shall perform the merit-based analysis of the Tender within 40 Business Days of its receipt.

9.2.5 The time limit referred to in Section 9.2.4 shall be suspended in the situation the Tenderer is invited to present its Tender or provide explanations on the content of its Tender.

9.2.6 The Call Organiser shall admit the Tenderer to Stage Two of the Call procedure if the Tender is awarded not less than: 50% of the total points and 50% of points under each quality criterion,

- 9.3 Tenderers shall be notified in the manner specified in Section 8.14, within 5 Business Days, of the Call Organiser's decision to qualify or not to qualify the Tender to Stage Two of the Tender assessment process.

## § 10.

### Stage Two of the assessment of Tenders

#### 10.1 Due diligence

In Stage Two, Tenders shall be subjected to an in-depth due diligence process to be conducted within 40 Business Days of the completion of the merit-based analysis. Due diligence is aimed to verify all information contained in the Tender that may affect the assessment of the Tenderer, as well as the Tenderer's legal/financial/business capacity to enter into and perform the Investment Agreement. For this purpose, the Call Organiser or its authorised consultants may demand additional documents, other than those submitted in the Tender, as well as information supporting the due diligence analysis. The detailed scope of the due diligence process is described in §12 Due Diligence and Investment Agreement.

Upon completion of the due diligence process, the Tenderers shall be notified by the Call Organiser in the manner specified in Section 8.14, within 5 Business Days of the decision, that the Tender has qualified to the next stage of the Call or has failed to qualify and hence their participation in the Call procedure has been terminated.

10.2 The date referred to in point 10.1 shall be suspended when the Tenderer is requested to submit explanations regarding the content of the submitted Tender or its supplementation.

## § 11.

### Tender selection criteria

11.1 Prior to the merit-based assessment of the Tender, the Call Organiser shall verify the Tenderer's fulfilment of all of the following Access Criteria:

- a) the applying Team has experience in equity investments or the management of equity funds, e.g. venture capital fund (operating at the seed, early stage, series "A", "B" or subsequent financing series), growth capital or private equity funds or other investment platforms in which the total amount of managed assets exceeded the equivalent of EUR 5 million,
- b) at least two Members of the Key Personnel are dedicated for a minimum of 80% of their professional working time (not less than 32 hours a week) the VC Fund,
- c) at least two Members of the Key Personnel have a verifiable<sup>8</sup> history of completed equity investments,
- d) not less than 1% but not more than 20% of the VC Fund's Declared Capitalisation shall be provided by members of the Key Personnel/Team.

11.2 As part of the merit-based analysis of Tenders, the Call Organiser shall make the assessment according to the following criteria:

#### 11.2.1 Team appointed by the Tenderer – 40% weighting

Under this criterion, the Call Organiser shall assess Tenders according to the following sub-criteria:

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<sup>8</sup> Verifiability is taken to mean, in particular, the presentation by the Tenderer of documents authenticating the participation of a Member of Key Personnel in a given investment project, e.g. an excerpt from a relevant register or any other documents supporting the verification process.

**A. Experience:**

- (i) At least one member of the Key Personnel has at least 2 years' experience in VC/PE funds or transaction experience (such periods sum up), or
- (ii) At least one member of the Key Personnel has entrepreneurial experience or experience other than as specified in item (i) (e.g. strategic restructuring consulting or experience in leveraging finance/funds for companies),
- (iii) Preferred experience consistent with the Investment Strategy of the VC Fund concerned,
- (iv) Track record and historical rates of return on VC/PE investments or other equity investments;

**B. Complementariness of the Members of the Key Personnel/Team in the context of the planned Investment Strategy and the allocation of responsibilities:**

- (i) The extent to which individual Members of the Key Personnel/Team complement each other in terms of skills, knowledge and experience (relating to VC/PE), business, operational and financial experience, as well as experience on the management of VC/PE investment portfolio or other equity investments, investment entries and exists),
- (ii) Clear definition of the allocation of responsibilities in the VC Fund;

**C. Planned time commitment of Members of the Key Personnel/Team in the activities of the VC Fund:**

- (i) The time commitment of other Members of the Key Personnel and other Team Members should be adequate to the size of the VC Fund and the Investment Strategy.

**11.2.2 Proposed Investment Strategy – 40% weighting**

Under this criterion, the Call Organiser shall assess Tenders according to the following sub-criteria:

- A.** Method/methodology of project acquisition and assessment (dealflow);
- B.** Loss of potential investment projects (pipeline); containing e.g. information on a letter of intent/term sheet, etc., concluded with a potential Portfolio Company (Eligible Undertaking);
- C.** Investment policy;
- D.** Planned portfolio structure, diversification adequate to the Investment Strategy, taking into account relevant geographical limits<sup>9</sup>;
- E.** Potential of the market/target sector of the VC Fund/attractiveness of the sector in terms of implementation of the strategy of the PFR KOFFI FIZ Fund;
- F.** Paths of exit from investment;

**11.2.3 Corporate Governance – 10% weighting**

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<sup>9</sup> Limits applicable to the part of the VC Fund's Investment Budget funded from the SG OP Resources

Under this criterion, the Call Organiser shall assess Tenders according to the following sub-criteria:

- A. Properly defined responsibilities and powers of the VC Fund's governing bodies in relation to the assumed legal form of the VC Fund;
- B. Existence of transparent procedures on the management of the VC Fund and the investment process;
- C. The method of resolving conflicts of interest in the investment process, aimed, in particular, to ensure consistency of interests and reduce a potential conflict of interest in connection with the capital participation of the Key Personnel/Team Members in the VC Fund's Declared Capitalisation (as defined in Article 7 (2) (f) of Regulation No 480/2014):
  - (i) Identification of possible conflicts of interest that may arise in the course of the operation of the VC Fund,
  - (ii) Proposed procedures for the management of conflicts of interest,
- D. The internal control system and accounting system planned to be implemented in the VC Fund.

#### 11.2.4 Fund economics – 7.5% weighting

Under this criterion, the Call Organiser shall assess Tenders according to the following sub-criteria:

- A. Operating budget:
  - (i) Proposed amount and method of distribution of Management Fee, with reference to market rates.
- B. Planned incentive systems:
  - (ii) The incentive system ensuring the Key Personnel/Team Members' commitment to work for the VC Fund, including the proposed rate and method of allocation of Carried Interest, with reference to market rates.

#### 11.2.5 Amount of the Managing Entity's private contribution – 2.5% weighting

- A. Amount of the Managing Entity's private contribution in excess of the required minimum contribution.

## § 12.

### Due Diligence process and Investment Agreement

- 12.1 Prior to the conclusion of the Investment Agreement by PFR Ventures, PFR KOFFI FIZ or their professional advisers shall: (1) carry out due diligence of the Managing Entity, the VC Fund, the Team and/or the Private Investor, in terms of: (i) confirmation of all information contained in the Tender that may affect the assessment of the Tenderer, (ii) the legal capacity and financial viability of Private Investors and the Managing Entity to make a private contribution to the VC Fund in the declared amount and perform their obligations under the Investment Agreement, (iii) the legal capacity of the VC Fund in the context of its authorisations to perform the Investment Agreement within the meaning of Article 7 (1) (a) of Regulation No 480/2014, (iv) verification of the investment experience of the Team, (v) the Team's reputation, (vi) non-existence of personal or equity relationships

between the parties mentioned in the Tender; the VC Fund and/or the Managing Entity agree to ensure that PFR KOFFI FIZ is able to perform such due diligence, and also agree to ensure that the Managing Entity, the VC Fund, members of the Team and/or each Private Investor shall present any and all information and documents that PFR Ventures, PFR KOFFI FIZ or their professional advisors may demand for this purpose, and (2) PFR Ventures shall negotiate the wording of the Investment Agreement with pre-qualified Tenderers, excluding any provisions arising from applicable laws and regulations and the provisions mentioned above which are not negotiable and which will be presented to the Tenderer prior to the commencement of negotiations.

- 12.2 Following the due diligence analysis, in the case a positive recommendation is obtained, the Call Organiser shall select the Tender for the Investment Agreement negotiation stage in accordance with the internal procedure for investment decision-making, and shall then provide the Tenderer, in the manner specified in Section 8.14, with information on the selection of its Tender and invitation of the Tenderer to negotiation of the Investment Agreement.
- 12.3 Each Investment Agreement made between PFR KOFFI FIZ and a VC Fund, the Managing Entity and Private Investor(s), irrespective of any other conditions set out in the Investment Agreement or the legal form of the VC Fund, shall contain mandatory provisions concerning in particular the following issues:
- 12.3.1 commitment to comply with EU and national laws and regulations, including in particular the rules arising from SG OP, DDPa (including in particular the commitment of the Managing Entity to act with due care and diligence characterising a professional manager, in good faith and avoiding conflicts of interest, using the best practices and regulatory supervision; the commitment to ensure the functioning of the due diligence procedure to ensure an economically viable investment strategy, including the policy of diversification of risk aimed at achieving profitability and efficient scale in terms of size and territorial coverage of a given Investment portfolio; the commitment that financing provided to Companies shall be based on a rational business plan containing detailed information about the product/service, sales, the level of profitability and maintained financial stability, the commitment that for each equity Investment and quasi-equity Investment a clear and realistic exit strategy shall be established,
- 12.3.2 commitment to achieve the objectives of the VC Fund set out in the Investment Policy and the milestones set out in the Investment Agreement, including in particular those concerning the rate of spending funds within the Investment Budget, together with the definition of sanction mechanisms at the level of PFR KOFFI FIZ's right e.g. to terminate the Investment Agreement,
- 12.3.3 commitment to provide the required private capital pool in addition to public funds contributed to the VC Fund, on the terms and conditions set out in the Investment Agreement (in particular in terms of a transparent and competitive selection system of private investors for individual Investments),
- 12.3.4 definition of the rules for the utilisation of resources provided to the VC Fund, in particular investing principles in line with Regulation No 1303/2013, Regulation 480/2014 and these Rules

- 12.3.5 definition of the VC Fund's financing object and rules, including the amount of the VC Fund's remuneration and the terms of its payment and settlement,
- 12.3.6 commitment that during the period following the selection of the Tenderer for VC Funds under the Call and until at least 70% of the Investment Budget is performed or to the end of the Investment Period (whichever period ends earlier), the members of Key Personnel shall not perform, without the prior consent of PFR KOFFI FIZ, any managerial, supervisory, advisory or other key functions in entities other than the VC Fund, the Managing Entity and/or the Companies which are the object of Investment by the VC Fund, the performance of which would entail a conflict of interest in relation to the business of the VC Fund, which shall be in each case verified for compliance by PFR KOFFI FIZ,
- 12.3.7 commitment of the Key Personnel and the Managing Entity to keep PFR Ventures and the Advisory Committee informed about every situation that may potentially give rise to a conflict of interest;
- 12.3.8 commitment of the VC Fund to develop and implement internal audit procedures;
- 12.3.9 definition of the terms of use of the accounting system to ensure accurate, complete and reliable information concerning in particular Investments made by the VC Fund in due time,
- 12.3.10 definition of the mechanisms ensuring economic sustainability and financial viability of the Investment Agreement on the part of the VC Fund,
- 12.3.11 the VC Fund's commitment to submit to controls and audits carried out by the Beneficiary, the Ministry of Economic Development, the European Commission, the European Court of Auditors or other entities authorised to carry out such controls, including to provide information and support to the European Court of Auditors to the extent necessary for the Court to perform its responsibilities, as well as the obligation to ensure that Companies in which the VC Fund invests shall also submit to controls by these institutions,
- 12.3.12 commitment to ensure an appropriate organisational structure and governance framework necessary to lend credibility to the VC Fund,
- 12.3.13 commitment to comply with applicable standards and regulations for the prevention of money laundering and combating terrorism and tax fraud, in particular the commitment not to cooperate with any entities registered within the territory of countries whose jurisdictions do not cooperate with the European Union in the application of tax standards agreed at international level,
- 12.3.14 definition of the rules of monitoring and reporting,
- 12.3.15 provisions on termination of the Investment Agreement by PFR KOFFI FIZ,
- 12.3.16 definition of the rules for replacing the Key Personnel and Private Investors in the course of the investment period,
- 12.3.17 definition of the rules for dismissal of the Managing Entity by PFR KOFFI FIZ,
- 12.3.18 definition of the terms of distribution of proceeds from exits from investment between PFR KOFFI FIZ, Private Investors and the Managing Entity, including the terms of payment of Carried Interest,

- 12.3.19 definition of the rules for the documentation of the Company's business activity within the territory of the Republic of Poland as at the time of Investment or Follow-on Investment, as well as the rules of documenting the allocation of funds received in connection with a given Investment for the purposes specified in the Investment Agreement,
- 12.3.20 definition of the rules for repayment by the VC Fund of funds disbursed incorrectly or drawn in an excessive amount;
- 12.3.21 definition of the rules for managing conflicts of interest,
- 12.3.22 the Managing Entity's commitment to perform periodic valuation of the investment portfolio and the performance of reporting and information obligations to PFR Ventures;
- 12.3.23 definition of the extent of control by the VC Fund of the implementation of the Investment Policy in accordance with applicable law and the rules set forth in these Call Rules, in particular by virtue of PFR KOFFI FIZ's option to appoint and dismiss members of the corporate bodies, should the Managing Entity be dismissed by PFR KOFFI FIZ in accordance with §12.3.17 of the Rules, and the investment committee of the VC Fund,
- 12.3.24 definition of the basic planned terms and conditions of investment agreements with Companies,
- 12.3.25 commitment to provide authorised institutions with data necessary for the Ministry of Economic Development to build databases, perform and commission analyses concerning the implementation of PFR KOFFI FIZ, financial instruments, policies, including horizontal policies, impact assessment, as well as assessment of macroeconomic impacts in the context of implementation of financial instruments,
- 12.3.26 commitment to take information and promotion measures,
- 12.3.27 commitment to submit financial statements of the VC Fund to examination by a certified auditor.
- 12.4 Starting negotiations on the Investment Agreement shall be possible provided that all of the following have been fulfilled:
  - 12.4.1 The Tenderer has provided all the original documents mentioned in §8.6 of these Rules, and
  - 12.4.2 the due diligence review referred to in §10 and §12.1 of the Rules has not shown a lack of legal and/or financial and/or reputational capacity of the Managing Entity, Private Investors, the Team and/or the VC Fund to enter into or perform the Investment Agreement.
- 12.5 In the case of a Tender submitted by a Managing Entity intending to establish a VC Fund:
  - 12.5.1 after such VC Fund is established, it shall be required to join an executed Investment Agreement, which should take place no later than the first transfer of funds to the VC Fund on the terms of and in accordance with the provisions of the Investment Agreement,
  - 12.5.2 before such VC Fund joins to the Investment Agreement, PFR Ventures, PFR KOFFI FIZ or their professional advisors shall be authorised to conduct due diligence of such VC Fund (including in order to determine whether such VC Fund is an entity authorised to submit the Tender under the terms and conditions set out in these Rules). The Managing Entity that has signed the Investment Agreement and the VC Fund joining the Investment Agreement shall enable PFR Ventures, PFR KOFFI FIZ or their professional advisors to carry out such due diligence,

and shall ensure that the VC Fund presents any and all information and documents that PFR Ventures, PFR KOFFI FIZ or their professional advisors may demand for this purpose.

- 12.6 In the event the Investment Agreement is not executed with the selected Tenderer within 60 Business Days from its Tender selection date, the Call Organiser may revoke the decision to select such Tenderer's Tender and exclude the Tender from further consideration.

### **§ 13.**

#### **Conflict of Interest**

- 13.1 A conflict of interest may arise, in particular, for the following reasons:

- 13.1.1 the existence of family relationships, i.e. the relationship by marriage, consanguinity, lineal or collateral affinity up to the second degree, adoption, care or guardianship, or actual cohabitation, and other close private ties between an employee or associate of PFR Ventures, PFR KOFFI FIZ, PFR TFI and/or the Beneficiary with members of the corporate bodies of the VC Fund, the Managing Entity or Private Investor, or persons linked by marriage, consanguinity, lineal or collateral affinity up to the second degree, adoption, care or guardianship, or actual cohabitation, and other close private ties with members of corporate bodies of the VC Fund, the Managing Entity with members of the Team or the Private Investor ( a conflict of interest shall survive cessation of the relationship justifying this exclusion, referred to above),
- 13.1.2 the existence of any ownership relationships involving the ownership of shares or stocks of the VC Fund, the Managing Entity or Private Investor, or any other entity, in which any of the above entities holds shares or stocks, by an employee or associate of PFR Ventures, PFR KOFFI FIZ, PFR TFI and/or the Beneficiary, or joint participation in partnerships, investment funds and other unincorporated bodies, involving any rights attaching to shares or stocks, or any similar rights,
- 13.1.3 the existence of asset-based relationships, especially financial relationships (e.g. the receipt by an employee or associate of PFR Ventures, PFR KOFFI FIZ, PFR TFI or the Beneficiary from the VC Fund, the Managing Entity from members of the Team/or a Private Investor of gifts of a significant value, donations, or an employee or associate of PFR Ventures, PFR KOFFI FIZ or the Beneficiary incurring financial obligations to the VC Fund, the Managing Entity or Private Investor),
- 13.1.4 an employee or associate of PFR Ventures, PFR KOFFI FIZ or the Beneficiary receiving income from the VC Funds, the Managing Entity or Private Investor in respect of employment or civil-law contracts, i.e. an employee or associate of PFR Ventures, PFR KOFFI FIZ or the Beneficiary is employed with the VC Fund, the Managing Entity or Private Investor under a contract of employment, contract for specific work or contract of mandate; also where an employee or associate of PFR Ventures, PFR KOFFI FIZ or the Beneficiary remains on unpaid leave granted by the VC Fund, the Managing Entity or Private Investor,
- 13.1.5 an employee or associate of PFR Ventures, PFR KOFFI FIZ or the Beneficiary serving in managerial or supervisory capacity with the VC Fund, the Managing Entity or Private Investor,

by holding a position on the governing bodies of the VC Fund, the Managing Entity or Private Investor, e.g. on the management board, supervisory board, etc.,

- 13.1.6 an employee or associate of PFR Ventures, PFR KOFFI FIZ or the Beneficiary establishing contacts with the VC Fund, the Managing Entity or Private Investor concerning the possibility of establishing in future an employment relationship as employee or associate of PFR Ventures, PFR KOFFI FIZ or the Beneficiary with the VC Fund, the Managing Entity and/or Private Investor,
- 13.1.7 remaining in such a legal or de facto relationship, which may give rise to reasonable doubt as to the impartiality of an employee or associate of PFR Ventures, PFR KOFFI FIZ and/or the Beneficiary.

The reasons mentioned in the paragraphs above may lead to a conflict of interest if they arise at the time an employee or associate of PFR Ventures, PFR KOFFI FIZ and/or Beneficiary considers the Tender submitted by the VC Fund or the Managing Entity, or if they have arisen in the past or there is a high probability of their arising in future, insofar as they affect the decision-making process in the case.

- 13.2 An associate of PFR Ventures, PFR KOFFI FIZ, PFR TFI and/or Beneficiary, as the case may be, shall be defined as a person involved in conducting any stage of the Call for Tenders, collaborating with PFR Ventures, PFR KOFFI FIZ, PFR TFI and/or Beneficiary, as the case may be, under any legal relationship.
- 13.3 An employee/ associate of PFR Ventures, PFR KOFFI FIZ, PFR TFI and or the Beneficiary, as the case may be, involved in work related to the Call for Tenders, shall submit a written statement to PFR Ventures to the effect that there are no grounds for a conflict of interest in the case on which they make a decision or give an opinion.
- 13.4 Conflict of interest, as to the affiliations with PFR Ventures, PFR KOFFI FIZ, PFR TFI and/or the Beneficiary, referred to in §13.1 of the Rules, shall apply accordingly to the persons composing the Team, who have undertaken to contribute to the Declared Capitalisation of the VC Fund and Private Investors being natural persons. In such a situation the affiliations with PFR Ventures, PFR KOFFI FIZ, PFR TFI and/or the Beneficiary, referred to in §13.1 of the Rules, should be deemed to apply *mutatis mutandis*.
- 13.5 Where the Tender has been selected in breach of the provisions of §13.1 – §13.4, the selection of such Tender may be cancelled and the Tender may be subject to re-assessment.
- 13.6 Prior to Investment in a given Company, the VC Fund shall be required to inform PFR KOFFI FIZ of the capital or personal relationship of the shareholders or partners of Companies, members of the management or supervisory body of Companies, or their spouses, relatives by blood or by marriage (up to the second degree) with partners, shareholders or with persons managing or supervising the VC Fund, the Managing Entity (including members of the Team/Key Personnel), the Private Investor or with other persons of those entities who can influence the VC Fund's investment decisions. In such a situation, making an Investment in such a Company shall be subject to consent of the Advisory Committee.

## § 14.

### Final provisions

- 14.1 These Rules shall enter into force as of the date of publication of the Notice of Calls on the Website.
- 14.2 Submission of the Tender shall operate as acceptance of the provisions of the Rules by the Tenderer.
- 14.3 Neither PFR KOFFI FIZ nor Tenderers may, without the consent of the other party, disclose any information connected with the content of the Tenders and the progress of the Call, and PFR KOFFI FIZ, the Team and Private Investors shall be obliged to maintain the confidentiality of all information obtained in the course of negotiating the Investment Agreement. The above shall be without prejudice to the right of PFR KOFFI FIZ and/or PFR Ventures to use the assistance of external experts, auditors and advisers in the course of the Call procedure, including the examination and assessment of Tenders, and shall not apply to any information that has been made public or is known to PFR KOFFI FIZ and/or PFR Ventures from other sources. The commitment of confidentiality does not prejudice the obligation of PFR KOFFI FIZ, PFR Ventures, the Tenderer, the Team and/or Private Investors to provide information to competent (internal, external) authorities or to make information public insofar as required by law.
- 14.4 Members of the Team and the Managing Entity shall consent to the acquisition by PFR Ventures (acting on behalf of PFR KOFFI FIZ) and authorised legal advisers of PFR Ventures performing due diligence, for the purposes of the merit-based analysis of the Tender and the due diligence referred to in §10 §12.1 of the Rules, of information on their existing investment and entrepreneurial activities and market reputation, which consent shall satisfy the conditions of consent to the processing of personal data within the meaning of the Act of 29 August 1997 on personal data protection (Journal of Laws of 2016, item 922), or shall constitute consent of the party to which confidential information applies, to the disclosure of information covered by the confidentiality requirement, should any contractual or unilateral obligation provide for non-disclosure of information on a member of the Team or the Managing Entity. Members of the Team and the Managing Entity shall also give their consent to the further processing by PFR KOFFI FIZ and PFR Ventures of information obtained only for the purposes of institutions that offer financing from public funds (PARP, NCBIR, BGK, ARP), and only in order to verify the experience in investment activities and market reputation indicated in the Tender.
- 14.5 These Rules shall be governed by and construed in accordance with the Polish law and the EU law.
- 14.6 The Tenderer shall consent to the processing of information contained in the Tender by PFR KOFFI FIZ and PFR Ventures, to the extent necessary in connection with the implementation of the SG OP and for parties involved in the programme implementation process (BGK, PFR TFI, Ministry of Development, Ministry of Finance).
- 14.7 Any disputes arising out of or in connection with these Rules shall be resolved by a common court having territorial jurisdiction over the registered office of PFR KOFFI FIZ.
- 14.8 PFR KOFFI FIZ reserves the right to cancel the Call, in particular in the event that major changes are made to laws and regulations that affect the conditions of the Call process or events of Force Majeure. The Tenderer shall have no right to claim damages in the event the Call is cancelled.



**Appendices:**

- Appendix 1: Tender Identification Form
- Appendix 2: Tenderer's Key Personnel Verification Form
- Appendix 3: Tenderer's Investment Strategy
- Appendix 4: List of the Tenderer's Potential Investment Projects
- Appendix 5: Tenderer's Statement
- Appendix 6: Statement by Member of the Tenderer's Key Personnel
- Appendix 7: Statement by Team Member Making a Contribution as Part of Declared Capitalisation
- Appendix 8: Private Investor's Statement (Natural Person/Legal Person)
- Appendix 9: Term Sheet for the Call for and Selection of VC Funds - PFR KOFFI FIZ ("Term Sheet")