

COMPREHENSIVE TERMS AND CONDITIONS GOVERNING THE PARTICIPATION OF BARCELONA CITY COUNCIL IN VENTURE CAPITAL ENTITIES FOR THE PROMOTION OF THE CITY'S DEEP TECH ECOSYSTEM

BACKGROUND

Within the framework of Barcelona City Council's public policies, the institution has accelerated its support for the promotion of entrepreneurship and the growth of companies in the city and its metropolitan area through financial investment in private equity vehicles with a focus on investing in newly created, fast-growing projects. During 2021 the "*Barcelona Accelera*" programme committed a total of up to 10 million euros in 6 venture capital funds to promote the creation and growth of companies in the region.

Given the experience of the Barcelona Accelera programme, Barcelona City Council intends to relaunch a financial investment programme focused on the deep tech sector. The new "*Barcelona Deep Tech Fund*" programme, as detailed in these terms and conditions, aims to complement policies to support newly created companies in the deep tech sector in the city and its metropolitan area by injecting capital into venture capital vehicles focused on investing in newly created, fast-growing projects in this sector.

This initiative is part of the municipal project named Barcelona Innovation Coast and Barcelona City Council has a local development agency, Barcelona Activa, through which to provide support to entrepreneurs and companies in the city.

Barcelona City Council aims to invest public resources in **Venture Capital Entities** in the "*Barcelona Deep Tech Fund*" investment programme.

Through the Barcelona Deep Tech Fund investment programme, Barcelona City Council will therefore allocate 10 million euros (the "**Total Investment**") to finance start-ups that focus on the development of Deep Tech, with applications in various sectors such as mobility, energy, health, industry, creative industries and the blue economy (the "**Target Companies**").

TERMS AND CONDITIONS

1. AIM

The aim of these terms and conditions (the "**Terms and Conditions**") is to establish the criteria and conditions that govern municipal investment in VCEs and to define the requirements that VCEs and their Management Companies must meet in order to be selected in this *Call for Proposals* and contribute to attracting investment in Barcelona and focus on the Deep Tech ecosystem.

2. PURPOSE

The purpose of the *Barcelona Deep Tech Fund* investment programme is to support start-ups in the Barcelona area that are a driving force for innovation in the local productive fabric, magnets for attracting creative talent and foreign investment, and a key element in positioning the city's brand on a

global scale. In particular, the aim is to contribute to attracting investment to Barcelona with a focus on the Deep Tech sector, as will be further defined below.

In order to achieve this goal, Barcelona City Council will invest a maximum of 10 million euros in those VCEs that comply with the conditions and criteria defined in these terms and conditions on a non-competitive basis, i.e. the nominees will not compete with each other, but in the event that they comply with the terms and conditions and as long as the amount of the Total Investment is not allocated, the VCE in question will be accepted, and the City Council of Barcelona will invest the agreed amount. In the event that there are more VCEs selected that exceed the Total Investment to be made by Barcelona City Council, Barcelona City Council will select the VCEs in order of receipt of their applications.

The Management Companies and/or the VCEs (if they are self-managed) may apply, once or several times, in accordance with the Terms and Conditions until 31 December 2023 from the date of publication in the Official Gazette of the Province of Barcelona, the Official Gazette and the Barcelona City Council website, provided that the total investment by Barcelona City Council has not been allocated.

3. LEGAL FRAMEWORK OF REFERENCE

- a) Act 22/2014, of 12 November, governing venture capital entities, other closed-end collective investment entities and management companies of closed-end collective investment entities, and amending Act 35/2003, of 4 November, on Collective Investment Institutions.
- b) Regulation (UE) no 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds.
- c) Legislative Decree 2/2003 of 28 April, approving the consolidated text of the Municipal and Local Government Act of Catalonia (Article 206).
- d) Decree 336/1988, of 17 October 1988, approving the Regulations on the assets of local entities in Catalonia (article 30).
- e) Act 22/1998, of 30 December, on the Barcelona Municipal Charter.

4. CHARACTERISTICS OF THE MANAGEMENT COMPANIES AND VCEs THAT CAN PARTICIPATE IN THIS CALL FOR PROPOSALS.

4.1. CHARACTERISTICS OF THE MANAGEMENT COMPANIES:

In order to be selected within the framework of this Call for proposals, the Management Companies must meet the following minimum requirements and characteristics:

- **Private capital** Except in the case of self-managed VCEs, only management companies with 100% privately owned capital will be eligible (no direct or indirect public participation is allowed).
- **Authorised Entities and registered office:** management companies, registered in Spain or in a Member State, in accordance with Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Management Companies and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010, which are duly authorised and registered by the competent authorities, in accordance with the applicable regulations.

- **Experience:** at least one (1) member of the current investment team (partner/director) must have been a member of the investment team of a venture capital fund or company (or similar) during the entire investment period of the venture capital fund or company and have demonstrated experience in investing in companies in the sectoral area described (Deep Tech).
- **Minimum commitment of the management companies:** at least 1% of the total amount of the fund or a minimum of 250,000 euros (if the business volume of the VCE exceeds 25,000,000 euros).
- **Management fee:** the terms and conditions must be the customary market terms and conditions for the management of this type of entity. Management fees may not exceed 2.5% per annum over the investment period or the capital invested during the divestment period.
- **Sponsorship or reference letter:** the Management Companies must have been "sponsored" or referred by an entity or person from the VCE ecosystem or from a Target Company in the Barcelona Metropolitan Area (e.g.: another Management Company, a benchmark investor, a marketer, a law firm, etc.).

4.2. CHARACTERISTICS OF THE VCEs:

In order to be selected within the framework of this Call for proposals, the VCEs must meet the following minimum requirements and characteristics:

- **Legal status:** The City Council will be able to invest in:
 - VCEs subject to Act 22/2014, of 12 November, governing venture capital entities, other closed-type collective investment entities and management companies of closed-type collective investment entities, amending Act 35/2003 of 4 November 2003 on Collective Investment Institutions ("LECR"), established as regulated entities, authorised by the CNMV; or
 - European Venture Capital Funds ("EVCF") regulated in Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds (the "European Regulation"); or
 - VCEs established in other member states of the European Union, managed by management companies authorised in a member state, in accordance with Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Management Companies and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010.
- **Authorisations:** To be eligible for selection, VCEs must be registered and/or authorised (in the case of self-managed VCEs) with the CNMV or, in the case of VCEs incorporated in other EU Member States, registered and/or authorised by the competent authorities of their State.
- **Registered Office:** the registered office of the VCE and of the Management Company may be located anywhere in the European Union, provided it complies with the "Legal Status" section.
- **Private origin of the funds:** The capital of the VCEs must be mostly private, taking into account the public participation of Barcelona City Council and the established limits. In the case of participation in the fund by institutions, companies or public bodies at regional or local level, the combined participation of these and that of Barcelona City Council may not exceed 50% of the VCE.

- **Existing commitments:** at the time of presentation of the information for the declaration of interest, the VCEs must have at their disposal firm and binding committed private capital equivalent to 50% of the planned objective or measure:
 - Portfolio contributions and other non-monetary contributions will not be considered valid commitments.
 - The commitment of the Management Company and/or the management team will be considered as valid and will be taken into account.
 - The investment commitments must:
 - (i) be totally independent from the management team and from each other, and
 - (ii) not be linked to the Management Company through shareholdings.
- **Geographic and sectoral investment policy of the VCEs. Multiplier:** at least x2 (the "**Multiplier**") the amount invested by Barcelona City Council in VCEs must be invested in Target Companies that meet the following cumulative requirements:

A) Geographic: Companies based in the Barcelona Metropolitan Area. Their fiscal and operational headquarters will be considered in order to determine whether they are located in the Barcelona Metropolitan Area (i.e. excluding those that have a mere holding activity if their main operational headquarters are not located in the Barcelona Metropolitan Area and those that have their fiscal headquarters in another territory). However, it will also include those Target Companies that do not meet these criteria but which can demonstrate that the destination of the investment received will be in the Barcelona Metropolitan Area.

B) Sector-based: Target Companies whose purpose and/or activity can be considered as part of the Deep Tech sector.

Deep-Tech will be understood as emerging technology clusters based on scientific discoveries or disruptive innovations, which offer a substantial advance over established technologies and which seek to address some of the fundamental challenges of the world and/or which seek to generate positive social and economic impacts, which (i) tend to have (though not necessarily) their roots in the academic world and are financed by public subsidies (ii) tend to require (though not necessarily) ample time for their development, (iii) tend to require (though not necessarily) exhaustive testing and periodic reviews, and (iv) the fields of application of which may be diverse, including, but not limited to, sectors such as mobility, health, industry, the creative industries or the blue economy, and which have a maximum development maturity status similar to TRL7 (without prejudice to the possibility of exceptionally exceeding this TRL if there are other factors that may warrant the investment).

By way of example, but not limited to, the above definition of Deep Tech could include a wide range of technologies such as artificial intelligence, the internet of things, mass data processing technologies, cloud computing, blockchain, natural language processing, cybersecurity, biometrics and digital identity,

green algorithms or deep learning.

- **Financial instruments:** VCEs with a strategy of investing through capital, debt convertible into capital, similar or analogue capital instruments (warrants and similar) or quasi-capital instruments, in line with the criteria of the CNMV or the competent authority for VCEs for the calculation of mandatory investment ratios.

For the purposes of calculating the Multiplier, only investments made as capital will be taken into account (secondary operations will not be considered in this section, nor will the concession of mere debt for the Target Company (except for venture debt instruments, which will be admitted provided that they incorporate a mechanism of participation or right of participation, (e.g., warrants) in the capital).

- **Size of target companies:** For the purposes of calculating the multiplier, only investments directed at Target Companies that meet the conditions to be considered small and medium-sized enterprises (SMEs), including micro-enterprises, in accordance with the definition of Commission Recommendation 2003/361/EC (OJ L 124, 20.5.2003, p. 36) with a high growth potential in the start-up phase, will be considered.
- **Destination of the investment in new investments:** in the event that the VCEs have made a previous investment at the time of formalising the contractual documentation with Barcelona City Council, this will not be taken into account in the Multiplier. The funds contributed by Barcelona City Council will be used for new investments, which may include disbursements of existing investment commitments in Target Companies, but these are not to be included in the Multiplier. As an exception to the above, all additional investments made in those VCEs in which Barcelona City Council has already invested in the past will count towards the Multiplier.
- **Sectors excluded:** inclusion in the VCE's legal documentation of an express prohibition on making direct or indirect investments in companies whose activities are related to:
 - illegal activities,
 - production or trade activities involving tobacco or distilled beverage activities,
 - production or trade in arms and/or ammunition,
 - casinos and gambling activities,
 - activities in the IT sector specifically aimed at
 - any of the excluded sectors,
 - pornography,
 - facilitating unlawful electronic access to or downloading of data,
 - the development and/or execution of projects where the result limits the individual rights of persons or violates human rights,
 - the development and/or execution of projects that harm the environment or are socially inadequate, (viii) ethically or morally controversial projects.

5. CONDITIONS FOR THE PARTICIPATION OF BARCELONA CITY COUNCIL IN VCEs

In order to be selected within the framework of this Call for Proposals, the Management Companies must accept: the following basic conditions that will be included in the letters of commitment, investment contracts and/or side letters, with the appropriate adaptations. The presentation of the Declaration of Interest by a Management Company within the framework of this Call for proposals will automatically

imply the acceptance of these conditions. The effectiveness of the approved commitments will be subject to the following conditions:

- **Basic conditions:**
 - (i) the signing of the agreements/contracts to formalise the municipal investment must be carried out within a maximum of 3 months counting from the date of the municipal approval by the Government Commission
 - (ii) and the commitments formalised through the agreements/contracts must not be less in amount than those presented as firm commitments in the documentation included in the Call for Proposals.
 - (iii) Barcelona City Council has been able to verify that the documents of the selected VCE (i.e. management regulations or by-laws, as the case may be), correctly implement the terms and conditions agreed with Barcelona City Council.
- **Capital calls:** The selected candidates will have to issue the disbursement and distribution requests following a format that will be detailed in each investment contract in the selected VCEs (or side letters). The period between the capital call and the effective date of disbursement may not be less than 45 days. Barcelona City Council is entitled to charge, as a maximum, the interest rates for late payment set by the annual State Budget Law in the event of a delay in the disbursement commitment.
- **Right of representation and participation:** the right of Barcelona City Council to participate in the representative bodies of the VCEs (board of members or participants and, if necessary, higher bodies such as the Advisory Board, supervisory committee or similar) of the VCEs will be defined in each investment contract in the selected VCEs, subject to the provisions of the VCE's constituent documents.
- **Right to information:** in addition to the rights to information recognised by law, Barcelona City Council will have the following rights:
 - Management Companies must issue quarterly VCE reports in a defined format within 45 calendar days counting from the date of the end of the quarter. In the last week of each calendar quarter, they must submit an estimate of disbursements/rebursements for the following quarter.
 - The Management Companies must submit the annual audit report and annual accounts of the VCE within a maximum period of 6 months from the closing date of the financial year to which they refer.
- **Most Favoured Nation ("MFN"):** all the documentation relating to the side letters or individual agreements signed by the Management Company or the VCE with any of the participants or members of the VRE will be provided to Barcelona City Council. Barcelona City Council is also guaranteed the right to receive all the benefits provided for in any side letter or individual agreement signed by the management company or the VCE with any of the participants or members of the VCE, provided that Barcelona City Council complies with the conditions or requirements established by the VCE in order to have access to equal rights. To this end, individual agreements with participants shall not be formalised except in writing.

- **Pari passu principle:** the terms and conditions for investment in the VCE must be the same for all participants or members.
- **Publicity:** The Management Companies must include the logo of Barcelona City Council in a visible place on their own website, with a link to the website, as well as any slogans, logos and emblems established between the parties in the subscription prospectus or investment agreement. In addition, the VCE's investees must comply with the reporting obligation by including this information in the corresponding contractual documentation formalised with the Target Companies and/or in letters annexed to it. Every effort will also be made to include this information in any press releases that are issued or in interviews or mentions in the media.
- **Penalties:** Penalty clauses will be detailed in each investment contract in the selected VCEs, which will refer to different circumstances, such as:
 - (i) if after the life of the fund the Management Company has not fulfilled the x2 investment commitment to Target Companies in Barcelona,
 - (ii) if the investment commitments turn out to be lower than those presented as firm,
 - (iii) if the management companies do not send the reports they are obliged to send,
 - (iv) non-compliance with the custody mechanism after 31 December 2026,
 - (v) any other breach of the conditions agreed with Barcelona City Council.

In the event of any breach of the conditions set out in sections i) to iv) above, Barcelona City Council may withdraw all the investment commitments not disbursed (or, in the event that the custody mechanism provided for in the Terms and Conditions is applied, it may request the return of the total amount in custody), or reduce the investment commitments, with the consequent release from the obligation to disburse. Furthermore, Barcelona City Council will be entitled to:

- a) Receive compensation consisting of 100% of the amount of the fees received by the Management Company in relation to the investment commitment of Barcelona City Council, and/or
- b) Not meet the disbursement obligations until they have fully complied with the corresponding obligation. Furthermore, Barcelona City Council will not apply any interest as a penalty for delay in this case nor will it consider the party to be in default, and/or
- c) Require the Management Company, which is obliged to make its best efforts, to facilitate Barcelona City Council's withdrawal from the VCE at market price.

The above penalties will be applied without prejudice to the right of Barcelona City Council to bring any actions that may assist it in claiming the appropriate compensation for losses and damages.

- **Right of disposition:** the right to dispose of the stake in the VCEs (individually considered) if the investment of the VCEs in question in a portfolio company or any other activity related to the investment could lead, under a reasonable and well-justified assessment, to a reputational risk for Barcelona City Council and, in particular, in the event of an irremediable failure to comply with the investment strategy.

6. OTHER CHARACTERISTICS AND CRITERIA OF MUNICIPAL INVESTMENT

- **Term of the investment:** The term of the VCE will be 10 years, with the possibility of a 2-year extension (in accordance with the terms of the VCE and in accordance with the prevailing legislation). The maximum period of disbursement by Barcelona City Council during the investment period will be limited to 4 years from the signing of the management regulation or operating agreement or other binding document of the VCE. In the event that part of the investments are made after the 4th year, the remaining investment commitment of Barcelona City Council (not disbursed) will be void, unless the Management Company provides custody instruments (i.e.: escrow account to deposit the commitments not disbursed by the City Council at that date).
- **Volume or size of the VCE:** restriction on the participation of Barcelona City Council in accordance with the total size of the VCE, firstly by establishing a maximum percentage of 10%, which may not be exceeded, and secondly by establishing a criterion whereby Barcelona City Council may not be the main shareholder or participant (not the main investor).
- **Tickets:** The investment to be made by Barcelona City Council in each VCE will be determined as follows:
 - Ticket of €500,000 for VCEs with firm and binding total investment commitments of at least €5,000,000,
 - Ticket of €500,000 or €1,000,000 for VCEs with firm and binding total investment commitments of between at least €10,000,000 and €15,000,000, and
 - Ticket of €500,000, €1,000,000 or €1,500,000 for VCEs with firm and binding total investment commitments of at least €15,000,000.

7. PROCEDURE FOR THE PRESENTATION OF DECLARATIONS OF INTEREST: TERMS AND FORM

The Declarations of Interest of the Management Companies that wish to participate in this Measure must be sent, together with the documentation indicated in point 9 of these Terms and Conditions, to the City Council through the Municipal Electronic Register. Further information, applications and forms are available on the website barcelonactiva.cat/capitalrisc. If you have any queries, please contact us by e-mail at ecr@barcelonactiva.cat.

Signing and registering the Declaration of Interest will imply acceptance of the Terms and Conditions.

The deadline for requesting Declarations of Interest is 31 December 2023 from the day after the publication of the terms and conditions in the BOPB (Official Gazette of the Province of Barcelona).

In the event that the interested parties have not submitted the documents as indicated in the terms and conditions, they will be required to submit them by e-mail in order to rectify any deficiencies detected or to attach the required documentation, with a warning of withdrawal in the event of failure to comply with the requirement, in accordance with the provisions of article 68 of Law 39/2015 of 1 October on common administrative procedure of the Public Administrations. For VCEs that provide documentation in a language other than Spanish or Catalan, the documentation provided must be translated by a certified translator into Spanish or Catalan.

Resolutions will be communicated each time they are adopted to the entities that have submitted declarations of interest and published on Barcelona City Council's website in the manner provided for in Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

The resolutions shall bring the administrative procedure to an end. The interested parties may lodge an appeal for reconsideration within a period of one month, or a judicial review or any other appeal they consider appropriate in the defence of their interests.

Nevertheless, the acts relating to the execution, effects and termination of the various investment contracts entered into with the selected VCEs will remain subject to private law and to the jurisdiction of the civil or commercial courts.

8. CALENDAR

- i. Once approved by the Barcelona City Council Government Commission, the preliminary approval of the investment will be communicated to those selected.
- ii. Those selected must comply with the formalities established in the terms and conditions of the call for proposals for this phase of the selection process and submit themselves to the verification processes deemed necessary or appropriate by Barcelona City Council.
- iii. A maximum period of 3 months, from the notification of the approval, is available in which to formalise the agreements/contracts and additionally, if necessary or appropriate and at the discretion of Barcelona City Council, the Management Company must first amend the regulations of the VCE, or the operating agreement or statutes, to the satisfaction of Barcelona City Council, so that their content is consistent with the terms and conditions of the call for proposals.
- iv. The investment commitment will be formalised with each of those selected who have satisfactorily passed the verification processes by signing the subscription agreement, investment contract or letter of adherence to the ECR, as well as the proposed side letter.
- v. Once the aforementioned documents have been signed, Barcelona City Council may be required to formalise the disbursement corresponding to the first instalment in accordance with the terms and conditions of the call, acquiring the full status of participant or shareholder of the VCE and becoming part of its activity in its role as such.

9. DOCUMENTATION TO BE SUBMITTED IN THE CALL FOR PROPOSALS

All Management Companies wishing to participate in this Call for proposals must present the following documentation at the time of application:

1. **Application form for adhesion to the Declaration of Interest**
2. **Side Letter template**
3. **Letter of reference or sponsorship**
4. **Additional documentation**

9.1. Documentation relating to the Management Company:

- a) Authorisation from the entity to act as a Management Company in accordance with the Law (authorisation and registration with the CNMV or the competent national authority if it is a foreign VCE).
- b) Deed of incorporation of the Management Company, which contains the company's articles of association.
- c) Information on the identity of the partners or members of the Management Company, as well as the administrative and management bodies of the Management Company.
- d) Documentation that justifies the fulfilment of the basic requirements (e.g. curriculum vitae of the Management Company team with sufficient details of their experience, evidence of the Management Company team's commitments, etc.), duly signed.

9.2. Documentation related to the VCE:

- a) Documents constituting the VCE duly authorised and/or registered by the competent authorities (e.g.: CNMV),
- b) Equity or capital of the VCE at the time of its constitution and at the present time,
- c) Management regulations or statutes and, if applicable, the Operating Agreement of the VCE,
- d) Documentation relating to the side letters or individual agreements signed by the Management Company or the VCE with any of the participants or partners of the VCE,
- e) Information brochure of the VCE,
- f) Documentation relating to the geographical and sectoral investment policy (e.g. Executive Summary, Investor Deck, etc.).
- g) Proposed standard-form contract for the VCE.