

SCIF TERM SHEETS: TERMS TO NEGOTIATE

ATTACHMENT TO PART 1: SIMMONDS STEWART TEMPLATE MARK-UP

MARK-UP OF THE TERM SHEET

Set out below is the SCIF Term Sheet for ordinary shares (as at 23 December 2015), marked-up to show Simmonds Stewart's suggested amendments and brief comments.

Our comments are based on the *term sheet for ordinary shares* available on the NZVIF website on 23 December 2015. Our comments are set out in column 3. To be clear, the footnotes are explanatory notes to the Term Sheet provided by NZVIF – they are not our comments.

We don't use formal term sheets at Punakaiki Fund

TERM SHEET
FOR ISSUE OF ORDINARY SHARES BY
[] LIMITED
(Company)

We generally exchange terms over email or calls, which we can do as our terms are very very simple.

General notes: This term sheet applies if the investment is in ordinary shares. Refer to alternative term sheets if preferred terms required or if the investment is structured as a loan convertible to equity. The more optional provisions appear in italics and instructions appear in bold italics. Refer to footnotes at the bottom of each page for comments on some of the optional provisions.

This document (**Term Sheet**) summarises the principal terms of a proposed investment in the Company (**Investment**). This Term Sheet is not legally binding except for the terms stated in part B of this Term Sheet and there will be no obligation to issue or subscribe for shares in the Company until a binding investment agreement (**Investment Agreement**) is signed by the parties.

We refer companies to law firms like Simmonds Stewart who have a track record of using simple, founder-centric contracts.

PART A: INVESTMENT TERMS (non-binding)

<i>SCIF Term Sheet provision</i>	<i>SCIF Term Sheet provision</i>	<i>Our comments</i>
Business:	The [<i>proposed</i>] business of the Company relating to [<i>describe</i>	

We tell founders it is their job is to instruct their lawyers - who need good clients to write great contracts.
Tell lawyers what you want, keep it simple and don't iterate too much.

SCIF Term Sheet provision	SCIF Term Sheet provision	Our comments
	business] (Business).	
Investment Amount:	[Up to ¹] \$[] [(subject to achievement of milestones)] (Investment Amount).	If possible, avoid the Investment Amount being paid against milestones. Early stage companies rarely develop according to plan, and milestones that make sense today are quite likely to become less relevant or in some cases even pointless as circumstances change over time. Worst case scenario is that you are faced with a choice of pursuing milestones that no longer make commercial sense, or to go cap in hand to your investors seeking a waiver of a milestone. It is not uncommon in the latter scenario for investors to require concessions from the company in return for a milestone waiver, e.g. a reduction of the pre-money valuation for this investment tranche. Agree with SS. We do not do investments that are conditional on actions of the company, but we have made investments where a 2nd tranche is conditional on us raising a certain amount by a certain date. These conditions were all easily fulfilled and the funds paid.
[Minimum Available Investment:	[The minimum amount available for investment by the Investors must be \$[] ²	
Investors:	[Insert name(s) of Investor(s)] or [The persons identified in Appendix 2 [and other members of the [] investment syndicate who agree to participate in the Investment] ³] [and NZVIF Investments Limited (NZVIF)] (Investors).	
Key People:	[Insert names of founder(s)/key people] (Key People)⁴.	It is important to limit the "Key People" to the founders of the company who are material to the future success of the company. For example, the "Key People" are prevented from selling shares for a potentially lengthy period under the "key people escrow" provisions below. We do not name key people, lock up founder shares etc. Founders should have significant shareholding so motivations are aligned.

¹ Words "up to" generally apply if investment is tranching and milestones or conditions apply for subsequent payments.

² Applicable if investment is by a syndicate and either, indicative commitments are yet to be received for the full Investment Amount or there is potential for some Investors to withdraw while others proceed (eg if they are not happy with the outcome of due diligence etc).

³ Applicable for a syndicate investment where all of the participants are yet to be confirmed.

⁴ The term "Founders" is more common than "Key People", but latter term may be more accurate in indicating the people and who are important who may not be limited to the original founders of the Company (see later provisions relating to conditions precedent and restrictions on share transfers).

<i>SCIF Term Sheet provision</i>	<i>SCIF Term Sheet provision</i>	<i>Our comments</i>
Pre-money valuation:	The investment is based on a pre-financing valuation of \$[].	The pre-money valuation is the single most important element of an investment deal. The higher the pre-money valuation, the greater % of the company that is retained by founders. However, there is a trade-off – the higher your pre-money, the more likely it is that your investors will seek preferential terms. Also, setting a high pre-money will limit the pool of investors your company appeals to, both in this round and if you subsequently need to raise more capital. The latter can cause serious problems if you are running out of cash. We therefore encourage companies to set their valuations at a reasonable level, in return for which we think it is reasonable for companies to offer a lower level of down-side risk protection.
Type of Shares:	Ordinary shares (Shares).	
Issue Price:	\$[] per Share.	We like founders to sell 10-20% each round, with the lower numbers for those companies that are the very best performers.
Number of Shares:	[Up to] [].	
Capital Structure:	The capitalisation of the Company immediately prior to investment and after investment of the Investment Amount will be as set out in the table in Appendix 1 (Capitalisation Table).	
Conditions Precedent: (for Investors' benefit)	<ul style="list-style-type: none"> Due diligence being completed to the satisfaction of the Investors. Agreement to a business plan which comprises an agreed budget (Agreed Business Plan). [Agreement on milestones which must be achieved for disbursement of post Completion Date tranches of the Investment Amount (Milestones)]. Final approval of each Investor's [board] [or] 	We like companies to raise just enough to get back to cash-flow positive, which also makes sure they can get a good next-round valuation.

We agree it is good practice to have before and after cap-tables to avoid confusion.

We don't sign any contracts until the DD is done and we all approve.

We see that these sorts of clauses in a contract mean the contract is not actually done, and they can cause incredible complexity and pain to write and manage.

See above comments relating to milestones. If your preferred investors insist on milestones, make sure these are (a) realistic and achievable and (b) of sufficient relevance to your core business proposition that they will continue to be relevant, even if your business plan

Avoid milestones.

We make sure that any of these issues are resolved before contract is signed. They are not in the contract itself.

<i>SCIF Term Sheet provision</i>	<i>SCIF Term Sheet provision</i>	<i>Our comments</i>
	<i>[Investment Committee]</i> (as applicable).	changes over time
	<ul style="list-style-type: none">• Completion of the Investment Agreement and all existing holders of shares or options in the Company agreeing it supersedes any existing agreements between them.• Capitalisation of all outstanding loans [<i>other than the loan(s) of \$ from []</i>] and that capitalisation resulting in the pre-investment capitalisation shown in the Capitalisation Table.• Completion of employment or contractor agreements(s) with the [<i>Key People</i>][<i>or</i>][] and [] on terms acceptable to the Investors (and which include suitable non compete covenants).• All relevant officers, consultants and contractors (including all Key People) assigning (in a form acceptable to the Investors) all intellectual property linked to the Business or proposed future business.• Agreement on the identity of [<i>insert number</i>] [<i>an</i>] [<i>independent director[s]</i>] [<i>and</i>] [<i>a chairman</i>].• Agreement on the parameters of an employee share option plan for the key officers, employees and contractors of the Company (including the Key People) to purchase up to [%] of the Company's post money capital (ESOP).• Evidence that any third party consents or other authorisations required to complete the investment have been obtained.	<p>We have asked founders to clean up balance sheets. Don't sign until it is done.</p> <p>We see founder salaries is a board issue. Trust the board to do the right thing.</p> <p>IP clauses are more important in some businesses than others. Over time these clauses creep into every contract, but in earlier stages poor clauses create major complexity.</p> <p>If the founders desire then offer a director (generally me), or agree on an independent or accept nothing for very early stage but experienced founders. We advise founders to keep control of their board membership, and churn as required for each stage. We will leave directorships if asked.</p> <p>We see that the best time to allocate shares to ESOPs is during a round. 10% is common, but leave it at allocation - the details can come later. If it's the very first round then make sure all founders have their fair allocation first.</p>

We see that parties should not sign a contract until they are authorised. It's a contract!

SCIF Term Sheet provision

SCIF Term Sheet provision

Our comments

Anticipated Completion Date: • ~~[Insert any other specific conditions precedent⁵].~~
~~[Insert date] or [5] Business Days after satisfaction of all conditions precedent in the Investment Agreement (actual settlement date being referred to as **Completion Date**).~~

We typically sign and send the money on the same day. Later rounds with lots of (especially offshore) investors often have this clause, but otherwise there is no need.

Disbursement of Investment Amount: The Investment Amount will be subscribed for Shares ~~[in one sum on the Completion Date] [or] [in the instalments as specified in the Agreed Business Plan (and applied solely to expenditure as specified in the Agreed Business Plan or otherwise approved by the Investors)] [or] [as follows:~~

See above comments relating to milestones.

~~\$ [] on the Completion Date;~~

~~\$ [] when [insert Milestone etc]]~~

~~[provided each instalment will be at the Investors' option if a Milestone due by the relevant date has not been achieved⁶.~~

We don't tell companies how to spend the money in any contract. That's between the board and the company, and we trust the founders.

Anti-dilution⁷: ~~[NarrowBroad-based weighted average]: The number of Shares held by the Investors will be increased (by the issue of further shares at nominal consideration to the Investors) on a narrowbroad-based weighted average basis if any new shares are issued [in the two[X] years after Completion] at a price less than the issue price for the Shares [other than pursuant to an approved ESOP or pro-rata rights issue]~~

Anti-dilution clauses are intended to protect investors from subsequent share issues at a lower price than they paid. We think this protection is reasonable but should not apply to rights issues as investors are able to protect their investment by participating in the rights issue and taking advantage of any discount offered (sometimes referred to as "pay to play"). Excluding rights issues from the anti-dilution provisions is also an important mechanism for encouraging investors to participate in future rights issues, an important consideration as rights issues are typically

~~[Full ratchet]: The number of Shares held by the Investors will be increased (by the issue of further shares at nominal~~

We have signed with anti-dilutes but do not see them as founder friendly, and do not ask for them in investments we lead.

⁵ Consider other specific conditions precedent which should be specified (eg. members of investment syndicate making commitments equivalent to at least the minimum required investment). However in this respect there is sufficient protection for Investors in the general due diligence condition and the non-binding nature of Term Sheet.

⁶ Of the 3 variables, the latter 2 options which allow for tranching will usually be preferred with third option being most preferred from Investors' perspective as payments are contingent on milestones.

⁷ Anti-dilution protection is standard. Full ratchet and narrow based weighted average options are given.

SCIF Term Sheet provision

SCIF Term Sheet provision

Our comments

~~consideration to the Investors) on a full ratchet weighted average basis if any new shares are issued [in the [X] years after Completion] at a price less than the issue price for the Shares [(other than pursuant to an approved ESOP)]~~

undertaken when a company is in critical need of cash from existing shareholders.

The “full ratchet” versus “weighted average” ratchet is a complicated topic, which we discuss in our blog on anti-dilution provisions. We do note that the “weighted average” anti-dilute should be broad-based, as is standard for investments of this type (meaning the anti-dilution formula in the full investment documentation is to account for any unexercised options in the company, in addition to the issued share capital), rather than narrow-based (which accounts for the issued share capital of the company only and therefore increases the number of shares to be issued to the investors on any trigger of the anti-dilution clause).

Board:

~~The Board will initially consist of:~~

~~Chairperson [(no casting vote)]~~

~~Investor Director[s] []~~

~~Other Shareholders' Director[s] []~~

~~[Independent Director[s]] []~~

~~The Board will meet [monthly][bi-monthly][six weekly]~~

~~While the Investor holds at least [15%] of the Shares on issue, the Investor will be entitled to appoint a director to the board of the Company.~~

~~[The Chairman will be paid \$[] per annum/meeting], [any independent directors will be paid \$[] per [annum/meeting] and] [the [Investor] [other] directors will be paid \$[] per~~

If an investor is placing a very large amount (% or \$) then they can have rights to appoint a director (and CEO should have informal veto right too). Investors may or may not be great directors.

Director appointment rights should fall away if the % of the company held by the investor ceases to be material.

We have signed a number of contracts with this clause.

We do talk about the boards before investing. I blame the CEO when things go well and the board when things go wrong, so get the right board for the right stages and churn churn churn.

<i>SCIF Term Sheet provision</i>	<i>SCIF Term Sheet provision</i>	<i>Our comments</i>
Protective Provisions:	<p>[<i>annum/meeting</i>]⁸ [<i>but otherwise attendance at Board meetings will not be remunerated</i>].</p> <p>[<i>or</i>]</p> <p>[<i>No Directors' fees will be paid [until at least [insert number] years after the Completion Date] unless authorised by a special resolution of Shareholders (75%);</i>]</p> <p>[<i>For a period of two years following Completion,]</i> Prior approval of the Investor Director(s) is required for any of the following in relation to the Company:</p> <ul style="list-style-type: none"> • [<i>For a period of two years following Completion</i>] issues of Shares (including any IPO), options or any instruments convertible to equity (other than issues already contemplated by the Investment Agreement and any pro-rata rights issues)⁹; • any transaction or arrangement likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities not specifically identified in the Agreed Business Plan, the value of which is greater than \$[10,000]; 	<p>From the Company's point of view, minority rights of veto over the conduct of the business potentially limit the commercial freedom of the company and in a worst case scenario could allow a minority to "greenmail" the majority. Consider asking for the protective provisions to apply for a fixed period, on the basis that these provisions are reasonable while the company is expending investor funds, but would ideally then drop away. An alternative approach would be for the rights of veto to cease to apply if the investors' shareholding falls below a stated %.</p> <p>It is critical that the board has the power to raise further capital when required by the company without any party having a unilateral right of veto, since the growth company model almost always involves future funding rounds. Investors do not need a right of veto if the term sheet provides for pre-emptive rights on new share issues, and anti-dilutes.</p>

NZ law and company constitutions provide excellent protection to investors. Everything else is for the board and CEO, not the investors to decide or control.

⁸ Usually the only directors fees will be (at most) a modest meeting fee to be paid to the Investor directors only.

⁹ May not be required in all situations i.e. where the Investors have a right of refusal in respect of 100% of shares issued and anti-dilution protection. Time limiting the veto right is also included as a negotiable option.

<i>SCIF Term Sheet provision</i>	<i>SCIF Term Sheet provision</i>	<i>Our comments</i>
	<ul style="list-style-type: none"> approval of subsequent budgets and Business Plans or any material amendments to or departures from the Agreed Business Plan, <u>approval not to be unreasonably withheld</u>; any borrowings, guarantees, indemnities or other contingent commitments, <u>the value of which is greater than \$10,000</u>; any change to accounting policies [<i>or the auditor</i>]; any change to Director appointment rights; or appointment or removal of the CEO, CFO or any other Key Person <u>or any other employee</u>, <u>approval not to be unreasonably withheld</u>; or [determining the fair market value of shares being bought back from a Key Person that is a bad leaver]¹⁰ <p>Prior approval of a special resolution of Shareholders (75%) is required for the following:</p> <ul style="list-style-type: none"> any Major Transaction or transaction involving the disposal of a material proportion of the Company's assets; any significant change in the nature of the Company's business (whether by acquisition or otherwise) any transaction between the Company and any holder of securities, Director, officer or employee of the 	<p>The adoption of budgets and business plans of the company are important operational matters for the business which affect all shareholders. Investors should be required to act reasonably in respect of any such decision.</p> <p>NZ law and company constitutions provide excellent protection to investors. Everything else is for the board and CEO, not the investors to decide or control.</p> <p>If investors do not like the board then they can choose not to invest.</p> <p>The appointments of senior employees are important operational matters for the business which affect all shareholders. Investors should be required to act reasonably in respect of any such decision.</p> <p>We would not invest in a company where shareholders have these controls over staff. It's for the board.</p> <p>This is enshrined in NZ law. No need to contract, but is often in shareholders agreements.</p> <p>We leave to the board and NZ law.</p>

¹⁰ Delete if Key People Vesting provisions are not included in the Term Sheet.

Notwithstanding the above, we see that smart founders keep all shareholders, especially the big ones, very well informed about these sorts of major issues, and often will get informal buy-in before proceeding.

The size of the investment (\$,%) gives different investors different formal and informal rights.

<i>SCIF Term Sheet provision</i>	<i>SCIF Term Sheet provision</i>	<i>Our comments</i>
	Company or any Associate of any of them, unless that transaction has been approved by a unanimous resolution of the Board (including at least one Director who is not interested in the transaction).	At PFL we do need numbers to do reporting to IRD & auditors and consolidated reporting to shareholders. We generally don't write this into the contract and the founders have been very generous. We respect the NDAs in each contract and ask if unsure.
Financial Statements, Reporting:	Unaudited [<i>monthly and</i>] quarterly statements and [<i>un</i>]audited annual accounts, accompanied by reports covering all material aspects of the Company's progress [<i>in the case of the quarterly and annual statements</i>].	
NZVIF Specific Clauses¹¹	If NZVIF is an Investor the provisions set out in Appendix 3 will apply.	Sharing read-only Xero access is quite common and very reassuring. I have access to 35 or so entities.
Pre-emptive rights and Drag and Tag along¹²:	<p>In addition to usual pre-emptive rights:</p> <ul style="list-style-type: none"> tag along rights will apply where Shareholder(s) wish to sell more than [5020%] of the Shares in the Company to a third party and as between the investors for any sale of investor Shares (so that the Shareholder(s) wishing to sell must procure the buyer to make a binding offer to other Shareholders who wish to sell on the same terms, on a pro rata basis if the buyer does not wish to buy all of the available Shares); and drag along rights will apply where Shareholder(s) wish to sell more than [7560%] of the Shares [including a majority of the investors' Shares] [or if the investors wish to sell all of their Shares]¹³; to a third party (so that the Shareholders selling their Shares may require the other Shareholders to sell all of their Shares on the 	<p>It is critically important to delete the text we have struck out in respect of the drag along rights otherwise:</p> <ul style="list-style-type: none"> ▲ the investors cannot be dragged without their agreement ▲ the investors (on their own) can drag the other shareholders and force them to sell their shares in the company without their consent. <p>We agree - normally ~75% for both</p> <p>The higher thresholds recommended in our mark-up are more usual than those proposed by NZVIF. You will need to consider the thresholds that are appropriate to your shareholding structure, however bear in mind the following:</p> <ul style="list-style-type: none"> ▲ the drag along provision is much more important than the tag along ▲ 75% is the logical starting point for a drag along, because 75% is the approval threshold under the Companies Act for major transactions of the company (i.e. 75% of shareholders can approve

¹¹ Delete this section if NZVIF is not an Investor.
¹² Needs to be considered on a case by case basis. Depends on the relative shareholdings of founders, Investors and other individual shareholdings.
¹³ ~~The investors may require this protection against being "dragged" by other shareholders. Consider if the investors should have the right to "drag" other shareholders for desired exit, irrespective of their percentage shareholding.~~

<i>SCIF Term Sheet provision</i>	<i>SCIF Term Sheet provision</i>	<i>Our comments</i>
	same terms).	<p>the sale of the business of the company)</p> <ul style="list-style-type: none"> ▲ founders will generally want to set the drag along threshold high enough so that they can't be compelled to sell their shares until they are ready to do so ▲ however, bear in mind that when founders want to sell the company, if you have set the drag along threshold too high, you may not be able to compel a minority to sell.
<p>[Key People Escrow]</p>	<p>[Except with the consent of the Investor Director(s) the Key People are not permitted to dispose of any Shares for a period of [3] years from Completion Date, with the exception of:</p> <ul style="list-style-type: none"> • a sale in an IPO; • a sale where a drag along right applies; or • any other transaction approved by the Investors; • any transaction where the Investors have the opportunity to sell on identical terms; • a transfer to their respective wholly owned and controlled entities or to immediate family; • a disposal that is consented to by Investors holding greater than 50% of the Investor Shares; or • a sale of not more than 25% of the Shares held by a Key Person.] <p>[These rights will [also][not] apply to transfers of the beneficial ownership of Shares between members of [insert name of syndicate] investment syndicate which will be held by [insert name of trustee] as bare trustee.]</p>	<p>When leading we invest in ordinary shares only. Sometimes we use preference shares, generally when they already exist.</p> <p>We would not ever want to constrain the founders shares in any way as we see these clauses change the class of shares founders own which is unfair and puts investors first. We would not sign a contract like this.</p>
<p>[Key People Vesting]:</p>	<p>The shares held by the Key People will be subject to the following provisions:</p> <ul style="list-style-type: none"> • [50% of the Key Peoples' shares to vest over a [insert] 	<p>Founder vesting is common with Silicon Valley start ups and is becoming more popular in New Zealand as co-founders are increasingly meeting through incubators or accelerator programs, rather than longstanding business,</p>

SCIF Term Sheet provision

SCIF Term Sheet provision

Our comments

~~year period¹⁴; and~~
~~the Company will have a right to buy back the shares of any Key Person who is a 'bad leaver' at [50]% of fair market value¹⁵.~~
[drafting note: delete either Key People Escrow or Key People Vesting, as applicable]

professional or social relationships. However, in our view founder vesting arrangements (if any) should ideally be agreed and dealt with separately amongst the co-founders before seeking investment, rather than negotiated with investors. For an example co-founder agreement see Simmonds Stewart's *template co-founder agreements* under the *governance* section of the templates page of our website. If any founder vesting is to be included then the *bad leaver* wording in the final two lines should be removed as a right to buy back all of the shares of a founder is particularly draconian.

Key Man Insurance:

~~The Company will use reasonable endeavours to procure and maintain (for the Company's benefit) and at least once annually review, key man life insurance policies in such amounts and on such terms as the Board determines is prudent, based on advice from a suitably qualified risk adviser, on the lives of [the] ~~or~~ [each of the following] Key People:~~

If the investor requests key man insurance, consider whether this is something the company wishes to have/can afford. Also consider who is to be classified as a *Key Person*. Rather than agreeing this up-front, it may be better addressed by the board once the investment has completed. **We leave this to the board, and agree that it is pointless for very early stage companies**

Warranties:

Without limiting usual warranties for similar investments as will be contained in the Investment Agreement, the Company ~~[and [Key People]¹⁶ [or name warrantors] (in the case of the individual warrantors, to the best of their knowledge and belief [after due and careful enquiry])~~ will warrant that (except as fully and fairly disclosed with sufficient particularity in a disclosure schedule):

Warranties:

- ▲ should be given by the company only, not individuals (other than the founders, if the company is very early stage and has been managed by the founder) and not employees. The effect of individuals giving warranties is that those individuals are personally liable for any breach of those warranties. If an individual is to give any warranties, the liability of that individual should be limited to his or her knowledge and to a specified

- ~~to the best of its knowledge and belief, all intellectual property and other rights necessary to pursue the Business are the full legal, beneficial and~~

¹⁴ This means that if any of the Key People cease to be employed at any time while their shares are "unvested" the Company will have the right to buyback those shares at a nominal price (e.g. total of \$1). Its purpose is to ensure that the Key People remains actively committed to the business for a certain period.

¹⁵ This allows the Company to buyback a Key Person's shares if they commit fraud, an indictable criminal offence, breach of restraint or confidentiality obligations or are otherwise terminated by the Company 'with cause'.

¹⁶ Warranties will generally be given by the Company and founders only, though there may be exceptions where it is appropriate for key employees to give them as well. Needs to be considered on a case-by-case basis.

I agree but worry more about the clauses and the limits. Don't sign anything you are not 100% comfortable with.

SCIF Term Sheet provision	SCIF Term Sheet provision	Our comments
	<p>unencumbered property of the Company;</p> <ul style="list-style-type: none"> the Company has no actual or contingent liabilities not specified in the statement of financial position provided to the Investors and such statement provides a true and fair view of the Company's position; and all other information provided to the Investors is true, accurate and complete in all material respects. <p><u>The liability of the Company for any breach of the warranties is limited to the Investment Amount.</u></p> <p>[The liability of [insert name(s) of individual warrantors] for any breach of the warranties is limited to, in aggregate, \$[50,000]¹⁷].</p>	<p>amount (e.g. \$50,000) (in which case retain the sections highlighted in yellow)</p> <p>▲ the warranty relating to ownership of IP should be limited to the awareness of the company so that the warranty will not be breached if a claim Agree subsequently arises over IP ownership and the company was not aware of it at the time of the investment.</p> <p>In no circumstances should the company be liable under a warranty claim for an amount in excess of the amount received from the investors. Agree</p>
Transaction Fees	<p>Immediately following payments subscription of [each the first tranche of] the investment Amount, the Company will pay to [insert entity] a sum equivalent to [insert number]% (plus GST) of the Investment Amount paid [for such tranche] to [insert entity]. For the avoidance of doubt, the Investment Amount is the amount actually paid to the Company by the Investor for the Shares.</p>	<p>The transaction fee sought by Angel groups is up to 6%, although this percentage can be negotiated down depending on the circumstances. This term provides for the percentage fee to be calculated assuming all tranches are paid. If the investment amount is to be paid in tranches, the transaction fee should only be paid on investment amounts actually paid to the company.</p>
[Other Key Terms:	<p><i>Insert other key terms as required e.g. will Investors have rights relating to further capital raisings?</i></p>	<p>Punakaiki Fund never charges deal fees.</p> <p>We advice that founders ask for the net amount and not pay kick-backs. We advise that they treat each investor as a black box. How each investor arranges their affairs is their own concern.</p> <p>If kickbacks are paid then founders should treat (and talk about) the total investment quantum as the net amount after these kickbacks, investor legal fees (see below) and enforced ongoing payments (e.g. for directors).</p>

¹⁷ A dollar cap is usual if individuals are required to provide warranties alongside the Company.

SCIF Term Sheet provision

SCIF Term Sheet provision

Our comments

PART B: LEGALLY BINDING TERMS

Exclusive Period:

For a period of [3060] days from the date of signing this Term Sheet, (**Exclusivity Period**) none of the Company, its shareholders, directors, officers, contractors or employees will conduct any discussions whatsoever with any third party regarding any investment in the Company, except as may be approved by the Investors in their discretion.

60 days is a long time for an early stage company that needs funds for its business.

We do not see value in exclusive negotiation clauses. They certainly reduce value for the founders as they lose bargaining power.

So we don't sign term sheets - just contracts, and founders can (and should) shop around.

Legal Costs:

~~Following Completion the Company will pay all legal and professional costs incurred by the Investors relating to the Investment Agreement and related documentation [up to a maximum of [\$10,000]] plus GST, whether or not an Investment Agreement is entered into.~~

Ensure these costs are limited to a maximum amount. \$10,000 (plus GST) is common – and are payable only if the investment is completed.

The Company will pay its own legal and professional costs incurred by it in relation to the Investment Agreement and related documentation, ~~which in any event will not exceed \$[insert amount].~~

The legal and professional expenses which may be incurred by the company in negotiating the investment should not be capped.

Confidentiality:

The contents of this Term Sheet, and the fact that one has been issued, may only be disclosed by the Company to its shareholders, directors and advisers or other person(s) approved by the Investors (on a need to know basis).

We never charge companies for our own legal fees, and the company's fees don't need to be discussed in a contract. So the legal fees issue should not be raised at all.

[Investors' Representative:

[] represents [he/she] has authority to bind [insert relevant Investors they represent] in respect of all matters relating to the Investment]]¹⁸.

If the investors insist then as above we treat investors as a black box and ask for the net amount with no come-backs.

If that doesn't work (for a co-investor say) then we would just take the same kickback in % terms and put it back into the fund (not give it to the manager).

We see that making investors pay their own legal fees encourages them to act quickly and keep things simple. The experienced co-investors we deal with generally don't need legal help.

¹⁸ May be applicable for an investor syndicate.