

# Duke Angel Network

TERMS OF MEMBERSHIP

Updated: 1 November 2016

# DUKE ANGEL NETWORK TERMS OF MEMBERSHIP

*This document (this “Membership Agreement”) governs membership in the Duke Angel Network. Please read it and consent to its terms electronically when you submit your membership payment.*

TO ACKNOWLEDGE AND AGREE TO THE TERMS AND CONDITIONS SET FORTH BELOW, CLICK “AGREE.” IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK “AGREE” AND DO NOT USE THE NETWORK.

## 1 DUKE ANGEL NETWORK (“DAN”)

DAN facilitates connections between private companies and potential investors within Duke University’s global community of faculty, staff, alumni, students and friends, and furthers Duke’s mission of enabling Duke-related entrepreneurial undertakings based on innovation and research. Membership in DAN is a privilege; as such it is subject to revocation or termination for any member’s conduct that is inconsistent with this Membership Agreement.

## 2 PURPOSE

2.01 – **Overall Goal:** The purpose of DAN is to provide members with exposure to investment opportunities in private companies with ties to the global Duke community, and to facilitate the active interchange of information and ideas regarding formation, development, mentoring and financial structuring of private companies with connections to Duke.

2.02 – **Association with the Duke Innovation Fund:** DAN is affiliated with the Duke Innovation Fund (“DIF”), which is a university-controlled charitable fund formed for the purpose of co-investing in certain DAN investments and supporting entrepreneurship at Duke. DIF may participate in DAN investments, and in doing so may limit the availability and/or size of investment opportunities for DAN members.

## 3 MEMBER BENEFITS

So long as a member remains in good standing, DAN shall provide:

3.01 – access to an online software platform (the “Platform”) that enables a member to: (i) view investment opportunities in private companies affiliated with the global Duke community, (ii) obtain information and ask questions regarding such investment

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opportunities, (iii) collaborate with other members in evaluating investment opportunities, and (iv) express interest in investment in such opportunities based on a member's independent investment decisions;

3.02 – the ability to express interest in investments facilitated by the Platform; *provided* that, in the event that an investment is oversubscribed, DAN will determine an appropriate process for making allocations on a case-by-case basis;

3.03 – means to communicate and network with other members; and

3.04 – from time to time, invitations to DAN events, which may include opportunities to view company presentations and interact with other members.

## 4 MEMBER APPLICATION & TERMINATION

4.01 – **Types of Members:** Members may be individual investors ("Individual Members,") or a group of investors organized as a separate entity ("Institutional Members"). All members, whether Individual or Institutional, must meet the following requirements listed below.

4.02 – **Affiliation with Duke:** Each member must be affiliated with the global Duke community in some way. Duke affiliations include: an alumnus; a current or former student; a parent of a student or alumnus; a current or former faculty or staff member; a donor; or an employee or an administrator of Duke University. While not all investors of an Institutional Member must be Duke affiliated, each Institutional Member must have one investor or manager from their group who is Duke affiliated. That investor or manager will be the only person from that Institutional Member with access to the Platform, and is required to act as the point of contact between the Institutional Member and DAN.

4.03 – **Membership Application and Survey:** Each member must complete an application for membership ("Membership Application") and must annually complete a membership survey provided by DAN ("Membership Survey"). Both the Membership Application and Membership Survey shall include an accredited investor certification. Institutional Members must independently verify that each of its investors is accredited.

4.04 – **Application Review & Approval:** The DAN Steering Committee will review each Membership Application and shall provide the Member with an electronic written response within thirty (30) days of submission of a complete Membership Application. If the DAN

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Steering Committee does not provide a response within this thirty (30) day period, the Membership Application has been declined.

**4.05 – Annual Fee Payment:** Membership in DAN requires full payment of the annual membership fee (“Annual Dues”), which a member must pay immediately upon acceptance. Certain DIF donors may receive discounted or free membership in DAN. The charitable contribution deduction available to any DIF donor who receives a discounted or free membership in DAN shall be reduced by the value of the discount or the value of the membership, respectively.

**4.06 – Discretionary Membership; Termination:** Membership is at the discretion of DAN’s Steering Committee and is subject to annual renewal, non-renewal, revocation, or termination. Should the Steering Committee deem termination or non-renewal of any membership advisable, such member shall be notified in writing and the member given thirty (30) days (the “Termination Notice Period”) to submit a written response to the Steering Committee. The Steering Committee shall consider, in its unfettered discretion, the member’s written response (if any) and provide a final determination within sixty (60) days of the Steering Committee’s receipt of the member’s response. The decision of the Steering Committee shall be final and not subject to appeal. If the member does not submit a written response to the Steering Committee within the Termination Notice Period, membership shall be deemed automatically terminated at the expiration of the Termination Notice Period. In the event of termination, the member shall forfeit any Annual Dues paid.

**4.07 – Assent to Membership Agreement Amendments:** The DAN Steering Committee may from time to time amend the terms of this Membership Agreement, and shall so notify all members in writing. In the event that the terms of this Membership Agreement are amended for any reason, any member may elect to opt out of the new Membership Agreement within thirty (30) days of receiving notice that the terms of the Membership Agreement have changed. Failure to opt out of the new Membership Agreement shall constitute assent to the revised agreement.

**4.08 – Annual Renewal:** To remain as a member, each member must annually assent to this Membership Agreement on or before the anniversary of joining the membership. In renewing, members will both affirm their consent to the terms of the Membership Agreement and affirm their Accredited Investor status.

**4.09 – Opt-Out of New Membership Agreement Amendments:** In the event that a member elects to opt out of the new Membership Agreement the member will no longer be permitted to participate in future investments through DAN. Upon written permission of the Steering Committee, the member may be allowed to retain some benefits associated with

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membership for a limited period of time; *provided that*, the member shall remain subject to his or her obligations under the pre-amendment Membership Agreement and the provisions of Sections 7, 8 and 9 of the pre-amendment Membership Agreement. If a member elects to opt out of a revised Membership Agreement, the member shall forfeit any Annual Dues paid.

### 5 ACCREDITED INVESTOR STATUS

5.01 – **Accredited Investor Status:** By submitting a Membership Application and/or signing this Membership Agreement, an applicant certifies that she/he is an “accredited investor,” as that term is defined below. Institutional Members must verify that each of their investors is accredited as defined below.

5.02 – **Definition of Accredited Investor:** Under Rule 501 of the U.S. Securities and Exchange Commission (the “SEC”), “accredited investor” is defined as (i) “Any natural person whose individual net worth or joint net worth with that person’s spouse at the time of his purchase exceeds \$1,000,000,” (ii) “Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of [the two most recent years] and has a reasonable expectation of reaching the same income level in the current year,” or (iii) “Any entity in which all of the equity owners are accredited investors.”

5.02 – **Failure to Qualify as an Accredited Investor:** In the event that a member fails to qualify as an accredited investor under Rule 501 at any point during his or her membership, the member shall notify the Steering Committee within 15 days of such non-qualification. The Steering Committee, at its sole discretion, may allow the member to maintain membership; HOWEVER, THE MEMBER WILL NOT BE PERMITTED TO PARTICIPATE IN ANY DAN INVESTMENT OPPORTUNITIES IF THE MEMBER FAILS TO QUALIFY AS AN ACCREDITED INVESTOR UNDER RULE 501.

### 6 MEMBERSHIP UNDERTAKINGS

Each member shall:

6.01 – Timely pay the Annual Dues set by DAN, which initially will be set at \$1,000 for Individual Members and \$1,000 for each of an Institutional Member's investors and managers, subject to a cap at the discretion of the Steering Committee. If a member represents a corporation without individual investors, then their Annual Dues will be initially

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set by the Steering Committee. These Annual Dues may be modified from time to time upon notice to the members;

6.02 – Conduct himself/herself in a professional manner at all times; and

6.03 – Provide accurate and complete responses to information requests from DAN.

## 7 DISCLAIMER

7.01 – **DAN Provides No Advice to Investors:** Neither Duke University, DAN nor any of their trustees, officers, employees, students, members, representatives, sponsors or agents (each, a “Duke Party”) are responsible or liable for any investment decision made by any DAN member. DAN is not a venture fund, investment bank, broker-dealer, investment clearinghouse, investment portal, investment advisor, tax, accounting or financial advisor, and DAN is not registered with the U.S. Securities and Exchange Commission or any state securities commission. Rather, DAN is a forum in which members may discuss various aspects of investment and business, as well as be introduced to companies for possible investment. DAN does not provide advice, recommendation, or any other indication of appropriateness or inappropriateness of a particular investment. DAN does not endorse any investment opportunity, makes no independent investigation to verify information provided by companies submitting to DAN for presentation or otherwise, and makes no representation or warranty regarding the same.

7.02 – **Investment Risk:** Each member is responsible for his/her own independent investment decisions. All investments in entrepreneurial companies involve a high degree of risk, and investors must be able to bear the risk of complete financial loss.

7.03 – **Reliance on Information:** Whether and how to use any information or knowledge gained through DAN is each member’s individual and personal choice. No Duke Party gives investment guidance, nor shall any Duke Party be responsible for a member’s use of such information for the purpose of making any investment. All members recognize and acknowledge that students may undertake some DAN work.

7.04 – **Diligence:** Each member shall have full responsibility to conduct due diligence and evaluate the terms of any investment the member elects to make through DAN. DAN makes no representations or warranties regarding any DAN-affiliated investment opportunity. Each member expressly agrees that any educational, analytical, or facilitation activities that may be undertaken by any Duke Party will be provided only for the convenience of the member.

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7.05 – **Participation Rights:** DAN membership does not create any right to participate in any particular investment opportunity. DAN has no authority or responsibility to accept or reject an investment by any member. Any company, in its sole discretion, may accept or reject a potential investor, based on the company’s sole discretion and judgment as to which investors best meet its needs and subject to other provisions or restrictions that such company may require, such as minimum investment requirements and maximum investment limits. Companies may accept other investors who are not DAN members.

7.06 – **Liability:** In no event shall any Duke Party be liable under this Membership Agreement to any member or any third party for consequential, incidental, indirect, exemplary, special, punitive or other damages, including any damages related to investment activity whether or not such damages were proximate or foreseeable. Notwithstanding anything herein to the contrary, in the event that any Duke Party is determined to be liable to any member or third party for any reason, the member agrees that the aggregate liability of all Duke Parties shall not exceed the Annual Dues paid by the member during the calendar year in which any such liability occurred.

7.07 – **Cause of Action:** Except in the case of fraud (which shall be interpreted to include the element of scienter), no member shall have any cause of action, and each member hereby irrevocably waives any cause of action that such member may have, known or unknown, now or in the future, against any Duke Party relating to such Duke Party’s DAN-related activities, information sharing, company investment presentation, or any actions taken by other members of DAN or the Duke global community which are related to DAN or the activities contemplated by this Membership Agreement.

## 8 CONFIDENTIALITY

8.01 – **Confidentiality:** Members may receive confidential information about the business affairs, products or services, intellectual property, trade secrets, third-party confidential information, or other sensitive aspects of companies considered for investment (collectively “Confidential Information”). Confidential Information shall *not* include information that is: (i) publicly available at the time of disclosure or subsequently becomes available without violation of an obligation of confidentiality, (ii) expressly non-confidential, (iii) known by the member before a disclosure, or (iv) developed by the member independently.

8.02 – **No Disclosure:** No member shall disclose or use Confidential Information for any purpose other than DAN investment activity, which activity may include conferring with a member’s investment advisors, or other members. Each member will use the same degree of care, but no less than a reasonable degree of care, as the member uses with respect to its

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own information of a similar nature to protect the Confidential Information and to prevent: (a) any use of Confidential Information in violation of this Agreement; and/or (b) any communication of Confidential Information to any unauthorized third party. Upon the Steering Committee's request, a member will promptly return or destroy all copies of Confidential Information (including all notes, summaries and abstracts thereof) and certify to DAN that such Confidential Information has been returned or destroyed.

8.03 – **Permitted Disclosure:** Members may only disclose Confidential Information as set forth above or pursuant to applicable federal, state or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction.

8.04 – **Member Information:** Members shall not disclose any information on other members without the express consent of such members.

## 9 GENERAL

9.01 – **Assignment:** This Membership Agreement is binding and for the benefit of DAN and its members only. A member may not assign his or her rights under this Membership Agreement to any other party.

9.02 – **Jurisdiction:** This Membership Agreement and all related documents, including any and all exhibits attached hereto, are governed by, and construed in accordance with, the laws of the State of North Carolina excluding its conflicts of law principles. Subject to the provisions of Section 9.03, each member irrevocably and unconditionally agrees that she/he will not commence any action, litigation, or proceeding of any kind whatsoever against any other party in any way arising from or relating to this Membership Agreement in any forum other than the United States District Court for the Middle District of North Carolina or the courts of the State of North Carolina. Each member hereby consents to the personal jurisdiction of such courts and waives, and agrees not to plead or to make, any claim that any such action or proceeding brought in such courts has been brought in an improper or inconvenient forum.

9.03 – **Mandatory Arbitration:** All claims and disputes arising under or relating to this Membership Agreement are to be settled by binding arbitration in Durham, North Carolina. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and

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reasonable attorney's fees. Any award declared during arbitration may be confirmed in a court of competent jurisdiction.

9.04 – **Entire Agreement:** This Membership Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter hereto and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the subject matter. No party may rely on any statement, representation, warranty or agreement of the other party or of any other person acting on such party's behalf, including any representations, warranties, or agreements arising from statute or otherwise in law, except for the representations, warranties, or agreements expressly contained in this Membership Agreement.

9.05 – **Electronic Signatures:** Each member agrees that the electronic signature, whether digital or encrypted, of the member and of an authorized representative of DAN included in this Membership Agreement is intended to authenticate this writing and to have the same force and effect as a manual signature. "Electronic signature" means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures.

9.06 – **Notice:** Members and DAN shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Membership Agreement in writing and addressed to the other party at the address set forth in the online investment portal used by DAN. DAN shall deliver all notices by email, facsimile, postal mail or personal delivery to the member's address as specified in the Membership Application.

9.07 – **No Waiver:** No waiver by either DAN or any member of any breach by the other of any condition or provision of this Membership Agreement with regard to any other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by any party in exercising any right, power or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. No waiver under this Membership Agreement is effective unless it is in writing, identified as a waiver to this Membership Agreement and signed by an authorized representative of the party waiving its right.

9.08 – **Counterpart:** This Membership Agreement may be executed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the parties. The signatures of all the parties do not need to be on the

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same counterpart to be effective. Delivery of an executed counterpart by any means has the same effect as delivery of an executed original of this Membership Agreement.

9.09 – **No Third Party Beneficiary:** This Membership Agreement is not intended to benefit any third party and does not confer any rights or remedies to any person or entity other than the parties to this Membership Agreement.

9.10 – **Severability:** If any term or provision of this Membership Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Membership Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.