

Graduation Amendment for the Microsoft® BizSpark™ Startup Program

This Graduation Amendment (“**Amendment**”) amends and restates the terms of that certain **Microsoft BizSpark Startup Agreement** between Microsoft and Startup, agreed to on the date of Startup’s enrollment in the BizSpark program (“**Agreement**”). This Amendment establishes the terms for Startup’s ongoing use of some of the Program Software upon the expiration of Startup’s participation in the BizSpark program. The Amendment is effective the earlier of the date below or three years from Startup’s enrollment in the Program (“**Amendment Effective Date**”). All terms not defined herein will have the same meaning as in the Agreement.

Amendment

1. **License Grant Document.** Startup may obtain from Microsoft a document stating specific quantities of licenses for the Program Software that Startup is entitled to use (the “**License Grant Document**”). Startup’s ongoing use of the Program Software is subject to the terms and quantities provided in the License Grant Document.
2. **Termination Provisions for Amendment.** Microsoft and Startup agree that the following termination provisions will apply to the Startup’s ongoing rights to use the Program Software:
 - a. Termination without cause. Microsoft may terminate the rights granted to Startup under this Amendment at any time, without cause, upon 30 calendar days’ notice. Startup may terminate its rights by discontinuing its use of the Program Software provided under this Amendment. Neither party will be responsible to the other for any costs or damages that are a direct result of such termination.
 - b. Immediate termination. The rights granted under this Amendment will immediately terminate without necessity of notice if Startup breaches this Amendment or terms applicable to specific Program Software.
 - c. Statutory form. If Microsoft is required to use a statutory form, Microsoft reserves the right to either terminate or vary this Amendment without the use of that form and without any liability to Startup.
 - d. Effect of termination. In all events of termination as described in this Section 2, Startup’s rights to use the Program Software will end.
 - e. Waiver of rights and obligations. To the extent necessary to implement the termination of this Agreement, each party waives any right or obligation under any applicable law or regulation to request or obtain intervention of the courts to terminate this agreement.
3. **Section 8.8 (Survival) of the Agreement.** Section 8.8 of the Agreement is acknowledged to survive the expiration of the Agreement.
4. **Expiration of Agreement.** Except as specifically described herein, all other terms of the Agreement are expired in accordance with the terms of Section 8 (Term and Termination) of the Agreement.
5. **Startup’s Rights to Ongoing Use of Visual Studio Ultimate with MSDN.** If, through a separate agreement with Microsoft, Startup has purchased Software Assurance for the Microsoft Developer Network Subscriptions associated with Visual Studio Ultimate with MSDN (or subsequent versions as listed on the License Grant Document), Startup may, at any time, install and use the current version of the Program Software made available to Startup under such applicable agreement. In such an event, Startup’s use of the Program Software acquired as a part of that Microsoft Developer Network Subscription is subject to the program and pricing of Startup’s applicable

licensing agreement with Microsoft and/ or Product Use Rights for that Program Software and not to the terms of this Agreement.

6. **Startup's Ongoing Use of Hosting Servers and IT Operations Servers.** Solely if the License Grant Document given to Startup by Microsoft lists any Hosting Servers or IT Operations Servers, then the following terms apply:

a. **Section 2(E) (End of BizSpark Participation) Deleted From Program EULA and Replaced.**

Microsoft and Startup agree that Section 2(E) of the Program EULA is deleted in its entirety from the Program EULA and replaced with the following:

- E. End of BizSpark Participation.** Upon your successful completion of the BizSpark Program, provided that you are and have been in compliance with the terms of the Startup Agreement:
- i. You may obtain from Microsoft a list of Hosting Servers and IT Operations Servers, and specific quantities of such Hosting Servers and IT Operations Servers, in a specific document (the "**License Grant Document**"); the nature, quantities of, and terms applicable to the use of the licenses to such Hosting Servers and IT Operations Servers listed in the License Grant Document will be determined and designated at Microsoft's sole discretion;
 - ii. You may continue to use specific Hosting Servers and IT Operations Servers identified on the License Grant Document, for Production Use (as described in Section 3 below, including but not limited to Section 3(A)(V) titled "Additional Licensing Requirements and/or Use Rights," and Annex B of the Startup Agreement) solely in the specific quantities designated in the License Grant Document; and
 - iii. You may continue to use copies of the Program Software you received before your participation in the BizSpark Program solely for development and testing purposes subject to the terms and quantities in the License Grant Document and in accordance with the MSDN NFR EULA available [\[HERE\]](#).

The license grant above is subject to the following restrictions:

- Section 6(b) of this Amendment;
 - You may not obtain any additional Program Software through the BizSpark Program unless otherwise permitted by a separate agreement between you and Microsoft; and
 - Except for your rights to use the specific Hosting Servers and IT Operations Servers listed on the License Grant Document, in the license quantities listed therein and subject to the terms of this Amendment, you may not use any other Program Software in Production Use under any circumstances.
- b. **Survival of Annex B to Agreement "Hosting and Production Rights."** In addition to Section 8.8 (Survival) of the Agreement, Microsoft and Startup agree that Sections 1, 2, and 4 of Annex B to the Startup Agreement will also survive the expiration of the Agreement.

Specifically, as stated and described in greater detail in Annex B to the Agreement, Microsoft and Startup agree that Startup may only use the

- i. Hosting Servers to provide Software Services to Customers, and
- ii. IT Operations Servers for managing (A) the Hosting Servers being used by Startup to provide Software Services, and (B) other IT Operations Servers that are being used to manage the Hosting Servers being used by Startup to provide Software Services.

In the event that Startup purchases Software Assurance for the Hosting Servers and IT Operations Servers from Microsoft, Startup will have the right to use the Hosting Servers and IT Operations Servers to perform internal business operations in addition to the rights provided in this Amendment.

- c. **Amended Section 8.6 (Effect of Termination).** Startup may continue to use the Hosting Servers and IT Operations Servers identified on the License Grant Document for Production Use as described in this Section 6 of this Amendment notwithstanding Section 8.6(b) of the Agreement.
7. **One Time Transfer Right.** Notwithstanding Section 10.4 of the Agreement, in the event of acquisition of Startup by or merger of Startup with a third party, Startup has the right to transfer the rights granted in this Amendment to the acquiring or merging third party. This transfer right may be exercised only one time. Further, the acquiring or merging entity (a) must assume the terms of this Amendment, in their entirety, and (b) may not subsequently transfer or otherwise assign the rights which it has received pursuant to the terms of this Amendment.