



# Cisco Enterprise Agreement 3.0 Program Terms – End Users

These Cisco Enterprise Agreement 3.0 Program Terms – End Users (“**EA Program Terms**”) apply when You Order Suites and Add-Ons through the Cisco Enterprise Agreement 3.0 Buying Program (the “**EA Program**”). Capitalized terms, unless defined in these EA Program Terms, have the meaning in the General Terms.

## 1. Program Overview

- 1.1 **EA Program.** The EA Program provides You access to certain Software, Cloud Services, and Services offered as Suites and Add-Ons.
- 1.2 **Applicable Terms.** These EA Program Terms and the Buying Program Offer Descriptions govern the EA Program and are Supplemental Terms to the End User Terms that govern Your Use of the Suites and Add-Ons purchased under the EA Program (“**Purchased Suite(s)**”). These EA Program Terms must be signed and will be effective the earlier of (a) You placing Your Initial EA Order with an Approved Source, or (b) the date of signature of these EA Program Terms.

## 2. Purchases and Adjustments

- 2.1 **Ordering.** All purchases under the EA Program will be made through Your Approved Source and all pricing will be provided by Your Approved Source. Your first Order under these EA Program Terms must meet the minimum requirements for the EA Program (“**Initial EA Order**”). Following Your initial Full Commit Suite purchase in a Portfolio, You may only purchase additional Suites or Add-Ons within that Portfolio through the Approved Source that sold the initial Full Commit Suite within that Portfolio.
- 2.2 **Subsequent Purchases.** Provided there is at least 12 months remaining in the EA Term, Suites and Add-Ons purchased after Your Initial EA Order will be governed by these EA Program Terms and, by default, co-terminate with the purchases in the Initial EA Order.
- 2.3 **Separate Purchases.** The following scenarios must be covered under a new EA Program purchase subject to Cisco’s then-current Enterprise Agreement Program Terms – End Users or through a separate purchase outside of the EA Program: (i) Suites and Add-Ons purchased with less than 12 months remaining in the EA Term, (ii) Suites and Add-Ons with a desired Suite Term end date after the EA Term, or (iii) Embedded Software delivered within the last 12 months of or after the end of the EA Term.
- 2.4 **Payment Obligations and Growth.** You will pay for the EA Commitment for the EA Term and any increases in Use.
  - (A) **True Forward.** Cisco has a process to periodically review, invoice, and adjust Entitlements for increases in Use above Your then-current Entitlement (“**True Forward**”). At True Forward, if Your Use of a Suite or Add-On is greater than Your then-current Entitlement for the measured Suite or Add-On, then (i) Cisco has the right to invoice for all associated charges for such increased Use over the applicable Entitlement prospectively through the remainder of the Suite Term, (ii) You will pay for all such charges, and (iii) Cisco will adjust Your Entitlement for that Suite or Add-On going-forward to the increased Use level.
    - (1) General. During the Suite Term, the True Forward will, by default, be conducted at the annual anniversary of the Initial EA Order date.

- (2) Off-Cycle True Forward. If Your Use of a Suite or Add-On exceeds 115% of Your then-current Entitlement (“**Exceptional Growth**”), Cisco has the right to initiate an off-cycle True Forward at the next semi-annual anniversary of the Initial EA Order date in addition to Your annual True Forward.
- (B) Adjustments to True Forward Calculation. Certain Full Commit Suites are eligible for value shift, as specified in the Buying Program Offer Descriptions.
  - (1) Intra Suite Value Shift. During a True Forward, the remaining value of any purchased but unused Software, Cloud Services, or Services in the applicable Purchased Suite will automatically be applied to offset fees for increased Use within the same Suite.
  - (2) Cross Suite Value Shift. During a True Forward, for a Full Commit Suite, You may apply the remaining value in full or in part of (i) purchased but unused Software, Cloud Services, or Services and (ii) Software, Cloud Services, or Services previously Used that You agree to no longer Use, to offset amounts owed for increased Use in another eligible Suite in the same Portfolio. To take advantage of Cross Suite Value Shift You will need to: (i) have Ordered Suite(s) from the same Approved Source with the same Suite Term end date, and (ii) provide Your Approved Source with 60 days’ notice before Your next annual True Forward anniversary.
- 2.5 **Price Predictability.** True Forward charges will be based on either a: (i) Not-to-Exceed Pricing for Full Commit Suites or (ii) fixed discount for applicable Partial Commit Suites or Add-Ons, in each case as provided to You by Your Approved Source. The pricing and discount terms for specific Suites and Add-Ons apply only to the Approved Source from whom You purchased such Suites and Add-Ons.
- 2.6 **Responsibility for Affiliates.** Your payment obligation will be based on the EA Commitment by You and any Affiliates that You have identified as participating in this EA Program. You remain responsible for all actions and omissions and payment of all charges incurred by You, any of Your Affiliates, or any other Authorized Users. In addition, You will provide Your Approved Source with an updated list of participating Affiliates to ensure compliance with the EA Program.

### 3. Term and Termination

- 3.1 **EA Term.** These EA Program Terms will remain in effect until expiration or termination of all the Suites and Add-Ons purchased in Your Initial EA Order (“**EA Term**”).
- 3.2 **Termination.**
  - (A) Either party may terminate these EA Program Terms (or Use of specific Suites or Add-Ons, as applicable) if the other party materially breaches the Applicable Terms, and that party does not cure the breach within 30 days of written notice from the non-breaching party. If You materially breach the Applicable Terms (including for non-payment of undisputed fees to the Approved Source), Cisco may also suspend Your access to the EA Program (including Use of specific Suites or Add-Ons, or resources such as the Cisco EA Tool) after providing You notice and an opportunity to cure as set forth in this section.
  - (B) Except as required by law or Section 3.2(a) above, these EA Program Terms and any Orders accepted under the EA Program may not be cancelled or terminated.
- 3.3 **Consequences of Termination or Expiration of a Suite Term.**
  - (A) Upon expiration of the Suite Term or termination pursuant to Section 3.2(a), all rights to Use the affected Suites and Add-Ons, or the Cisco EA Tool and resources available as part of the Suites and Add-Ons, will terminate.

- (B) If You terminate for Cisco's uncured material breach, Cisco will provide a refund to Your Approved Source for the remaining pro rata portion of amounts prepaid to Cisco for the terminated Purchased Suites and attributable to the period after termination.
- (C) If Cisco terminates for Your uncured material breach, You will pay all unpaid fees through the end of the then-current Suite Term for all Purchased Suites terminated.

3.4 **Assignment and Transfer.** Neither these EA Program Terms, nor any right or obligation herein, may be assigned or transferred by a party (including under the Cisco Software Transfer and Re-licensing Policy) without the other party's prior written consent, which may not be unreasonably conditioned, withheld, or delayed. However, to continue providing You with the benefits of the EA Program, Cisco may assign or transfer its obligations (in whole or in part) upon written notice to You in the event of an acquisition of business assets to which these EA Program Terms relate. When validly assigned or transferred, these EA Program Terms will bind and inure to the benefit of the parties and their successors and assigns.

## 4. Delivery, Tax and Customs

4.1 **Delivery.** Cisco will make electronically delivered Software available to You and Your Affiliates in the transaction country of record and You are responsible for distributing such Software across Your organization. Software delivered on newly purchased Hardware will be made available to You and Your Affiliates at the address provided with the purchase order for the Hardware. For purchases of Hardware with Embedded Software, You must use the EA Tool during the setup of Your Cisco Enterprise Agreement.

4.2 **Embedded Software.** During the Suite Term, for Purchased Suites that include Embedded Software, the value of Embedded Software may be deducted from the purchase price of the related Hardware from Cisco to Your Approved Source. If You are required to pay an importation fee, Your jurisdiction may use the value of both the Hardware and Embedded Software to calculate the importation fee and related duties. Accordingly, the importation fee on the value of the combined products may be higher than if calculated solely using the price of the Hardware.

## 5. Interpretation

5.1 **Order of Precedence.** If there is any conflict between the EA Program Terms, the Buying Program Offer Descriptions, and the End User Terms, the order of precedence is: the Buying Program Offer Descriptions, these EA Program Terms, Offer Descriptions or Services Descriptions, and then the General Terms or equivalent written agreement between You and Cisco for accessing and using Software and Cloud Services. This order of precedence supersedes the order of precedence in the General Terms for Orders in the EA Program.

5.2 **Entire Agreement.** These EA Program Terms, together with the applicable Buying Program Offer Descriptions and End User Terms, are the complete agreement between the parties regarding the purchase of Software, Cloud Services, and Services under the EA Program and supersedes all prior or contemporaneous communications, understandings, or agreements (whether written or oral).

## 6. Definitions

Term	Meaning
<b>Add-On</b>	An optional Software, Cloud Services, and Services offering that is available as an additional add-on purchase to an underlying Suite, as described in the Buying Program Offer Descriptions.
<b>Applicable Terms</b>	The EA Program Terms, Buying Program Offer Descriptions and End User Terms, as described in Section 1.2.
<b>Buying Program Offer Descriptions</b>	The description of EA Program features applicable to the Software, Cloud Services and Services in the EA Program available at the <a href="#">Offer Descriptions</a> site.

Term	Meaning
<b>Cisco EA Tool</b>	The applicable platform, website, tool, or portal that Cisco makes available to You under the EA Program from time to time to enable You to: (i) view and manage Your Entitlement and Use of the Suites and Add-Ons; and (ii) access information about the EA Program.
<b>Cross Suite Value Shift</b>	The ability to shift value across eligible Suites as described in Section 2.4(b)(2).
<b>EA Commitment</b>	(i) The initial Entitlement under Your Initial EA Order, (ii) additional Entitlements associated with subsequent purchases of Suites and Add-Ons, and (iii) increases in Use.
<b>Embedded Software</b>	Software that is delivered on newly purchased Hardware.
<b>End User Terms</b>	As specified in the Buying Program Offer Descriptions: (i) For Cisco Software and Cloud Services, the <a href="#">General Terms</a> (including applicable <a href="#">Offer Descriptions</a> ), or equivalent written agreement between You and Cisco for accessing and using Software and Cloud Services; and (ii) For Services, the applicable <a href="#">Service Descriptions</a> .
<b>Entitlement</b>	The type, quantity or value, and duration of Suites and Add-Ons that You have committed to acquire (or previously acquired and agreed to cover under the EA Program), as adjusted (e.g., as a result of a True Forward).
<b>Full Commit Suite</b>	A Suite acquired on terms (including duration, price, and quantities) that fulfill the minimum requirements for a 'Full Commit Suite', as set out in the Buying Program Offer Descriptions.
<b>Intra Suite Value Shift</b>	The ability to shift value within an eligible Suite, as described in Section 2.4(b)(1).
<b>Not-to-Exceed Pricing</b>	Pricing model that (i) includes a maximum price and (ii) allows for lower prices if applicable list price decreases.
<b>Partial Commit Suite</b>	A Suite acquired in addition to a corresponding Full Commit Suite, that does not meet the minimum eligibility requirements for a Full Commit Suite.
<b>Portfolio</b>	A standardized grouping of Suites and optional Add-Ons.
<b>Services</b>	Services for the applicable Hardware, Software, or Cloud Services corresponding to the Purchased Suite.
<b>Suite</b>	A defined combination of Software, Cloud Services, and Services made available under the EA Program.
<b>Suite Term</b>	With respect to each Purchased Suite, the duration of the Purchased Suite, commencing on the earliest date any Software, Cloud Services and Services in the Purchased Suite is available for Your Use.
<b>Use</b>	To download, install, activate, provision, enable, or otherwise access or have available Suites and Add-Ons under the EA Program.
<b>You or Your</b>	The individual or legal entity purchasing the Software, Cloud Services, and Services under the EA Program.