

**AMENDMENT FIVE  
STATE TERM CONTRACT 204X  
(IFB ITS-400277)**

THIS AMENDMENT 5 is entered into by and between North Carolina Department of Information Technology (“DIT”), 3700 Wake Forest Road, Raleigh, NC 27609, and Cisco Systems, Inc. (“Cisco”), 170 W. Tasman Drive, San Jose, CA 95134 (“Vendor”).

The parties acknowledge they entered into a contract, IFB ITS-400277, in April 2019 to provide Cisco server, storage, and networking equipment, maintenance, and related professional services to the State of North Carolina. The contract was amended in May 2019 (Amendment 1) to correct a pricing error with the Minimum Percentage off List Discounts in Cisco Best and Final Offer Response to IFB ITS-400277. The contract was further amended in September 2020 (Amendment 2) to add the Cisco Universal Cloud Agreement and specific Cisco Cloud and SaaS product offerings, in December 2020 (Amendment 3) to add the Cisco Enterprise Agreement Program Terms and Conditions (“Cisco EA 2.0”), and again in April 2021 (Amendment 4) to add Cisco Duo and WebEx Cloud and SaaS product offerings (“Agreement”).


The parties now wish to amend the Agreement as follows:

- 1) Add the Cisco Enterprise Agreement 3.0 Program Terms and Conditions (“Cisco EA 3.0”) for NC STC 204X End Users (Licensor’s Agreement) as modified herein (Exhibit A). Parties agree that Cisco and its authorized resellers will use Exhibit A for all Cisco Enterprise Agreement 3.0 purchases made under State Term Contract 204X.
- 2) The Licensor’s Agreement is modified by this Amendment, and therefore, conflicts arising among the terms of the Licensor’s Agreement and the terms of this Amendment shall be resolved by the following order of precedence:
  - a) This Amendment,
  - b) BAFO ITS-400277
  - c) IFB ITS-400277 not superseded by the BAFO
  - d) The Licensor’s Agreement,
  - e) Terms and other documents incorporated by reference in the Licensor’s Agreement.

Except as modified herein, the Agreement continues in effect as written and agreed.

Executed by authorized officials as of the day and date indicated below.

**State of North Carolina  
Department of Information Technology**



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Signature

**Jim Weaver**

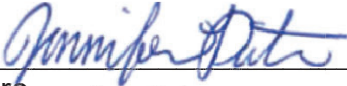
Secretary and State CIO

\_\_\_\_\_  
Printed Name of Signatory & Title

**06/14/2022**

\_\_\_\_\_  
Date

**Cisco Systems, Inc.**



\_\_\_\_\_  
Signature

**Jenn Pate**

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Printed Name of Signatory & Title

**June 13, 2022**

\_\_\_\_\_  
Date

**APPROVED BY LEGAL**

# Cisco Enterprise Agreement 3.0 Program Terms and Conditions for NC STC 204X Users

These terms and conditions together with (a) the applicable Enrollment Descriptions and End User Information Form ("EUIF") (collectively, the "EA 3.0 Program Terms") and, (b) the Cisco-held North Carolina State Contract 204X (ITS-400277), which is incorporated by this reference, govern any Suites that You order under the Cisco Enterprise Agreement 3.0 Program ("Purchased Suites"). The EA 3.0 Program Terms do not modify the terms of any Cisco products or services You purchase outside of the Cisco Enterprise Agreement 3.0 Program. The documents comprising the EA 3.0 Program Terms and the NC 204X Contract are complementary, and to the extent possible, construed and interpreted consistently.

## 1. Program Overview

- 1.1. **EA Program.** These EA 3.0 Program Terms explain the Cisco Enterprise Agreement 3.0 Program (the "EA Program") and govern all access to, use, and consumption of Cisco Technology and Services in Suites and Add-ons ("Use", "Usage") purchased under the EA Program. You should also review the EA Program Guide for additional information on the EA Program.
- 1.2. **Applicable terms.** When You purchase Suites under Cisco Enterprise Agreement 3.0 Program, You are bound by these Program Terms for the Purchased Suites. Any capitalized terms not defined herein have the meanings set out in the End User Terms.

## 2. Purchases and Adjustments

- 2.1. **Ordering.** All purchases will be made through Your Approved Source(s) and all pricing will be provided by Your Approved Source(s). Your first order under the EA Program must meet the minimum requirements set forth in the Program Guide ("Initial EA Order").
- 2.2. **Your EA Commitment.** Your commitment consists of (i) the initial Entitlement under Your Initial EA Order, (ii) additional Entitlements associated with subsequent purchases of additional Suites and Add-ons, and (iii) increases in Usage, as set out in this section. You can also view and manage Your Entitlement, Usage, and the Suites and Add-ons available to You, via the Cisco EA Tool.
- 2.3. **Payment obligations and Growth.** You will be charged for, and You must pay for, any additional Suites and Add-ons that You purchase, and any increases in Usage, as further described below.
  - a. **True Forwards.** Your Usage will be periodically reviewed for each Suite or Add-on (on a quarterly or annual basis, as set forth in the Program Guide) against Your then-current Entitlement. If Your Usage is found to be in excess of Your then-current Entitlement for the measured Suite or Add-on, then (i) You will be responsible for paying for all associated charges for such increased Usage for the remainder of the Suite Term, and (ii) Your Entitlement for that Suite or Add-on will be adjusted on a going-forward basis to the increased Usage level (a "True Forward").
  - b. **Special Growth Considerations:**
    - i. **Initial Growth Cap.** For any Full Commit Suite that has an Initial Growth Cap (as set forth in the Program Guide), if Your Usage at any time during the first six months of the Suite Term exceeds the Initial Growth Cap amount (usually 105% of Your applicable Entitlement, but will vary depending on the specific Purchase Suite), then Cisco has the right to conduct a special True Forward review at the next quarterly anniversary of the applicable Suite Term.
    - ii. **Exceptional Growth.** For all Full Commit Suites, if Your Usage at any time during the Suite Term exceeds Your then-current Entitlement for that Suite by the threshold percentage specified in the Program Guide (usually 115% of Your applicable Entitlement, but will vary depending on the specific Purchase Suite), then Cisco has the right to conduct a special True Forward review at the next quarterly anniversary of the applicable Suite Term.
    - iii. **Growth Allowance.** For any Full Commit Suite that has a Growth Allowance (as set forth in the Program Guide), (i) You will still be subject to the Initial Growth Cap adjustments under subsection (b)(i) above, but (ii) thereafter You are permitted to increase your Usage up to the Growth Allowance amount (measured against the then-current Entitlement after giving effect to the Initial Growth Cap adjustments) without triggering an Exceptional Growth adjustment (under subsection

## EXHIBIT A

(b)(ii) above), a special True Forward or incurring any additional Usage charges for that Growth Allowance amount.

- 2.4. **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 (as identified in the Program Guide), in each case as provided to You by Your Approved Source(s) at the time You placed the order for the applicable Suite or Add-on. These pricing and discount terms apply only to the specific Approved Source that You have selected for the applicable Suite(s).
- 2.5. **Responsibility for Affiliates.** Your charges will be based on the Entitlement and Usage by You and any Affiliates that you have identified as participating in this EA Program, and You agree to update the list of participating Affiliates to ensure compliance with applicable Suite commitments. In addition, You remain responsible for all actions and payment for all charges incurred by You, any of Your Affiliates or any individual otherwise permitted by You or any of Your Affiliates to access Suites and Add-ons available to You under the EA Program or the Cisco EA Tool.

### 3. Term and Termination

- 3.1. **Suite Term.** The Suite Term for a Suite You purchase will be the commitment period set forth in Your Initial EA Order, as extended or upgraded by mutual agreement ("**Suite Term**"), and all other Suites and Add-ons purchased thereafter under these EA Program Terms will not extend beyond the initial Suite Term unless otherwise agreed through a subsequent order placed with Your Approved Source.
- 3.2. **EA Term.** These EA Program Terms will remain in effect until expiration or termination of the Suite Term. Cisco may change these EA Program Terms or any of its components at any time, but any such changes will only apply to new purchases (other than coterminous Suites or Add-ons included in the original Suite Term) or renewals after the date of modification.
- 3.3. **Termination**
  - a. Either party may terminate these EA Program Terms (or specific Suites or Add-ons, as applicable) if the other party materially breaches these EA Program Terms, and that party does not cure the breach within thirty (30) days of written notice from the non-breaching party. If You materially breach these EA Program Terms, 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) until your breach has been cured.
  - b. Except as permitted Section 3.3(a) above or the terms of NC State Contract 204X, these EA Program Terms, and any orders accepted under the EA Program may not otherwise be cancelled or terminated.
- 3.4. **Consequences of Termination or Expiration of a Suite Term**
  - a. If these EA Program Terms terminate, or if the Suite Term or any other commitment You have purchased under the EA Program expire, then:
    - i. any rights to access or use Cisco Technology or Services, or the Cisco EA Tool, or resources available as part of the EA Program will immediately terminate; and
    - ii. You must destroy all product activation keys (PAKs) provided with the terminated or expired Cisco Technology.
  - b. If You terminate for Cisco's material breach, Cisco will provide a refund (to be applied through the Approved Source) for the remaining pro rata portion of amounts prepaid to Cisco attributable to the period after termination.
  - c. If Cisco terminates for Your material breach, You must pay Cisco or the Approved Source all unpaid fees up to the effective date of termination for all terminated Suites.

## EXHIBIT A

### 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 Cisco hardware will be made available to You and Your Affiliates at the address provided with the purchase order for the Cisco hardware, and for any such purchases of Cisco hardware You must use the EA Tool during the setup of Your Cisco EA.
- 4.2. **Embedded Software.** For Suites that include Embedded Software, the value of Embedded Software may be deducted from the purchase price of the related Cisco hardware. If You are required to pay importation fees, Your jurisdiction may use the value of both the hardware and Embedded Software to calculate importation fees. Accordingly, the importation fees 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 3.0 Program Terms and the End User Terms, then the EA Program Terms will prevail.
- 5.2. **Entire Agreement:** RESERVED
- 5.3. **Definitions.** These terms have the meanings specified below:
  - a. **"Add-on"** means an optional software or services offering that is available as an add-on purchase to an underlying Suite, as described in the EA Program Guide.
  - b. **"Affiliate"** means any governmental departments, agencies, bodies, and other public sector entities as listed on the completed EUIF by End User.
  - c. **"Approved Source"** means Cisco or a Cisco authorized reseller, distributor, or systems integrator.
  - d. **"Cisco EA Tool"** means the 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, Usage, and the Suites and Add-ons; and
    - ii. access information about the EA Program including the Program Guide.
  - e. **"End User Terms"** means:
    - i. for Cisco Technology, the End User License Agreement (including applicable Product Specific Terms) per the NC State Contract 204X (the **"Licensing Terms"**); and
    - ii. for Services, the combination of Cisco's explanation of How Cisco Provides Services and the applicable Service Descriptions available at <https://www.cisco.com/c/en/us/about/legal/service-descriptions.html> (collectively the **"Services Terms"**).
  - f. **"Full Commit Suite"** means a Suite acquired on terms (including duration, price, and quantities) that fulfil the minimum eligibility criteria for a 'Full Commit Suite' as set out in the Program Guide.
  - g. **"Partial Commit Suite"** means any other Suite in the Program Guide that does not meet the minimum eligibility requirements for a Full Commit Suite.
  - h. **"Program Guide"** means the written guidance that identifies the catalogue of Cisco Technology and Services available under the EA Program called the 'Program Guide' that Cisco makes available to You under the EA Program. The Program Guide may be provided by your Approved Source or made available as 'Program Guide' content in the Cisco EA Tool.
  - i. **"Suite"** means a defined combination of Cisco Technology and Services made available under the EA Program. Additional information about the Cisco Technology and Services in each Suite are in the Program Guide.
  - j. **"You"** or **"Your"** means the individual or legal entity purchasing the Cisco Technology and Services under these EA Program Terms.