THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number	
24-570	
SAP Number	

Innovation and Technology Department

Department Contract Representative Telephone Number	Jeremiah Thomas (909) 388-0641
Contractor	Dell Products, L.P.
Contractor Representative	N/A
Telephone Number	N/A
Contract Term	The period commencing on the date of first use of the software and continuing until terminated.
Original Contract Amount	N/A
Amendment Amount	N/A
Total Contract Amount	N/A
Cost Center	1200604048

Briefly describe the general nature of the contract: Non-financial End User License Agreement, including non-standard terms, with Dell Products, L.P. for the use of open-source Live Optics software used to document configuration and performance of information technology infrastructure, for the period commencing on the date of first use of the software and continuing until terminated.

FOR COUNTY USE ONLY		
Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
Bonnie Uphold, Supervising Deputy County	<u> </u>	<u> </u>
Counsel		
Date 4/24/2024	Date	Date

END USER LICENSE AGREEMENT FOR LIVE OPTICS

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- 5. <u>Compliance.</u> Upon request by Dell, you will certify in writing that all use of Live Optics Software is in compliance with the terms of this EULA, indicating the number of Live Optics Software licenses deployed at that time. You grant Dell, or an agent selected by Dell, the right to perform, during normal business hours, a reasonable audit of your compliance with this EULA. You agree to cooperate and provide Dell with all records reasonably related to your compliance with this EULA. If, as a result of the audit, a deficiency of greater than five percent (5%) is found in the license fees paid, then you shall bear the total cost of the audit, in addition to any other liabilities you may have.
- **6.** <u>Non-Transferability.</u> This license is non-transferable. You may not distribute, sublicense, assign, share, sell, grant a security interest in, use for service bureau purposes, or otherwise transfer the Live Optics Software or your license to use the Live Optics Software without the prior written consent of Dell.
- **7. Support and Subscription Services Not Included.** Dell does not provide any maintenance or support services under this EULA. Maintenance and support services, if any, are provided under a separate agreement, which may be located at www.dell.com/servicecontracts/global.

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- 9. Export, Import and Government Restrictions. The Live Optics Software is subject to U.S. export laws as well as the laws of the country where it is delivered or used. You agree to abide by these laws. Under these laws, the Live Optics Software may not be sold, leased or transferred to embargoed countries (currently Cuba, Iran, North Korea, Sudan and Syria), other restricted countries, restricted end-users, or for restricted end-uses. You specifically agree that the Live Optics Software will not be used for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. You understand that certain functionality of the Live Optics Software, such as encryption or authentication, may be subject to import or export restrictions in the event that you transfer the Live Optics Software from the country of delivery and you are responsible for complying with applicable restrictions.

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Insofar as applicable law prohibits any limitation on liability herein, the parties agree that such limitation will be automatically modified, but only to the extent required to make the limitation compliant with applicable law.

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- 17. Right to Preliminary and Injunctive Relief. You agree that money damages would be an inadequate remedy for Dell in the event of a breach or threatened breach by you of the provisions set forth in this EULA; therefore, you agree that in the event of a breach or threatened breach of any such provisions, Dell may, in addition to any other remedies to which it is entitled, be entitled to such preliminary or injunctive relief (including an order prohibiting you from taking actions in breach of such provisions), without the need for posting bond, and specific performance as may be appropriate to preserve all of Dell's rights. All rights and remedies afforded Dell by law shall be cumulative and not exclusive.
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- 19. Dispute Resolution and Binding Individual Arbitration. ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PREEXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN YOU AND DELL arising out of or in connection with this EULA, or the breach, termination or validity thereof SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING INDIVIDUAL ARBITRATION. If you are in the United States, the arbitration will be administered by the American Arbitration Association (AAA), or JAMS (if you are in Canada, arbitration will be at ADR Chambers pursuant to the general ADR Chambers Rules for Arbitration located at www.adrchambers.com). Otherwise, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC") by one or more arbitrators appointed in accordance with such rules. The arbitration shall be conducted in the English language. For any ICC arbitration, the place of the arbitration shall be Austin Texas or another commercial center reasonably chosen by the arbitration panel to ensure that the award resulting from the arbitration shall be of an international character and enforceable under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The arbitration panel shall be empowered to grant whatever relief would be available in court, including without limitation preliminary relief, injunctive relief and specific performance. Any award of the arbitration panel shall be final and binding immediately when rendered, and judgment on the award may be entered in any court of competent jurisdiction. Neither you nor Dell shall be entitled to join,

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- **21. No Waiver.** No waiver of breach or failure to exercise any option, right, or privilege under the terms of this EULA on any occasion by Dell shall be construed to be a waiver of a subsequent breach or right to exercise any option, right, or privilege.
- **22. No Assignment.** You may not assign or transfer its interests, rights or obligations under this EULA, in whole or in part, whether voluntarily, by contract, or by merger (whether that party is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action or order, or otherwise. Any attempt to assign this EULA without prior written consent from an authorized executive officer of Dell shall be null and void.
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