UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ANACONDA, INC. Plaintiff, v. DELL, INC. Defendant.	Civil Action No. 1:24-cv-1527 JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Anaconda, Inc., by and through its attorneys, alleges as follows:

INTRODUCTION

1. Anaconda provides software that is foundational to the management and deployment of modern artificial intelligence ("AI") and high-performance scientific computer programs. With over 45 million users worldwide, Anaconda's technology enables corporate, research and academic institutions around the world to acquire competitive advantage and engage in ground-breaking research, including by harnessing the power of open-source software.

2. Though Anaconda licenses its software to thousands of paying customers, it also makes its software available under royalty-free licenses to universities and other accredited educational institutions, individuals, and small enterprises having fewer than 200 employees, including hundreds of organizations that develop open-source software. It also makes its software automatically interoperable with open-source software around the world. To these ends, Anaconda distributes its software by placing it in non-firewalled repositories called the Anaconda Proprietary

Repositories (available at, *e.g.*, http://repo.anaconda.com), inviting users to access and use that software subject to terms of service that do not require educational institutions, individuals, and small enterprises having fewer than 200 employees to pay for access.

3. Anaconda requires large enterprises – *i.e.*, those with more than 200 employees – to pay for access to and use of the Anaconda Proprietary Repositories. As with other users, such large enterprises can access and use the non-firewalled Proprietary Repositories subject to the terms of service. But unlike other users, under the terms of service these large enterprises are unequivocally required to contact Anaconda and negotiate a paid license with Anaconda as a condition for enjoying access to and use of the Anaconda Proprietary Repositories.

4. Because the Proprietary Repositories must remain non-firewalled for the benefit of educational institutions, individuals, and small enterprises, Anaconda largely relies on an honor system to ensure that the large enterprises comply with the terms of service in contacting Anaconda to pay for access to and use of the Proprietary Repositories. If a large enterprise chooses not to contact Anaconda to pay for such access and use, Anaconda will contact that enterprise to initiate good faith negotiations covering such access and use, seeking to charge that large enterprise a standard per-user fee for access and use.

5. Dell has unlawfully taken advantage of the non-firewalled status of the Proprietary Repositories over the past four years by repeatedly accessing and using the software inside those repositories without paying Anaconda a fee.

6. As Dell has unlawfully enjoyed royalty-free access to and use of the software inside the Proprietary Repositories, it has not even attempted to engage in good-faith negotiations to obtain a license covering its access and use. Thousands of users at Dell have been unlawfully accessing and using the Proprietary Repositories over the past four years, and Dell has also

downloaded many replicas – or "mirrors" – of the Proprietary Repositories that can be used secretly by any number of users within Dell.

7. As a result, Anaconda has been in virtually constant contact with Dell over that entire time seeking in good faith to negotiate a license for such access and use at a per-user fee comparable to what other large enterprises have been paying. In response, Dell has engaged in dilatory tactics, stringing out negotiations with Anaconda over the past four years, and has repeatedly lied about the extent of its access and use. By way of example, when faced with a block that was preventing Dell from accessing the Proprietary Repositories at a time when it had an urgent need for such access, Dell asked Anaconda to provide it a competitively priced 20-user license to meet its urgent need even as the parties were negotiating an enterprise-wide license spanning hundreds of seats. Anaconda agreed to do so in exchange for a commitment from Dell to soon complete negotiations for the larger enterprise-wide license and lifted the block. In response to Anaconda's forbearance, Dell then took a license for a single user, for a fee of $600, and again proceeded to allow thousands of its employees to access and use the Proprietary Repositories until Anaconda detected Dell's subterfuge and reinstituted the block.

8. On another occasion, just a few weeks after Anaconda reinstituted the block against Dell, Dell represented that it was not even trying to access the Anaconda Proprietary Repositories when in fact it was secretly circumventing Anaconda's block, disguising its ongoing use of the Proprietary Repositories by hiding behind a third-party proxy Internet Protocol ("IP") address.

9. The adage, "no good deed goes unpunished," applies to this case. Anaconda has spent considerable time and resources perfecting the Proprietary Repositories and has made them freely available to accredited educational institutions, individuals, and small enterprises having

fewer than 200 employees, declining to firewall the repository to ensure its software is automatically interoperable with the open-source software used by many of these small entities.

10. Dell has responded to this distribution model by taking advantage of the non-firewalled status of the repositories to steal from Anaconda in blatant violation of the applicable terms of service. Unlike hundreds of other large enterprises that have ultimately respected the honor system underpinning Anaconda's distribution model and paid the required license fee for the use of Anaconda, Dell has chosen to misappropriate that same intellectual property for free. Dell then chose to lie about its ongoing, unlawful use.

11. Given Dell's refusal to conduct good-faith negotiations or even acknowledge its use of Anaconda's products, Anaconda had no choice but to file suit.

PARTIES

12. Anaconda, Inc. ("Anaconda") is a corporation organized under the laws of the State of Delaware with its principal place of business in Austin, Texas. Anaconda does business in the Western District of Texas.

13. On information and belief, Dell, Inc. ("Dell") is a corporation organized under the laws of the State of Delaware with its principal place of business in Round Rock, Texas. Dell does business in the Western District of Texas.

JURISDICTION AND VENUE

14. This is an action for copyright infringement arising under the copyright laws of the United States, Title 17, United States Code, and for breach of contract arising under Texas law. Jurisdiction as to these claims is conferred on this Court by 28 U.S.C. §§ 1331, 1338(a), and 1367(a).

15. This Court has personal jurisdiction over Dell because Dell has conducted and does conduct business within the State of Texas and within this judicial district. This Court also has personal jurisdiction over Dell because Dell consented to personal jurisdiction in this judicial district for actions arising under the terms of service at issue in this Action.

16. Venue is proper in the Western District of Texas under 28 U.S.C. §§ 1391 and 1400(a) and because, pursuant to the above-referenced terms of service, Dell consented to this venue.

BACKGROUND

Anaconda's Products and Services

17. Anaconda is a privately held company that was founded in 2012 to simplify the management and deployment of high-performance scientific and analytic software libraries, which are used in the vast majority of modern artificial intelligence ("AI") software. Anaconda allows researchers and businesses to rapidly develop AI and data science applications using these software libraries with minimal overhead. Thanks to Anaconda's technology, which is the subject of this Complaint, Anaconda's offerings are in high demand, with over 45 million users at more than one million companies worldwide, including many *Fortune 500* companies.

18. Anaconda's offerings allow software developers to manage individual software "packages" sourced from a variety of other software developers, and to combine these packages together into a single stable execution "environment." This capability is important because a software developer working on a single project often needs to combine multiple software packages from multiple different sources into a single stable execution environment to complete that single project, which can be complicated and tedious without access to technologies such as the ones provided by Anaconda.

19. A "package" is a group of related computer programs that can be licensed, downloaded and/or subscribed to as a single bundle of related software products. For example, a developer performing an AI-related data analysis might want to use a variety of well-known software packages, such as, "pandas," a data reporting and manipulation tool, "NumPy," a tool that manipulates large arrays of numbers, and "SciPy," a tool that implements a wide variety of high-performance algorithms used in science and engineering.

20. Most widely used packages comprise open-source software, which is developed in a collaborative and public manner by many disparate software developers and licensed to the general public with very few restrictions on use or distribution to enable rapid evolution of the software. Open-source software has many advantages such as often being free to use, and easily modifiable to suit a particular purpose. Open-source software also has disadvantages due to the fact that its development is often fragmented. For example, different open-source packages may not work together seamlessly, security vulnerabilities may go undetected for longer periods of time, and updates or patches may not be as readily available as quickly as required.

21. An application created by a software developer and a set of packages that are used by that application execute in an "environment." By using different environments for different projects, software developers ensure that applications and packages within one environment can execute independently of, and are thus unaffected by, applications and packages that are executing in another environment, even when all are executing on the same computer. In the fields of AI and data science, deploying several disparate packages (including open-source packages) within a single stable environment can often be a time-consuming and expensive challenge. Anaconda's technology solves this problem.

22. In 2012, long before the current explosion of machine learning development, Anaconda developed "conda", an open-source package-management and environment-management system designed to help programmers develop applications for artificial intelligence and scientific computing. Anaconda observed that data scientists experienced hurdles in developing new programs and research because individual software packages that are commonly used in AI and scientific computing are often created and maintained by different organizations and individuals including a great many in the open-source community. These packages do not always work well when installed together in the same environment. This would often cause programs to produce inaccurate results, behave in unpredictable ways, or even crash. Anaconda's conda system solved the problems caused by incompatible packages in a single environment. Rather than forcing data scientists and software developers to ensure compatibility among packages on an *ad hoc* basis, conda automatically analyzes all the software packages installed in a software environment, identifies all package dependencies, flags compatibility issues, and warns the developer if two packages are incompatible with each other and cannot both be used in the same environment. Furthermore, conda can be pointed at repositories that contain conda-compatible replacements for such incompatible packages, enabling conda to rapidly address the incompatibility issues it has flagged by automatically downloading conda-compatible replacement packages that might not suffer from those issues.

23. Users of the conda system may download conda-compatible packages from a variety of repositories. Some repositories, like the "conda-forge.org" repository, are curated and maintained by the open-source community. Other repositories, such as those hosted at repo.anaconda.com and repo.anaconda.cloud, are curated and maintained by Anaconda and meet Anaconda's rigorous quality standards. These Anaconda Proprietary Repositories are engineered

to work together seamlessly and provide additional functionality beyond that found in the community repositories. The Anaconda Proprietary Repositories contain several hundred of the most popular conda-compatible packages. These core conda-compatible packages form a principal part of the "Anaconda Distribution," which is at issue here and protected by the Asserted Copyright as further explained below.

24. Prior to March 2020, all of Anaconda's offerings were free. However, curating and updating the Proprietary Repositories described above requires significant time and expense, and a substantial amount of network infrastructure and bandwidth is needed to make these repositories available to millions of Anaconda users on a daily basis.

25. To keep up with the monetary demand of offering its products to the public and to continue providing its products to most users for free, in or about March 2020, Anaconda determined that it would be necessary to charge some large enterprises a licensing fee for the right to use its Proprietary Repositories.

Anaconda's Revised Terms of Service

26. In March 2020, Anaconda revised its terms of service. While individuals and small businesses were still able to use the Anaconda Proprietary Repositories for free, the updated terms of service required certain larger companies to purchase a license to use them.

27. As further set forth below, Dell has accessed the Proprietary Repositories without authorization since Anaconda first published the revised terms of service in March 2020 (the "March 2020 Terms of Service"). Anaconda subsequently further revised the terms of service on October 29, 2020 (the "October 2020 Terms of Service"), April 2, 2023 (the "April 2023 Terms of Service"), and March 31, 2024 (the "March 2024 Terms of Service"). These four versions of the Terms of Service are collectively referred to herein as the "Terms of Service."

28. Each version of the Terms of Service expressly prohibited Dell from using the Proprietary Repositories without purchasing a license. At all relevant times, the Terms of Service also expressly prohibited Dell from downloading or mirroring Anaconda's repositories.[1]

29. The March 2020 Terms of Service prohibit commercial use of the Proprietary Repositories without purchasing a license and expressly state as follows:

> Your use of the Repository must always comply with applicable law and the other terms of this Agreement. In particular, but without limitation, you agree not to:
>
> (a) Engage in commercial activities, such as marketing the contents of the Repository or utilizing the Repository in a way that could degrade the ability of our other community members to use the Repository;
>
> (b) Create mirrors of the Repository for commercial purposes, without express permission;
>
> (c) Republish material from the Repository, including republication on another website or creating a public or private mirror without express permission from Anaconda; or
>
> (d) Sell, rent or sub-license material from the Repository.

30. A true and accurate copy of the March 2020 Terms of Service is attached as Exhibit A. The March 2020 Terms of Service were effective from March 26, 2020 to October 28, 2020.

31. Anaconda revised the terms of service effective October 29, 2020. The October 2020 Terms of Service similarly prohibit commercial use without a paid license. Specifically, the October 2020 Terms of Service state:

[1] "Mirroring" means to create an exact duplicate or copy of an entire repository, which is then used to supply individual packages to multiple end-users, and is updated periodically based on updates to the original repository. As set forth below, upon information and belief, Dell has repeatedly mirrored the Proprietary Repositories and stored complete copies of the Proprietary Repositories on its own servers. Dell's employees can then use these internal "mirrors" to access Anaconda's Proprietary Repositories, bypassing Anaconda's servers. By mirroring Anaconda's Proprietary Repositories and redistributing their contents to its end-users, Dell has effectively concealed the extent of its use from Anaconda.

> Your use of the Repository must always comply with applicable law and the terms of this Agreement. In particular, but without limitation, you agree not to use the Repository to:
>
> - Mirror the Repository or create a cache via any automated means including as prohibited below under the heading "Access and Interference";
> - Engage in commercial activities to market the Repository or a material portion of its contents or engaging in activities which encourage the use of the Repository in a manner that violates this Agreement, or utilizing the Repository in a way that could degrade the ability of our other community members to use the Repository;
> - Republish any material portion of the Repository in a manner competitive with the offering by Anaconda, including republication on another website or creating a public or private mirror without express permission from Anaconda (For private mirrors, we encourage you to contact Anaconda at termsofservice@anaconda.com for more information about Anaconda Enterprise); or
> - Sell, rent or sub-license material from the Repository.

A true and accurate copy of the October 2020 Terms of Service is attached as Exhibit B.

32. To avoid confusion, the October 2020 Terms of Service also explain that prohibited "commercial activities" include any use of the Proprietary Repositories by an entity with more than 200 employees. *See id.* at 2. The October 2020 Terms of Service were effective from October 29, 2020 to April 1, 2023.

33. Anaconda revised the Terms of Service again on or about April 2, 2023. The April 2020 Terms of Service include the same prohibitions as the October 2020 Terms of Service. Specifically, Section 1.1(a)(i)(b) of the April 2023 Terms of Service state:

> You may not use Free Offerings for commercial purposes, including but not limited to external business use, use in organizations over two hundred (200) employees (unless such use is for an Educational Purpose), third-party access to the Cloud Offerings, or Content redistribution or mirroring (each a "Commercial Purpose"). Using the Free Offerings for a Commercial Purpose requires a Paid Plan with Anaconda.

A true and accurate copy of the April 2023 Terms of Service is attached as Exhibit C.

34. The April 2023 Terms of Service also continued to prohibit mirroring and other conduct that circumvents contractual usage limits or access. Specifically, Section 5.2 states, in pertinent part:

> *You will not* (a) make any Cloud Offerings available to anyone other than You or your Authorized Users, or use any Cloud Offerings for the benefit of anyone other than You or your Affiliates, unless expressly stated otherwise in an Order or the Documentation, (b) sell, resell, license, sublicense, distribute, rent or lease any Cloud Offerings except as expressly state otherwise in an Order or the Documentation, (b) sell, resell, license, sublicense, distribute, rent or lease any Clous Offerings except as expressly permitted if you have rights for Embedded Use, or include any Cloud Offerings in a service bureau or outsourcing Cloud Offering, . . . (f) attempt to gain unauthorized access to any Cloud Offerings, Customer Content, or Third Party Services or their related systems or networks, (g) permit direct or indirect access to or use of any Cloud Offerings, Customer Content, or Third Party Services in a way that circumvents a contractual usage limit, or use any Cloud Offerings to access, copy or use any Anaconda intellectual property except as permitted under these TERMS OF SERVICE, an Order, or the Documentation, (h) modify, copy, or create derivative works of the Cloud Offerings or any part, feature, function or user interface thereof except, and then solely to the extent that, such activity is required to be permitted under applicable law, (i) copy Content except as permitted herein or in an Order or the Documentation, (j) *frame or mirror any part of any Content or Cloud Offerings*, except if and to the extent permitted in an applicable Order for your own Internal Business Purposes and as permitted in the Documentation . . . .

Id. at §5.2 (emphasis added).

35. The April 2023 Terms of Service were effective from April 2, 2023 to March 30, 2024.

36. Anaconda revised the terms of service again effective March 31, 2024. The March 2024 Terms of Service continued to prohibit use of the Proprietary Repositories by organizations with 200 or more employees. Specifically, Section 2.1 of the March 2024 Terms of Service read, in pertinent part:

> Your registration, download, use, installation, access, or enjoyment of all Anaconda Offerings on behalf of an organization that has two hundred (200) or

> more employees or contractors ("Organizational Use") requires a paid license of Anaconda Business or Anaconda Enterprise.

A true and accurate copy of the March 2024 Terms of Service is attached as Exhibit D.

37. Like the prior terms of service, the March 2024 Terms of Service expressly prohibit mirroring and other conduct that circumvents contractual usage limits or access. Specifically, Section 1.2 of the March 2024 Terms of Service states:

> Unless expressly agreed by Anaconda, You may not: (a) Make, sell, resell, license, sublicense, distribute, rent, or lease any Offerings available to anyone other than You or Your Users, unless expressly stated otherwise in an Order, Custom Agreement or the Documentation or as otherwise expressly permitted in writing by Anaconda; . . . (c) Use the Offerings or Third Party Services to store or transmit Malicious Code, or attempt to gain unauthorized access to any Offerings or Third Party Services or their related systems or networks; . . . (e) Permit direct or indirect access to or use of any Offerings or Third Party Services in a way that circumvents a contractual usage limit, or use any Offerings to access, copy or use any Anaconda intellectual property except as permitted under these TERMS OF SERVICE, a Custom Agreement, an Order or the Documentation; (f) Modify, copy or create derivative works of the Offerings or any part, feature, function or user interface thereof except, and then solely to the extent that, such activity is required to be permitted under applicable law; (g) Copy Content except as permitted herein or in an Order, a Custom Agreement, or the Documentation or republish any material portion of any Offering in a manner competitive with the offering by Anaconda, including republication on another website or redistribute or embed any or all Offerings in a commercial product for redistribution or resale; (h) Frame or Mirror any part of any Content or Offerings, except if and to the extent permitted in an applicable Custom Agreement or Order for your own Internal Use and as permitted in a Custom Agreement or Documentation; . . .

Id. at § 1.2.

38. At all relevant times and under all applicable Terms of Service, before installing the Anaconda software, the individual or entity installing the software was required to affirmatively agree to the Terms of Service in effect at the time of installation.

39. With regard to every download or installation of Anaconda's software by or on behalf of Dell from March 2020 to the present, the Terms of Service in effect at the time of installation constitute a valid and enforceable agreement between Anaconda and Dell.

Dell's Unauthorized Use of the Proprietary Repositories

40. Dell is a technology company that, according to its 2024 Form 10-K, provides customers with a broad and innovative solutions portfolio for the data and artificial intelligence era, including traditional and modern infrastructure.

41. For companies like Dell, Anaconda's products provide invaluable stability, compatibility, and functionality that is not available from other sources, including from the "community" repositories described above.

42. Following the publication of the March 2020 Terms of Service, Anaconda repeatedly notified representatives of Dell – Dell users of Anaconda products and members of Dell's procurement team – that the Terms of Service had been revised and that to continue using Anaconda products, including the Proprietary Repositories, Dell was required to purchase an appropriate license.

43. Since March 2020, Dell has breached the Terms of Service by installing Anaconda's software and packages from the Proprietary Repositories tens of thousands of times.

44. Anaconda's investigation also reveals, and Anaconda alleges on information and belief, that since March 2020, Dell has further breached the Term of Services by mirroring the Proprietary Repositories.

45. As explained in note 1, above, by mirroring the Proprietary Repositories in full or in part, Dell is able to provide access to Anaconda's carefully curated and monitored conda-compatible packages to its employees while concealing the number of employees who actually use

those products. Dell has thus been able to use its mirrors to provide any number of its users with Anaconda's conda-compatible packages, making full use of Anaconda's Proprietary Repositories without its users needing to directly download the mirrored packages from Anaconda's servers.

Anaconda's Attempts to License Dell and Dell's Continued Unauthorized Use of Anaconda's Products

46. From 2020 through the Fall of 2023, Anaconda worked diligently and in good faith to bring Dell into compliance, but Dell failed to extend the same courtesy by negotiating in good faith or even acknowledging its extensive use of Anaconda products.

47. By way of example, on several occasions, members of Dell's procurement team requested price quotes for its enterprise grade usage, only to stall after receiving the quotes and eventually cease communications with Anaconda. That is only one example of the delay tactics employed by Dell.

48. After it became clear that Dell was not operating in good faith or willing to engage in serious negotiations to remedy its misuse of Anaconda's property, Anaconda determined that it had no choice but to block computers having a Dell IP address (*i.e.*, IP addresses associated with the domain "dell.com") from accessing the Proprietary Repositories. Anaconda did so on or about October 23, 2023.

49. In or about February 2024, Dell asked Anaconda to lift the block on dell.com IP addresses, indicating that it was working on an urgent project that required the use of a minimum of 20 licenses to the Proprietary Repositories. Dell also claimed that it was willing to eventually pay for a site-wide license to Anaconda's offerings. Taking these representations in good faith, and with the sincere hope that Dell would finally acknowledge its wide-ranging use of Anaconda's products and engage in good faith negotiations for a go-forward license, Anaconda removed the block on dell.com IP addresses on April 17, 2024.

50. Over the next two months, Dell bought a single-user license from Anaconda for a price of $600 – the only known fee Dell has paid Anaconda to date for its use of its software – and then proceeded to once again allow thousands of its employees to use the Proprietary Repository. All the while, Dell used the same delay tactics and continued to refuse to negotiate in good faith or even acknowledge its use of Anaconda's products, which forced Anaconda to retain counsel to further pursue licensing negotiations with Dell.

51. Beginning in June 2024, Anaconda's counsel and Dell's in-house counsel held a series of discussions concerning the terms of a potential license for Dell to use and potentially mirror the Proprietary Repositories.

52. During those discussions, Dell's in-house counsel claimed that Dell had blocked access to Anaconda internally in an attempt to prevent further unauthorized use while the Parties continued licensing negotiations and agreed with Anaconda's counsel's suggestion that Anaconda re-institute its own block of dell.com IP addresses.

53. Anaconda placed the agreed-to block on dell.com IP addresses on or about June 21, 2024.

54. On information and belief, within days of Anaconda placing the agreed-to block on dell.com IP addresses, Dell continued to access the Proprietary Repositories and took affirmative action to conceal its unauthorized access.

55. Specifically, Anaconda's investigation suggests that, shortly after Anaconda instituted the block, a member of Dell's end user software distribution team used a third-party proxy service called Zscaler to download content from the Proprietary Repositories. By hiding behind a proxy IP address, this Dell employee was able to bypass the block on dell.com IP addresses and gain unauthorized access to the repository. Since June 2024, this Dell employee has

used the Zscaler proxy service to download content from the Proprietary Repositories multiple times per month.

Anaconda's Copyright and Protected Work

56. The Anaconda Distribution provides everything a software developer needs to quickly start creating AI and high-performance scientific programs, by including the most commonly used data science, AI, and machine learning conda-compatible packages and all the software needed to use those packages in a conda environment. The Anaconda Distribution comprises hundreds of popular conda-compatible packages, enabling a user-friendly experience with conda that is safe from malware and other dangers.

57. Anaconda creates the conda-compatible packages of the Anaconda Distribution by creating metadata files containing Anaconda proprietary information about the underlying packages that is instrumental for the proper functioning of conda. A subset of these metadata files are index files that Anaconda makes available to its users and that conda relies upon to create stable execution environments, and executable files that are precompiled conda-compatible executables created by Anaconda using its proprietary information. Anaconda places the resulting conda-compatible packages—which form a core part of the Anaconda Distribution—and further configures the conda-compatible packages so that they are easy to install and use. The Anaconda Distribution currently includes:

- Over 250 default conda-compatible software packages curated for data science, machine learning, and data visualization, and the ability to access and download over 8,000 packages, all pre-configured and ready for deployment on Anaconda's platform;

- conda (Anaconda's cross-platform, language-agnostic command line package and environment manager);
- The latest version of the Python programming language supported by the Anaconda Distribution; and
- Anaconda Navigator (a graphical user interface for launching and managing packages and environments).

58. The hundreds of conda-compatible packages in the Anaconda Distribution reflect the heart of Anaconda's offerings. The Anaconda Proprietary Repository also offers thousands of additional conda-compatible versions of packages for research and development in AI, machine learning, and other data science. While many packages embody free and open-source software and could be separately downloaded and compiled by developers, Anaconda's conda package manager software provides a seamless, safe, and user-friendly way to use and manage the conda-compatible packages of the Anaconda Distribution. Anaconda securely hosts its conda-compatible packages and maintains, methodically tests, and updates the conda-compatible packages of the Anaconda Distribution. All packages and libraries in the Anaconda Proprietary Repositories, including those of the Anaconda Distribution, are pre-configured by Anaconda to ensure that the packages run correctly in a conda execution environment without errors. Anaconda tracks changes to the conda-compatible packages and libraries it makes available in its Proprietary Repositories, updating them as needed to ensure that any changes to underlying packages are accounted for and any necessary dependencies or conflicts are updated.

59. As explained above, Anaconda's conda-compatible packages in the Anaconda Proprietary Repositories, including those of the Anaconda Distribution, also provide Anaconda's users with the ability to manage their environments and ensure that packages continue to operate

as expected and without errors when software is changed and updated. For example, when a new version of a given package is released that is incompatible with a prior version of a different package, conda will warn a user about this incompatibility before updating the package. The pre-configured conda-compatible packages available through the Anaconda Distribution and the Anaconda Proprietary Repositories include proprietary instructions developed by Anaconda that reflect information concerning package management, tracking, and security. While a programmer could separately download, compile, install, and test conda and the thousands of separately maintained software packages for compatibility with each other, it would be burdensome for an individual programmer to undertake such a task. Since Anaconda's proprietary instructions within the Anaconda Distribution and the Anaconda Proprietary Repositories ensure package compatibilities, users are no longer burdened by package management issues, leaving them to instead focus on using the packages for their own projects.

60. The Asserted Copyright, for a work titled "Anaconda Distribution and Associated Packages Release 2024.02-01" was registered with the U.S. Copyright Office with Registration No. TX-9-407-381. A copy of the registration certificate for the Asserted Copyright is attached as Exhibit E.

61. Anaconda is the owner of all rights, title, and interest in and to the Asserted Copyright.

62. The copyrighted work reflected in the Asserted Copyright is Release 2024.02-01 of the Anaconda Distribution and the associated Anaconda conda-compatible packages. As described above, the Anaconda Distribution provides everything software developers need to get started on developing AI, machine learning, and other data science projects as quickly and seamlessly as possible. It provides a comprehensive package- and environment-management system that allows

users to install, run, and update packages and their dependencies for Anaconda's users' projects in a variety of science, engineering, and other data-intensive contexts.

63. The specific selection and arrangement of packages, libraries, code, and other files in the Anaconda Distribution represents the exercise of discretion and creativity of Anaconda's employees and engineers.

64. The Anaconda Distribution and associated conda-compatible packages also contain proprietary material that Anaconda's engineers and employees created at significant effort and expense ("Proprietary Components"), including the proprietary computer instructions critical to providing the smooth and easy user experience driving Anaconda's mission and business success. The Proprietary Components reflect Anaconda's own exercise of discretion, judgment, and design choices in describing how the various versions of the thousands of packages can optimally operate together. By providing a design through which the packages can interoperate cooperatively with each other, the proprietary computer instructions developed by Anaconda operate as a blueprint for building AI development platforms within the conda environment.

65. Anaconda's Proprietary Components are extremely valuable and serve to attract Anaconda's customers to its platform. Anaconda owns all rights to its Proprietary Components in all versions of the Anaconda Distribution.

Dell's Infringement of Anaconda's Copyright

66. As explained above, although Anaconda repeatedly urged Dell to pay for a license as required under the Terms of Service, Dell refused to pay for its continued use of the Anaconda Distribution and the Proprietary Repositories. Dell is infringing Anaconda's Asserted Copyright by using the Anaconda Distribution and the associated conda-compatible packages, including the Proprietary Components.

67. First, on information and belief, Dell, without Anaconda's authorization, reproduces and creates derivative works based on Anaconda's Proprietary Components and other protectable elements of the Anaconda Distribution by using the Anaconda Distribution and associated conda-compatible packages for internal purposes. On information and belief, Dell allowed its employees to continue using the Anaconda Distribution and Anaconda's conda-compatible packages, including the Proprietary Components, even after Anaconda informed Dell of its breach of the Terms of Service and its violation of Anaconda's intellectual property rights.

68. Second, on information and belief, after Anaconda informed Dell of its infringing acts, rather than ceasing use of the Anaconda Distribution and Anaconda's conda-compatible packages or engaging with Anaconda to take a license, Dell instead took affirmative steps to conceal its use of Anaconda's copyrighted material by hiding behind a proxy IP address, as explained in detail above.

COUNT I
Breach of Contract

69. Anaconda hereby restates and realleges the allegations set forth in paragraphs 1 through 68 above and incorporates them by reference.

70. The Terms of Service constitute valid and enforceable agreements between Anaconda and Dell.

71. At all relevant times, Anaconda has fully performed its obligations under the Terms of Service.

72. Dell's conduct described herein, including, but not limited to, its download, installation, and mirroring of the Proprietary Repositories without Anaconda's authorization or consent, materially breached the Terms of Service.

73. As a result of Dell's multiple, material breaches of the Terms of Service, Anaconda has suffered damages in an amount to be determined at trial.

COUNT II
Attorneys' Fees – Texas Civil Practice and Remedies Code § 38.001(8)

74. Anaconda hereby restates and realleges the allegations set forth in paragraphs 1 through 73 above and incorporates them by reference.

75. Pursuant to Section 38.001(8) of the Texas Civil Practice and Remedies Code, "[a] person may recover reasonable attorney's fees from an individual or organization . . . in addition to the amount of a valid claim and costs, if the claim is for an . . . oral or written contract."

76. Count I is a claim for breach of a written contract. Thus, in addition to recovering for the damage Dell's breaches of contract caused it, Anaconda is entitled to recover the reasonable attorneys' fees and costs it incurs in prosecuting its claim for breach of contract.

COUNT III
Copyright Infringement

77. Anaconda hereby restates and realleges the allegations set forth in paragraphs 1 through 76 above and incorporates them by reference.

78. Anaconda owns the Asserted Copyright, which is valid and enforceable and protects the Anaconda Distribution, Anaconda's associated conda-compatible packages, and all copyrightable elements of the Anaconda Distribution and the associated conda-compatible packages, including the Proprietary Components. The Asserted Copyright was properly registered with the U.S. Copyright Office prior to instituting this action for copyright infringement.

79. Dell lacks authorization, license, or permission from Anaconda to reproduce, prepare derivative works based on, distribute to the public, or export the Anaconda Distribution,

Anaconda's associated conda-compatible packages, the Proprietary Components, or any other elements protected by the Asserted Copyright.

80. Through the acts alleged above, Dell has violated, and is continuing to violate, Anaconda's exclusive rights to reproduce, prepare derivative works based on, distribute to the public, and export the Anaconda Distribution and Anaconda's associated conda-compatible packages, in violation of 17 U.S.C. §§ 106, 501, and 602.

81. As detailed above, Dell was and remains aware that the Anaconda Distribution, Anaconda's associated conda-compatible packages, and elements of those works, including the Proprietary Components, are protected by copyright, or acted or is acting in reckless disregard of the possibility that it was infringing and continues to infringe the copyrightable elements protected by the Asserted Copyright. On information and belief, Dell purposefully and without authorization downloads and uses protectable elements of the Anaconda Distribution and Anaconda's associated conda-compatible packages, including the Proprietary Components. Dell was aware, and remains aware, that it improperly downloads and uses those protectable elements of the Anaconda Distribution and Anaconda's associated conda-compatible packages. Thus, Dell's violations of Anaconda's exclusive rights were, and continue to be, knowing, intentional, and willful.

PRAYER FOR RELIEF

WHEREFORE, Anaconda prays for the following relief:

a. Judgment in its favor on Counts I and II of the Complaint;

b. Actual damages on Count I in an amount to be determined at trial;

c. Judgment of copyright infringement and/or willful copyright infringement of the Asserted Copyright on Count III of the Complaint;

d. A permanent injunction ordering Dell, and its officers, directors, members, agents, servants, employees, and attorneys, and all other persons acting in concert or participating with it, who receive actual notice of the injunction order by person or other service to cease all acts of copyright infringement relating to the use of Anaconda Distribution and Anaconda's conda-compatible packages;

e. A permanent injunction that includes all terms necessary to prevent and restrain infringement of the Anaconda Distribution and Anaconda's conda-compatible packages;

f. An award of damages adequate to compensate Anaconda for the infringement that has occurred pursuant to 17 U.S.C. § 504(b), on in the alternative, statutory damages pursuant to 17 U.S.C. § 504(c);

g. Any additional damages, including punitive or exemplary damages, as the Court determines is appropriate and/or to deter willful infringement;

h. An accounting and/or supplemental damages to account for harm occurring after any discovery cut-off;

i. An order impounding or destroying all infringing articles pursuant to 17 U.S.C. § 503, including, as necessary, while this action is pending;

j. An order awarding Anaconda prejudgment and post-judgment attorneys' fees, interest, statutory costs and expenses; and

k. An order awarding Anaconda any other relief in law and in equity, that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Anaconda, Inc. demands trial by jury of all claims so triable under Federal Rule of Civil Procedure 38.

Dated: December 12, 2024

Respectfully submitted,

/s/ Karl Rupp

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