



These Terms and Conditions govern your access through the Internet website portal of Continental Resources, Inc. (“CONRES”) to certain cloud computing services (the “Services”) offered by Amazon Web Services (“AWS”). Acceptance of these Terms by you (the “Client”) is required in order for you to access and utilize Services through the CONRES portal. Client will also be required to accept additional terms of use and terms of service from CONRES’s reseller and/or from AWS prior to first accessing and using any Services.

CONRES will make the Services available to Client on a month-to-month basis following the successful implementation of Services. ConRes will notify Client by email when the Services are available for Client's use, and billing for such Services will begin on the earlier of the date when (a) credentials for an AWS account are provided to Client, or (b) Services are provisioned within Client's AWS account.

**BEFORE YOU CLICK ON THE “ACCEPT” BUTTON AT THE END OF THIS DOCUMENT, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY CLICKING ON THE “ACCEPT” BUTTON, YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. YOU ARE ALSO ACKNOWLEDGING THAT MY ACCEPTING THESE TERMS THAT YOU HAVE THE AUTHORITY TO BIND YOUR COMPANY TO SUCH TERMS. IF YOU DO NOT AGREE TO ALL THE TERMS OF THIS AGREEMENT, CLICK THE “DECLINE” BUTTON AND YOU WILL NOT BE AUTHORIZED TO USE THE AWS MARKETPLACE OR the AVNET ACT PORTAL.**

**FURTHER, BY ACCEPTING THESE TERMS AND CONDITIONS AND THE AVNET AND AWS TERMS, CLIENT ACKNOWLEDGES THAT THIS AGREEMENT IS THE EQUIVALENT OF THE CLIENT’S PURCHASE ORDER FOR SERVICES UTILIZED BY CLIENT AND THAT CLIENT IS OBLIGATED TO MAKE PAYMENTS FOR SUCH SERVICES TO CONRES.**

**IMPORTANT: BY ENTERING INTO THESE TERMS AND CONDITIONS, CLIENT ACKNOWLEDGES THAT ITS USE OF AWS SERVICES IS SUBJECT TO THE AWS CUSTOMER LICENSE TERMS, A SEPARATE AGREEMENT BETWEEN CLIENT AND AMAZON WEB SERVICES LLC, A CURRENT VERSION OF WHICH IS LOCATED AT <https://aws.amazon.com/solutions/solution-providers/program/reseller/customerterms/>.**

## **1. Pricing Assumptions**

For Client AWS accounts and sub-accounts for the Services, AWS Business Level of Premium Support is required. Client will be billed for both (a) "actual" usage of the Services per month, and (b) certain one-time charges. Client may add or decrease AWS-available features for the Services. Client acknowledges and agrees there will be monthly pricing fluctuation for the Services, and a formal change management process may not be required for such monthly pricing fluctuations.

## **2. Term and Termination**

### **A. Term**

CONRES will use commercially reasonable efforts to make the Services available to Client on a month-to-month basis. Client may cancel at any time without advance notice.

### **B. Cancellation/Termination Of Your Account**

- 1) CONRES or any of its resellers (e.g., Avnet) may suspend (remove right to access or use any portion of the Services) or cancel (also defined as "terminate") Client's access to Services through CONRES' and/or such reseller's web portal(s) if:
  - a) Client fails to pay in full when due any two (2) invoices, other than as to amounts being reasonably, actively and diligently disputed by Client in good faith ("Disputed Charges"). In addition to, and not in lieu of, the foregoing:
    - i) CONRES will have the right to suspend Client's access to its AWS account and to AWS Services if Client has not paid in full all undisputed charges within ten (10) days following Client's receipt of notice of past due charges..
    - ii) CONRES will have the right to terminate Client's access to its AWS account and to AWS Services thirty (30) days following a suspension described in the foregoing clause (i) if Client has not by such date paid in full all past due charges (other than Disputed Charges).
    - iii) CONRES may suspend and/or terminate or cancel Client's access to its AWS account and to AWS Services immediately if Client indicates that it will not pay in full CONRES or reseller-invoiced charges (other than Disputed Charges).
  - b) Client violates the AWS Acceptable Use Policy (AUP), or these Terms and Conditions, or any terms and conditions applicable to Client's accessing and use of Services, or fails to comply with any applicable government rule, regulation, law or ordinance.

Additionally, CONRES may terminate the provision to customers and clients generally (including Client) of access to Services through its web portal at any time not less than sixty (60) days' notice.

### **3. Payment Terms**

CONRES will invoice Client on a monthly basis for Client's usage of Services. Each CONRES invoice is due and payable upon receipt. Client is also responsible for payment of all taxes, duties, assessments and similar charges on the Services (excluding taxes on the net income of CONRES).

### **4. Client Responsibilities**

A. **Client Account.** Client is ultimately responsible for establishing, managing and using its AWS account, including (i) controlling access to, use and security of the account and of all information and data transmitted to, uploaded to, stored on or managed or processed by the Services, and (ii) maintaining security of passwords and other access-control measures.

B. **Client Warranties.** Client represents and warrants to, and agrees with, CONRES that (i) it has the requisite power and authority to enter into these Terms and Conditions and to perform its obligations hereunder, (ii) all information and data that Client provides, transmits or discloses to or through CONRES, any CONRES reseller, or AWS, for the purpose of establishing Client's Services account or its access to Services, or in connection with its usage of Services, is complete and accurate, and Client will update such information and data from time to time as necessary to continuously maintain such completeness and accuracy, and (iii) Client's provision, transmission or disclosure of such information and data does not violate the proprietary or privacy rights, whether under contract or under applicable law, of any person or entity.

C. **Security.** Client shall take all reasonable security precautions in connection with its accessing and use of the Services. Client shall protect the confidentiality of all usernames, passwords, and other information and data it uses to access the Services and shall change its passwords periodically. If Client's CONRES, reseller or AWS account is hacked or otherwise accessed by a third party without authorization, CONRES may suspend Client's access thereto until CONRES determines that the intrusion is finally resolved.

D. **Compliance with Laws.** Client's accessing and use of Services shall at all times comply with all applicable laws, including, but not limited to, applicable federal, state and local laws, judicial decisions, rules and regulations respecting the security of telecommunications networks or computer systems or the privacy or protection of personal data and information (including, but not limited to, Massachusetts General Laws Chapter 93H and the rules and regulations promulgated thereunder at 201 CMR 17.00 *et seq.*, each as may be amended and in effect from time to time). Client shall establish a process to respond to notices of alleged privacy or security violation, infringement or illegal content that complies with applicable law. Client acknowledges and agrees that (i) CONRES may, but is not obligated to, monitor Client's compliance, and (ii) CONRES may, without liability to Client, block or take down the transmission of content by Client that in CONRES' opinion violates any such law or regulation or otherwise imposes or

could result in any liability on or to CONRES. CONRES reserves the right to suspend or terminate Client's accounts or access to Services if CONRES determines, in its reasonable opinion, that the content provided or transmitted is in breach of applicable law.

E. **Indemnification.** Client shall defend, indemnify and hold harmless CONRES and its affiliates and its and their respective directors, officers, employees, agents, representatives, heirs, successors and assigns from and against any and all claims, demands, liabilities, losses, damages, penalties, fines and expenses (including reasonable attorneys' fees and expenses) arising out of or related to any of the following: (i) actual or alleged use of the Services in violation of these Terms and Conditions, any other applicable terms and conditions or applicable law by Client or any end-users of Client (including any actual or alleged infringement or misappropriation of third party intellectual property rights by Client or arising from data or other content transmitted to or stored on the Services by Client or its end users); (ii) any dispute between Client and its customers, contractors or end users; (iii) the operation or use of any Client software, hardware or other application or any data or content contained therein or transmitted thereby; or (iv) any breach or violation by Client, its customers, contractors or end users of any of Client's representations, warranties or agreements contained in these Terms and Conditions, or violation or breach by Client, its customers, contractors or end users, of any other applicable terms, conditions, agreements or policies of AWS or any CONRES reseller. Customer shall not settle any claim under this paragraph E without the prior written consent of CONRES.

## **5. CONRES Warranties; Disclaimer**

A. CONRES warrants that, subject to the provisions of these Terms and Conditions, it shall use commercially reasonable efforts to maintain its web portal in operation for Client's access to Services thereby 24x7x365; provided, that CONRES shall be permitted to suspend operation of such portal from time to time, with no obligation of prior notice to Client, at such times as it chooses and for so long as it deems necessary for ordinary and extraordinary diagnostics, maintenance, repair, upgrade and replacement of its electronic, computer and telecommunications systems, equipment and software; and provided further, that CONRES shall have no obligation or liability with respect to outages, failures and other unavailability of Services or access thereto originating with sources and providers other than CONRES.

B. EXCEPT AS EXPRESSLY SPECIFIED IN THESE TERMS AND CONDITIONS, ALL SERVICES ARE PROVIDED "AS IS" AND CONRES (FOR ITSELF, ITS SUBSIDIARIES, AFFILIATES, RESELLERS, SUPPLIERS AND LICENSORS) DISCLAIMS ANY AND ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. NEITHER CONRES (NOR ANY OF ITS AFFILIATES, RESELLERS, SUPPLIERS OR LICENSORS) WARRANTS OR REPRESENTS THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. CLIENT ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY (INCLUDING THE RELATED CLOUD BASE SERVICES THAT MAY BE PROVIDED HEREIN) THAT

COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, DATA, CONFIDENTIAL INFORMATION, AND PROPERTY.

C. CLOUD BASE SERVICES ARE NEVER WHOLLY FREE FROM DEFECTS, ERRORS AND/OR BUGS, CONRES GIVES NO WAARRANTY OR REPRESENTATION OF ANY KIND THAT THE SERVICES WILL BE WHOLLY FREE FROM SUCH DEFECTS , ERRORS AND /OR BUGS.

## **6. Limitation of Liability**

NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS AND CONDITIONS TO THE CONTRARY, IN NO EVENT SHALL CONRES OR ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, AGENTS, RESELLERS, LICENSORS OR SUPPLIERS, BE LIABLE UNDER ANY THEORY OF LAW (INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND INFRINGEMENT) FOR:

*I.* PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DATA, OR PROFITS, OR BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (HOWEVER CAUSED AND UNDER ANY THEORY OF LAW INCLUDING BREACH OF CONTRACT, STATUTE, TORT, STRICT LIABILITY, AND INFRINGEMENT), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR

*II.* ANY AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE FEES ACTUALLY RECEIVED BY CONRES FROM CLIENT IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE FIRST OCCURRENCE OF AN EVENT GIVING RISE TO A CLAIM. THIS IS AN AGGREGATE LIMIT. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT.

CLIENT ACKNOWLEDGES THAT EACH OF THE FOREGOING LIMITATIONS OF LIABILITY ARE AN ESSENTIAL PART OF THESE TERMS AND CONDITIONS AND THAT ABSENT SUCH LIMITATIONS CONRES WOULD NOT PROVIDE ACCESS TO THE SERVICES TO CLIENT OR ENTER INTO THESE TERMS AND CONDITIONS. CLIENT ACKNOWLEDGES THAT DATA BACKUP OR DATA STORAGE SERVICES, IF ANY, ARE PROVIDED SOLELY BY, AND ARE THE SOLE RESPONSIBILITY OF, CONRES' RESELLER(S) AND/OR AWS, AND CLIENT HEREBY RELEASES CONRES FROM ANY LIABILITY FOR LOSS, CORRUPTION OR UNAUTHORIZED DISCLOSURE OF CLIENT DATA.

NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS NEGLIGENCE, OR FOR FRAUD.

## **7. Force Majeure**

Without limitation of any other provision of these Terms and Conditions, CONRES shall not be liable to Client for any delay in CONRES' performance of, or CONRES' inability to perform, any of its obligations to Client by reason of any cause beyond the then-actual control of CONRES including, without limitation, acts of God, terrorism or the public enemy, fire, flood or other casualty, war, riot, embargo, strike or other labor unrest; interruption of supply, electric or other utilities, or manufacturing capacity, or transportation shortage.

## **8. Assignment**

Assignment of these Terms and Conditions is prohibited without the written consent of both parties, except that (a) each party may assign these Terms and Conditions to its successor by merger or consolidation or to the purchaser or other transferee of all or substantially all of such party's assets, and (b) CONRES reserves the right to subcontract its billing processing obligations hereunder.

## **9. Governing Law; Venue**

These Terms and Conditions, and all disputes between the parties hereunder or otherwise arising out of or related to the services provided by CONRES hereunder, will be governed by the laws of the Commonwealth of Massachusetts, without reference to its conflict of law's provisions. Any action or proceeding by a party to enforce its rights or the other party's obligations hereunder or in relation to such services will be brought only in the appropriate federal and state courts located in Suffolk County or Middlesex County, Commonwealth of Massachusetts, and each party hereby submits to the exclusive personal jurisdiction of such courts for such purpose.

## **10. Entire Agreement**

These Terms and Conditions represent the entire and final agreement between the parties regarding the subject matter hereof, and merge and supersede any and all prior agreements, undertakings, statements and communications between them respecting such subject matter. Any amendment or waiver of these Terms and Conditions must be agreed to in writing or electronically between the parties.

## **11. SubContracting**

ConRes acknowledges to the Customer that from time to time it may engage a Subcontractor to provide additional consulting services, if necessary, to a Customer in helping to assist in the AWS Cloud Service Offerings. The Actual AWS Services elected shall remain the responsibility of the Customer.

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