

CloudWise™ Terms of Service

This agreement is between Avyan Consulting Corp., a Washington, WA corporation (Avyan), and the Customer agreeing to these terms (Customer).

1 SOFTWARE SERVICE

This agreement provides Customer access to and usage of a web based cloud governance solution which is designed to operate on a Customer provided Cloud Subscriptions and Application Hosting Plan as further specified on: www.avyanconsulting.com.

2 USE OF SERVICE

1. **Warranty** Avyan warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service (excluding maintenance outages, force majeure, Microsoft Azure outages, and outages that result from any Customer or third party technology issues); (ii) the functionality or features of the Service may change but will not materially decrease during any paid term; and (iii) that the Support may change but will not materially degrade during any paid term.
2. **LIMITED REMEDY** Customer's exclusive remedy and Avyan's sole obligation for its failure to meet the warranty in bullet point (iii) above will be for Avyan to provide a credit for the applicable month (if this agreement is not renewed, then a refund), for the month; provided that Customer notifies Avyan of such breach within 30 days of the end of that month.
3. **DISCLAIMER** AVYAN DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE Avyan TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, Avyan DOES

NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

3 PAYMENT

Customer must pay all software fees as specified on the Azure marketplace. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes.

4 MUTUAL CONFIDENTIALITY

4. **Definition of Confidential Information:** Confidential Information means all non-public information disclosed by a party (Discloser) to the other party (Recipient), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (Confidential Information). Avyan's Confidential Information includes without limitation the Service (including without limitation the Service user interface design and layout, and pricing information).
5. **Protection of Confidential Information:** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
6. **Exclusions** Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach

of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

5 AVYAN PROPERTY

7. **Reservation of Rights** The software, workflow processes, designs, know-how, and other technologies provided by Avyan as part of the Service are the proprietary property of Avyan and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Avyan. Customer may not remove or modify any proprietary marking or restrictive legends in the Service. Avyan reserves all rights unless expressly granted in this agreement.
8. **Restrictions** Customer may not (i) sell, resell, rent or lease the Service or use it in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or their related systems or networks; (v) reverse engineer the Service; or (vi) access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
9. **Aggregate Data** During and after the term of this agreement, Avyan may use Customer Data for purposes of enhancing the Service, aggregated statistical analysis, Microsoft reporting, technical support and other business purposes.

6 TERM AND TERMINATION

1. **Term:** This agreement continues until customer terminates the Azure VM on which CloudWise software is running.

2. **Mutual Termination for Material Breach:** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
3. **Return Avyan Property Upon Termination:** Upon termination of this agreement for any reason, Customer must pay Avyan for any unpaid amounts, and destroy or return all property of Avyan. Upon Avyan's request, Customer will confirm in writing its compliance with this destruction or return requirement.
4. **Suspension for Violations of Law:** Avyan may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law. Avyan will attempt to contact Customer in advance.

7 LIABILITY LIMIT

1. **Exclusion of Indirect Damages:** Avyan is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of data, records or information; and lost profits or lost anticipated cost savings), even if it knows of the possibility of such damage or loss.
2. **Total Limit On Liability:** Avyan's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 12-month period prior to the event that gave rise to the liability.

8 INDEMNITY

1. **Defense of Third Party Claims:** Avyan will defend or settle any third party claim against Customer to the extent that such claim alleges that Avyan technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies Avyan of the claim in writing, cooperates with Avyan in the defense, and allows Avyan to solely control the defense or settlement of the claim.

2. **Costs:** Avyan will pay infringement claim defense costs incurred as part of its obligations above, and Avyan negotiated settlement amounts, and court awarded damages. Process. If such a claim appears likely, then Avyan may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Avyan determines that none of these are reasonably available, then Avyan may terminate the Service and refund any prepaid and unused fees. Exclusions. Avyan has no obligation for any claim arising from: Avyan's compliance with Customer's specifications; A combination of the Service with other technology where the infringement would not occur but for the combination; Use of Customer Data; or Technology not provided by Avyan. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND AVYAN'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
3. **By Customer:** Other than as provided in 8(1) above, if any third-party brings a claim against Avyan related to Customer's use of the Service, Customer must defend, indemnify and hold Avyan harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim.

9 GOVERNING LAW AND FORUM

This agreement is governed by the laws of the State of Washington (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for King County, Washington, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

10 OTHER TERMS

1. **Entire Agreement and Changes:** This agreement and the order placed through Azure marketplace constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related

to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.

2. **Reference:** Avyan may use Customer's name and logo in its website, marketing communications and materials, in accordance with Customer's trademark guidelines and policies.
3. **No Assignment:** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
4. **Independent Contractors:** The parties are independent contractors with respect to each other.
5. **Enforceability and Force Majeure:** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.
6. **Money Damages Insufficient:** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
7. **No Additional Terms** Avyan rejects additional or conflicting terms of any Customer form-purchasing document.
8. **Survival of Terms:** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply.