

Oracle Contract Checklist for FINMA Guidelines

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Overview

Oracle has developed this document as a part of its continuing efforts to help financial services customers meet their unique obligations under Swiss Financial Market Supervisory Authority (FINMA) Circular 2018/3 Outsourcing – banks and insurers. We want to make it easier for you as a financial institution to identify the sections of the Oracle Cloud services contract that pertain to the requirements in FINMA Circular 2018/3. This document also addresses the Swiss Banking Association (SBA) Cloud Guidelines, which provides the SBA’s non-legally binding recommendations relating to the use of cloud services by banks.

In this document, you will find a list of relevant FINMA requirements and equivalent SBA recommendations, along with a reference to the relevant section(s) of the Oracle Cloud services contract and a short explanation to help you conduct your review of the Oracle Cloud services. For further guidance, please read this document in conjunction with [Oracle’s Compliance Advisory addressing FINMA Circular 2018/3 on outsourcing applicable to Financial Institutions](#).

The Oracle Cloud services contract includes the following components, all of which are referenced in this document:

- **Oracle Cloud services contract** – an Oracle Cloud Services Agreement (CSA) or Oracle Master Agreement (OMA) with Schedule C (Cloud)
- **FSA** – The Oracle Financial Services Addendum to the Oracle Cloud Services Agreement (CSA) or Master Agreement (OMA) with Schedule C (Cloud)
- **Ordering Document** – Oracle Cloud services order
- **Services Specifications** – Service-specific components, including the [Oracle Cloud Hosting and Delivery Policies](#) with applicable [Services Pillar Document\(s\)](#) and the [Oracle Data Processing Agreement](#).

For more information on financial services regulations in other jurisdictions please visit <https://www.oracle.com/cloud/compliance/>

NO.	FINMA CIRCULAR REFERENCE	FINMA REQUIREMENTS	SBA GUIDELINES REFERENCE	SBA RECOMMENDATIONS	REFERENCE TO ORACLE CLOUD SERVICES CONTRACT	ORACLE EXPLANATION
Inventory of outsourced functions						
1.	Margin no. 14	The customer must keep an up-to-date inventory of the outsourced functions that includes a description of the outsourced functions, the service provider (including subcontractors), recipient of the outsourcing, and the customer's internal unit, responsible for the outsourcing.	No equivalent	N/A	<ul style="list-style-type: none"> Section 4 European DPA Addendum Sections 6.1 and 6.2 FSA 	<p>Section 4 of the European Addendum to the Oracle Data Processing Agreement authorizes Oracle to engage Oracle affiliates and third party subprocessors to assist in the performance of the services. This section also includes a right for a customer to object to the intended involvement of a new third party subprocessor or Oracle affiliate.</p> <p>Sections 6.1 to 6.2 of the FSA include terms applicable to Oracle's use of subcontractors and strategic subcontractors, and similar to the Oracle Data Processing Agreement, includes a right for a customer to object to the intended involvement of a new strategic subcontractor.</p> <p>Oracle publishes a list of its affiliates, subprocessors and Strategic Subcontractors to customers via My Oracle Support.</p>
Selection, instruction and monitoring of the service provider						
2.	Margin no. 16	The service specifications must be agreed in line with the aims of the outsourcing and documented before the agreement is signed. This includes conducting a risk analysis that takes account of the main economic and operational considerations as well as the associated risks and opportunities	Margin no. 6	If the decision to procure cloud services is taken on the basis of a risk analysis carried out in advance, this should take account not just of the opportunities and risks associated with using cloud services but also of the significance of the cloud services for the purposes of FINMA Circ. 18 / 3 and the categorisation of the protected information, in particular CID, processed as part of the cloud services.	N/A	<p>This obligation does not apply to the Cloud services provider, however, Oracle provides a number of resources to assist its customers in conducting the necessary risk assessments and due diligence. Oracle provides customers with access to security questionnaires (CAIQ), audit reports and other information regarding Oracle's operational and security practices including the following:</p> <ul style="list-style-type: none"> Oracle Corporate Security Website located at https://www.oracle.com/corporate/security-practices/ Oracle Cloud Compliance Website located at https://www.oracle.com/cloud/compliance/

					Customers can access these materials via the Oracle Compliance Site located at https://www.oracle.com/cloud/compliance/ as well as on Oracle's Cloud consoles.	
3.	Margin no. 17	The service provider must be chosen with due regard to, and subject to checks of, its professional capabilities as well as its financial and human resources. Where multiple functions are outsourced to the same service provider, the concentration of risk must be taken into account.	Margin no. 14	When selecting the appropriate provider it is in the customer's interest to take account of the provider's ability to fulfil the contractual obligations, its financial stability and the jurisdiction to which it is subject, as well as other essential points. Significant subcontractors should be included in the assessment. The provider should assist as appropriate in gathering the information on this matter requested by the customer.	See rows 1 and 2 above.	See rows 1 and 2 above.
4.	Margin no. 18	The prospect of changing service providers and the possible consequences of such a change must be considered when deciding to outsource and selecting the service provider. The service provider must offer a guarantee of permanent service provision.	Margin no. 7	When assessing the risks, the customer should also take into account those that may be associated with the inadequate delivery of the cloud services or the total or partial failure of those services or of the provider.	<ul style="list-style-type: none"> • Section 3.1(d) FSA • Section 4.2 FSA • Section 4.3 FSA • Section 9.1 DPA 	<p>Section 3.1(d) of the FSA permits customers to terminate any affected outsourcing agreement if there are material changes affecting Oracle or the services provided, which result in an adverse impact on the provision of the cloud services.</p> <p>Section 4.2 of the FSA describes the terms pursuant to which Oracle will continue to make the services available for an additional service period.</p> <p>Section 4.3 of the FSA addresses customers who require assistance with a transition. Oracle will discuss such transition services in good faith with customers.</p> <p>Section 9.1 of the DPA confirms that, on termination of an arrangement, Oracle will promptly return or delete any remaining copies of personal data, except as otherwise stated in the Oracle Cloud services contract.</p>
5.	Margin no. 18.1	Provision must be made for insourcing the outsourced function or transferring it to	Margin no. 55	The provider should undertake to return the protected information to the	<ul style="list-style-type: none"> • Section 6.1 Oracle Cloud 	Section 6.1 of the Oracle Cloud Hosting and Delivery Policies explains that on termination of the

		another service provider in an orderly manner.		customer, a successor company or rescue company at any time as part of assistance with termination, if the customer is in recovery or resolution and on the instructions of the customer or FINMA, provided the provider has the means and knowledge (the provider of IaaS and PaaS cloud services may have no knowledge of the architecture chosen by the customer and/or the components used by the customer) to do so. In this case, the provider should transfer the protected information back in a standardised, machine-readable format.	<ul style="list-style-type: none"> Hosting and Delivery Policies Section 4.1 FSA Section 9 DPA Section 9.4 Schedule C Section 9.5 CSA 	<p>agreement, Oracle agrees to make personal information and content available in a structured, machine-readable format for retrieval by the customer.</p> <p>Section 4.1 of the FSA explains that Oracle will provide reasonable assistance to customers during the retrieval period to enable them to retrieve their content from the production services environment.</p> <p>Also see Section 9 of the Oracle Data Processing Agreement, Section 9.4 of Schedule C and Section 9.5 of the CSA, as applicable, where Oracle also agrees to make personal information and content available for retrieval by the customer.</p> <p>Please also see row 4 above.</p>
6.	Margin no. 19	The duties of the parties must be contractually agreed and delimited, in particular with regard to interfaces and responsibilities.	Margin no. 14	The contract between the customer and the provider should set out the corresponding rights and duties of the parties and others involved and should also cover their implementation.	<ul style="list-style-type: none"> CSA Ordering Document 	Written Oracle Cloud services contract and referenced Service Specifications.
7.	Margin nos. 20-21	The customer must continuously monitor and assess the services of an outsourcing provider, and for this purpose must establish contractual terms for the necessary rights of instruction and control.	Margin no. 10	When allocating responsibilities and defining roles, the service and delivery models must be considered. The provider should cooperate as appropriate and necessary, making relevant information available to the customer. Ideally this cooperation should begin during the tender process.	<ul style="list-style-type: none"> Section 3.2.2 Oracle Cloud Hosting and Delivery Policies Section 11 Schedule C Section 11 CSA 	<p>Section 3.2.2 of the Oracle Cloud Hosting and Delivery Policies indicates that Oracle will provide customers with access to a customer notifications portal for monitoring their Cloud service availability.</p> <p>Section 11.1 of Schedule C and Section 11.1 of the CSA, as applicable, explains that Oracle also continuously monitors the Cloud services.</p>
Security						
8.	Margin no. 24	The parties must contractually agree to the security requirements that apply and the customer must monitor compliance with these requirements.	Margin no. 31	In general, the provider should offer and, in accordance with the agreement, implement appropriate technical and organisational measures to protect the	<ul style="list-style-type: none"> Section 5 Schedule C Section 5 CSA 	Section 5 of Schedule C and Section 5 of the CSA , as applicable, explains that Oracle employs relevant administrative, physical and technical safeguards to

				<p>customer's protected information that it is processing. International and local standards should be taken into account. The subcontractors and the members of staff deployed by the provider and the subcontractors should also, where applicable, be bound to comply with such measures.</p>	<ul style="list-style-type: none"> • Section 6 DPA • Oracle Cloud Hosting and Delivery Policies • Oracle SaaS Public Cloud Services Pillar Document • Oracle PaaS and IaaS Public Cloud Services Pillar Document • Section 4.1 DPA • Sections 6.1 and 6.2 FSA 	<p>protect customer's content for as long as it resides in the Cloud services.</p> <p>In addition, Section 6 of the Oracle Data Processing Agreement states that Oracle maintains technical and organizational security measures applicable to the Cloud services, including measures to prevent unauthorized disclosure of, or access to customer's personal information.</p> <p>The Oracle Cloud Hosting and Delivery Policies as well as the PaaS/IaaS Cloud Services Pillar Document or the SaaS Cloud Pillar Document, as applicable, provide additional details regarding the specific security measures that apply to the ordered Cloud services.</p> <p>Section 4.1 of the Oracle Data Processing Agreement indicates that, to the extent Oracle engages third party subprocessors and/or Oracle affiliates to process personal information, such entities shall be subject to the same level of data protection and security as Oracle under the terms of the Oracle Cloud services contract. This section also indicates that Oracle is responsible for the performance of the Oracle affiliates and third party subprocessors' obligations in compliance with the terms of the Oracle Data Processing Agreement and applicable data protection law.</p> <p>Sections 6.1 to 6.2 of the FSA include terms applicable to Oracle's use of subcontractors and strategic subcontractors, and similar to the Oracle Data Processing Agreement, includes a right for a customer to object to the intended involvement of a new strategic subcontractor.</p>
9.	Margin no. 25	The parties must draw up a security framework to ensure the outsourced	No equivalent	N/A	<ul style="list-style-type: none"> • Section 5 FSA 	Section 5 of the FSA indicates that Oracle maintains business continuity plans and testing pertaining to

		function can continue to be performed in an emergency.			<ul style="list-style-type: none"> Section 2 Oracle Cloud Hosting and Delivery Policies 	<p>Oracle's internal operations as utilized in the provision of Oracle Cloud services.</p> <p>Additionally, please see the Oracle Cloud Service Continuity Policy in Section 2 of the Oracle Cloud Hosting and Delivery Policies.</p>
Audit and supervision						
10.	Margin no. 26	The customer, its audit firm and FINMA must be able to verify the service provider's compliance with supervisory regulations. To that end, they must have the contractual right to inspect and audit all information relating to the outsourced function at any time without restriction.	Margin nos. 65-66	<p>There should be provision for the audits to be carried out and ordered by the customer, its internal and external auditors or FINMA. Pool audits by a number of customers or their audit firms, as well as indirect or accompanied audits in which auditing and reporting are conducted by the provider's audit firm or an audit firm designated by the provider are permitted, provided the audit firm has the necessary independence and specialist expertise. This also applies to audits ordered by FINMA.</p> <p>An on-site audit of the IT infrastructures actually used to deliver the cloud services is not absolutely necessary, except for inspecting the physical security measures. Granting the customer, its audit firm or the competent authority logical access can be regarded as sufficient. The provider can agree the arrangements for this right of access directly with the supervisory authority.</p>	<ul style="list-style-type: none"> Section 1.5 FSA Section 1.2 FSA Section 2 FSA (particularly section 2.7) Section 1.9 FSA 	<p>Section 1.5 of the FSA provides customers full access and unrestricted audits and supplements the Oracle Cloud services agreement and the Oracle Data Processing Agreement.</p> <p>Section 1.2 of the FSA provides customers the right to use a third party to conduct the audit.</p> <p>Section 2 of the FSA provides audit rights for the customer's regulators. Section 2.7 of the FSA, in particular states that Oracle will cooperate with a customer's regulator and provide reasonable assistance in accordance with applicable law.</p> <p>Section 1.9 of the FSA allows pooled audits to the extent sufficient to allow customer to comply with its regulatory obligations.</p>
11.	Margin no. 27	Auditing may be delegated to the service provider's auditors if they are adequately qualified. Where this is done, the customer's audit firm may use the findings	Margin no. 64	Compliance with the requirements applicable to or contractually imposed on the provider arising out of the legal and regulatory requirements (in particular with regard to outsourcing,	<ul style="list-style-type: none"> Section 1.9 FSA 	Please refer to Section 1.9 of the FSA .

		of the service provider's auditors for its audit.		data protection and information security) should be audited regularly, taking account of the fact that the effectiveness of measures results from a combination of controls at the provider and at the customer. The provider should assist in this process to an appropriate extent. Performance of the contractually agreed services may also form part of the audit.		
12.	Margin no. 28	The outsourcing of a function must not make supervision by FINMA more difficult, in particular if the function is outsourced to another country.	No equivalent	N/A	<ul style="list-style-type: none"> Section 6.1 FSA Sections 1 and 2 FSA 	<p>Section 6.1 of the FSA states that any outsourcing will not diminish Oracle's responsibility under the agreement.</p> <p>Sections 1 and 2 of the FSA set out Oracle's obligations with regard to customer and customer regulators' audit rights.</p> <p>Please also see row 10 above.</p>
13.	Margin no. 29	If the service provider is not supervised by FINMA, it must be contractually obligated to provide FINMA with all the information and documentation concerning the outsourced functions, which are necessary for FINMA's supervisory activities. If auditing is delegated to the service provider's auditors, their report must be supplied, on request, to FINMA as well as to the outsourcing customer's internal auditors and audit firm.	Margin no. 67	In the case of cloud services with links outside Switzerland, a contractual agreement covering the right for the institution, its audit firm, the provider's audit firm and FINMA to audit the provider directly or indirectly satisfies the requirement for appropriate clarification of audit rights.	<ul style="list-style-type: none"> Section 2.7 FSA 	<p>Section 2.7 of the FSA indicates that Oracle will provide customers' regulators with necessary information.</p> <p>Please also see rows 10 and 12 above.</p>
Outsourcing abroad						
14.	Margin no. 30	Outsourcing to another country is admissible if customer can expressly guarantee that it, its audit firm and FINMA can assert and enforce their right to inspect and audit information.	See row 13 above.	See row 13 above.	<ul style="list-style-type: none"> Sections 1 and 2 FSA 	<p>Sections 1 and 2 of the FSA set out Oracle's obligations with regard to customer and customer regulators' audit rights.</p> <p>See also rows 10, 12 and 13 above.</p>

15.	Margin no. 31	The customer must ensure that outsourcing to a foreign service provider will not hinder restructuring or resolution in Switzerland and the information necessary for this purpose must be accessible in Switzerland at all times.	Margin no. 54	The customer should be able to access any protected information that is stored or processed abroad or in Switzerland at any time from Switzerland. The provider should undertake to continue to deliver the cloud services to the customer, a successor company or rescue company and, where applicable, FINMA if the customer is in recovery or resolution, to the extent that such access from Switzerland to information abroad or in Switzerland is assured as a result.	<ul style="list-style-type: none"> • Section 4.1 FSA • Section 6.1 Oracle Cloud Hosting and Delivery Policy • Section 9 DPA • Section 9.4 Schedule C • Section 9.5 CSA • Section 9 FSA 	<p>Section 4.1 of the FSA explains that Oracle will provide reasonable assistance to customers during the retrieval period to enable them to retrieve their content from the production services environment.</p> <p>See Section 6.1 of the Oracle Cloud Hosting and Delivery Policies, Section 9 of the Oracle Data Processing Agreement, Section 9.4 of Schedule C and Section 9.5 of the CSA, as applicable, where Oracle also agrees to make personal information and content available for retrieval by the customer.</p> <p>Also, see Section 9 of the FSA where Oracle agrees to continue to perform the services in the event of a Resolution Event.</p>
Agreement						
16.	Margin no. 32	The outsourcing must be based on a written agreement. In addition to naming the parties and describing the outsourced function, the agreement must also address the requirements in Margin nos. 33–34.	See row 6 above.	See row 6 above.	<ul style="list-style-type: none"> • CSA • Ordering Document 	Written Oracle Cloud services contract and referenced Service Specifications.
17.	Margin no. 33	<p>The customer must ensure that it is informed about the use or replacement of subcontractors for significant functions at an early stage and has the possibility of terminating the outsourcing in an orderly manner in accordance with Margin no. 18.1.</p> <p>Where subcontractors are used, they must also be bound by the obligations and guarantees on the part of the service provider that are necessary to comply with this circular.</p>	Margin no. 18	The involvement of new significant subcontractors or a change of subcontractors must be conducted in accordance with the principles set out in FINMA Circ. 03 / 18. A contractual agreement on criteria for the involvement of significant subcontractors, with the provider required to ensure compliance and demonstrate fulfilment to the customer in advance, can give the customer additional security. In any event the customer must be notified before the provider involves a new significant subcontractor and given the opportunity to terminate the contract with the provider by a specific deadline,	<ul style="list-style-type: none"> • Section 4.1 DPA • Section 4 European DPA Addendum • Sections 6.1 and 6.2 FSA • Section 6.2.1 • Section 14.2 Schedule C • Section 17.2 CSA 	<p>Section 4.1 of the Oracle Data Processing Agreement indicates that, to the extent Oracle engages third party subprocessors and/or Oracle affiliates to process personal information, such entities shall be subject to the same level of data protection and security as Oracle under the terms of the Oracle Cloud services contract. This section also indicates that Oracle is responsible for the performance of the Oracle affiliates and third party subprocessors' obligations in compliance with the terms of the Oracle Data Processing Agreement and applicable data protection law.</p> <p>Section 4 of the European Addendum to the Oracle Data Processing Agreement authorizes Oracle to engage Oracle affiliates and third party subprocessors</p>

				<p>for good or justified reason where appropriate. In such cases the customer should take suitable precautions – in particular allowing itself an appropriate termination period and requiring appropriate cooperation on termination from the provider, as well as, if necessary, options to extend while maintaining the existing operating model – so that the outsourced functions and services and protected information can be returned or transferred to a new provider.</p>		<p>to assist in the performance of the services. This section also includes a right for a customer to object to the intended involvement of a new third party subprocessor or Oracle affiliate along with providing customer with termination rights.</p> <p>Sections 6.1 to 6.2 of the FSA include terms applicable to Oracle’s use of subcontractors and strategic subcontractors, and similar to the Oracle Data Processing Agreement, includes a right for a customer to object to the intended involvement of a new strategic subcontractor along with providing customer with termination rights.</p> <p>Section 6.1 of the FSA further indicates that all subcontractors with access to customer content will be subject to the same level of data protection and security as Oracle under the terms of the Oracle Cloud services contract. In addition, under this section, Oracle agrees to enter into written agreements with subcontractors reflecting obligations that are consistent with Oracle’s obligations under the relevant terms of the Oracle Cloud services contract. Any such subcontracting will not diminish Oracle’s responsibility towards its customers under Oracle Cloud services contracts and Oracle will appropriately oversee a subcontractor’s performance.</p> <p>Section 6.2.1 of the FSA specifies criteria used for Strategic Subcontractors.</p> <p>Please also refer to Section 14.2 of Schedule C and Section 17.2 of the CSA, as applicable.</p>
18.	Margin no. 34	The agreement must include measures to ensure implementation of the requirements set out in this circular, in particular in Margin nos. 21, 24, 26, 29, 30 and 31.	No equivalent	N/A	See rows 7, 8, 10, 13, 14 and 15 above.	See rows 7, 8, 10, 13, 14 and 15 above.