

# Oracle Contract Checklist for the Australian Prudential Regulation Authority (APRA) Prudential Standard CPS 231 on Outsourcing

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The information in this document may not be construed or used as legal advice about the content, interpretation or application of any law, regulation or regulatory guideline. Customers and prospective customers must seek their own legal counsel to understand the applicability of any law or regulation on their use of Oracle services. Please also note that the relevant contract(s) between you and Oracle determine(s) the scope of services provided and the related legal terms and the information provided in this document is provided as an aid to assist you in your review of your Oracle Cloud services agreement and indicates where information is located in your Oracle Cloud services agreement and its incorporated documents. The entire Agreement and your order must be read to understand all applicable contractual terms.

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The information in this document is current as of June 2023

## Overview

Oracle has developed this document as a part of its continuing efforts to assist Australian Prudential Regulation Authority (APRA) regulated customers that are subject to the Prudential Standard CPS 231 Outsourcing (CPS 231), relating specifically to the use of Oracle Cloud Infrastructure (OCI) and Oracle Cloud Applications<sup>1</sup>. We want to make it easier for you as an entity subject to CPS 231 to identify the sections of the Oracle Cloud services agreement that may help you address the standards set out in CPS 231. In this document, you will find a list of CPS 231 provisions, along with a reference to the relevant section(s) of the Oracle Cloud services agreement and incorporated/referenced documents and some accompanying commentary to aid you to conduct your review of the Oracle Cloud services agreement.

The Oracle Cloud services agreement and an order under that agreement includes the following customer-specific components, all of which are referenced in this document:

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

## Regulation Background

The latest [CPS 231](#) was released in July 2017. It sets out the requirements for outsourcing of a "material business activity" by APRA regulated entities that are subject to and regulated by CPS 231. The Standard defines "material business activity" in paragraph 14 of the Standard.

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

The below table sets out requirements of CPS 231 and where you can find relevant provisions in the Oracle Cloud services agreement.

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<sup>1</sup> Note that Oracle GBU SaaS, Netsuite and Advertising SaaS Services are not included in the scope of this document.

NO.	REFERENCE	SUMMARY OF REQUIREMENT/DESCRIPTION	REFERENCE TO ORACLE CLOUD SERVICES AGREEMENT	ORACLE EXPLANATION	
<b>THE OUTSOURCING AGREEMENT</b>					
1.	CPS 231, paragraph 28	Each outsourcing arrangement is to be contained in a documented legally binding agreement (except where otherwise provided in CPS 231). The agreement must be signed by all parties to it before the outsourcing arrangement commences.	<ul style="list-style-type: none"> <li>Oracle Cloud services agreement</li> <li>Ordering Document</li> </ul>	<p>An Oracle Cloud services agreement (i.e. the CSA or OMA with Schedule C) and an Ordering Document must be signed before Oracle starts providing Cloud services. Upon request by financial services entities regulated by CPS 231, the FSA may be appended to the Oracle Cloud services agreement to address additional regulatory requirements that these entities are subject to.</p> <p>In this table it is assumed that the FSA is part of your Oracle Cloud services agreement.</p>	
2.	CPS 231, paragraph 29	The agreement needs to address the following matters:	<ul style="list-style-type: none"> <li>Ordering Document</li> </ul>	<p>The description of the services ordered can be found in the Ordering Document and in the Services Specifications/Services Description for those services which are referenced in the Ordering Document.</p>	
		(a) the scope of the arrangement and services to be supplied;			<p>The duration of the term for which you subscribe to Cloud services (“Services Period”) is stated in the Ordering Document.</p>
		(b) commencement and end dates;			
		(c) review provisions;	<ul style="list-style-type: none"> <li>Ordering Document</li> </ul>	<p>Pricing information is set out in the Ordering Document.</p>	
		(d) pricing and fee structure;	<ul style="list-style-type: none"> <li>Oracle Cloud Hosting and Delivery Policies, section 3</li> <li>Services Pillar Documents, section 3</li> </ul>	<p>The Oracle Cloud Hosting and Delivery Policies (Section 3, Oracle Cloud Service Level Agreement) as well as the relevant Pillar Document for SaaS and PaaS/IaaS, (Section 3), define the applicable Target Service Availability Level, or Target Service Uptime for the Cloud services.</p>	
		(e) service levels and performance requirements;	<ul style="list-style-type: none"> <li>CSA/OMA Schedule C, section 3 (Ownership Rights and Restrictions),</li> </ul>	<p>Your data is kept electronically and in machine readable format in Your cloud environment as per the Oracle Cloud Hosting and Delivery Policies. You remain otherwise in control of the format of Your Content.</p>	
		(f) the form in which data is to be kept and clear provisions identifying ownership and control of data;			

	<p>section 4 (Nondisclosure) and section 5 (Protection of Your Content)</p> <ul style="list-style-type: none"> <li>Oracle Cloud Hosting and Delivery Policies, section 6.1 (Termination of Oracle Cloud Services)</li> </ul>	<p>Subsection 3.1 of the CSA/OMA Schedule C states that you or your licensors retain all ownership and intellectual property rights in and to Your Content. “Your Content” is defined under subsection 19.6 of the CSA (15.6 in the OMA Schedule C) as “all software, data (including Personal Data), text, images, audio, video, photographs, non-Oracle or third party applications, and other content and material, in any format, provided by You or any of Your Users that is stored in, or run on or through, the Services. Services under this Agreement, Oracle Software, other Oracle products and services, and Oracle intellectual property, and all derivative works thereof, do not fall within the meaning of the term “Your Content”. Your Content includes any Third Party Content that is brought by You into the Services by Your use of the Services or any Oracle-provided tools.” “Your Content” is defined in the same way under Schedule C of the OMA.</p> <p>Subsection 3.3 of the CSA/OMA Schedule C states that you have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Your Content, and for obtaining all rights related to Your Content required by Oracle to perform the ordered Cloud services.</p> <p>Sections 4 and 5 of the CSA/OMA Schedule C outline the confidentiality terms between You and Oracle and our respective obligations relating to the protection of Your Content.</p>
(g) reporting requirements, including content and frequency of reporting;	<ul style="list-style-type: none"> <li>FSA, section 7 (Service Notifications) and section 6.2.2</li> <li>Oracle Cloud Hosting and Delivery Policies, section 3.2.2 and section 5.2.1</li> </ul>	<p>Section 7 of the FSA states that service notifications and alerts relevant to the Cloud services subscribed are posted on the Oracle Cloud customer support portal.</p> <p>The Oracle Cloud Hosting and Delivery Policies (Section 3, Oracle Cloud Service Level Agreement) as well as the relevant Pillar Document for the type of Cloud services ordered, define the applicable Target Service Availability Level, or Target Service Uptime for the Cloud services. Subsection 3.2.2 of the Oracle Cloud Hosting and Delivery Policies states that customers can access metrics on the Service Availability Level for the ordered Cloud services through the customer notifications portal. Where such metrics are not available via the customer notification portal, a Service Request can be submitted requesting the metrics.</p>
(h) audit and monitoring procedures;	<ul style="list-style-type: none"> <li>FSA, section 1 (Audit and Access Rights for You), section 2 (Audit and Access Rights for Financial Services Regulators), section 5 (Business Continuity) and section 11.3.</li> </ul>	<p>Section 1 of the FSA sets out the audit rights granted to financial services regulated entities and in particular Section 1.5 sets out how you are enabled to monitor the Cloud services outsourcing arrangement.</p> <p>Section 2 of the FSA sets out the audit/inspection rights granted to Financial Services Regulators. Section 2.5 provides that in relation to an audit under Section 2, that Oracle will cooperate with a customer’s regulator and provide reasonable assistance and information that may be required by law or regulations applicable to you or the financial services industry.</p> <p>Section 5 of the FSA permits financial services customers to review Oracle’s business continuity program as described in that section, and section 11.3 provides that the</p>

		parties will discuss in good faith any amendment to the FSA to account for developments in regulations.
(i) business continuity management;	<ul style="list-style-type: none"> <li>• FSA, section 5 (Business Continuity)</li> <li>• Oracle Cloud Hosting and Delivery Policies, section 2</li> <li>• Services Pillar Documents, section 2</li> <li>• Oracle Corporate Security Practices</li> </ul>	<p>Section 5 of the FSA states that Oracle maintains a business continuity program and conducts testing pertaining to Oracle’s internal operations as utilized in the provision of Oracle Cloud services. Upon at least 30 days’ notice by you no more than once per calendar year, Oracle will make available to you via web conference or on Oracle premises, in a guided manner, a summary of the BCP Program and applicable test information, material modifications to the BCP Program within the last 12 months, and pertinent BCP governance areas, and confirmation that an internal review of these governance areas was performed within the last 12 months.</p> <p>Additionally, see the Oracle Cloud Service Continuity Policy in Section 2 of the Oracle Cloud Hosting and Delivery Policies.</p> <p>Section 2 of the Pillar Documents for SaaS and PaaS/IaaS also addresses Cloud service continuity.</p> <p>Oracle Corporate Security Practices, which are incorporated into the CSA/OMA Schedule C at Section 5.1, provide details of Oracle’s risk management resilience policy and related framework.</p>
(j) confidentiality, privacy and security of information;	<ul style="list-style-type: none"> <li>• CSA/OMA Schedule C section 4 (Nondisclosure) and section 5 (Protection of Your Content)</li> <li>• DPA, section 7 (Security and Confidentiality) and section 9.2 (Incident Management and Breach Notification)</li> <li>• Oracle Cloud Hosting and Delivery Policies, section 1</li> <li>• Services Pillar Documents, section 1</li> <li>• Oracle Corporate Security Practices</li> </ul>	<p>Section 4.3 of the CSA and Section 4 of Schedule C to the OMA, as applicable (specifically, Oracle’s obligation to protect the confidentiality of “Your Content” for as long as it resides in the services) and section 5 of the CSA/OMA Schedule C (Protection of Your Content) outline the general obligations of Oracle in relation to protecting your confidential information.</p> <p>Section 7 of the DPA states that Oracle has implemented and will maintain appropriate technical and organizational security measures for the processing of personal information.</p> <p>In addition, under subsection 9.2 of the DPA, Oracle will notify customers of a confirmed Information Breach (as such term is defined in the DPA) without undue delay but at least within 24 hours.</p> <p>Section 1 of the Oracle Cloud Hosting and Delivery Policies contains the Oracle Cloud Security Policy, which outlines Oracle’s security practices. These practices are further detailed in the Oracle Corporate Security Practices. The Oracle Cloud Hosting and Delivery Policies and Oracle’s Security Practices govern Oracle’s security obligations.</p> <p>Section 1 of the Services Pillar Documents for both Pillar Documents for SaaS and PaaS/IaaS also addresses security measures, including physical safeguards.</p>

(k) default arrangements and termination provisions;

- CSA/OMA Schedule C, section 6 (Warranties, Disclaimers and Exclusive Remedies) and section 9 (Term and Termination)
- FSA, section 3 (Additional Termination Rights) and section 4 (Exit Provision)
- Oracle Cloud Hosting and Delivery Policies, section 6
- Services Pillar Documents (for SaaS and PaaS/IaaS), section 6

Section 6.3 of the CSA/OMA Schedule C provides a termination right if the services are not performed as warranted and the deficiency cannot be corrected in a commercially reasonable manner. In the service warranty, Oracle warrants that it will perform the services using commercially reasonable care and skill in all material respects as described in the Service Specifications. The entire section 6 should be read for completeness.

Section 9.4 of the CSA/OMA Schedule C provides a termination right for breach of a material term that is not remedied within 30 days.

Under Section 3 of the FSA, if at any time during the Services Period of the relevant Ordering Document you have a reason to believe that the continued use of the Cloud services will put You in contravention of applicable law which might lead to action by Your Financial Services Regulator, you must promptly notify Oracle so that you and Oracle can discuss options (such as amending the Oracle Cloud services agreement where Oracle can technically and commercially reasonably accommodate that change) enabling the continued use of the Cloud services. Customers have the right to terminate the Cloud services upon 30 days' written notice in the following situations:

Termination due to regulatory requirements

- Termination requested based on express instruction issued by the regulator;
- Oracle is in a breach of applicable law or regulation in providing the relevant Cloud services;
- impediments affecting Oracle's ability to perform the Cloud services are identified;
- there are material changes affecting the Cloud services or Oracle which result in an adverse impact on the provision of the Cloud services; or
- there are weaknesses regarding the management and security of Your Content or Confidential Information.

During the 30-day notice period, Oracle will use commercially reasonable efforts to address the concerns raised in your termination notice.

Termination due to insolvency

- Oracle has become insolvent or resolved to go into liquidation.
- A proposal is made for entering into any compromise or arrangement with any or all of Oracle's creditors (other than a solvent reconstruction).
- A receiver is appointed over all or substantially all the assets of Oracle.

		<p>Under Section 4 of the FSA (Exit Provision) customers are able to order transition services and transition assistance to facilitate the transfer or the reincorporation of the concerned function back to the customer or to a third-party provider.</p> <p>Section 6 of the Oracle Cloud Hosting and Delivery Policies and section 6 of the SaaS and PaaS/aaS Pillar Documents sets out the process by which Oracle will make Your Content available to you upon termination of the services and provide related support.</p>
(l) dispute resolution arrangements;	<ul style="list-style-type: none"> <li>FSA, section 10 (Dispute Resolution)</li> </ul>	Section 10 of the FSA addresses dispute resolution and the parties' respective obligations relating to Oracle Cloud services agreement.
(m) liability and indemnity;	<ul style="list-style-type: none"> <li>CSA/OMA Schedule C, section 7 (Limitation of Liability) and CSA section 8 (Indemnification)/OMA General Terms section 5 (Indemnification) together with OMA Schedule C section 8 (Additional Infringement Indemnification Terms)</li> </ul>	<p>Section 7 of the CSA/OMA Schedule C describes the limitation of liability applicable to the Oracle Cloud services agreement.</p> <p>Section 8 of the CSA or section 5 of the OMA General Terms together with section 8 of OMA Schedule C (as applicable) describes the terms of indemnification applicable to Oracle Cloud services agreement.</p>
(n) sub-contracting;	<ul style="list-style-type: none"> <li>FSA, section 6 (Subcontracting)</li> <li>CSA, section 17/OMA Schedule C section 14.2</li> <li>DPA, section 5 (Oracle Affiliates and Third Party Subprocessors)</li> </ul>	<p>Section 6 of the FSA include terms applicable to Oracle's use of subcontractors and Strategic Subcontractors. While Oracle may engage subcontractors to assist in the performance of the services, section 6.1 of the FSA states that all subcontractors with access to Your Content will be subject to the same level of data protection and security as Oracle under the terms of the Oracle Cloud services agreement. In addition, where Oracle engages subcontractors:</p> <ul style="list-style-type: none"> <li>Oracle will enter into a written agreement with the subcontractor reflecting obligations that are consistent with Oracle's obligations under the relevant terms of the Oracle Cloud services agreement;</li> <li>any such subcontracting will not diminish Oracle's responsibility towards Oracle customers under Oracle Cloud services agreements; and</li> <li>Oracle will provide appropriate governance and oversight of the subcontractor's performance.</li> </ul> <p>Section 6.2.2 of the FSA further provides that Oracle maintains and makes available to customers lists of Strategic Subcontractors. Customers can sign up to receive notice of</p>



			<p>any intended changes to these lists. This section also sets out the process should you wish to object to a Strategic Subcontractor.</p> <p>Please also refer to subsection 17.2 of the CSA, or subsection 14.2 of OMA Schedule C as applicable.</p> <p>Section 5 of the DPA sets out Processing of Personal Information by Oracle Affiliates and Third Party Subprocessors (as such terms are defined in the DPA) engaged to assist in the performance of the services. Section 5.2 of the DPA indicates that, to the extent Oracle engages Third Party Subprocessors and/or Oracle Affiliates, such entities are subject to the same level of data protection and security as Oracle under the terms of the Oracle Cloud services agreement. This section also indicates that Oracle remains responsible for the performance of such Oracle Affiliates' and Third Party Subprocessors' compliance obligations.</p> <p>Oracle maintains and makes available to customers lists of Oracle Affiliates and Third Party Subprocessors that may Process Personal Information. Customers can sign up to receive notice of any intended changes to these lists. This section also sets out the process should you wish to object to the intended involvement of a new third party subprocessor or Oracle affiliate.</p>
		(o) insurance; and	<p>Ordering Document</p> <p>Oracle maintains an appropriate level of insurance. Oracle contracts may specify applicable insurance coverage and limits in the Ordering Document.</p>
		(p) to the extent applicable, offshoring arrangements (including through sub-contracting).	<ul style="list-style-type: none"> <li>Ordering Document</li> <li>Cloud Hosting and Delivery Policies, Overview section and 4.1.2</li> <li>DPA, section 6 (Cross-border data transfers)</li> </ul> <p>The Ordering Document or cloud customer support portal sets out the data centre region applicable to the ordered Cloud services.</p> <p>Section 6 of the DPA sets out Oracle's practices relating to cross-border data transfers and compliance with applicable data protection laws.</p> <p>See the explanations above of Oracle's subcontracting processes.</p> <p>The overview of the Cloud Hosting and Delivery Policies confirms that Your Content will be hosted in the data centre region applicable to the services and that Oracle may replicate Your Content to other locations within the applicable data centre region in support of data redundancy.</p>
CPS 231, paragraph 30	An APRA-regulated institution that outsources a material business activity must ensure that its outsourcing agreement includes an indemnity to the effect that any sub-contracting by a third party service provider of the outsourced function will be the responsibility of the third party service provider, including	Oracle Cloud services agreement or Ordering Document	Where agreed, Oracle may include language in your Oracle Cloud services agreement or Ordering Document in relation to this requirement.

		liability for any failure on the part of the sub-contractor.		
<b>APRA access to service providers</b>				
3.	CPS 231, paragraph 34	An outsourcing agreement must include a clause that allows APRA access to documentation and information related to the outsourcing arrangement. In the normal course, APRA will seek to obtain whatever information it requires from the APRA-regulated institution; however, the outsourcing agreement must include the right for APRA to conduct on-site visits to the service provider if APRA considers this necessary in its role as prudential supervisor. APRA expects service providers to cooperate with APRA's requests for information and assistance. If APRA intends to undertake an on-site visit to a service provider, it will normally inform the APRA-regulated institution of its intention to do so.	<ul style="list-style-type: none"> <li>FSA, section 2 (Audit and Access Rights for Financial Services Regulators)</li> </ul>	Section 2 of the FSA provides for audit rights for Financial Services Regulators.
4.	CPS 231, paragraph 36	An APRA-regulated institution must take all reasonable steps to ensure that a service provider will not disclose or advertise that APRA has conducted an on-site visit, except as necessary to coordinate with other institutions regulated by APRA that are existing clients of the service provider.	<ul style="list-style-type: none"> <li>CSA, section 4 (Nondisclosure)/OMA General Terms, section 8 (Nondisclosure)</li> </ul>	Section 4 of the CSA or section 8 of the OMA General Terms confirm that Oracle will refrain from disclosing information clearly identified as confidential at the time of disclosure for a period of five years, unless such disclosure is permitted under the CSA or OMA.
<b>Monitoring the relationship</b>				
5.	CPS 231, paragraph 43	Where an outsourcing agreement is terminated, an APRA-regulated institution must notify APRA as soon as practicable and provide a statement about the transition arrangements and future strategies for carrying out the outsourced material business activity.	<ul style="list-style-type: none"> <li>FSA, section 4 (Exit Provision)</li> <li>Oracle Cloud Hosting and Delivery Policies, section 6</li> <li>Services Pillar Documents, section 6</li> </ul>	<p>Pursuant to Section 4 of the FSA (Exit Provision) customers are able to order transition services and transition assistance to facilitate the transfer or the reincorporation of the concerned function back to the customer or to a third-party provider.</p> <p>Section 6 of the Oracle Cloud Hosting and Delivery Policies and section 6 of the SaaS and Paas/IaaS Pillar Documents sets out the process by which Oracle will make Your Content available to you upon termination of the services and provide related support.</p>

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