

Existing and revised B-10 minimum contractual requirements



Guideline B-10 ⁷	Revised Guideline B-10 ⁸
Applicability of Minimum Contractual Requirements	
OSFI expects material outsourcing arrangements to be documented by a written contract that addresses all elements of the arrangement. Some of the items identified below may not be applicable in all circumstances, however, FRFIs are expected to address all issues relevant to managing the risks associated with each outsourcing arrangement to the extent feasible and reasonable given the circumstances and having regard to the interests of the FRFI.	Annex 2 provides a non-exhaustive list of provisions that FRFIs should include in high-risk and critical third-party agreements . Consideration should be given to adding these provisions to agreements with other third parties as appropriate, proportionate to the risk and criticality posed by the third party.
Nature and Scope of the Arrangement	
The agreement is expected to specify the scope of the relationship, which may include provisions that address the frequency, content, and format of the service being provided. The agreement is expected to detail the physical location where the service provider will provide the service.	The agreement should specify the nature and scope of the arrangement, including provisions that address the frequency, content, and format of services, duration of the agreement, and physical location of the services being provided.
Roles and Responsibilities	
Not included as a separate contractual requirement	The agreement should clearly establish the roles and responsibilities of the FRFI, the third-party service provider, and subcontractors, including the management of technology and cyber risks and controls.

⁷Guideline B-10, *supra* note 1, s. 7.2.1.

⁸Revised Guideline B-10, *supra* note 4, Annex 2.

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Use of Subcontractors	
<p>The agreement is expected to set out any rules or limitations to subcontracting by the service provider. Security and confidentiality standards should apply to subcontracting or outsourcing arrangements by the primary service provider.</p> <p>The audit and inspection rights of the FRFI and OSFI should continue to apply to all significant subcontracting arrangements.</p>	<p>The agreement should establish parameters for the use of subcontractors and require the third party to notify the FRFI of any subcontracting of services. The FRFI should have the ability to conduct due diligence to evaluate the impacts of the change in service.</p>
Pricing	
<p>The agreement should fully describe the basis for calculating fees and compensation relating to the service being provided.</p>	<p>The agreement should set out the basis for calculating fees relating to the services being provided.</p>
Performance Measures	
<p>Performance measures should be established that allow each party to determine whether the commitments contained in the contract are being fulfilled.</p>	<p>The agreement should establish performance measures that allow each party to determine whether the commitments set out in the agreement are being fulfilled.</p>
Ownership and Access	
<p>Identification and ownership of all assets (intellectual and physical) related to the outsourcing arrangement should be clearly established, including assets generated or purchased pursuant to the outsourcing arrangement. The agreement should state whether and how the service provider has the right to use the FRFI's assets (e.g., data, hardware and software, system documentation, or intellectual property) and the FRFI's right of access to those assets.</p>	<p>The agreement should identify and establish ownership of all assets (intellectual and physical) related to third-party arrangements, including assets generated or purchased pursuant to the arrangement. The agreement should also specify whether and how the third party has the right to use the FRFI's assets (e.g., data, hardware and software, system documentation, or intellectual property), including authorized users, and the FRFI's right of access to those assets.</p>

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Security of Records and Data	
<p>At a minimum, the agreement is expected to set out the FRFI's requirements for confidentiality and security. Ideally, the security and confidentiality policies adopted by the service provider would be commensurate with those of the FRFI and should meet a reasonable standard in the circumstances. The agreement should address which party has responsibility for protection mechanisms, the scope of the information to be protected, the powers of each party to change security procedures and requirements, which party may be liable for any losses that might result from a security breach, and notification requirements if there is a breach of security.</p> <p>OSFI expects appropriate security and data confidentiality protections to be in place. The service provider is expected to be able to logically isolate the FRFI's data, records, and items in process from those of other clients at all times, including under adverse conditions.</p>	<p>The agreements should govern the confidentiality, integrity, security, and availability of records and data.</p>
Notifications to the FRFI	
<p>Not included as a separate contractual requirement.</p>	<p>The agreement should require the third party to notify the FRFI of:</p> <ul style="list-style-type: none"> incidents/events (experienced by the third party or a subcontractor) that impact or could impact services provided, the FRFI's customers/data, or the FRFI's reputation; technology and cyber security incidents (experienced by the third party or a subcontractor) to enable the FRFI to comply with its reporting requirements under OSFI's Technology and Cyber Security Incident Reporting Advisory⁹; significant organizational/operational changes; and material non-compliance with regulatory requirements (i.e., regulatory enforcement) or litigation.

⁹[Technology and Cyber Security Incident Reporting](#) (3 September 2021), Office of the Superintendent of Financial Institutions.

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Dispute Resolution	
<p>OSFI expects the agreement to incorporate a protocol for resolving disputes. The agreement should specify whether the service provider must continue providing the service during a dispute and the resolution period, as well as the jurisdiction and rules under which the dispute will be settled.</p>	<p>The agreement should incorporate a protocol for resolving disputes. The agreement should also specify whether the third party must continue providing the service during a dispute and the resolution period, as well as the jurisdiction, governing law(s), and rules under which the dispute will be settled.</p>
Regulatory Compliance	
<p>Not included as a separate contractual requirement.</p>	<p>The agreement should enable the FRFI to comply with all applicable legislative and regulatory requirements, including, but not limited to, location of records and privacy of client information.</p>
Business Continuity and Recovery	
<p>The agreement should outline the service provider's measures for ensuring the continuation of the outsourced business activity in the event of problems and events that may affect the service provider's operation, including systems breakdown and natural disasters, and other reasonably foreseeable events. The FRFI should ensure that the service provider regularly tests its business recovery system as it pertains to the outsourced activity, notifies the FRFI of the test results, and addresses any material deficiencies. The FRFI is expected to provide a summary of the test results to OSFI upon reasonable notice. In addition, the FRFI should be notified in the event that the service provider makes significant changes to its business resumption and contingency plans, or encounters other circumstances that might have a serious impact on the service.</p>	<p>The agreement should require the third party to outline measures for ensuring continuity of services in the event of a disruption, including testing and reporting expectations and mitigation requirements, as well as requirements of the third party to monitor and manage technology and cyber security risk.</p>

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Default and Termination	
<p>The agreement is expected to specify what constitutes a default, identify remedies, and allow for opportunities to cure defaults or terminate the agreement. The FRFI is expected to ensure that it can reasonably continue to process information and sustain operations if the outsourcing arrangement is terminated or the service provider is unable to supply the service. Appropriate notice should be required for termination of service and the FRFI's assets should be returned in a timely fashion. In particular, data and records relating to data processing in outsourcing arrangements should be returned to the FRFI in a format that would allow the FRFI to sustain business operations without prohibitive expense.</p> <p>The agreement should not contain wording that precludes the service from being continued in situations where OSFI takes control of the FRFI, or where the FRFI is in liquidation.</p>	<p>The agreement should specify what constitutes a default, or right to terminate, identify remedies, and allow for opportunities to cure defaults or terminate the agreement. Appropriate notice should be required for termination of the service and, where applicable, the FRFI's assets should be returned in a timely fashion. Any data and records should be returned to the FRFI in a format that allows the FRFI to sustain business operations without unreasonable expense.</p> <p>The agreement should not contain any terms that inhibit OSFI, or any other resolution authority or financial compensation scheme, from carrying out their mandate in times of stress or resolution. For example, the agreement should, among other things, remain valid and enforceable during a dispute resolution provided there is no default in payment obligations.</p>
Insurance	
<p>The service provider should be required to notify the FRFI about significant changes in insurance coverage and disclose the general terms and conditions of the insurance coverage.</p>	<p>The agreement should require the third party to obtain and maintain appropriate insurance and disclose the general terms and conditions of the insurance coverage. The agreement should also require the third party to notify the FRFI in the event of significant changes in its insurance coverage(s).</p>

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Audit	
<p>The contract or outsourcing agreement is expected to clearly stipulate the audit requirements and rights of both the service provider and the FRFI. At a minimum, it should give the FRFI the right to evaluate the service provided or, alternatively to commission an independent auditor to evaluate, on its behalf, the service provided. This includes a review of the service provider's internal control environment as it relates to the service being provided. In addition, in all situations, irrespective of whether an activity is conducted in-house, outsourced, or otherwise obtained from a third party, OSFI retains its supervisory powers.</p>	<p>Audit is not included in the minimum contractual requirements, but section 2.3.3 and Principle 8 indicate that the FRFI's third-party arrangements should allow the FRFI timely access to accurate and comprehensive information to assist it in overseeing third-party performance and risks. Depending on the arrangement and its criticality and risk level, audit rights may be required to satisfy Principle 8. We suggest that as a default in high-criticality or high-risk arrangements, audit provisions or similar measures should still be included to achieve adequate oversight.</p>
Prudent Risk Management	
<p>Not included as a separate contractual requirement.</p>	<p>The agreement should include any additional provisions necessary for the FRFI to prudently manage its risks in compliance with the Revised Guideline B-10.</p>