

# Summary of G-Cloud 9 call-off contract changes

Disclaimer: This document is not intended to be a legally binding document. Suppliers should seek their own legal advice about the G-Cloud 9 contract documents and the changes from G-Cloud 8.

<b>G-Cloud 9 reference</b>	<b>Page number</b>	<b>Summary of change</b>
Order Form	2	Simplification and consolidation of various entries, including guidance notes.
Service Level Agreement	4	New entry in the Order Form to give the Buyer room to set out any specific service levels required.
Collaboration Agreement	4	This section has been moved higher up in the Order Form. Obligations which appeared in the G-Cloud 8 Order Form about Collaboration have been moved to the Call-Off Contract terms and conditions.
Limits of Liability	4	Limits of Liability financial caps have been separated into a) Property related defaults b) Buyer Data defaults and c) Other defaults; providing the parties with more flexibility.
Force Majeure	5	New entry in the Order Form to enable the Buyer to specify the number of days a Force Majeure Event must persist to be able to End the Call-Off Contract.
Audit	5	New entry in the Order Form to enable the Buyer to insert and 'flow down' any audit provisions from the Framework Agreement into the Call-Off Contract.
Supplier's Information	5	Deletion of the entry for Supplies to add details of their commercially sensitive information. Suppliers can still provide this information to Buyers in writing if relevant.
Alternative clauses	6	This section has been added to the Order Form, Alternative clauses can be selected from Schedule 4.
Public Services Network	6	Obligations which appeared in the G-Cloud 8 Order Form about PSN have been moved to the Call-Off Contract terms and conditions and simplified.
Clause 1	7	The Call-Off Contract now includes the right for the Buyer to extend it by a maximum of 2 periods of up to 12 months each provided that clause 1.4 is complied with.
Clause 1.4	7	New clause which provides additional obligations on the Supplier if the Buyer reserves the right in the Order Form to extend the Call-Off Contract beyond 24 months (these additional obligations are set out at clauses 21.3 to 21.8).
Clause 2.1 to 2.4	7	In order to simplify and reduce the length of the Call-Off Contract, clause 2.1 operates to incorporate the listed Framework Agreement clauses into the Call-Off

		<p>Contract as Call-Off Contract terms. This reduces repetition of equivalent clauses across both documents.</p> <p>Where Call-Off Contract clauses appear to have been removed from G-Cloud 9 compared to G-Cloud 8, they have likely been flowed down from the Framework Agreement. See the list of flowed down clauses in clause 2.1.</p>
Clause 3.1	9	This was G-Cloud 8 clause 2.1.
Clause 3.2	9	This was G-Cloud 8 clause 6.3.
Clauses 4.4 to 4.8	9	<p>New clauses to clarify that the Parties do not intend for the Supplier to be engaged in a capacity that could bring the Supplier within the IR35 legislation; and to enable the Buyer to establish the Supplier's position and IR35 compliance.</p> <p>New clause 4.4 allows the Buyer to conduct an IR35 Assessment using the ESI tool.</p> <p>New clause 4.5 enables the Buyer to End the Call-Off Contract if the Supplier is found to be providing the Services within the scope of IR35.</p> <p>New clause 4.6 enables the Buyer to request the Supplier to self assess using the ESI tool and give the Buyer the results.</p> <p>New clause 4.7 requires the Supplier to provide further information if assessment indicates a risk of IR35 applying so that the Buyer can undertake its own assessment.</p> <p>New clause 4.8 requires the Buyer to provide the Supplier with the PDF and ESI reference number if it establishes that the Supplier does not fall within IR35.</p>
Clause 5.1	10	New bullet number 3 clarifying that the Parties should raise all due diligence questions before entering into a Call-Off Contract.
Clauses 6.1 to 6.3	10	Additional wording to clarify that Business Continuity and Disaster Recovery services for the ordered cloud services are part of the Service and must be performed when required. Additional wording requiring consistency with the Buyer's own business continuity and disaster recovery plans where requested.
Clause 7	10	Reordering and simplification of the clauses, but no significant changes. Additional clause at 7.12 (which was previously a guidance note in the Order Form) to clarify that due to the nature of cloud services, volumes in the Order Form are indicative only.
Clause 9	11	Reordering and simplification of the clauses for readability. No significant changes.
Clause 10	12	Most of the confidentiality clauses have been removed from the Call-Off Contract document and are now

		<p>flowed down from the Framework Agreement (Framework Agreement clauses 8.83 to 8.91). The indemnity provision from G-Cloud 7 about the Data Protection Act and confidentiality has been reinstated.</p>
Clause 11	12	<p>New Intellectual Property Rights (IPR) provisions at 11.2 clarifying that where the Supplier creates Project Specific IPRs during the Call-Off Contract (not including the Supplier's Background IPRs) the Supplier must grant a licence to the Buyer to allow it to continue to use these IPRs. The Call-Off Contract allows the Supplier to own these Project Specific IPRs.</p> <p>New clause 11.3 clarifying that where any Background IPRs are embedded in the Project Specific IPRs from either the Supplier or a third party, the Supplier must obtain a licence for the Buyer so that it can make full use of the Project Specific IPRs and can lawfully publish any items containing the Project Specific IPRs as open source if it requires.</p> <p>New clause 11.4 which gives the Supplier an:</p> <ul style="list-style-type: none"> <li>• early opportunity to raise with the Buyer any issues it may have in complying with clauses 11.2 and 11.3</li> <li>• obligation to avoid including third party IPRs and Background IPRs within the Project Specific IPRs if it can't obtain an appropriate licence</li> </ul> <p>Standard government indemnity provision inserted at clause 11.5 about infringement of third party IPRs caused by the Supplier.</p> <p>Standard government indemnity provisions inserted at clause 11.6 setting out the process where a claim is made for infringement of third party IPRs.</p> <p>New clause 11.7 ensuring the Supplier is not liable where an IPR claim is based on data which originates from the Buyer.</p> <p>New clause 11.8 which allows a Buyer to terminate the Call-Off Contract where the Supplier has delivered the service without ensuring that the Buyer's IPR requirements have been observed (including repayment of the money paid).</p>
Clauses 12.1 to 12.3	13	<p>The data protection clause has been simplified and some of the clauses have been removed and now flow down from the Framework Agreement (clauses 8.57 to 8.62).</p> <p>New Clause 12.1 to provide general protection to the Buyer about the Supplier's use of Buyer Personal Data.</p> <p>New clause 12.2 clarifying the Supplier's obligations to provide assistance to the Buyer so that the Buyer can properly deal with a complaint or request about Buyer Personal Data.</p>
Clauses 13.6 and 13.7	13	<p>Links to the relevant policies and standards have now been included and updated (including a new reference to the NCSC Cloud Security Principles). The reference</p>

		to the Technology Code of Practice has been moved out of the G-Cloud 8 definition for 'Good Industry Practice' and into this clause. New clause 13.7 to clarify that the Supplier must comply with any specific security requirements in the Order Form.
Clause 14	14	This section now includes the Public Services Network (PSN) clauses (moved here from the Order Form) and also a general Supplier requirement to deliver the services in a way which enables the Buyer to meet its Technology Code of Practice obligations.
Clauses 15.1 and 15.2	14	New general open source clauses. Unless the Buyer agrees otherwise, the default position should be that any software created for the Buyer must be suitable for publication as open source.
Clause 16	15	New clause 16.1 which applies if requested by the Buyer and requires the Supplier to provide details of its information security management system and security management plan for approval. New clause 16.7 requiring the Supplier to provide the Buyer with its cyber essentials certificate if this is a requirement in the Order Form.
Clause 17	15	Simplification of the clause for readability and some reordering of the provisions.
Clause 19	16	Simplification of the clause for readability and some reordering of the provisions.
Clause 20.2	17	New clause clarifying that service of legal proceedings and legal disputes (other than under the dispute resolution process), should be served to the parties' addresses in the Order Form.
Clause 21	17	Clause 21.1 includes an additional requirement on the Supplier that its exit plan ensures continuity of the Buyer's service during the exit phase. Clause 21.2 has been moved into this clause from the G-Cloud 8 clause 28.2. Buyers can now extend contracts beyond 24 months but only if they are able to demonstrate that there is a clear exit plan. To enable Buyers to obtain approval to extend, Suppliers must provide an additional exit plan at least 8 weeks before the 18 month anniversary of the Start Date under clause 21.3. Clauses 21.4 to 21.8 have further provisions for the additional exit plan, including: <ul style="list-style-type: none"> <li>• obligations to align the additional exit plan to the Buyer's exit strategy (clause 21.5)</li> <li>• requirements of the additional exit plan (clauses 21.6 to 21.8)</li> </ul>
Clauses 22.2 and 22.3	18	New clause 22.2 to clarify that the Supplier will be

		required to provide service information to the Buyer to enable it to run a fair competition for a new supplier. New clause 22.3 to ensure that the information provided under 22.2 is accurate and has a reasonable level of detail.
Clause 23.1	19	Force Majeure Event period can now be specified by the Buyer in the Order Form. Other Force Majeure provisions are now flowed down from the Framework Agreement.
Clause 24	19	Most liability provisions are now flowed down from the Framework Agreement. Limits of Liability financial caps have been separated into a) Property related defaults b) Buyer Data defaults and c) Other defaults; providing the parties with more flexibility. These are set out as part of the Order Form.
Clause 26.1	19	New clause which clarifies that as a Supplier of the Services, it is required to provide all necessary equipment for the services.
Clause 29	20	The employment regulations could apply under certain circumstances, and this new clause 29 provides the parties with additional certainty over how they will deal with it. If the regulations apply, the Supplier must comply with the law and the public sector equivalent (New Fair Deal) and must indemnify for losses if it fails or failed to comply. If the regulations apply, the Supplier must provide staffing information (clause 29.2); warrant the accuracy of this information (clause 29.3); and must not move staff to or from the services unless this is part of its ordinary course of business (clause 29.4).
Clause 31	21	New clause which specifies Suppliers collaboration obligations in addition to the Collaboration Agreement.
Schedule 3 - Collaboration agreement	22	This has been added to the Call-Off Contract. A Collaboration Agreement template is now included to provide some clarity over the terms that could be entered into.
Schedule 4 - Alternative clauses	22	This was Schedule 4 in the G8 Call-Off Contract.
Schedule 5 - Guarantee	22	This was Schedule 3 in the G8 Call-Off Contract.
Schedule 6 - Glossary and interpretations	26	Creation of a specific schedule for the Framework Agreement glossary. Various minor amends and simplification of language to the defined terms in the glossary.

