

**ICT purchasing conditions of Stichting Van Gogh Museum ('the Van Gogh Museum Foundation'), established in Amsterdam**

**1. Definitions**

1.1. In these ICT purchasing conditions, the following terms are defined as stated below:

- (a) Acceptance: the formal written confirmation by VGM that the delivered (parts of the) ICT Performance complies with the functional and technical specifications laid down in the Agreement. Acceptance will only take place after completion of a pre-agreed acceptance test, in which any defects found have been remedied in accordance with the agreed classifications;
- (b) Agreement: all agreements between VGM and the ICT Supplier concerning the performance of services or the provision of products, and all legal and other actions connected with these matters, as well as these ICT Purchasing Conditions, which together with the General Terms and Conditions form an integral part of the Agreement;
- (c) Artificial Intelligence (AI): (the part of) the ICT Performance that (partly) consists of Software that uses data analysis, statistics and/or self-learning logic to make predictions, take decisions and/or give advice and recommendations in an automated manner. In any case, AI refers to an AI system as defined in the Artificial Intelligence Regulation (AI Act);
- (d) Defect: any malfunction and/or other fault as a result of which the ICT Performance are not suitable for the agreed use, or any other failure of the ICT Performance to function properly;
- (e) Equipment: all hardware, including firmware and drivers, additional facilities and accessories, as well as accompanying documentation (including any rights of use) that will be supplied by the ICT Supplier to VGM as described in the Agreement;
- (f) Escrow: a continuity arrangement whereby the ICT Supplier has the complete and current source code, documentation, development environments and other essential materials relating to the software stored by an independent escrow agent. This escrow agent provides these materials to VGM, including a right of use that enables VGM to maintain, modify and continue the software for its own use, insofar as this is necessary for the continuity of the services as described in the Agreement.
- (g) Exit phase: has the meaning given to it in Article 21 of these ICT Terms and Conditions;
- (h) General Terms and Conditions: the general purchasing conditions of the Van Gogh Museum, version January 2024;
- (i) Hosting: the provision of the ICT Performance to VGM by the ICT Supplier by means of technologies for remote communication. This will also be considered to include, but not limited to, SaaS products or services and cloud services and cloud storage;
- (j) ICT Conditions: these ICT purchasing conditions of the Van Gogh Museum;
- (k) ICT Environment: the entire ICT infrastructure of VGM within which the ICT Performance are implemented;
- (l) ICT Performance: all Equipment and Software (including Rights of Use) and/or Services supplied or offered by the ICT Supplier to VGM, and which are described in more detail in the Agreement;

- (m) ICT Supplier: the party that performs services for VGM, provides a Right of Use or supplies products and/or services to VGM or has agreed with VGM to do so;
- (n) Implementation: all actions and activities to be performed by the ICT Supplier that are necessary to deliver all components of the ICT Performance, separately and in conjunction with each other, in a complete, operational and usable manner in accordance with the agreed use, including the associated documentation. This includes, but is not limited to, (data) conversion, the realisation of the necessary and/or agreed links, the performance of integration, functional and acceptance tests, as well as the guidance of users during commissioning;
- (o) Maintenance: the activities to be carried out by the ICT Supplier with the aim of the repair and/or improvement of the ICT Performance;
- (p) Open Source Software (OSS): software whose source code has been made publicly available and which is offered under an open source licence approved by the Open Source Initiative (OSI) that permits free use, modification and redistribution under the associated licence conditions;
- (q) Personnel: the employees and/or auxiliary persons to be engaged by the parties in the performance of the Agreement;
- (r) Software: all software supplied by the ICT Supplier or made available under the Agreement in object code and/or source code form, including accompanying documentation, interfaces, configuration files, data models and, if applicable, updates, upgrades, patches, customised modules and other components developed or integrated by the ICT Supplier, regardless of whether these are made available locally, via a network or as a cloud or SaaS service;
- (s) Rights: intellectual property rights, including but not limited to copyrights, trade name rights, trademark rights, design rights (registered or unregistered), portrait rights, database rights and patents, including applications for such rights.
- (t) Right of Use: the right on the basis of which VGM is authorized to use the ICT Performance;
- (u) Services: all, as described in the Agreement (including appendices, including the Service Level Agreement and/or Document Agreements and Procedures), for the purpose of VGM, work performed and services provided in the field of information and communication technology, including (i) the development, modification, configuration, implementation, management, maintenance and support of Software and customisation, (ii) hosting and making available applications, platforms and digital infrastructure (including SaaS, PaaS, IaaS and CaaS), and (iii) consultancy, support, training and other related services, regardless of the method of delivery or contractual form.
- (v) Specific ICT Performance: an ICT Performance developed solely for VGM, whether or not created on the instructions and/or under the direction and supervision of VGM, and for which VGM has paid the development costs;
- (w) Third-party software: Software (including cloud services such as SaaS, PaaS, IaaS and CaaS) that is not developed by the ICT Supplier and is supplied by the ICT Supplier to VGM or used by the ICT Supplier in the development of, or forming part of, the Specific ICT Performance and to which other terms and conditions of use, maintenance or liability may apply.;
- (x) Training data: all data, datasets or data sources, regardless of form or structure, used for training, testing, validating or optimising algorithms, AI systems or *machine learning* models;

- (y) Update: a subsequent version of the ICT Performance in which Defects have been repaired and/or the functioning of the ICT Performance has been improved in other ways, without any substantial addition of new functionalities;
- (z) Upgrade: a subsequent version of the ICT Performance that predominantly includes new or substantially modified functionalities resulting in an improvement or expansion of the operation of the ICT Performance and made available by the ICT Supplier under the same or a different name;
- (aa) VGM: the Van Gogh Museum Foundation, formerly Rijksmuseum Vincent van Gogh / Rijksmuseum H.W. Mesdag.

## 2. Applicability

- 2.1. These ICT Conditions form an integral part of the General Purchasing Conditions of VGM, and are only applicable to the ICT Performance. In the event of inconsistency between the General Terms and Conditions and the ICT Conditions, the provisions of the ICT Conditions will prevail.
- 2.2. These ICT Conditions are applicable to all requests, tenders, offers, orders, purchase orders, order confirmations, agreements and other legal actions in connection with the performance of services or the provision of products by the Supplier to VGM, as well as all legal and other actions connected with these matters (hereinafter also referred to as offers and orders).
- 2.3. Any deviation from and/or amendment to these ICT Terms and Conditions may only be agreed between the parties in writing and expressly..
- 2.4. ICT Terms and Conditions or other general terms and conditions of an ICT Supplier, under whatever name, are expressly rejected and therefore do not apply to the Agreement. Such conditions shall also not apply if reference is made to them in, but not limited to, quotations, order confirmations or electronic systems of the ICT Supplier..
- 2.5. In the event that the content of the Agreement deviates from the content of these ICT Conditions, the content of the Agreement will prevail.

## 3. Duty of inquiry and disclosure

- 3.1. In order to determine the intended use of the ICT Performance by VGM, the ICT Supplier has sufficiently informed itself about:
  - a. the objectives in connection with which VGM is entering into the Agreement;
  - b. the organization and ICT Environment of VGM, insofar as this is significant for the Agreement.
- 3.2. In fulfilling the research and information obligation set out in Article 3.1, the ICT Supplier has also formed an opinion on the feasibility and conformity of the ICT Performance within the frameworks specified by VGM for this purpose..
- 3.3. VGM shall provide the ICT Supplier with sufficient information, with due observance of Article 3.1. Upon request, VGM shall provide the ICT Supplier with additional information insofar as it is not confidential and must reasonably be considered relevant to the performance of the Agreement. In the event of any uncertainty, the ICT Supplier shall consult with VGM in a timely manner.
- 3.4. he parties shall keep each other informed of developments and changes that are or may be relevant to the performance of the Agreement..

## 4. Guarantees

- 4.1. In addition to the provisions of Article [9] of the General Terms and Conditions, the ICT Supplier guarantees that the ICT Performance:
  - I. also complies with Article 4 of these ICT Terms and Conditions during peak loads;
  - II. has the agreed characteristics and is fit for the agreed purpose in accordance with the Agreement;
  - III. after Implementation, can be used by VGM without modifications;
  - IV. is and will remain fully compatible with VGM's existing ICT environment;
  - V. contains no (other) security measures, functions or elements foreign to the ICT Performance (e.g. but not limited to logic bombs, viruses and worms) than those specified in the documentation provided by the ICT Supplier, as described in Article 5 of these ICT Terms and Conditions.;
  - VI. new versions and updates will be released regularly.
  - VII. in any case, complies with the agreed use during the technical lifespan customary for the ICT performance;
  - VIII. complies with and (in the case of Maintenance) will continue to comply with the relevant laws and regulations; and  
that delivery is possible at the price agreed in the Agreement for (equivalent, interchangeable and functionally equivalent) parts, components and extensions as available (and/or announced) at the time of signing the Agreement.
- 4.2. VGM is authorised but not obliged to implement Upgrades to the ICT Performance, unless the Upgrade is essential for the use of the ICT Performance and VGM agrees to this in writing.
- 4.3. The ICT Supplier shall inform VGM in advance in writing about Updates, stating in any case the reason for and the time of the Update. After the Update has taken place, the ICT Supplier shall inform VGM in writing about the change or improvement in functionality.
- 4.4. The ICT Supplier guarantees that the quality and capacity of any third party or parties engaged by it will be at least equivalent to that of the ICT Supplier, and that it will comply with all other guarantees customary in the ICT Supplier's sector to which a competent and diligent ICT Supplier may be held under the given circumstances, taking into account normal care and attention and normal professional knowledge and practice.
- 4.5. Notwithstanding the provisions of article 4.1, the ICT Supplier guarantees that for a period of 12 months after Acceptance, Defects in the ICT Performance and/or the ICT Environment will be remedied at the ICT Supplier's expense. If Defects arise in the ICT Performance and/or the ICT Environment within a period of 12 months after Acceptance (or the guarantee period applied by the ICT Supplier if this is longer) or it becomes apparent that the ICT Performance do not comply with the provisions of article 7 of the General Terms and Conditions and article 4.1, the ICT Supplier will repair or replace the ICT Performance and/or the ICT Environment as quickly as possible, at its own expense, at VGM's first request but no later than within two weeks, without prejudice to the other rights accruing to VGM by virtue of the Agreement, or another maintenance or other agreement arising from it, or the law.
- 4.6. If the ICT Performance is replaced or repaired pursuant to this article, a new warranty period of 12 (twelve) months shall commence for the replaced or repaired (part of the) ICT Performance after Acceptance of the replaced or repaired (part of the) ICT Performance.
- 4.7. If temporary solutions are used to repair Defects, the ICT Supplier shall replace them with a permanent solution as soon as possible..

- 4.8. If the ICT Supplier is of the opinion that VGM cannot invoke the provisions of the guarantee because a non-working function or a non-working component does not form a part of the guaranteed features as described in the Agreement, or because a Defect could be attributed to a cause that could not be imputed to the ICT Supplier, then the burden of proof in this respect lies with the ICT Supplier.
- 4.9. The ICT Supplier guarantees that it can maintain the ICT Performance for at least 5 (five) years after the date of Acceptance. In the event of repair or replacement, as referred to in Article 4.5, this period of 5 (five) years shall recommence after Acceptance of the replaced or repaired (part of the) ICT Performance.
- 4.10. If the ICT Supplier does not comply with its obligation to repair Defects in good time, then VGM is entitled, without prejudice to its further rights, to remedy these Defects itself or have them remedied by a third party, following notification in writing, at the expense of the ICT Supplier. The ICT Supplier is obliged to grant its cooperation with this. In such an event the ICT Supplier is obliged to provide the information necessary for this at VGM's first request.
- 4.11. The parties shall make further agreements regarding the guarantee concerning the ICT Performance in a Service Level Agreement, whether as a separate article in the Agreement or otherwise.
- 5. Documentation**
- 5.1. The ICT Supplier will supply VGM with adequate and comprehensible documentation in respect of the ICT Performance. This documentation must be drawn up in the Dutch language, must give an accurate, complete and detailed description of the ICT Performance and their functions, and must enable the users of the ICT Environment to test the ICT Performance or have them tested, as well as to maintain them or have them maintained, and to make use of all possibilities of the ICT Performance in a simple manner. The documentation must be provided previously to or at the same time as the delivery of the ICT Performance or the test versions thereof. If the parties explicitly agree to this in writing, the documentation may be drawn up in English.
- 5.2. The ICT Supplier shall ensure that the documentation supplied by it is replaced, amended or modified as soon as possible at its expense if, at any time during the use of the ICT Performance by VGM, it appears that the documentation contains incorrect information or is otherwise incomplete, insufficient, unclear or outdated.
- 5.3. VGM is permitted to reproduce, modify and publish documentation for use within its organisation without being liable for any further compensation, provided that any copyright notices etc. appearing on such documentation are retained.
- 6. Delivery, implementation/installation and Acceptance**
- 6.1. The ICT Supplier will deliver the ICT Performance to VGM in accordance with the time schedule stated in the Agreement, with the issue of a certificate of receipt. Unless VGM explicitly states that it will do this itself, the implementation and/or installation will take place in accordance with the time schedule specified in the Agreement.
- 6.2. The ICT Supplier will ensure that the ICT Performance will be implemented and/or installed in conjunction with the ICT Environment already present at VGM. As part of the implementation and/or installation the ICT Supplier will carry out an internal operational test, which has the object of the ICT Supplier establishing for itself that the ICT Performance function properly, both in terms of their separate components and as a whole (hereinafter referred to as the 'Acceptance Test'). Once the implementation and/or installation is completed in the opinion of the parties, a certificate of implementation and/or installation will be drawn up and signed by the parties. This certificate does not affect the provisions of the Agreement and the General Terms and Conditions concerning Acceptance

and the guarantee. Unless agreed otherwise in writing, the Acceptance Test will be prepared by the ICT Supplier and offered to VGM within 14 days of the delivery and completion of the implementation and/or installation. The Acceptance Test concerns all components of the ICT Performance. VGM can impose further conditions on the acceptance procedure in the Agreement.

- 6.3. Immediately after the Acceptance Test, a report in which any Defects shown by the ICT Performance are specified will be drawn up and signed by the parties. These Defects will be remedied by the ICT Supplier within a period of a maximum of two weeks, at the ICT Supplier's expense. After this a second Acceptance Test will be performed. If the ICT Performance are again rejected by VGM, then VGM can terminate the Agreement with immediate effect and/or demand compensation, without any notice of default to this effect being required, without prejudice to its right to nevertheless demand full compliance.
- 6.4. Acceptance of the ICT Performance takes place at the moment that VGM has approved the software or implementation in writing and does not affect the other rights of VGM. Defects that VGM has assessed as not reasonably preventing the ICT Performance from being put into use (hereinafter referred to as Minor Defects) will not prevent Acceptance. This does not release the ICT Supplier from its obligation to repair these Minor Defects as soon as possible at no cost.
- 6.5. If the ICT Performance consists of the delivery of hardware, ownership of this hardware shall transfer to VGM upon Acceptance by VGM, in accordance with the provisions of this article.
- 6.6. VGM is not obliged to make any payment to the ICT Supplier before Acceptance has taken place. Payments that are made prior to Acceptance take place under the suspensory condition of Acceptance. Unless other payment arrangements have been made in the Agreement between the parties.
- 7. Threatened delay**
- 7.1. If the implementation of the Agreement and/or the delivery of the ICT Performance is threatened with delay, the ICT Supplier will notify VGM of this immediately, stating the cause and consequences thereof. The ICT Supplier will also propose measures to VGM to prevent any delay, or further delay, or to limit it as much as possible.
- 7.2. As soon as possible after the receipt of the notification referred to in article 7.1, VGM will inform the ICT Supplier of whether or not it consents to the proposed measure. Consent does not automatically mean that VGM acknowledges the cause of the impending delay, and does not affect its rights in relation to the ICT Supplier.
- 8. Access to data and authorizations**
- Conditions that must be met and procedures that must be followed in order to gain access to the network of VGM apply to the ICT Supplier. A copy of the 'Protocol for Access to the VGM Network for ICT Suppliers' is attached to these ICT Purchasing Conditions as Appendix 1.
- 9. Hosting**
- 9.1. In addition to the provisions of these ICT Purchasing Conditions, the provisions of this article also apply in the case of Hosting.
- 9.2. The ICT Supplier will provide all necessary details that are needed to actually make use of the ICT Performance, such as URLs and login details, to VGM.
- 9.3. ICT Leverancier is niet gerechtigd de Hosting op te schorten, behalve voor zover voortzetting redelijkerwijs niet geveerd kan worden. De enkele eenmalige niet-betaling door VGM rechtvaardigt niet de opschorting van de Hosting..

- 9.4. VGM itself is fully responsible at all times for the use it makes of the Hosting and for the data that it stores, calls up, distributes and otherwise uses by means of the Hosting.
- 9.5. Indien en voor zover er aanwijzingen of vermoedens bestaan dat de middels de Hosting verwerkte gegevens onrechtmatig jegens derden zijn, zal ICT Leverancier VGM daarover zo spoedig mogelijk informeren..
- 9.6. The ICT Supplier will not delete the data in question without prior consultation with VGM, unless the data is so evidently unlawful and the urgency of the situation is such that prior consultation with VGM cannot be awaited.
- 9.7. Notwithstanding the provisions of article 17.5, the ICT Supplier shall install Updates and/or Upgrades for Hosting at no additional cost.
- 9.8. The right to refuse to take Updates and/or Upgrades into use as referred to in article 13.4 is not applicable in the case of generic Hosting that is offered to multiple customers by the ICT Supplier, unless determined otherwise in the Agreement.
- 9.9. In view of the great dependence on the ICT Supplier, as well as the continuity risk in the event of incidents and emergencies (such as bankruptcy) that exists in the case of Hosting, the ICT Supplier declares forthwith and in advance that it is prepared to make additional agreements with VGM in order to reduce the abovementioned risks.
- 9.10. The additional agreements referred to in the previous paragraph may include, among other things:
- Making agreements on the periodic return or supply to a third party of the data processed by the ICT Supplier ('data escrow');
  - Entering into an agreement with a third party to the end that the third party in question is severally bound to or guarantees compliance with the Agreement;
  - Entering into an agreement, such as a tripartite agreement, with a third party with the purpose that the third party in question gains possession, continuously or otherwise, of all necessary details in order to be able to implement all or part of the ICT Performance in the Agreement in the place of the ICT Supplier, whether or not on the basis of a new agreement.

## 10. Intellectual property rights

- 10.1. Without prejudice to the provisions of Article 15 of the General Terms and Conditions, all Rights and/or other (similar) rights to a Specific ICT Service, including software and source code, the materials and documentation required for use and Maintenance, are vested in VGM. This also applies to all anticipated and/or unforeseen intellectual property rights that may arise or be acquired by the ICT Supplier in the future, including but not limited to those arising or acquired through expansion, improvement and modification of the Software, as well as all powers that the law grants or will grant to these rights, and will, insofar as these are or will be vested in the ICT Supplier. These rights will be transferred by the ICT Supplier to VGM (in advance, if necessary) on the basis of these ICT Terms and Conditions and/or the order confirmation. Insofar as a further deed is required for this transfer, the ICT Supplier shall, at VGM's first request, sign such a deed and perform all acts necessary to ensure that the Rights are transferred to VGM and, where relevant, that such Rights are registered in the name of VGM. If it concerns future work that is delivered in advance, the ownership rights will be transferred to VGM without the need for any further delivery action.
- 10.2. Insofar as any intellectual property rights are not transferable by the ICT Supplier to VGM and/or insofar as the law does not permit transfer, the ICT Supplier hereby grants VGM the exclusive, free of charge, worldwide, perpetual, irrevocable, non-terminable and sublicensable right to use these intellectual property rights in the broadest possible sense. If the ICT Supplier does not itself hold the intellectual

property rights, it shall explicitly state this well in advance of the Agreement being concluded, whereby the ICT Supplier guarantees that it has or will obtain the authority from the rights holder to grant the licence described above.

- 10.3. In the event that VGM obtains the exclusive, royalty-free, worldwide, perpetual, irrevocable, non-terminable and sublicensable right to Software, as described in the previous paragraph, royalty-free Updates will form part of this Software.
- 10.4. In the event of a Specific ICT Service, the ICT Supplier, also on behalf of its Personnel, waives all moral rights to which it may be entitled, insofar as this is legally possible. The ICT Supplier guarantees that it is authorised to effect this waiver on behalf of its Personnel. The ICT Supplier guarantees that all third parties involved in the ICT Service who do not have an employment relationship with the ICT Supplier have transferred all intellectual property rights relating to the Specific ICT Service to the ICT Supplier. If this is not the case, the ICT Supplier undertakes to ensure that these intellectual property rights are transferred to it.
- 10.5. The ICT Supplier guarantees that the rights referred to in this article are transferred freely and unencumbered, that it is independently entitled to do so, and that the use of products or services supplied by the ICT Supplier by VGM does not infringe on the rights of third parties.
- 10.6. Unless the parties agree otherwise, the ICT Supplier shall refrain from using, exploiting or allowing third parties to exploit the Specific ICT Performance in any way, or from disclosing or reproducing it in any other way, other than strictly necessary for the performance of the Specific ICT Service and/or the direct or indirect registration or application for legal protection with regard to the aforementioned intellectual property rights or derivative rights.
- 10.7. Unless the parties agree otherwise, the ICT Supplier shall make the source code for the Specific ICT Performance available to VGM when offering the first version of the Specific ICT Performance for Acceptance, or upon first request by VGM. If changes to the aforementioned Specific ICT Performance result in changes to the source code, the modified source code shall be made available to VGM. Ownership of the source code carrier shall be automatically transferred to VGM at the time of making it available to VGM.
- 10.8. The ICT Supplier guarantees that the Specific ICT Performance does not infringe, either wholly or in part, any intellectual property rights, personal rights or any comparable rights of third parties and indemnifies VGM against all (imminent) claims from third parties in respect of any infringement(s) of intellectual property rights and/or other (comparable) rights of those third parties.
- 10.9. In addition to the indemnification referred to in Article 10.7, if the use of the Specific ICT Service provided by him to VGM is prohibited in connection with an infringement of intellectual property rights and/or other (similar) rights of third parties, at VGM's discretion, the ICT Supplier shall, as soon as possible and at his own expense:
- acquire a right of use for VGM from the entitled party to the relevant Specific ICT Performance, if this is not possible;
  - modify the relevant Specific ICT Performance in such a way that it no longer infringes on the rights of third parties, or if this is not possible;
  - replace the Specific ICT Performance in question with an equivalent Specific ICT Performance with at least the same functionality, which does not infringe on the rights of third parties, or if this is not possible;
  - withdraw the Specific ICT Service against reimbursement of all costs paid for the Specific ICT Service and its implementation, without prejudice to VGM's other rights, including the right to terminate the Agreement and the right to (additional) compensation.

- 10.10. Insofar as VGM has not acquired the intellectual property rights and/or other comparable rights on the Specific ICT Performance in accordance with the Agreement, then VGM is entitled to continue to use the Specific ICT Performance on the termination of the Agreement on the basis of the acquired licence, unless it has been established in law that VGM has attributably failed to comply with its obligations under the Agreement or if parties in the agreement have agreed upon otherwise.
- 10.11. In the event of a disagreement between the parties regarding intellectual property rights to (parts of) the Specific ICT Performance, it will be assumed, unless proven otherwise, that those rights are vested in VGM. Regardless of the outcome of that dispute, VGM may continue to use the Specific ICT Performance in accordance with the Agreement.
- 10.12. The ICT Supplier is liable for all damage suffered by VGM and/or third parties arising from or related to (a failure to comply with) this article.

#### **11. Intellectual property rights Software ICT Supplier**

- 11.1. All intellectual property rights, including copyrights and database rights, relating to the standard software supplied by the ICT Supplier remain vested in the ICT Supplier.
- 11.2. VGM shall only obtain a non-exclusive, non-transferable and non-sublicensable right to use the Software, solely for the agreed purpose and within the agreed usage environment, for the duration of the Agreement.
- 11.3. Unless the parties agree otherwise in writing, the VGM is not permitted to disclose, modify, decompile or reverse engineer the Software, except to the extent permitted by mandatory law.
- 11.4. The ICT Supplier guarantees that it is entitled to provide the Software under licence and indemnifies VGM against all (imminent) claims from third parties due to alleged or actual infringement(s) of intellectual property rights and/or other (similar) rights of those third parties with regard to the Software. VGM shall immediately notify the ICT Supplier of any such claims and shall cooperate fully in the defence thereof.
- 11.5. The indemnification referred to in the previous paragraph does not apply if the infringement is the result of VGM's use of the Software in violation of the Agreement or the documentation provided, or of modification of the Software by VGM or by third parties hired by it.
- 11.6. VGM is authorised to make a few backup copies of the Software referred to in this article. If it is unable to do so as a result of security measures, the ICT Supplier will provide it with a few backup copies free of charge upon first request.

#### **12. Third-party software**

- 12.1. If the ICT Performance (in whole or in part) consists of the delivery of Third-party software, the ICT Supplier shall notify VGM of this in writing in advance.
- 12.2. The ICT Supplier shall make any applicable licence terms and conditions of this third party available to VGM for acceptance and shall inform VGM of any restrictions on the right of use, including geographical restrictions, user numbers, duration or technical requirements.
- 12.3. The Third-Party Software shall be supplied by the ICT Supplier, including implementation, updates, upgrades, maintenance and everything necessary to deliver and maintain the ICT Performance in full working order, in accordance with the provisions of the Agreement, including all provisions of Articles 5 and 6 of these ICT Terms and Conditions.

- 12.4. The ICT Supplier guarantees that the Third-Party Software will function in accordance with the provisions of the Agreement. If the Third-Party Software does not function or does not function satisfactorily in conjunction with equipment and/or Software not supplied by the ICT Supplier, the parties will consult with the other party or parties involved in order to identify and remedy the cause of the malfunction or inadequate functioning in a spirit of cooperation. The ICT Supplier will not charge any costs for this.

- 12.5. If and insofar as the aforementioned third-party terms and conditions are deemed inapplicable or are declared inapplicable for any reason whatsoever in the relationship between VGM and the ICT Supplier, the provisions of these ICT Terms and Conditions shall apply in full.

- 12.6. All intellectual property rights relating to the Third-Party Software remain vested in the relevant third-party licensor(s). VGM only acquires a right of use under the terms and conditions of the relevant licence agreement, as determined by the third-party licensor. The ICT Supplier guarantees that it is authorised to grant or transfer the relevant licence to VGM.

- 12.7. The ICT Supplier guarantees that it is authorised to grant or transfer the relevant licence to VGM. The ICT Supplier indemnifies VGM against claims from third parties for infringement of intellectual property rights, if and insofar as these arise from the unauthorised or invalid granting of licences by the ICT Supplier.

- 12.8. In the event of any conflict between these ICT Terms and Conditions and the licence terms and conditions of the original licensor, the terms and conditions of the third-party licensor shall prevail with regard to the use of the Third-Party Software in question.

#### **13. Continuity**

- 13.1. If circumstances arise that render the ICT Supplier (temporarily or permanently) unable to fulfil its obligations under this agreement – including suspension of payments, bankruptcy or termination of business activities – the ICT Supplier shall, at VGM's first request, cooperate fully in ensuring the continuity of the ICT Performance.
- 13.2. In the context of continuity, the availability of the ICT Service is essential for HSE. The ICT Supplier is therefore not entitled to impede or block the use of the ICT Service by means of technical measures. This is only different in the event that:
- VGM fails to fulfil its obligations under the Agreement in an attributable manner,
  - the ICT Supplier has sent VGM a notice of default in which it states its intention to obstruct or block (suspend) the ICT Service, and
  - VGM fails to fulfil its obligations within a reasonable period of time.
- 13.3. If and insofar as the software supplied is essential to VGM's business operations and/or in the case of Hosting, the ICT Supplier shall, upon request, cooperate in drawing up a continuity plan, which shall include:
- concluding an escrow agreement with an independent third party for the storage of the source code and accompanying documentation;
  - providing technical documentation and transfer information;
  - access to necessary data, configurations and licence information;
  - the inability to suspend the Services due to disputes;
  - all obligations as referred to in Article 21 of these ICT Terms and Conditions (Exit phase).
- 13.4. Any costs associated with measures to ensure continuity shall only be borne by VGM if these have been agreed in advance in writing.

13.5. The obligations in this article shall remain in force during a transitional period of at least 3 (three) months after termination of the Agreement, unless the parties agree otherwise in writing.

#### **14. Open Source Software**

14.1. The ICT Supplier is not permitted to use Open Source Software for the development of the Specific ICT Performance, unless this has been expressly agreed in writing in the Agreement, whereby the ICT Supplier has submitted the terms and conditions of this Open Source Software Supplier to VGM in writing for approval in advance.

14.2. If, with VGM's consent, the ICT Supplier uses Open Source Software for the development of the Specific ICT Performance, the ICT Supplier will do everything possible to ensure that VGM acquires all Rights to the Specific ICT Performance. If this is not possible, the ICT Supplier will notify VGM of this before the Specific ICT Performance is developed.

#### **15. Artificiële Intelligentie (AI)**

15.1. The ICT Supplier is not permitted to use documentation, visual material, information or other data owned by or provided by VGM as Training Data or to share it in any other way with or enter it into AI models or systems or similar algorithmic technologies, unless VGM has given its express prior written consent for this.

15.2. If the ICT Supplier provides an algorithmic application, regardless of whether this is an independent Specific ICT Service or part of an ICT Service, the following conditions apply:

- a) in developing this, the ICT Supplier will be fully compliant with existing and future legislation and regulations and will comply with its obligations;
- b) The ICT Supplier acknowledges that it is the expert in this field and will closely monitor developments relating to this legal framework.
- c) The ICT Supplier guarantees that the application functions and will continue to function in accordance with this legislation and that VGM, as the user, can comply with its legal obligations;
- d) if the AI Act applies, the ICT Supplier is designated as the "provider" and VGM as the "controller", whereby the ICT Supplier has a duty of care to prevent VGM from being classified as the "provider";
- e) if the application is classified as "high risk" under the AI Act, the ICT Supplier shall at least ensure that it has the required declarations of conformity and certifications at the start of the Agreement and that it continues to have them for the duration of the Agreement;
- f) The ICT Supplier guarantees that the application offers an appropriate level of accuracy, robustness and cyber security and is suitable for its intended use;
- g) The ICT Supplier guarantees that the application is sufficiently transparent to enable VGM to reasonably understand and interpret its operation and output;
- h) At VGM's request and without (additional) costs, the ICT Supplier will provide all information that VGM needs to comply with applicable laws and regulations;
- i) VGM has the right to check whether the prediction or decision models/algorithms in the application are working correctly and whether the underlying data is accurate;
- j) The ICT Supplier shall indemnify and hold VGM harmless against any claims from third parties if the application is defective or has otherwise caused damage, insofar as this damage is related to a shortcoming on the part of the ICT Supplier under the Agreement or other unlawful acts by the ICT Supplier towards VGM or third parties.

#### **16. Escrow**

16.1. In the specific situation described in Articles 10 and 13 of these ICT Terms and Conditions, VGM shall at all times be entitled to require the ICT Supplier to provide Escrow, even if this was not initially agreed between VGM and the ICT Supplier.

16.2. Escrow will be in compliance with that which is customary in this respect in the Dutch market at the time of entering into the Agreement.

16.3. If Escrow forms a part of the Agreement, the ICT Supplier will provide VGM with proof showing that the Escrow fulfils the provisions in this respect in the Agreement, or the ICT Supplier will ensure with appropriate haste that such facility is provided.

16.4. If Escrow does not form a part of the Agreement, VGM is also entitled to subsequently require that such an arrangement is nevertheless entered into, and/or it may at any time enter into an Escrow agreement as referred to in 11.2. Reasonable costs connected with this will be borne by VGM.

#### **17. Support and Maintenance**

17.1. The ICT Supplier shall familiarise VGM and its users of the (Specific) ICT Performance with the use of the (Specific) ICT Performance. This support shall be provided by experts who are competent and suitable for this purpose and who have knowledge of the specific implementation carried out. During the term of the Agreement, the ICT Supplier is also willing and able to provide VGM's staff with training(s) for the use of the (Specific) ICT Service at reasonable terms and rates to be agreed upon at that time.

17.2. The ICT Supplier declares its willingness to maintain the (Specific) ICT Performance at VGM's first request and to conclude a maintenance agreement with VGM for this purpose. At VGM's request, the parties will enter into consultation about concluding one or more service level agreements (SLAs) and/or Document Agreements and Procedures (DAPs), whether or not supplemented by an escalation sheet, in which concrete performance levels ('service levels' and/or 'working agreements') relating to the (Specific) ICT Performance and the maintenance to be performed are laid down and in which penalties are included for failure to achieve the agreed service levels. Any measures stipulated in the SLAs do not affect VGM's other rights, including the right to recover any damage it has suffered.

17.3. If and insofar as no further agreements (maintenance agreements, SLAs or DAPs as referred to in the foregoing paragraph) have been made, then the conditions for maintenance stated in article 12.4 apply as minimum standards for Maintenance.

17.4. Maintenance includes, at a minimum, the provision of user support, the maintenance of the (Specific) ICT Performance by taking appropriate preventive measures to ensure that the (Specific) ICT Performance will function in accordance with the Agreement for the duration of the Agreement, detecting and remedying malfunctions and defects as quickly as possible, continuing to comply with relevant legislation and regulations in a timely manner, modifying the (Specific) ICT Performance after written permission from the VGM in order to increase its reliability, change functions or add new functions and/or resolve problems in its use, and/or regularly releasing new versions and 'releases' of the (Specific) ICT Performance. VGM is not obliged to always implement the latest Upgrade of the delivered ICT Performance. Article 4.2 applies mutatis mutandis. Failure to implement the latest Upgrade does not affect the Maintenance and the obligations of the ICT Supplier referred to in this article.

17.5. On the request of VGM the ICT Supplier will attend to the Implementation of Upgrades, for a payment to be further agreed.

17.6. The time at which Maintenance is carried out shall be determined by mutual agreement. The basic principle is that Maintenance shall be carried out in such a way that it causes the least possible disruption to VGM's business processes. Maintenance that disrupts or may disrupt VGM's business processes shall be announced in writing in good time, but at least 5 (five) working days in advance.

- 17.7. Any payment obligation relating to agreed Maintenance shall in any case only commence after the expiry of the warranty period, unless the parties have agreed otherwise.
- 17.8. If no further maintenance agreement has been agreed, notwithstanding the provisions of Article 17.4, the VGM shall be entitled to carry out maintenance work in relation to the (Specific) ICT Performance under its own management or to have it carried out by a third party, without the right to warranty lapsing. The ICT Supplier shall cooperate unconditionally in this regard, including by providing the necessary information and resources. This article does not apply to SaaS services or products.
- 17.9. If no maintenance agreement or availability has been agreed in the SLAs, the ICT Supplier shall in any case be available for Maintenance on working days between 8 a.m. and 6 p.m.
- 18. Security**
- 18.1. If the ICT Supplier is obliged under the Agreement or by the nature of the (Specific) ICT Performance, such security shall in any case comply with the applicable laws and regulations and with what may reasonably be expected of a diligent supplier within the industry, taking into account the nature and scope of the services, as well as the current state of technology and prevailing standards within the sector. In addition, the security shall comply with the specifications agreed in writing between the parties regarding security.
- 18.2. The ICT Supplier must demonstrate which appropriate technical and organisational measures are taken to protect VGM's data and systems against loss, unauthorised access or unlawful processing.
- 18.3. If the ICT Supplier uses third parties to perform the Agreement, it shall ensure that these third parties take at least the same security measures and shall submit these measures to VGM upon request.
- 18.4. Insofar as the (Specific) ICT Performance is carried out at VGM, the ICT Supplier shall instruct its Personnel to comply with the security procedures specified by VGM and the house rules referred to in Article 14.6 of the General Terms and Conditions. This includes, but is not limited to, the 'Protocol for access to the VGM Network for ICT suppliers' referred to in Article 8 and the rules referred to in Article 14.7 of the General Terms and Conditions.
- 18.5. If a security incident occurs that could affect VGM's data or systems, the ICT Supplier shall report this in writing within 24 hours of discovery via the specified procedure, with a copy to the VGM contact person, and shall provide an initial assessment of the nature, scope and expected impact.
- 18.6. Once a year, or upon first request in the event of incidents, the ICT Supplier shall provide an up-to-date overview of the security measures applied.
- 18.7. VGM has the right to conduct or have conducted an audit of compliance with this article once per contract year, or in the event of a serious security incident, at its own expense, provided that reasonable notice of at least 10 (ten) working days is given and that the confidentiality of the ICT Supplier's business information is respected.
- 19. Insurance**
- In addition to the provisions of article 22 of the General Terms and Conditions, the ICT Supplier will in any event insure itself in respect of risks in the fields of information security and privacy.
- 20. Personal data**
- 20.1. If and insofar as ICT Supplier processes personal data for or on behalf of VGM in the role of Processor, as stipulated in Article 16 of the General Terms and Conditions, a separate processing agreement will be concluded between the parties in which further agreements will be made regarding, among other

things, the nature and duration of the processing, the categories of data and data subjects, security measures, relevant rights, audit rights and sub-processors.

- 20.2. In such a case, the ICT Supplier shall also, at VGM's first request, provide full cooperation in the fulfilment of VGM's obligations under the GDPR, including requests for access from data subjects, DPIA's (Data Protection Impact Assessments), audit requests and contacts with supervisory authorities.
- 20.3. If ICT Supplier processes personal data in the role of controller in the context of the performance of the Agreement, ICT Supplier will comply with all applicable laws and regulations, including but not limited to the General Data Protection Regulation (GDPR). If the ICT Supplier and VGM are designated as joint controllers in accordance with the GDPR, the parties will make further agreements in the Agreement regarding the processing of the personal data in question.
- 21. Exit-phase**
- 21.1. If the Agreement ends (prematurely) for any reason, the ICT Supplier shall, at VGM's first request, but no later than within 5 (five) working days, do whatever is reasonably necessary to ensure that a new party or VGM itself can continue to use and maintain the (Specific) ICT Performance without hindrance and, where necessary, to develop it (further). This includes, but is not limited to, the following:
- a) right to immediate access to data and systems;
  - b) providing technical and operational support;
  - c) making available all data entered, generated or stored by VGM (including log data, configurations and associated metadata) in a common and structured electronic format;
  - d) not withholding or deleting data or copies of data entered, generated or stored by VGM without VGM's written consent;
  - e) providing VGM with the specific settings/configuration of the (Specific) ICT Performance (including business rules, macros, etc.);
  - f) keeping the (personal) data processed by the ICT Supplier available for unimpeded inspection by VGM until such time as this data has been returned or deleted upon request;
  - g) technically unbundling and dismantling (part of) the (Specific) ICT Performance.
- 21.2. If it has been agreed that the ICT Supplier will destroy the (personal) data for which VGM is responsible, this will take place in accordance with the underlying legal regulations and the ICT Supplier will issue written proof of destruction.
- 21.3. The ICT Supplier shall immediately return to VGM all documents, books, records and other goods (including data and information carriers) provided to it by VGM, as well as all data in a format to be specified by VGM. This applies in full to all data and goods in the possession of subcontractors of the ICT Supplier.
- 21.4. If the ICT Supplier uses a third party for the delivery of the (Specific) ICT Performance, for example for hosting services, the ICT Supplier undertakes towards VGM to facilitate that this party immediately grants VGM access to all data of VGM that this party has in its possession and that this party enters into an agreement with VGM to now provide the same services that were previously provided to the ICT Supplier directly to VGM. This is without prejudice to the provisions of Article 13 of these ICT Terms and Conditions.
- 21.5. At the first request of VGM, but no later than within 5 (five) working days, the parties shall draw up an exit plan setting out further guidelines regarding an exit. This is in addition to the provisions of this article.
- 21.6. Any costs incurred by the ICT Supplier upon exit will be specified in advance and will only be payable if they are reasonable, necessary and have been agreed in advance in writing by VGM. Under no

circumstances will these costs exceed the rates and conditions agreed in the Agreement. The services referred to in this article will be provided free of charge if the Agreement has been dissolved or otherwise terminated due to an attributable shortcoming on the part of the ICT Supplier.

## **22. Final provisions**

- 22.1. The Dutch-language text of these ICT Purchasing Conditions forms the only authentic text. In the event of discrepancy between the Dutch-language text and a translation into another language, the Dutch-language text will prevail.
- 22.2. The invalidity of any provision of the Agreement and/or these ICT Terms and Conditions shall not affect the validity of the other provisions of the Agreement and these ICT Terms and Conditions. If and insofar as a provision of the Agreement and/or these ICT Terms and Conditions is invalid or, under the given circumstances, unacceptable according to standards of reasonableness and fairness, the parties will consult on a provision that is valid or acceptable. If the parties are unable to reach agreement within two (2) weeks of the aforementioned consultation, VGM will be entitled to terminate the Agreement in accordance with the provisions of Article 18 of the General Terms and Conditions.
- 22.3. Obligations which, by their nature, are intended to continue even after termination or dissolution of the Agreement shall remain in force after termination of the Agreement in accordance with their meaning. These obligations include, among others, those relating to intellectual property, confidentiality, liability, insurance, cooperation in the transfer of services, applicable law and disputes, and choice of domicile.

## **Appendix 1: Protocol for Access to the VGM Network for ICT Suppliers**

### **Brief description of this protocol**

This protocol describes:

- the conditions that must be met;
- the procedure that must be followed;

in order to give third parties access to the Van Gogh Museum (VGM) Infrastructure.

This protocol relates to the following activities for VGM:

1. Remote activities (on-premise);
2. On-site activities;
3. Cloud services (IaaS, PaaS)
4. Cloud services (SaaS).

The following apply:

- Confidentiality statement  
The ICT supplier must sign a confidentiality statement for VGM at the start of the activities. VGM will supply this statement. The confidentiality statement will be attached as an appendix to the signed protocol.
- Certificate of good conduct (VOG)  
The ICT supplier must provide a valid Certificate of Good Conduct (Verklaring Omtrent Gedrag - VOG). The Certificate of Good Conduct is submitted and checked off as seen by VGM. In the context of the GDPR legislation, no copies are made by VGM and any (digital) copies provided by the ICT supplier will be destroyed after inspection. Without a valid Certificate of Good Conduct, the employee cannot be employed at VGM.
- Engagement of third parties  
The ICT supplier will represent the third parties engaged by it as if this concerned its own actions or omissions. The supplier guarantees that third parties engaged by it will adhere to all applicable VGM codes of conduct and house rules and to this protocol for ICT suppliers.

### **1. Remote Activities (on-premises)**

- Depending on the impact of a change on a business-critical process, the change must always first be tested in the (if present) test environment in consultation with VGM ICT.
- The activities must be restricted to the issued assignment.
- All changes (work) that are not stated in the TOPdesk ticket must always be discussed in advance with the client within the VGM and VGM ICT and approved by them.
- Remote activities may only be carried out during office hours, unless agreed otherwise with VGM ICT or in the event of a malfunction.
- In principle no work may be carried out by the ICT supplier on Fridays, Saturdays, Sundays or public holidays, unless explicitly agreed otherwise with VGM ICT or in the event of a malfunction. Remote access to VGM Servers is exclusively via the ICT supplier portals and with a VGM token code (MFA), unless otherwise agreed with VGM ICT.
- The VGM provides the application form for remote work (on premises), which is available from the ICT Service Desk.
- The ICT supplier is responsible for the secure storage of its login details in a Password Manager, and must ensure the periodic change of the passwords at least every three (3) months.
- Remote access to VGM Servers may only be from a secure network. Connection from a mobile and/or public network is not permitted, unless a VPN solution is used.
- An ICT Supplier's own device must meet the basic security requirements (up-to-date OS patches, virus scan and firewall).



- The ICT supplier is not permitted to install software or updates on the VGM servers, unless this takes place in consultation with the client within VGM and VGM ICT.
- It is not permitted to make a connection with a modality other than that for which the order has been issued.
- No data of VGM may be copied to own devices or to external media of the ICT supplier, unless the data owner has given explicit permission for this and this is done in consultation with VGM ICT.
- ICT supplier is not permitted to use the VGM Infrastructure as a demonstration environment for third parties, unless VGM ICT has given explicit permission for this.

## 2. On-Site Activities

- Depending on the impact of a change on a business-critical process, the change must always first be tested in the (if present) test environment in consultation with VGM ICT.
- All activities must be restricted to the issued assignment.
- All changes (work) that are not stated in the TOPdesk ticket must always be discussed in advance with the client within the VGM and VGM ICT and approved by them.
- On-site work by ICT Supplier is only allowed during office hours, unless otherwise agreed with VGM ICT or in the event of a malfunction.
- In principal no work may be carried out by the ICT supplier on Fridays, Saturdays, Sundays or public holidays, unless explicitly agreed otherwise with VGM ICT or in the event of a malfunction.
- The ICT supplier is not permitted to install software or updates on the VGM servers, unless this is done in consultation with the client within VGM and VGM ICT.
- An ICT Supplier's own device must meet the basic security requirements (up-to-date OS patches, virus scan and firewall).
- ICT supplier may not use a UTP cable or other connection cable to its device without permission from VGM ICT.
- The use of the Wi-Fi network is not permitted without permission from VGM ICT.
- No data of VGM may be copied to own devices or to external media of the ICT supplier, unless the data owner has given explicit permission for this and this is done in consultation with VGM ICT.
- ICT supplier may not connect its own devices (AP, Router, Switch, cameras, printers, etc.) to the VGM network without consultation with VGM ICT.
- ICT suppliers are strictly prohibited from browsing to suspicious websites via the VGM network
- ICT supplier is not permitted to use the VGM Infrastructure as a demonstration environment for third parties, unless VGM ICT has given explicit permission for this.

## 3. Cloud services (IaaS, PaaS)

- Depending on the impact of a change on a business-critical process, testing must always first be carried out in the Dev environment.
- The activities must be restricted to the issued assignment.
- All changes (work) that are not stated in the TOPdesk ticket must always be discussed in advance with the client within the VGM and VGM ICT and approved by them.
- Changes to Cloud services by an ICT supplier may only take place during office hours, unless otherwise agreed or in the event of a malfunction.
- In principal no work may be carried out by the ICT supplier on Fridays, Saturdays, Sundays or public holidays, unless explicitly agreed otherwise with VGM ICT or in the event of a malfunction.
- Access by ICT supplier is only permitted with MFA
- Access by ICT supplier to (VGM) resources never takes place with Owner privileges, unless necessary and it takes place in consultation with VGM ICT.
- ICT supplier does not have Just-In-Time access (temporary access), unless otherwise agreed in consultation with VGM ICT.
- There is an access restriction to the IP address of the ICT supplier. The ICT supplier must inform VGM ICT in advance from which IP addresses it is working.
- Remote access from ICT supplier to the VGM Azure Portal is only allowed from a secure network. This means that connection from a mobile or public network is never allowed, unless a VPN solution is used.

- An ICT Supplier's own device must meet the basic security requirements (up-to-date OS patches, virus scan and firewall).
- No data of VGM may be copied to own devices or to external media of the ICT supplier, unless the data owner has given explicit permission for this and this is done in consultation with VGM ICT.
- Activating resources or creating a subscription by an ICT supplier always takes place in consultation with and after approval from VGM and VGM ICT, this in connection with cost control.
- To activate new resources, the ICT supplier always runs Azure Advisor and applies all possible critical recommendations.
- ICT supplier is not permitted to use the VGM Infrastructure as a demonstration environment for third parties, unless VGM ICT has given explicit permission for this.

## 4. Cloud services (SaaS)

- Depending on the impact of a change on a business-critical process, testing must always first be carried out in the Dev environment.
- The activities must be restricted to the issued assignment.
- All changes (work) that are not stated in the TOPdesk ticket must always be discussed in advance with the client within the VGM and VGM ICT and approved by them.
- Changes to Cloud services by an ICT supplier may only take place during office hours, unless otherwise agreed or in the event of a malfunction.
- In principal no work may be carried out by the ICT supplier on Fridays, Saturdays, Sundays or public holidays, unless explicitly agreed otherwise with VGM ICT or in the event of a malfunction.
- No data of VGM may be copied to own devices or to external media of the ICT supplier, unless the data owner has given explicit permission for this and this is done in consultation with VGM ICT.
- ICT supplier is not permitted to use the VGM Infrastructure as a demonstration environment for third parties, unless VGM ICT has given explicit permission for this.

### Contact details during working hours from 8:30 AM to 5:30 PM:

- [helpdesk@vangoghmuseum.nl](mailto:helpdesk@vangoghmuseum.nl)
- +31 (0)20 5705932

### Contact details outside of working hours, at weekends and on public holidays:

- *In consultation with ICT and the client*

Signature ICT supplier: