

**General Purchase Conditions of the Van Gogh Museum Foundation, located at Paulus Potterstraat 7, in Amsterdam.**

**VI ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO ICT SERVICES**

**Clause 26. Applicability**

26.1 In the case of ICT Services the provisions of the clauses in this chapter shall be applicable in addition to the provisions of the above clauses. In the event of conflict between the former clauses and the latter clauses, the provisions of the latter clauses shall prevail.

**Clause 27. Definitions**

27.1 Acceptance: approval by the Van Gogh Museum of (parts of) the Software and/or the outcome of the implementation thereof within the ICT Environment.  
27.2 ICT Environment: the entire ICT infrastructure of the Van Gogh Museum within which the ICT Service is implemented.  
27.3 ICT Service: all items and/or services in the field of IT and/or ICT which are provided or offered by the Contractor to the Van Gogh Museum and which are specified more fully in the contract, including but not limited to the development and provision or otherwise making available of software, application software, systems software and/or hardware, as well as taking care of the implementation and installation and maintenance of all items and/or services in the field of ICT which are provided or offered by the Contractor to the Van Gogh Museum such as the provision, conversion, installation, implementation, maintenance, repair and creation of and advising about (parts of) software, systems software, hardware or IT systems, in all cases with accompanying materials, resources, replacement parts and documentation, the issue of software licences and/or intellectual property rights in the ICT Service, maintenance and "hosting" of networks and websites, provision of telecom services, (causing) registration of domain names and design of websites and web applications.  
27.4 Defect: non-compliance or incomplete compliance of the ICT Service with the agreed specifications, or otherwise inadequate functioning of the ICT Service.

**Clause 28. Investigation**

28.1 In order to determine the envisaged use by the Van Gogh Museum of the ICT Service the Contractor has adequately acquainted itself with: a) the objectives in relation to which the Van Gogh Museum has entered into the contract and b) the organisation and ICT Environment of the Van Gogh Museum, in as far as it is relevant to the contract.  
28.2 In carrying out the investigation and information obligation of clause 28.1 the Contractor has also formed an opinion about the feasibility of the ICT Service within the parameters indicated therefor by the Van Gogh Museum.  
28.3 The Van Gogh Museum has provided the Contractor with sufficient information in view of the provisions of clause 28.1. On request the Van Gogh Museum shall provide additional information to the Contractor in so far as it is not of a confidential nature and can reasonably be deemed to be relevant to the performance of the contract. In the event of any lack of clarity the Contractor shall make prompt enquiries with the Van Gogh Museum.

**Clause 29. Quality/guarantee**

29.1 In respect of the ICT Service the Contractor in addition to the provisions of clauses 6 and 7 guarantees that (i) the ICT Service shall meet the provisions of this clause also during peak load, (ii) that the ICT Service shall be efficient, coherent and sound, (iii) that the ICT Service can be used without modifications, (iv) that the ICT Service is and shall remain fully compatible with the existing ICT Environment of the Van Gogh Museum, (v) that the ICT Service does not contain security measures or functions or elements that are foreign to the ICT Service (such as logic bombs, viruses and worms) other than those which are stated in the documentation, and that (vi) new versions and updates of the ICT Service shall be introduced regularly and (vii) that the possibility exists at the time of signature of the contract of the delivery of (equivalent, exchangeable and functionally similar) parts, components and extensions as available (and/or advertised) at a reasonable price.  
29.2 The Van Gogh Museum shall be entitled but not obliged to make use of new versions and updates of the ICT Service.  
29.3 The Contractor also guarantees that the quality and capacity of any third party or parties it engages shall correspond at least to that of the Contractor, and also that it shall comply with all other guarantees that are customary in the sector of the Contractor which a competent and careful Contractor under the given circumstances, exercising normal caution and with normal professional knowledge and normal professional practice, may be expected to abide by.  
29.4 Notwithstanding the provisions of clause 29.1, the Contractor furthermore guarantees that for a period of twelve months following Acceptance, Defects in the

ICT Service and/or the ICT Environment shall be rectified at the expense of the Contractor. If Defects occur in the ICT Service and/or ICT Environment within the period of 12 months (or the guarantee period offered by the Contractor, should this be longer), [or] after delivery [it] does not meet the provisions of clauses 6, 7 and 29.1, the Contractor shall upon demand by the Van Gogh Museum repair or replace the ICT Service and/or the ICT Environment at its own expense as soon as possible and within two weeks at the most, without prejudice to the other rights vested in the Van Gogh Museum under the contract or a subsequent (maintenance) contract arising therefrom or the law.  
29.5 If the ICT Service is replaced in accordance with this clause, a new period of 12 months shall commence.  
29.6 If temporary solutions are resorted to when repairing Defects, the Contractor shall replace these with a permanent solution as soon as possible.  
29.7 If the Contractor is of the opinion that the Van Gogh Museum cannot rely on the terms of the guarantee because a non-operational function or a non-operational part does not fall under the guaranteed properties or because a Defect is due to other causes that are not attributable to the Contractor, the burden of proof shall rest with the Contractor.  
29.8 The Contractor guarantees that it can maintain the ICT Service for a minimum period of 5 years from the date of Acceptance.  
29.9 If the Contractor does not promptly fulfil its obligation to repair Defects, the Van Gogh Museum without prejudice to its further rights, shall after prior written notice be entitled to repair these Defects itself or cause them to be repaired by third parties at the expense of the Contractor. The Contractor shall be obliged to cooperate with this. In that event the Contractor shall be obliged to provide the necessary information upon demand.

**Clause 30. Documentation**

30.1 The Contractor shall provide the Van Gogh Museum with a sufficient number of copies of documentation regarding the ICT Service. This documentation must be in the Dutch language and must give an accurate, complete and detailed description of the ICT Service and the functions thereof and must enable (users of) the ICT Environment to (cause to) test as well as (cause to) maintain the ICT Service and use all features of the ICT Service in a simple manner. This documentation must in all cases be provided promptly, prior to or together with the delivery of the (text versions of) the ICT Service.  
30.2 The Contractor shall at its own expense ensure that the documentation it has provided shall be replaced, amended or adjusted as soon as possible if it should appear at any point during the use of the ICT Service by the Van Gogh Museum that the documentation contains incorrect information or is otherwise incomplete, inadequate, unclear or out of date.  
30.3 The Van Gogh Museum may reproduce, amend and publish the documentation for use within its organisation, without being liable for any additional payment, provided that specifications of copyright et cetera occurring within it are maintained.

**Clause 31. Delivery, implementation/installation and acceptance test**

31.1 The Contractor shall deliver the ICT Service to the Van Gogh Museum in accordance with the time frame contained in the contract against submission of a receipt. Unless the Van Gogh Museum expressly indicates that it shall do so itself, the implementation or installation shall take place in accordance with the time frame laid down in the contract. The Contractor shall ensure that the ICT Service is implemented or installed in correlation with the ICT Environment already present at the Van Gogh Museum. As part of the implementation or installation the Contractor shall carry out an internal operational test for the purpose of enabling the Contractor to establish for itself that the ICT Service is functioning properly in respect of its various parts as well as in its entirety. As soon as the parties are of the opinion that the implementation or installation has been completed, the parties shall draw up and sign a certificate of implementation or installation. This certificate shall have no effect upon the provisions of the contract and these General Conditions regarding Acceptance and guarantee. Unless otherwise agreed in writing, the acceptance test shall be drawn up by the Contractor and submitted promptly to the Van Gogh Museum. The acceptance test shall relate to all parts of the ICT Service. The Van Gogh Museum may stipulate further conditions in the contract relating to the acceptance procedure.  
31.2 Immediately after the acceptance test a report shall be drawn up and signed by the parties in which any Defects which the ICT Service shows shall be recorded. These Defects shall be rectified by the Contractor at its own expense within a reasonable period of no more than two weeks to be agreed by the parties. Thereafter a second acceptance test shall be carried out. If the ICT Service is once again rejected by the Van Gogh Museum, the Van Gogh Museum may terminate the contract extra judicially with immediate effect, without any notice of default being required, and/or claim compensation, without prejudice to the right to demand full performance at a later date.

31.3 Small Defects which do not reasonably prevent the taking into use of the ICT Service and/or the ICT Environment, at the discretion of the Van Gogh Museum, shall not prevent Acceptance, notwithstanding the obligation of the Contractor to repair these defects free of charge as soon as possible. Acceptance of the ICT Service shall have no effect on the other rights of the Van Gogh Museum.  
31.4 Notwithstanding the provisions of clause 4 of these General Conditions, if the ICT Service consists of hardware, the ownership of that hardware shall pass to the Van Gogh Museum after Acceptance by the Van Gogh Museum in accordance with the provisions of this clause.

**Clause 32. Imminent delay**

32.1 If the performance of the contract and/or the delivery of the ICT Service are at risk of delay, the Contractor shall immediately notify the Van Gogh Museum of this stating the cause and consequences thereof. Together with this the Contractor shall propose measures to the Van Gogh Museum to prevent (further) delay or limit it as far as possible.  
32.2 As soon as possible after receipt of the notification referred to in clause 32.1, the Van Gogh Museum shall inform the Contractor whether it agrees with the proposed measures. Agreement shall not mean that the Van Gogh Museum accepts the cause of the imminent delay and shall have no effect on its rights against the Contractor.

**Clause 33. Intellectual property and other (comparable) rights**

33.1 Notwithstanding the provisions of clause 23 of these General Conditions, if intellectual property rights and/or other (comparable) rights in the ICT Service are vested in the Contractor or third parties, the Contractor undertakes to automatically and forthwith grant (or cause to be granted) to the Van Gogh Museum a non-exclusive irrevocable (sub)licence for use for an indefinite period, without the Van Gogh Museum being liable to the Contractor for additional costs in respect thereof. In so far as it relates to an ICT Service in respect of which the Contractor owns the intellectual property rights and/or other (comparable) rights, the Contractor states that it shall be prepared if the situation arises upon demand by the Van Gogh Museum to enter into an escrow agreement with regard to the source code, the data and/or the structure of the ICT Service, with a company established in the Netherlands, to be designated by the Van Gogh Museum, that specialises in software source code escrow agreements, on written conditions to be determined by agreement.  
33.2 Notwithstanding the provisions of clause 33.1 of these General Conditions, all intellectual property rights and/or other (comparable) rights in an ICT Service specifically developed or acquired for the Van Gogh Museum, including software and the source code, the materials and documentation needed for the use and the maintenance, shall be vested in the Van Gogh Museum, and all foreseen and/or unforeseen intellectual property rights which may arise in the future or are acquired by the Contractor, including but not limited to the creation or acquisition by means of extension, improvement and modification of the Software as well as all powers which the law attaches or may attach to these rights shall, in as far as these are (shall be) vested in the Contractor, be transferred to the Van Gogh Museum if the situation arises by the signing of a contract by the Contractor, which transfer shall be accepted by the Van Gogh Museum immediately after the creation of these rights if the situation arises.  
33.3 In so far as any intellectual property rights are not capable of transfer by the Contractor to the Van Gogh Museum and/or in so far as the law does not permit transfer, the Contractor hereby grants the Van Gogh Museum the exclusive, free, worldwide, perpetual, irrevocable, non-cancellable and sublicensable right to use these intellectual property rights in the broadest sense possible, which right is hereby accepted by the Van Gogh Museum. If it does not have control of the intellectual property rights the Contractor shall communicate this clearly and promptly prior to concluding the contract, and the Contractor shall furthermore guarantee that it has the authority of the right holder to grant the licence described above.  
33.4 In so far as the transfer of such rights may require a further deed or other formalities to be fulfilled, the Contractor grants the Van Gogh Museum irrevocable power of attorney to draw up and sign such a deed on behalf of the Contractor and to fulfil these formalities on behalf of the Contractor if the situation arises, notwithstanding the obligation of the Contractor to give its cooperation upon demand by the Van Gogh Museum to the transfer of such rights, without being able to attach conditions thereto.  
33.5 The Contractor hereby surrenders any personality rights vested in it to the Van Gogh Museum to the extent that the applicable legislation permits such surrender.  
33.6 The Contractor guarantees that the employees or contractors involved on its side have, under the employment contract or contract for services that is applicable between them and the Contractor surrendered any personality rights which may accrue to them to the Contractor, to the extent that the applicable

legislation permits such surrender. The Contractor also guarantees that all third parties involved with the ICT Service which have no employment relationship with the Contractor have transferred all intellectual property rights relating to the ICT Service to the Contractor. If this is not the case, the Contractor undertakes to ensure that these intellectual property rights shall still be transferred to it.

33.7 The Contractor declares and guarantees that it has no further claims to the intellectual property rights that have been transferred by means of the contract. The Contractor itself shall refrain from in any way using, exploiting or causing third parties to exploit, or in any other way publishing or reproducing the intellectual property rights other than [in ways that are] strictly necessary for the implementation of the ICT Service and/or directly or indirectly registering or applying for legal protection with regard to the aforementioned intellectual property rights or derivative rights.

33.8 Unless the parties agree otherwise, the Contractor shall provide the source code of the ICT Service developed for the Van Gogh Museum to the Van Gogh Museum when offering the first version of the ICT Service for Acceptance, or upon demand by the Van Gogh Museum. Whenever modifications in the said ICT Service lead to modifications in the source code, the modified source code shall be made available to the Van Gogh Museum. Ownership of the carrier of the source code shall automatically be transferred to the Van Gogh Museum at the time of making it available to the Van Gogh Museum.

33.9 The Van Gogh Museum is authorised to make a few back-up copies of the software supplied by the Contractor. If it is unable to do so as a result of security measures, the Contractor shall upon demand provide a few back-up copies free of charge.

33.10 In so far as the Contractor wishes to make use of open source software in the ICT Service, it shall submit this to the Van Gogh Museum for prior approval. The Van Gogh Museum may require the Contractor to investigate the quality of the open source software, the rights and obligations related to it and the possible consequences of the use thereof within the ICT Service.

33.11 The Contractor guarantees that the ICT Service does not infringe any intellectual property right, personality rights or any comparable rights of third parties in full or in part. The Contractor indemnifies the Van Gogh Museum against all (impending) claims of third parties in respect of any infringement(s) of intellectual property rights and/or other (comparable) rights of such third parties. In addition to the indemnity referred to in clause 23.2, in the event that the use of the ICT Service supplied by it to the Van Gogh Museum is prohibited due to an infringement of the intellectual property rights and/or other (comparable) rights of third parties, the Contractor shall, at the option of the Van Gogh Museum, as soon as possible and at its expense:

a) acquire a right of use of the relevant ICT Service for the Van Gogh Museum;  
b) modify the ICT Service concerned in such manner that no infringement of the rights of third parties takes place any longer;  
c) replace the ICT Service concerned with an equivalent ICT Service with at least the same functionality that does not infringe the rights of third parties;  
d) take back the ICT Service against repayment of all costs paid for the ICT Service and the implementation thereof without prejudice to the other rights of the Van Gogh Museum, including the right to terminate the contract and the right to (additional) compensation.

33.12 The transfer of any intellectual property right and/or any other (comparable) right to the Van Gogh Museum shall not be subject to revocation upon termination of the contract. In so far as the Van Gogh Museum has not acquired the intellectual property rights and/or other (comparable) rights to the ICT Service in accordance with the contract, the Van Gogh Museum shall be entitled to continue using the ICT Service upon termination of the contract on the basis of the licence acquired, unless it is legally established that the Van Gogh Museum is in breach of its obligations under the contract.

#### **Clause 34. Support and maintenance**

34.1 The Contractor shall acquaint the Van Gogh Museum and its users of the ICT Service with the use of the ICT Service. Support shall be provided by experts who are qualified and suitable to do so and shall be provided as far as possible by those experts who are or were involved with the implementation or installation. During the duration of the contract the Contractor shall likewise be prepared and able to provide staff of the Van Gogh Museum with training in the use of the ICT Service against reasonable conditions and rates to be agreed in that event.

34.2 The Contractor declares that it is prepared to maintain the ICT Service upon demand by the Van Gogh Museum and to enter into a maintenance contract with the Van Gogh Museum for this purpose. At the request of the Van Gogh Museum the parties shall enter into consultation about concluding one or more service level agreements (SLAs), in which concrete performance (service levels) in respect of the ICT Service and the maintenance to be carried out shall be laid down and sanctions for not attaining the agreed service levels shall be included.

34.3 Maintenance shall in any event include the provision of user support, maintenance of the ICT Service by taking appropriate preventive measures in order to promote the functioning of the ICT Service in accordance with the contract for the duration of the contract, tracing and repairing interruptions and defects as soon as possible, modifying the ICT Service after written approval by the Van Gogh Museum in order to increase the reliability thereof, modifying functions or adding new functions and/or solving problems arising in the use thereof, and/or regularly introducing new versions and releases of the ICT Service. The Van Gogh Museum shall not be obliged each time to implement the latest version or release of the ICT Service supplied.

34.4 Any payment obligation in respect of maintenance shall in any event take effect only after expiry of the guarantee period.

34.5 If no maintenance contract is entered into, the Van Gogh Museum shall have the right to carry out maintenance activities in respect of the ICT Service itself or have these carried out by a third party. The Contractor shall give its unconditional cooperation hereto, inter alia by providing the necessary information and resources.

#### **Clause 35. Exit**

35.1 If the contract for whichever reason should terminate (early), the Contractor shall upon demand by the Van Gogh Museum do everything that is reasonably necessary to ensure that a new party or the Van Gogh Museum itself can continue to use and/or implement the ICT Service without impediment. The Contractor shall also forthwith return to the Van Gogh Museum all documents, books, records and other goods (including data and information carriers) that were made available to it by the Van Gogh Museum, as well as all data in a format to be stipulated by the Van Gogh Museum. Upon demand by the Van Gogh Museum the Parties shall draw up an Exit plan in which further guidelines in respect of an exit shall be set out.

35.2 The Contractor shall perform the services referred to in clause 35.1 at the rates and on the conditions stipulated in the contract or in the absence thereof at the rates generally charged by the Contractor and on conditions to be agreed. The services referred to in clause 35.1 shall be carried out free of charge if [the contract] has been dissolved or otherwise terminated on account of breach by the Contractor.

#### **Clause 36. Privacy**

36.1 The Contractor guarantees that all statutory provisions relating to data to be processed, including in particular the provisions stipulated by or pursuant to the Dutch Personal Data Protection Act, have been and shall be strictly observed. The Contractor shall forthwith provide the Van Gogh Museum with relevant information requested. The Contractor shall ensure adequate state-of-the-art protection of personal data. The Contractor shall indemnify the Van Gogh Museum against all claims by third parties which may be brought against the Van Gogh Museum for breach of the current privacy legislation and/or regulations and/or statutory retention periods.