

# **VETTING FOR ARTS**

## **Processing of Garda Vetting Applications on behalf of Affiliates**

### **Terms and Conditions of Service**

Dated 25 May 2020

BETWEEN:

C.A.F.E. Company Limited by Guarantee, trading as Create, 2 Curved Street, Dublin 2, - 'The Registered Organisation'

And

'The Affiliate'

By submitting the Application to the Registered Organisation, the Affiliate accepts that these terms and conditions shall govern the arrangement between the Registered Organisation and the Affiliate with regard to the submission by the Registered Organisation of all applications for vetting disclosure to the Garda National Vetting Bureau that may be made from time to time on behalf of the Affiliate.

## 1. Introduction

Garda vetting in the Republic of Ireland is provided by the National Vetting Bureau (NVB) of An Garda Síochána to *'relevant organisations'* for *'relevant work and activities'* whether in a full-time, part-time, voluntary or student placement basis, as defined in the **National Vetting Bureau (Children & Vulnerable Persons) Acts 2012 to 2016**. Create does not provide vetting in any other circumstance. [www.vetting.garda.ie/](http://www.vetting.garda.ie/)

Create must be satisfied that all vetting applications are made for bona-fide reasons of engagement in relevant work or activities in the arts. Under the **Children First Act, 2015** the provider of *'relevant services'* (e.g. cultural, recreational or educational) to children under the age of 18 must complete a **Child Safeguarding Statement** and appoint a first point of contact in relation to the statement. To qualify as a *'relevant service'*, the provider must employ, or engage, a minimum of one other person. People that work alone, including artists working alone, are exempt from the requirement. Information on Children First is available at [www.tusla.ie](http://www.tusla.ie)

In line with the **General Data Protection Regulation (GDPR)**, Create is fully committed to protecting the privacy of personal data that we may collect, access, process, and/or disclose. All personal data sought by us is treated with the highest standards of confidentiality. We undertake appropriate technical, organisational and security measures to protect against unauthorised access, unlawful processing, accidental loss, destruction and damage of all personal data we hold. Information on data protection and vetting is available at [www.dataprotection.ie](http://www.dataprotection.ie)

## 2. Scope of Service

Create will, in the ongoing support of this agreement:

- a) Provide access as a Registered Organisation on behalf of the Affiliate to the NVB application system, in accordance with law and regulation
- b) Register the Affiliate as a Relevant Organisation with the NVB as appropriate
- c) Manage vetting applications and related correspondence between the NVB and the Affiliate
- d) Relay the results of applications to the Affiliate as soon as they are received
- e) Encourage appropriate practices and procedures for vetting and data protection

In the case of each Application, and on payment of the Processing Fee, Create will provide an organised and competent service and process the Application in a timely and organised manner, subject to the time it takes the NVB to process. Create accepts no responsibility for delays in the vetting process that are outside of its control and shall not be liable for any direct or indirect consequential loss or damage suffered by the Affiliate or any other person whatsoever arising from any such delays.

In fulfilling its responsibilities, Create will only respond to queries made through the Affiliates designated contact. If Create considers that the instructions of the service user or its designated contact infringe applicable law or regulation, it will inform the service user and resist carrying them out.

## 3. Definitions

The following words and phrases shall have the following meanings:

## Create Vetting for Arts– Terms & Conditions of Service

“Affiliate” means the entity (organisation, group, community, or employer) on behalf of whom the Registered Organisation facilitates the submission of Applications for vetting disclosures to the NVB, regardless of whether or not that organisation is a Create Member.

“Application” means the NVB vetting application forms NVB 1, 2 & 3 as may be required.

“Create Member” refers to a paid up and accepted Member of Create, with access to benefits in return for a subscription; it does not imply legal membership or Affiliate status or access to Vetting.

“Data Protection Act” means Data Protection Acts 1988 and 2003 and the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).

“Designated Contact” means the individual(s) within the Affiliate nominated by the Affiliate to manage the vetting process on behalf of the Affiliate.

“Disclosure” means the outcome of the vetting Application from the NVB.

“Garda Vetting Clerk User” means the named and registered individual(s) within the Registered Organisation who input Applications into the NVB system and track Applications.

“Liaison Person(s)” means the person within the Registered Organisation who may receive vetting enquiries, process applications, receive correspondence and Disclosures from the NVB and the person primarily responsible for dealing with the Affiliate in relation to any matter covered here.

“Minister” means the Minister for Justice and Equality.

“NVB” means the National Vetting Bureau of An Garda Síochána.

“Processing Fee” means the charge made by the Registered Organisation for processing the Application for the Affiliate, as set from time to time by the Registered Organisation. There are separate fees for Create Members and non-Create Members as specified in paragraphs 11.6 to 11.9 of these terms and conditions.

“Registered Organisation” means Create – which is included on the NVB Register of Relevant Organisations to represent other persons, organisations and groups (“affiliates”) in accessing vetting for relevant work in the arts and nominated to apply for and receive vetting Applications on behalf of the Affiliate.

“Relevant Organisation” means the Affiliate – which is a person, company or other entity that employs, contracts or permits any person to undertake relevant work or activities on their behalf.

“Relevant work and activities” under the Act are where a necessary and regular part consists mainly of the person having access to, or contact with, children or vulnerable persons.

“Specified Information” has the meaning given to it under the Act.

“Vetting Act” or “Act” means the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 including all amendments.

“Vetting Fee” means the charge that may be levied by the NVB under section 32 of the Act for accepting applications, set from time to time by the Minister.

“Vetting Subject” means the person in respect of whom an Application for a Disclosure has been made to undertake relevant work or activities.

## 4. Data Processing Agreement

- 4.1 This agreement is intended to satisfy the obligation under the GDPR for a Data Controller to govern the processing of data between itself and the Data Processor. Create, as the Registered Organisation and vetting service provider, is the Data Processor. The Affiliate, as the Relevant Organisation and vetting service user, is the Data Controller.
- 4.2 The Affiliate acknowledges its responsibilities for the proper management of personal data disclosed through the vetting process under Data Protection law and regulation. The Affiliate further acknowledges that it is providing documented instructions with regard to its data processing requirements. The Affiliate confirms that it has the legal right as a Data Controller to disclose personal data to the Registered Organisation as the Data Processor in connection with this agreement.
- 4.3 In making the Application through the Registered Organisation, the Affiliate permits the processing of the Application on its behalf. It authorises An Garda Síochána to furnish the Registered Organisation with personal data about the Subject, including offence history information and Specified Information, if any, or a statement that there is none. It instructs the Registered Organisation to disclose that information to it, as the Data Controller, in the manner required including by electronic means.
- 4.4 The Affiliate recognises that all information received in respect of the Subject is for the sole use of the Affiliate for the purpose(s) for which the Subject provided consent.
- 4.5 The Affiliate understands that all data received in respect of the Subject must be managed and protected in compliance with the statutory provisions of Data Protection law and regulation and hereby undertakes to comply with all relevant provisions in this regard.
- 4.6 The Registered Organisation commits to protecting all data in relation to the Subject held by it, in a confidential manner as provided for in Data Protection law. The Affiliate understands that a breach of confidentiality may result in the Registered Organisation revoking this service.
- 4.7 The Affiliate may appoint senior officers or a committee to determine suitability of the Subject for roles in the Affiliate. Such persons will be bound by confidentiality rules as set out in these terms and conditions.
- 4.8 Disclosures may only be used for the purpose for which they were provided to the Affiliate, in accordance with the consent of the Subject, and shall not be further processed or disclosed to other parties, except with clear prior written agreement and the specific and prior consent of the Subject ([see template](#)).
- 4.9 The Registered Organisation's responsibilities as the Data Processor are to:
  - a) Ensure the service is discharged in accordance with the requirements of applicable law, in particular data protection and vetting regulation and legislation
  - b) Treat all personal data received in the operation of vetting in the strictest confidence, at all stages of the process, in line with Data Protection regulation
  - c) Only process personal data received from the Affiliate on the documented instruction of that Affiliate, unless required by law to process data without such instructions
  - d) Ensure that any employee(s) processing personal data is subject to a duty of confidentiality and treat all personal data in strict confidence and only for the purpose provided
  - e) Take all measures required including appropriate technical and organisational measures to protect personal data received from the Affiliate against unauthorised or unlawful processing, accidental loss, destruction or damage, and take any appropriate action including encryption, systems testing, officer training, notification of any data breach, and the maintenance of records and evidence of compliance with this agreement

- f) Not appoint or use any sub-processors to process the personal data received from the Affiliate, at least without the specific prior approval of the Affiliate
- g) Assist the Affiliate by appropriate technical and organisational measures to respond to data subject rights' requests under the GDPR
- h) Assist the Affiliate to ensure compliance with obligations under GDPR in relation to security, notification of data breaches and data protection impact assessments
- i) On the Affiliate's instruction, delete or return to it all personal data after the end of the provision of services relating to processing
- j) The Registered Organisation will only hold sensitive personal data relating to the Application for the purpose and duration of the process to obtain a Disclosure. 30 days after a Disclosure has been issued to the Affiliate the Registered Organisation will delete from its system all Application and Disclosure information with the exception of the Subject's name, NVB application number, Affiliate name, Application date and the date the Disclosure was issued
- k) Make available to the Affiliate all information necessary to demonstrate compliance and allow for and contribute to audits and inspections by or mandated by the Registered Organisation.

**5. Record Keeping** The secure storage of Applications and Disclosures made by An Garda Síochána to Liaison Persons and Affiliates is a key data protection consideration. The content of Disclosures constitutes data that is sensitive and personal and must be held in a secure manner with access restricted to a small number of authorised personnel.

- 5.2 The Affiliate will keep the signed consent inviter form (NVB 1), where required the Parental Consent form (NVB 3) and proof of identity validation on file for the duration of the validity of the Disclosure.
- 5.3 The Disclosure can be kept on file until the purpose for which it was sought has expired.
- 5.4 Personal data must be destroyed when the purpose for which it was sought has expired. The Office of the Data Protection Commissioner has recommendations on retention and destruction of Disclosures.
- 5.5 A copy of the Disclosure must be made available to the Vetting Subject by the Affiliate on request.

### **6. Designated Contact (Affiliate)**

- 6.1 The Affiliate will appoint a Designated Contact(s) who will manage the vetting process on behalf of the Affiliate.
- 6.2 The Affiliate will notify the Registered Organisation of any changes of Designated Contact(s) and their contact details, as a matter of priority, by email or otherwise as required by the Registered Organisation.
- 6.3 The Affiliate will ensure that its Designated Contact(s) understands their legal responsibilities in processing and storing Applications and Disclosures.
- 6.4 From time to time, the Affiliate may be required to ensure the Designated Contact(s) undertake training and/or information sessions in relation to changes to legislation or the e-vetting process.
- 6.5 The Affiliate will only permit access to the vetting service to its Designated Contacts.
- 6.6 Disclosures will only be issued, once, to the Affiliate via email to the Designated Contact(s), as determined by the Registered Organisation.

## **7. Establishment of Identity**

- 7.1 It is the responsibility of the Affiliate to establish and validate the identity of the vetting Subject as set out in the Vetting Act.
- 7.2 Identity checks conducted by the Affiliate must include validation of:
- a) Full name of the Subject (and if applicable, any former, including maiden, name);
  - b) Date of birth of the Subject
  - c) Full current address of the Subject
- 7.3 The Affiliate is responsible for checking the Subject's name, date of birth and current address on the Disclosure against the established identity and for the retention of all of the required evidence, in accordance with applicable law and regulation.

## **8. Obtaining and Retention of Consent**

- 8.1 It is the responsibility of the Affiliate to obtain and hold proof of the Vetting Subject's consent to the Disclosure of a criminal record and Specified Information.
- 8.2 To be valid, the Subject must have given consent within 180 days prior to the Application being processed.
- 8.3 For those aged 16 to 18 years old, consent must be given by a parent/ guardian on a NVB3 form.

## **9. Obligations of the Affiliate**

- 9.1 By submitting an Application to Create the Affiliate accepts these terms and conditions.
- 9.2 These terms and conditions will be binding on the Affiliate for the duration of the period that Disclosures obtained under these terms and conditions are held by the Affiliate.
- 9.3 Each party confirms that it has the full power, capacity and authority to enter into and perform this arrangement and the execution and performance of this arrangement does not conflict with or constitute a breach of any contract or agreement of any kind to which it is a party.
- 9.4 The Affiliate agrees to provide the relevant required information to the Registered Organisation as set out in the provisions of the Vetting Act and in these terms and conditions, in the format and through the system determined by the Relevant Organisation.
- 9.5 The Affiliate agrees to ensure that the Registered Organisation has the correct up to date details of the Affiliate's legal and/or trading name, address and contact details at all times. Failure to do so could lead to the Affiliate not having a Disclosure in place in their name.
- 9.6 The Affiliate agrees to cooperate with and provide any documentation relating to the vetting process to compliance or audit officers of the NVB or to the Registered Organisation for the purpose of carrying out or facilitating compliance audits.
- 9.7 The Affiliate acknowledges it is solely responsible for ensuring its compliance at all times with its statutory obligations. The Affiliate acknowledges that any breach of and/or omission to adhere to the statutory requirements outlined in the Vetting Act may result in the Affiliate engaging in a criminal offence and the possibility of criminal sanction.
- 9.8 In addition to the requirements of the e-Vetting system, the affiliate service user must:
- a) Operate vetting only for roles that represent relevant work and activities under the Act
  - b) Ensure all vetting subjects receive and act on their email invitation from the NVB to complete an online vetting application

## 10. Decision Making Process

- 10.1 All Disclosures should be managed within a legislative, human rights and natural justice framework in relation to information disclosed and decisions made as a result of vetting.
- 10.2 Within a natural justice framework, decision makers may take into account a Disclosure. In evaluating the seriousness and relevance of information disclosed, they should:
- a) Inform the Subject of the organisation's policy with regard to Disclosures in advance
  - b) Ensure the process identifies and assesses the relevance and circumstances of Disclosures
  - c) Be cautious against being guided by the personal values or ethical systems of those involved
  - d) Adhere to policies relating to recruitment for the position for which the Application was made.
- 10.3 In dealing with Disclosure information, the Affiliate should:
- a) Inform the Subject, in private, of the nature and significance of any Disclosure of concern
  - b) Allow the Subject an opportunity to verify the information in advance of any decision
  - c) Consider in respect of the Disclosure or Specified Information:
    - o its nature and seriousness
    - o any court result or penalty
    - o mitigating factors
    - o self-disclosure
    - o age and time elapsed
    - o conduct in the interim
  - d) Consider the rights of the Subject before any decision is made based on a Disclosure.
- 10.4 The Affiliate will follow their own decision-making process regarding the requirement to vet for particular roles, and the suitability of the Subjects for these roles. The Affiliate will have an internal Garda Vetting policy in place to assist in making fair, balanced and equitable decisions in relation to the suitability or not of Subjects for roles.
- 10.5 In providing access to this service the Registered Organisation has no decision-making role in relation to the suitability of Subjects for roles with the Affiliate or otherwise, and takes no responsibility for and shall not be liable for any direct or indirect consequential loss or damage suffered by the Affiliate or any other person whatsoever arising from any such decisions.
- 10.6 The Affiliate acknowledges the limitations of the NVB vetting process in determining the suitability of Vetting Subjects for roles with the Affiliate (including those where Vetting Subjects have resided in other jurisdictions) and does not hold the Registered Organisation responsible for any such limitations.
- 10.7 The Affiliate acknowledges that a particular Disclosure is only valid for the role it was applied for in respect of the Vetting Subject, for the Affiliate for whom it the Application was made.
- 10.8 Where a Disclosure lists criminal history information or Specified Information, the Affiliate (and not the Registered Organisation) shall be responsible for advising the Subject of their right to appeal, should they dispute the contents of the Disclosure. The NVB may

contact the Subject separately in relation to Specified Information and an opportunity to appeal.

- 10.9 Should the Subject dispute information contained in a Disclosure (not being Specified Information) they should outline in writing to the Liaison Person, via the Affiliate, the exact basis of their dispute. The Liaison Person, will then submit the Subject's concerns to be processed by the NVB. In submitting such concerns, the Registered Organisation gives no assurance and bears no responsibility in relation to the outcome and shall not be liable for any direct or indirect consequential loss or damage suffered by the Affiliate or any other person whatsoever arising from such outcome. For the avoidance of doubt, this includes failure by the NVB to provide relevant information in a Disclosure or Specified Information.

## **11. Payment**

- 11.1 The Affiliate shall pay the Registered Organisation an annual Affiliation fee.
- 11.2 The Affiliate shall pay the Registered Organisation a fee for each subsequent Application after the first five (5) Applications.
- 11.3 If an Application needs to be resubmitted due to error or omission by the Affiliate or the Subject, the Affiliate shall pay the Registered Organisation an additional fee.
- 11.4 The fee will be made up of the Processing Fee (set and charged by the Registered Organisation) and the Vetting Fee that must be collected by the Registered Organisation on behalf of the NVB.
- 11.5 The fee must be paid with the Application by the Affiliate in the manner set by the Registered Organisation, unless the Registered Organisation has granted the Affiliate a credit account in which case the fees will be invoiced on a monthly basis and must be settled within 30 days.
- 11.6 The current Affiliation fee is €60 for an entity (organisation, group, community, or employer) and €30 for an individual.
- 11.7 The current Create Member Processing Fee is €10 per Application.
- 11.8 The current Non-Create Member Processing Fee is €10 per Application.
- 11.9 The current Vetting Fee charged by the NVB is €0 per Application.
- 11.10 In the event of non-payment or late payment the Registered Organisation reserves the right to refuse Applications from the Affiliate and/or the right to withhold Disclosures.

## **12. Termination**

- 12.1 The Registered Organisation may terminate this service if any of the following events occur:
- a) The Affiliate does not pay its debts as they fall due
  - b) The Affiliate breaches these terms and conditions or the Vetting or Data Protection Acts.
  - c) The NVB terminates or requests the Registered Organisation to terminate the service to one or more Affiliates
- 12.2 Other than in the case of termination in circumstances listed above, if the Registered Organisation decides to discontinue providing the service to one or more Affiliates, at least 1 months' notice will be given of termination.

## **13. Amendment of these terms and conditions**

- 13.1 The Registered Organisation may from time to time amend these terms and conditions. In doing so it will make the amended terms and conditions available to the Affiliate and any Application made by the Affiliate after the date the amended terms and conditions come into force shall be deemed to represent acceptance of the amended terms and conditions.

## **14.Law and Jurisdiction**

- 14.1 These terms and conditions and any dispute arising out of or in connection with them shall be governed by and construed in accordance with the laws of the Republic of Ireland. The parties agree that the courts of the Republic of Ireland are to have jurisdiction over any such dispute.

## **15.General**

- 15.1 Subject to any amendment as per paragraph 13 above, these terms and conditions shall be the entire understanding of the parties and no representation whatsoever whether oral or written shall have any binding effect.
- 15.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation. If any part of these terms and conditions shall be held to be unenforceable to any extent, the remainder of the terms and conditions shall nevertheless remain in full force and effect.
- 15.3 The failure of the Registered Organisation to enforce any of the terms and conditions shall not be construed as a waiver of its rights of any of these terms and conditions.
- 15.4 Without prejudice to the other provisions of these terms and conditions, the Affiliate acknowledges and agrees that, in providing this service, the Registered Organisation bears no responsibility for any act, omission or negligence of the Affiliate or any other party nor for the underlying obligations of the Affiliate or any other party pursuant to the Vetting Act or otherwise and the Registered Organisation shall not be liable for any direct or indirect consequential loss or damage suffered by the Affiliate or any other person whatsoever to include without limitation direct or indirect consequential loss or damage suffered as a result of the use of this service, an Application submitted to the NVB, a Disclosure received from the NVB and any outcomes arising from information contained in Applications and/or Disclosures.