

VETTING FOR ARTS SERVICE

Data Processing Contract

Terms and Conditions of Processing Garda Vetting Applications on behalf of Affiliate Service Users

Create is the trading name of C.A.F.E. Company Limited by Guarantee, located at 2 Curved Street, Dublin 2. These terms and conditions govern arrangements for making a vetting application to the Garda National Vetting Bureau on behalf of an Affiliate.

1. Definitions

In this agreement, the following words and phrases shall have the following meanings:

“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 GNVB’s application forms NVB1, NVB2 and NVB3 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 letter from the GNVB setting out the outcome of the vetting Application, including offence history and Specified information, if any, or a statement that there is none.

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

“Liaison Person(s)” means the person within the Registered Organisation (Create) who may receive vetting enquiries, process applications, receive GNVB correspondence and Disclosures and primarily responsible for dealing with the Affiliate in relation to the service.

“Minister” means the Minister for Justice.

“Processing Fee” means the charge made by Create for processing the Application for the Affiliate.

“Registered Organisation” means Create, which is included on the GNVB Register to represent “*other persons, organisations and groups*” in accessing vetting for relevant work in the arts and nominated under this agreement to apply for vetting and receive Disclosures on behalf of the Affiliate.

“Relevant Organisation” here means the Affiliate, i.e. the person (company or other entity) that employs, contracts or permits any person to undertake relevant work or activities on its behalf.

“Relevant work and activities” means an engagement on a full-time, part-time, voluntary or student placement basis, a necessary and regular part of which consists mainly of having access to, or contact with, children or vulnerable persons.

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

“Vetting Act” or “the 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 GNVB 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.

2. Introduction

Garda vetting is provided by the Garda National Vetting Bureau (GNVB). The GNVB provides vetting for ‘*relevant work and activities*’ under the terms set out in the **National Vetting Bureau (Children & Vulnerable Persons) Acts 2012 to 2016**. To access this service, Create must be satisfied that the Affiliate is making vetting applications for bona-fide reasons of engagement in work or activities in the arts. Create does not provide access to vetting in any other circumstances.

www.vetting.garda.ie/

Under the **Children First Act 2015**, a provider of ‘*relevant services*’ (e.g. cultural, recreational or educational) to children under 18 years must complete a **Child Safeguarding Statement** and appoint a Designated Contact person. A ‘*relevant service*’ must employ, or engage, a minimum of one person other than its owner. People that work as self-employed owner operators or self-employed Solo Practitioners not engaged in work by another organisation, are exempt from the requirement. See **Children First** at www.tusla.ie

In line with **General Data Protection Regulation** (GDPR), Create is fully committed to protecting the privacy of personal data that we collect, access, process, and/or disclose as part of this service. We treat all personal data with the highest standards of confidentiality and undertake appropriate technical, organisational and security measures to protect against unauthorised access, unlawful processing, and accidental loss destruction and damage. The Data Protection Commissioner has recommendations on the retention and destruction of vetting information www.dataprotection.ie.

3. Scope of this Service

Create will, in the ongoing support of this agreement:

- a) Provide access to the Affiliate to the GNVB application system, in accordance with law and regulation
- b) Collect, check and process the required information and documentation
- c) Manage applications and related correspondence between the GNVB and the Affiliate, including for compliance checking and audit purposes
- d) Relay the results to the Affiliate once they are received
- e) Encourage and support appropriate practices and procedures for vetting and data protection

Create provides an organised and competent service and processes each Application in a timely and organised manner. The process is subject to the time it takes the GNVB to process and Create accepts no responsibility for delays in the process outside of its control. Create shall not be liable for any direct or indirect consequential loss or damage suffered by the Affiliate arising from delays.

Create can only respond to queries made through a Designated Contact. If the instructions we receive infringe applicable law or regulation, we will inform the affiliate and resist carrying them out.

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. It further acknowledges that it is providing documented instructions with regard to its data processing requirements and that it has the legal right as a Data Controller to disclose personal data to Create as the Data Processor in connection with this agreement.
- 4.3 In making the Application through Create, the Affiliate permits the processing of the Application(s) on its behalf. It authorises An Garda Síochána to furnish Create with personal data about the Subject, including a vetting Disclosure. It instructs Create 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 Create commits to protecting all data in relation to the Subject held by it, in a confidential manner as provided for in Data Protection law.
- 4.7 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.
- 4.8 The Affiliate will appoint senior officers / committee to determine suitability of the Subject for the role offered. Such persons will be bound by the same confidentiality rules.
- 4.9 Create'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 legislation and regulation
 - 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 processing personal data is subject to a duty of confidentiality
 - e) Treat all personal data in strict confidence and only for the purpose provided
 - f) 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
 - g) 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
 - h) Assist the Affiliate by appropriate technical and organisational measures to respond to data subject rights' requests under the GDPR
 - i) Assist the Affiliate to ensure compliance with obligations under GDPR in relation to security, notification of data breaches and data protection impact assessments

- j) On the Affiliate's instruction, delete or return to it all personal data after the end of the provision of services relating to processing
- k) Only hold sensitive personal data relating to the Application for the purpose and duration of the process to obtain a Disclosure and complete any compliance checks, tests or audits:
 - 30 days after a Disclosure has been issued, Create will delete from its system all Disclosure information with the exception of the Subject's name, GNVB application number, Affiliate name, and Application and Disclosure dates
 - One year (12 months) after the date of Disclosure, Create will delete all copies of proof of identity validation documents
- l) Create will make available to the Affiliate all information necessary to demonstrate compliance and allow for and contribute to audits and inspections by or mandated by it

4.10 The secure storage of vetting documents is a key data protection consideration for the Affiliate. Applications and Disclosures contain data that is both sensitive and personal and must be held in a secure manner.

- a) Access to vetting information should be restricted to authorised personnel
- b) Personal data must be destroyed when the purpose for which it was sought has expired
- c) The Affiliate must retain the original signed consent invitation form (NVB 1 and NVB 3) for the duration of the validity of the Disclosure
- d) A Disclosure can be kept on file until the purpose for which it was sought has expired
- e) Where a Vetting subject remains in continuous employment, current best practice is that Re-Vetting be carried out every 3 years.
- f) Proof of identity verification must be retained for 12 months – original hard copies must be retained for 6 months, and a soft copy should be retained for a further 6 months
- g) A copy of the Disclosure must be made available to the Subject on request.

5. Obligations of the Affiliate

- 5.1 Before signing up to this service, the Affiliate must apply to the GNVB for approval and receive a valid GNVB Registration Number
- 5.2 The Affiliate must ensure that Create has the correct and up to date details of its legal and/or trading name(s), address and contact details
- 5.3 The Affiliate must appoint a Designated Contact to manage its vetting and notify Create of changes to the contact details as a matter of priority
- 5.4 The Affiliate should ensure its Designated Contact understands the legal responsibilities in processing and storing vetting applications and disclosures
- 5.5 Create will issue Vetting results, Disclosures, once only, to the Designated Contact via email
- 5.6 The Affiliate agrees to provide the information required by the Vetting Act, in the format and through the system as determined by Create
- 5.7 The affiliate must ensure all Vetting Subjects receive and act on the email invitation issued by the GNVB to complete an online vetting application
- 5.8 The Affiliate will cooperate with and provide any and all documentation required by the GNVB for compliance and/or audit checks and to facilitate such checks and audits
- 5.9 The Affiliate acknowledges it is solely responsible for ensuring compliance with its statutory obligations. Any breach of and/or failure to adhere to the terms of the Vetting Act may result in a criminal offence and the possibility of criminal sanction
- 5.10 It is the responsibility of the Affiliate to establish and validate identity of the vetting Subject. 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

- 5.11 The Affiliate is responsible for checking details on the Disclosure against the established and validated identity
- 5.12 It is the responsibility of the Affiliate to obtain and hold proof of the Subject's consent to the Disclosure of a criminal record history and Specified Information (NVB 1)
- 5.13 To be valid, the Subject must have given consent within 180 days prior to the Application being processed.
- 5.14 For those aged 16 to 18 years old, consent must be given by a parent/ guardian on a NVB3 form.

6. Payment

- 6.1 The Affiliate shall pay Create any Affiliation fees due, and any fee levied for each Application.
- 6.2 If an Application needs to be resubmitted due to error or omission by the Affiliate or the Subject, Create may levy an additional fee
- 6.3 Fees will be exclusive of any charges that must be collected on behalf of the NVB (currently €0).
- 6.4 All invoices must be paid in the manner set by Create and be settled within 30 days
- 6.5 The current annual Affiliation fee is €50 for an entity (employer, group, community, or other entity)
- 6.6 The current Processing Fee is €20 per application from non-profit entities and €35 per application from commercial entities.

7. Termination

- 7.1 Create may terminate an Affiliate's access to this service if any of the following events occur:
 - a) non-payment or late payment of charges as they fall due
 - b) breaches of terms and conditions
 - c) possible breaches of the Vetting Acts or Data Protection law and regulation
 - d) If the GNVB terminates or requests a suspension of services to the Affiliate
- 7.2 Other than the circumstances listed, if Create decides to discontinue the service to an Affiliate, at least 1 month's notice will be given.

8. General

- 8.1 Create and the Affiliate each confirm it has the power, capacity and authority to enter into this agreement.
- 8.2 This agreement is binding for the duration of the period that Disclosures are held.
- 8.3 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.
- 8.4 Create may amend and make available alternate terms and conditions from time to time.
- 8.5 Any failure by Create to enforce these terms shall not be construed as a waiver of its rights
- 8.6 Without prejudice to other provisions, the Affiliate acknowledges and agrees that Create bears no responsibility for any act, omission or negligence of the Affiliate or any direct or indirect consequential loss or damage to any other party for the underlying obligations of the Affiliate or otherwise.