

Create Garda Vetting Service – Affiliate Data Processing Contract

Garda vetting is provided in Ireland by the National Vetting Bureau (NVB) of An Garda Síochána to *'relevant organisations'* for *'relevant work and activities'* as defined in the National Vetting Bureau (Children & Vulnerable Persons) Acts 2012 to 2016 ("the Act") in a full-time, part-time, voluntary or student placement basis.

A **'relevant organisation'** means a person, company or other entity that employs, contracts or permits any person to undertake relevant work or activities. **'Relevant work and activities'** are where *'a necessary and regular part consists mainly of the person having access to, or contact with, children or vulnerable persons'*. Vetting under the Act can only be conducted in respect of relevant work and activities. Create is not registered to provide vetting in any other circumstance.

Create is included on the NVB Register of Relevant Organisations for the purpose of representing other persons, organisations and groups in accessing vetting for relevant work in the arts. To process vetting through Create, affiliates must register with it and, as the Data Controller, agree to the terms of this Data Processing Contract. Create must be satisfied that all vetting applications are for bona-fide reasons of engagement in relevant work or activities. Under the Code of Practice included here, the affiliate must manage vetting disclosures within a legislative, human rights and natural justice framework in relation to the information disclosed and decisions made as a result.

Under the **Children First Act, 2015** a provider of *'relevant services'* (e.g. cultural, recreational or educational) to children under the age of 18 is required to complete a Child Safeguarding Statement and to appoint a first point of contact in respect of the Statement. To qualify as a relevant service, the provider must employ, or otherwise engage, at least one other person. Persons who work alone are exempt, including artists who work alone. Information on Children First is at www.tusla.ie

In line with the General Data Protection Regulation, Create is fully committed to protecting the privacy of personal data that we may collect, access, use and or disclose. All personal data volunteered to or sought by us is treated with the highest standards of confidentiality. We undertake appropriate technical, organisational and security measures to protect against unauthorised access to, unlawful processing, accidental loss, destruction or damage, of all personal data held. Information on data protection is at www.dataprotection.ie

1. Agreement Overview

This is a legally binding agreement between Create as the Service Provider [the Data Processor] and (insert affiliate name) as the Service User [the Data Controller]. The agreement defines the level of service an affiliate can expect, provides clear references to the respective roles and responsibilities of both parties and outlines Create's expectations of the affiliate as service user and Data Controller.

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. It sets out the subject matter and duration of the processing, the nature and purpose of that processing, the data to be processed, the categories of data subject, and the respective obligations and rights of the parties to the agreement.

In making vetting applications through Create, the service user permits the processing of Vetting Applications on its behalf for Vetting Subjects it will employ, contract or permit to undertake relevant work or activities. It authorises An Garda Síochána to furnish Create with personal data about Vetting Subjects, including offence history information and specified information, if any, or a

statement that there is none. It instructs Create to disclose that information to it, as the Data Controller, in the manner required (Letter of Disclosure), including by electronic means.

This agreement remains valid for the duration of the service user's subscription as an affiliate, unless superseded by a revised agreement. This supersedes all previous service level agreements.

2. Scope of Service

Create will, in the ongoing support of this agreement:

- Provide access to the NVB application system in accordance with law and regulation
- Register the service user as an affiliate with the National Vetting Bureau as appropriate
- Manage vetting applications and related correspondence between the NVB and the affiliate
- Relay the results of applications to the affiliate as soon as they are received
- Encourage appropriate vetting and data protection practices and procedures

Create will provide the affiliate with reasonable and efficient access to the service and communicate any changes to the system in good time. In fulfilling its responsibilities, Create will only respond to queries made through the 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.

Create reserves the right to withdraw this service if the service user is in breach of the conditions of this agreement.

3. Service User Requirements

The service user's responsibilities as an affiliate in support of this agreement are to:

- Designate a responsible person to manage their vetting requirements and inform of any change in this position (resend the Acceptance page, signed by the new contact)
- Provide Create with documented instructions with regard to data processing requirements
- Confirm that you have the legal right as a Data Controller to disclose personal data to Create as the Data Processor in connection with this agreement
- Validate and check all vetting applications and consents and retain all the required evidence in accordance with applicable law and regulation

In addition to the requirements of the e-Vetting system, the affiliate service user must:

- Operate vetting only for roles that represent relevant work and activities under the Act
- Ensure all vetting subjects receive and act on their email invitation from the NVB to complete an online vetting application
- Manage all data disclosed by the service within a legislative, human rights and natural justice framework set out in the Code of Practice for this agreement (below)

Vetting Disclosure letters issued to a named organisation cannot be further processed or shared with other parties except with clear prior written agreement and the specific and prior consent of the vetting subject.

4. Service Provider Requirements

Create's responsibilities as the Data Processor and service provider under this agreement are to:

- Ensure the service is discharged in accordance with the requirements of applicable law, in particular data protection and vetting regulation and legislation
- 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
- Only process personal data received from the Controller on the documented instruction of the Controller (unless required by law to process data without such instructions)
- Ensure that any person(s) processing personal data is subject to a duty of confidentiality and treats all personal data in strict confidence and only for the purpose provided
- Take all measures required including appropriate technical and organisational measures to protect personal data received from the Data Controller 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
- Not appoint or use any sub-Processors to process the personal data received from the Data Controller, at least without the specific prior approval of the Data Controller
- Assist the Data Controller by appropriate technical and organisational measures to respond to data subject rights' requests under the GDPR
- Assist the Data Controller to ensure compliance with obligations under GDPR in relation to security, notification of data breaches and data protection impact assessments
- On the Controller's instruction, delete or return to it all personal data after the end of the provision of services relating to processing
 - Create will not retain any representation whatsoever of disclosure information
 - Create will retain NVB1 forms for a maximum of 12 months from the date they were signed and thereafter delete it or, if so instructed, return them to the affiliate
- Make available to the Controller all information necessary to demonstrate compliance and allow for and contribute to audits and inspections by or mandated by the Controller

5. Service Expectations (Code of Practice for Garda Vetting)

All National Vetting Bureau 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. This includes,

a) Security of Confidential Information

The Service User acknowledges their responsibilities for the proper management of personal data disclosed through the vetting process under Data Protection regulation and undertakes that:

- Information will be supplied with the individual's limited consent, on a confidential basis, for the sole purpose of informing a recruitment decision
- The rights of the individual will be considered before any decision is made based on vetting disclosures

b) Dealing with Disclosures

Within a natural justice framework, decision makers may take into account vetting disclosures. In evaluating the seriousness and relevance of the information disclosed, they will:

Service Level Agreement 2019 – Create Garda Vetting Service

- Inform the applicant of the organisation’s policy with regard to disclosures, in advance
- Ensure the process identifies and assesses the relevance and circumstances of such disclosures
- Be cautious against being guided by the personal values or ethical systems of those involved
- Adhere to policies relating to recruitment for the position for which the application was made

In dealing with disclosure information, the Service User will:

- Inform the applicant, in private, of the nature and significance of any disclosure of concern
- Allow the applicant an opportunity to verify the information in advance of any decision
- An employer may, inter-alia, consider in respect of disclosures: the nature and seriousness of the information; any court result or penalty; mitigating factors; self-disclosure; age and time elapsed; conduct in the interim

c) Dispute Handling Mechanism

Where a vetting subject disputes the detail contained in a vetting disclosure from the National Vetting Bureau, he or she may refer the issue to the National Vetting Bureau dispute process.

<https://vetting.garda.ie/Disputes/Disclosure>