

**NHI PROCESSING OF GARDA VETTING APPLICATIONS ON
BEHALF OF AFFILIATES
– TERMS AND CONDITIONS OF USE**

Dated 25th September 2017

BETWEEN:

Independent Nursing Home Ireland CLG, trading as Nursing Homes Ireland (NHI),
Unit 2051, Castle Drive, Citywest, Dublin 24, - **'The Registered Organisation'**

And

'The Affiliate'

By submitting the Application to the Registered Organisation, the Affiliate accepts 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 National Vetting Bureau that may be made from time to time on behalf of the Affiliate.

1. Definitions

The following words and phrases shall have the following meanings:

- 1.1. "Affiliate" means the organisation on behalf of whom the Registered Organisation facilitates the submission of applications for vetting disclosure to the NVB, regardless of whether or not that organisation is a NHI Member.
- 1.2. "Application" means the NVB vetting forms NVB 1, 2 & 3 as may be required.
- 1.3. "Data Protection Act" means Data Protection Acts 1988 and 2003 and the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).
- 1.4. "Disclosure" means the outcome of the vetting Application from the NVB.
- 1.5. "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.
- 1.6. "Garda Vetting Officer" means the individual(s) within the Affiliate and nominated by the Affiliate to manage the vetting process on behalf of the Affiliate.
- 1.7. "Liaison Person(s)" means the liaison person(s) within the Registered Organisation, who may receive vetting enquiries, process forms to the vetting unit and receive returns directly from the vetting unit.
- 1.8. "Minister" means the Minister for Justice and Equality.
- 1.9. "NHI Member" means a paid up and accepted Member of NHI.
- 1.10. "NHI Online Portal" means the online NHI system through which Affiliates can submit and track Applications.
- 1.11. "NVB" means the National Vetting Bureau of An Garda Síochána.
- 1.12. "Processing Fee" means the charge made by the Registered Organisation for processing the Affiliates' Applications, as set from time to time by the Registered Organisation. There are separate NHI Member and non-NHI Member fees as specified in paragraphs 9.5 and 9.6 of these terms and conditions.
- 1.13. "Registered Organisation" means NHI – which is registered with the NVB and nominated to apply for and receive vetting Applications on behalf of the Affiliate.
- 1.14. "Specified Information" has the meaning given to it under the Act;
- 1.15. "Vetting Act" or "Act" means the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016 including all amendments.
- 1.16. "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.
- 1.17. "Vetting Subject" means the person in respect of whom an Application for a Disclosure has been made.

2. Obligations

- 2.1. By submitting an Application to NHI the Affiliate accepts these terms and conditions.
- 2.2. 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.
- 2.3. 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.
- 2.4. In the case of each Application, on payment of the Processing Fee, the Registered Organisation will provide an organised and competent service to the Affiliate, providing support and processing vetting applications in a timely and organised manner, subject to the time it takes the NVB to process applications. The Registered Organisation accepts no responsibility for delays in the vetting process which 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.
- 2.5. 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.
- 2.6. The Affiliate agrees to ensure that the Registered Organisation has the correct up to date details of the Affiliates 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.
- 2.7. 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 compliance audits.

3. Legal Responsibility of the Affiliate

- 3.1. The Affiliate acknowledges there are certain statutory requirements outlined in the Vetting Act and gives an undertaking to the Registered Organisation to comply with those statutory requirements in respect of all Applications made to the Registered Organisation and all data received via the Registered Organisation from the NVB.
- 3.2. 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.
- 3.3. The Affiliate acknowledges it is solely responsible for ensuring its compliance at all times with its statutory obligations.

4. Garda Vetting Officer (Affiliate)

- 4.1. The Affiliate will appoint a Garda Vetting Officer(s) who will manage the vetting process on behalf of the Affiliate.
- 4.2. The Affiliate will notify the Registered Organisation of any changes of Garda Vetting Officer(s) and their contact details, as a matter of priority, either by email or by updating the NHI Online Portal as required by the Registered Organisation.
- 4.3. The Affiliate will ensure that the Garda Vetting Officer(s) understands their legal responsibilities in processing and storing Applications and Disclosures.
- 4.4. From time to time, the Affiliate may be required to ensure the Garda Vetting Officer(s) undertake training and/or information sessions in relation to changes to legislation or the e-vetting process.
- 4.5. The Affiliate will only permit access to the vetting module of the NHI Online Portal to Garda Vetting Officers.
- 4.6. Disclosures will only be issued to the Affiliate via either email to the Garda Vetting Officer(s) or via the NHI Online Portal, as determined by the Registered Organisation.

5. Establishment of Identity

- 5.1. It is the responsibility of the Affiliate to establish the identity of the Vetting Subject as set out in the Vetting Act.
- 5.2. Establishment of identity of the Vetting Subject (Identity Validation) must include establishing:
 - 5.2.1. Full name of the Vetting Subject (and if applicable, any former name (to include maiden name) of the Vetting Subject)
 - 5.2.2. Date of birth of the Vetting Subject
 - 5.2.3. Full current address of the Vetting Subject
- 5.3. The Affiliate is responsible for checking and verifying the Vetting Subject's name, date of birth and current address on the Disclosure against the established identity.

6. Obtaining Consent

- 6.1. 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.
- 6.2. To be valid, consent must have been given by the Vetting Subject within 180 days prior to the Application being processed.
- 6.3. For those aged 16 to 18 years old, consent must be given by a parent or guardian on a form NVB 3.

7. Decision Making Process

- 7.1. The Affiliate follows their own decision-making process regarding:
 - 7.1.1. the requirement to vet for particular roles; and
 - 7.1.2. the suitability of the Vetting Subjects for these roles.
- 7.2. 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 Vetting Subjects for roles.
- 7.3. The Registered Organisation, in providing this administrative service, has no decision-making role in relation to the suitability of Vetting Subjects for roles with the Affiliate or otherwise and takes no responsibility for same 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.
- 7.4. 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.
- 7.5. 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 who it was applied for.
- 7.6. Where a Disclosure lists criminal record(s) or Specified Information, the Affiliate (and not the Registered Organisation) shall be responsible for advising the Vetting Subject of their right to appeal, should they dispute the contents of the Disclosure.
- 7.7. Should the Vetting Subject dispute information contained in a Disclosure (not being Specified Information) they should outline in writing to the Liaison Person the exact basis of their dispute. The Liaison Person, who will be the person primarily responsible for dealing with the Affiliate in relation to any matter covered by these terms and conditions, will then submit the Vetting 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 of any such submission 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.
- 7.8. The NVB may contact the Vetting Subject separately in relation to Specified Information and an opportunity to appeal.
- 7.9. The Registered Organisation bears no responsibility for the information (including the accuracy of that information) contained in Disclosures or Specified Information provided by the NVB 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 information. For the avoidance of doubt, this includes failure by the NVB to provide relevant information in a Disclosure or Specified Information.

8. Confidentiality

- 8.1. Disclosures may only be used for the purpose for which they were provided to an Affiliate in accordance with the consent of the Vetting Subject and shall not be further processed or disclosed to other parties.
- 8.2. The Affiliate recognises that all information received in respect of a Vetting Subject is for the sole use of the Affiliate for the purpose(s) the consent is provided for.
- 8.3. The Affiliate understands that all data received in respect of Vetting Subjects must be managed and protected in compliance with the statutory provisions of the Data Protection Acts and any other legislation that may be enacted in respect of data protection and under the Vetting Act and hereby undertakes to comply with all relevant statutory provisions in this regard.
- 8.4. The Affiliate understands that a breach of confidentiality may result in the Registered Organisation revoking this service.
- 8.5. The Registered Organisation commits to protecting all data in relation to Vetting Subjects held by it in a confidential manner as provided for in the Data Protection Act.
- 8.6. The Affiliate may appoint senior managers or an internal committee to determine suitability of Vetting Subjects for roles in the Affiliate. Such people will be bound by the confidentiality rules as set out in these terms and conditions.

9. Payment

- 9.1. The Affiliate shall pay the Registered Organisation a fee per Application.
- 9.2. If an Application needs to be submitted again due to error or omission by the Affiliate or Vetting Subject, the Affiliate shall pay the Registered Organisation an additional fee.
- 9.3. 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.
- 9.4. The fee must be paid with the Application Form 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.
- 9.5. The current NHI Member Processing Fee is €10 per Application.
- 9.6. The current Non-NHI Member Processing Fee is €25 per Application.
- 9.7. The current Vetting Fee is €0.
- 9.8. In the event of non-payment or late payment the Registered Organisation reserves the right to refuse Applications from the Affiliate or withhold Disclosures.

10. Record Keeping

- 10.1. 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 sensitive personal data and must be held in a secure manner with access restricted to a small number of authorised personnel.
- 10.2. 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.
- 10.3. The Disclosure can be kept on file until the purpose for which it was sought has expired.
- 10.4. 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.
- 10.5. A copy of the Disclosure must be made available to the Vetting Subject by the Affiliate on request.
- 10.6. The Registered Organisation will only hold sensitive personal data relating to Applications and Disclosures 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 Vetting Subject's name, date of birth, NVB application number, Affiliate name, Application date and date Disclosure issued.
- 10.7. The Registered Organisation is not responsible for providing copies of Disclosures at a later date.

11. Termination

The Registered Organisation may terminate this service if any of the following events occur:

- 11.1. The Affiliate does not pay its debts as they fall due.
- 11.2. The Affiliate breaches these terms and conditions or the Vetting Acts.
- 11.3. The NVB terminates or requests the Registered Organisation to terminate the service to one or more Affiliates.
- 11.4. Other than in the case of termination in circumstances listed in 11.1 – 11.3 above, the Registered Organisation decides to discontinue providing the service to one or more Affiliates, in which case at least 1 months' notice will be given.

12. Amendment of these terms and conditions

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 applications made by the Affiliate after the date the amended terms and conditions come into force shall be deemed to be acceptance of the amended terms and conditions.

13. Law and Jurisdiction

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.

14. General

- 14.1. Subject to any amendment as per paragraph 12 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.
- 14.2. 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.
- 14.3. 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.
- 14.4. 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.