

INFORMATION NOTE
ON GDPR IN RELATION TO
PUBLIC WORKS CONTRACTS & CONDITIONS OF ENGAGEMENT

Data protection law is a legal regime which regulates the seeking and giving of information about an identifiable individual person (referred to as “*personal data*”). Data protection law sets out the rights of individuals (“*data subject*”) regarding their *personal data* and the responsibilities of those who seek and use this information. Prior to 25 May 2018, data protection law in Ireland was set out in the Data Protection Acts 1998 – 2003, which are based on EU Directives. Effective from 25 May 2018, a new Europe wide data protection regime came into place under the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”). The GDPR significantly increases the obligations and responsibilities for organisations and businesses on how they collect, use and protect *personal data*. Under data protection law, a “*data controller*” is a person (or business) who determines the purposes for which it seeks *personal data* and the way in which that *personal data* is then stored and used (referred to as “*data processing*”). A “*data processor*” is anyone who processes *personal data* on behalf of and on the instructions of a *data controller* and their role can be, for example, to use the *personal data* in the course of carrying out a service for the *data controller*.

Where an Employer (such term includes Client) shares *personal data* with a Contractor (such term includes consultants), the Contractor is likely processing the data it receives on behalf of the Employer in the course of providing services. Generally in such cases, the Employer will be the *data controller* and the Contractor will be the *data processor*. Examples may include where a Contractor receives *personal data* for tenants of the Employer as part of a maintenance contract or *personal data* for tenants of the Employer when carrying out repairs or dealing directly with insurers.

Under the GDPR, the activities of a *data processor* must be governed by a binding contract between the *data controller* and the *data processor* which must set out the types of *personal data* to be processed, the duration, nature and purpose of the processing and which must contain certain specific contractual provisions, set out in the GDPR. It should be noted, however, in some cases, the Contractor may be acting as a *data controller* in its own right or as a joint *data controller* with the Employer. The Employer or Contractor should contact its legal advisor or Data Protection Officer if it has any questions about its role and obligations under the GDPR.

The public works contracts and the conditions of engagement for consultants have been amended by inserting new Data Protection clauses that comply with the requirements of the GDPR where the Employer is acting as the *data controller* and the Contractor is acting as the *data processor*.

Effective from the date of publication of this Note, Employers must use these revised forms of public works contract or conditions of engagement when procuring works or services. If the subject contract does not involve the processing of any *personal data* by the Contractor, then no further action is required. If the Contractor is processing *personal data*, the Employer should assess which party (the Employer and/or the Contractor) is determining the purpose and means of processing (i.e., acting as *data controller*). If the Contractor is a *data processor* for the Employer it

is recommended that a description of the *data processing* services and categories of potential *personal data* be included in the Works Requirements, a typical schedule is given in Appendix 1 to this Note.

It is also recommended that the Employers review their existing contracts to identify those contracts where *personal data* is or will be processed by the Contractor. If the contract does not involve the processing of any *personal data* by the Contractor, then no further action is required. If the Contractor is or will be processing *personal data* on behalf of the Employer, the Employer should consider the *data processing* being carried out under each contract on a case by case basis, including if necessary, seeking appropriate advices from legal advisor or Data Protection Officer if it has any questions about its role and obligations under the GDPR.

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