

IRISH WATER

FIRST FIX SCHEME LEAK REPAIR OFFER TERMS AND CONDITIONS

First Fix Leak Repair Scheme Offer incorporating Terms and Conditions

For the purposes of these Terms and Conditions:

“Dwelling” means a building or part of a building used by a person as his or her place of private residence (whether as his or her principal place of residence or not).

“External Supply Pipe” means the water supply pipework serving the Property, which pipework runs between the point that is (i) 225mm outside the boundary to the Property and the point (ii) just before such pipework enters the Dwelling (the latter point being determined at Irish Water’s discretion, acting reasonably). External Supply Pipe excludes:

external plumbing systems, standpipes, irrigation systems or other external water supplies; and/or

pipework that exceeds 15 metres in length; and/or

pipework that runs under buildings or structures on the Property; and/or

pipework with an inside diameter exceeding 25 millimetres.

“First Fix Leak Repair Scheme Offer” means the offer by Irish Water to carry out Works on the External Supply Pipe, subject always to acceptance of these Terms and Conditions.

“Property” means a Dwelling and includes the curtilage to that Dwelling.

“Works” mean all of the works of every kind (both temporary and permanent) including all investigatory, survey (including the taking of photographs), design, excavation, reinstatement, resurfacing and making good works which, at Irish Water’s discretion, are necessary for, or incidental to (either directly or indirectly) the investigation, design, execution and completion of first fix leak repair works to the External Supply Pipe (which works may, on occasion, result in the complete replacement of the External Supply Pipe or a section of it), including the remedying of any defects.

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Under the Water Services Act 2007, owners are required to ensure that, amongst other things, the water distribution system (pipework and related fittings) within their Property is maintained in such condition, as to ensure that water leakage does not occur. Owners are therefore responsible for any remedial repairs and renewals required to the pipes within their Property.

However, reducing leaks and conserving water is important for Irish Water. Therefore, notwithstanding that such pipework is not its responsibility, Irish Water intends to assist owners who are customers in addressing leaks in the External Supply Pipe. It will do so by identifying and, where possible, repairing leaks in such pipework free of charge.

The owner's Property has been identified as potentially having a leak on the External Supply Pipe. Irish Water is now willing, subject to these Terms and Conditions, to assist the owner with the repair of that leak. Irish Water requires the owner's confirmation, acknowledgment and acceptance of these Terms and Conditions prior to undertaking any Works. The owner may accept the First Fix Leak Repair Scheme Offer (and these Terms and Conditions) by signing and returning the attached 'Acceptance Form' to Irish Water. If the owner does not accept this offer, then Irish Water reserves its rights under the Water Services Acts 2007/2014 to require the owner, at the owner's cost, to repair the leak (insofar as it is the owner's statutory responsibility to do so).

Irish Water shall not be carrying out any Works or repairing any internal leaks within the Dwelling. Subject to these Terms and Conditions, any First Fix Leak Repair Scheme Offer made by Irish Water shall be limited solely to leaks in the External Supply Pipe. Owners should note that it may not be possible to locate or repair any or all of the leaks on the External Supply Pipe and thus no guarantees can be provided by Irish Water in this regard.

1. ACCEPTANCE OF FIRST FIX LEAK REPAIR SCHEME OFFER AND DATE FOR ACCESS

- 1.1 Any reference to Irish Water in these Terms and Conditions and the attached acceptance letter(s) shall, unless the context requires otherwise, be read and construed as a reference to any contractor(s) that Irish Water has engaged to carry out the Works.
- 1.2 The making or issue of a First Fix Leak Repair Scheme Offer in respect of any Property is, at all times, a matter for the discretion of Irish Water.
- 1.3 Following receipt of a First Fix Leak Repair Scheme Offer from Irish Water, the owner shall have a period of 30 business days to accept such an offer by completing the attached Acceptance Form and returning it to Irish Water. Following acceptance of the First Fix Leak Repair Scheme Offer the owner shall agree with Irish Water the date for permitting access to Irish Water to carry out the Works. If the owner does not agree to the first date for access as proposed by Irish Water, or such alternative date(s) as are proposed by Irish Water (acting reasonably) then Irish Water may revoke its First Fix Leak Repair Scheme Offer. If a suitable date for access to the Property has not been agreed with the owner within sixty (60) days of the return of the attached Acceptance Form then the First Fix Leak Repair Scheme Offer shall be automatically revoked and withdrawn.
- 1.4 Even though the First Fix Leak Repair Scheme Offer is limited to pipework which does not exceed 15 metres in length, Irish Water may in its discretion (and taking into account the costs associated with the extension of the First Fix Leak Repair Scheme Offer) elect to extend such First Fix Leak Repair Scheme Offer to pipework serving the Property which exceeds 15 metres. In such circumstances the definition 54

of External Supply Pipe shall be deemed to include pipework that exceeds 15 metres in length.

2. RIGHT OF ACCESS AND AUTHORITY TO PERFORM WORKS

The owner permits (and shall procure that each occupant of the Dwelling shall permit) Irish Water to have access to the owner's Property to perform the Works on the date(s) and time(s) as agreed with Irish Water.

3. PREPARATORY WORK TO ALLOW THE WORKS TO BE CARRIED OUT

Prior to commencing the Works, the owner will be responsible for removing plants, shrubs, fixtures and any other object(s) which may, directly or indirectly, obstruct or cause damage to, or be damaged by, the Works. The owner agrees that Irish Water will not be liable for or in connection with any loss or damage caused to such objects or by any removal activities associated with such objects.

4. OWNER REPRESENTATIVE

The owner agrees that, during the carrying out of the Works (including the remedying of any defects pursuant to clause 8 hereto), an adult representative of the owner will be present at the Dwelling to turn the water fittings on and off as necessary.

5. EXCAVATIONS AND RESURFACING

General

The following provisions shall apply to the performance of the Works and any reinstatement works carried out as part of the Works. Irish Water will use reasonable endeavours to procure that the Works are performed efficiently but owners shall accept that the Works (including any related reinstatement, resurfacing and making good works) may not be completed in a single business day. As part of the Works Irish Water shall, as a matter of course, be required to make excavations in the ground in order to access the External Supply Pipe. After excavations have been made Irish Water will, in due course, carry out reinstatement, resurfacing and making good Works. In carrying out reinstatement, resurfacing and making good Works an exact match to the surface that was in place prior to the excavation Works cannot be guaranteed and Irish Water will only reinstate the surface area that has been directly excavated as part of the Works. The agreed scope and nature of reinstatement, resurfacing and making good works to be carried out as part of the Works when the External Supply Pipe is laid beneath (a) Natural Ground, or (b) Tarmac or Concrete or a (c) Modular Surface, is detailed in 5(a), 5(b) and 5(c) below.

(a) "Natural Ground"

means a surface that is composed of rough and/or unmade ground, grass fields, grass verges, agricultural land, cultivated grass, allotments, cultivated gardens (including lawns), gravel and/or hard-core surfaces and cleared demolition ground excepting any surface that is determined by Irish Water to have a particularly specialist or distinctive colour, texture or surface finish. As part of the Works, any trench that has been excavated in Natural Ground will be backfilled with material from the excavation up to the surface level, except where the trench is within one meter of the paved edge of a road, in which case the excavated area will be backfilled with imported materials. Irish Water will not accept liability for loss or 55

damage resulting from the removal or re-planting of plants or grasses or other natural features.

(b) "Tarmac or Concrete"

means a surface that is composed of concrete whether mass or reinforced, "Bitmac", asphalt, tarmacadam or similar surface products excepting any surface which is determined by Irish Water to have a particularly specialist or distinctive colour, texture or surface finish. As part of the Works any trench that has been excavated in Tarmac or Concrete will be backfilled with imported material and surfaced with tarmac or concrete (or, in Irish Water's discretion, an alternative surface material). It is acknowledged and agreed by the owner that on a Tarmac or Concrete surface, the area of new tarmac or concrete over the excavated area may create a patch effect and may be of a different colouring, texture or finish to the surface that was in place before the Works were carried out. Irish Water will not resurface (or accept liability for the costs of resurfacing) any area of Tarmac or Concrete outside of that direct area which has been subject to excavation for the purposes of the Works.

(c) "Modular Surface"

means a surface that is composed of pre cast concrete block paving (including slabs/blocks), slabs and cobble lock (or equivalent), with each unit or piece of such surface being a 'Module', excepting any surface which is determined by Irish Water to have a particularly specialist or distinctive colour, texture or surface finish. As part of the Works any trench that has been excavated in a Modular Surface will be backfilled with imported material and the Modular Surface will, in so far as it is reasonably practicable to do so, be relaid in a safe and level manner (reusing the Modules that were taken up as part of the Works). Irish Water will not accept any liability for any Modules that are damaged or broken during the course of the carrying out of the Works. If some of the individual Modules are broken during the course of the Works then, at Irish Water's discretion during the carrying out of reinstatement Works, those Modules will be replaced with either (a) other type modular units which may not match or replicate (in colour, size, material or shape) those Modules that were in place prior to the Works commencing or (b) concrete infill (for reasons of safety).

5.1. For the purposes of these Terms and Conditions and the Works the term '**Specialist Surface**' means any surface which is not Natural Ground, Tarmac or Concrete or a Modular Surface. In circumstances in which a First Fix Leak Repair Scheme Offer is issued by Irish Water and accepted by an owner in relation to External Supply Pipe that is laid under a Specialist Surface, the owner confirms and agrees to take full responsibility and liability for all reinstatement, resurfacing and making good Works in respect of such Specialist Surface. In such circumstances clause 5.1.1 of these Terms and Conditions will apply to those Works:

5.1.1. **Specialist Surfaces: Owner to carry out reinstatement, resurfacing and making good works:** In these circumstances, the term "Works" (and the execution and completion of the Works) in these Terms and Conditions shall be read and construed as if any references to reinstatement, resurfacing and making good works relate only to the provision of backfill to the excavated area up to the surface level, together with a temporary finish (which will not be the same as the finish that was in place prior to the Works being carried out). All responsibility and liability for any further or additional re-instatement, re-surfacing or making good works in respect of 56

the Specialist Surface will rest with the owner. The agreement of the owner in relation to the carrying out of re-instatement, resurfacing and making good Works on the Specialist Surface will be specifically recorded on the attached Acceptance Form. The owner acknowledges and agrees to be solely and entirely responsible for the timely execution and completion of all such further reinstatement, resurfacing and making good works (including all of the costs thereof).

1 The owner agrees that to return the affected area to its original condition, especially for Specialist Surfaces, the owner may need to arrange for further work to be carried out by third parties. Irish Water accepts no liability in connection with such further work, including the costs of carrying out such further work and/or the costs of associated materials.

2 **LIMITATION OF LIABILITY**

- 6.1. Other than in respect of (a) death or personal injury (and nothing in these Terms and Conditions seeks to limit the liability of Irish Water in the event of death or personal injury attributed to Irish Water) caused by the carrying out of the Works or (b) the liability of Irish Water as described in clause 6.2 below, the owner agrees that Irish Water's sole liability and the owner's sole remedy in connection with the proposed Works shall be the carrying out of the Works by Irish Water plus the remediation of any defects in such Works in accordance with clause 8 below. The following provisions of this clause 6 are in addition to and not intended to undermine the limitations set out in this clause 6.1.
- 6.2. The owner agrees that Irish Water will not be liable for any loss or damage in relation to the Property arising from, or in connection with, the carrying out of the Works (including the remediation of defects) except to the extent that such loss or damage arises from the negligence of Irish Water.
- 6.3. The owner agrees that Irish Water will not be liable for any loss (including costs) or damage caused during the period while the owner is waiting for the Works to be carried out or where it is not possible to carry out the Works (either at all or in their entirety).
- 6.4. Unless it relates to the work required to remediate a defect for which Irish Water is responsible under clause 8 below, the owner agrees that Irish Water will not be liable for any loss or damage after the Works are carried out (including for example (but without limitation) settlement of the ground which is caused by the ground drying out because any leak has stopped).
- 6.5. The owner agrees that Irish Water will not be liable for any direct, indirect or consequential loss or damage, including loss of use, economic loss (including loss of profit or loss of revenue), or additional cost.
- 6.6. The owner agrees to indemnify Irish Water against any and all claims in connection with Irish Water's entry on to the Property (or any neighbouring property to which access is required) for the purposes of carrying out the Works (including the remediation of defects), except in respect of any valid and proper claims that the owner is entitled to make against Irish Water under these Terms and Conditions.
- 6.7. Irish Water does not warrant or guarantee that the Works to the External Supply Pipe have repaired or will repair all of the leaks within the pipework on the owner's Property (including, for example, those leaks on pipework within the Dwelling) or that the Works will reduce the owner's water consumption.
- 6.8. Irish Water shall not be liable if it is unable to carry out any its obligations pursuant to a First Fix Leak Repair Scheme Offer due to industrial disputes or any other cause outside the control of Irish Water, including but not limited to (a) acts of God, explosion, flood, lightning, tempest, fire or accident; (b) war or threat of war, 57

sabotage, riot, protest, insurrection, civil disturbance or disorder; (c) acts, restrictions, regulations, laws (including by-laws), prohibitions or measures of any kind on the part of any governmental authority; (d) import or export regulations or embargoes; (e) defaults of suppliers, contractors or sub-contractors; (f) any act or omission of any nature whatsoever on the part of the owner or an occupier of the Dwelling; (g) any act or omission of the owner or occupier of any neighbouring property or land to which access is required for the purposes of the Works.

1 Nothing in this clause is intended to exclude Irish Water's liability to the extent Irish law prohibits the above limitations and exclusions of liability from applying.

2 THIRD PARTY INVOLVEMENT

7.1. As part of the Works the owner agrees to procure that each occupier of the Dwelling shall not restrict the access of Irish Water to the Property and shall use all reasonable endeavours to assist Irish Water to get access to any neighbouring property where necessary. Notwithstanding the generality of the foregoing, if access to a neighbouring property (or properties) is required in order for the carrying out of the Works then the owner will procure that the consent of the owner of each such neighbouring property is obtained in advance of the Works commencing (in a form that is acceptable to Irish Water). If access to the Property (or any neighbouring property) is restricted or impeded in any manner (either by the owner or a third party) or if the required consent in relation to access to any neighbouring properties is not obtained and provided to Irish Water 7 days prior to the Works commencing then Irish Water, at its discretion, shall be entitled to revoke the First Fix Leak Repair Scheme Offer in its entirety and Irish Water will be under no obligation to carry out any Works in respect of the Property. In such circumstances (and without prejudice to clause 6.3 above) the owner acknowledges and agrees that Irish Water shall have no liability whatsoever to the owner either in respect of (a) the leak or (b) the failure to carry out any Works.

1 If, after commencement of the Works but prior to completion, access to the Property (or any neighbouring property) is restricted or impeded in any manner (either by the owner or a third party) then Irish Water will be under no obligation to carry out any further Works in respect of the Property (including re-installment Works). In such circumstances (and without prejudice to clause 6.3 above) the owner acknowledges and agrees that Irish Water shall have no liability whatsoever to the owner either in respect of (a) the leak or (b) the failure to carry out any further Works (including reinstatement Works). In addition the owner acknowledges and agrees to be solely and entirely responsible for the timely execution and completion of any necessary reinstatement, resurfacing and making good works (including all of the costs thereof) and hereby agrees to indemnify Irish Water in relation to any and all losses, damages, costs, claims or liabilities that arise from, or are related to, the owner's failure to carry out (or arrange for the carrying out) of any (or any appropriate) reinstatement, resurfacing or making good works.

2 IF THE LEAK REPAIR IS DEFECTIVE, NO LEAK IS DETECTED OR THERE IS AN INTERNAL LEAK

8.1 If a defect occurs in the Works within a 12 month period following the completion of such Works (the date for completion being the date on which Irish Water's contractors notify Irish Water of the completion of the Works), then, subject to clause 8.2, Irish Water will procure the remediation of the relevant defect. 58

8.2 If the defect in the Works is due to the material used by Irish Water as part of the Works (as opposed to the manner in which the Works were carried out), then the defect will only be repaired if the material or part which is defective is still under warranty (which warranty covers the entirety of the costs of Irish Water in remediating such defect).

8.3 Irish Water does not warrant that, following acceptance of a First Fix Leak Repair Scheme Offer, a leak on the External Supply Pipe will be located. If Irish Water commences excavation works and, after a reasonable period of time, no leak on the External Supply Pipe is detected or an 'Internal Leak' (as defined below) is detected, the provisions of clause 8.3.1 or 8.3.2 (as applicable) will apply:

8.3.1 No Leak detected: Irish Water may stop excavation work and carry out reinstatement, re-surfacing and making good works (such reinstatement, re-surfacing and making good works to be carried out pursuant to these Terms and Conditions). In such circumstances Irish Water is under no obligation to carry out any supplemental or secondary works in order to locate a leak on the External Supply Pipe.

8.3.2: Internal Leak: If Irish Water determines that a leak is located on the pipework within the Dwelling (an "Internal Leak") then Irish Water may stop excavation works and carry out reinstatement, re-surfacing works and making good works (such reinstatement, re-surfacing and making good works to be carried out pursuant to these Terms and Conditions). In such circumstances Irish Water is under no obligation to carry out supplemental or secondary excavation works in order to locate a leak on the External Supply Pipe or to carry out any supplementary or secondary works to investigate and/or repair an Internal Leak.

8.4 This clause 8 is in addition to and does not detract from any existing statutory rights which the owner may have.

9. NO DEROGATION FROM STATUTORY RESPONSIBILITIES

9.1 The owner acknowledges and accepts that the carrying out of the Works by Irish Water does not limit or reduce the obligations and duties that are imposed on owners by the Water Services Acts 2007 -2014 (including those which relate to the External Supply Pipe).

10. SEVERABILITY

All of the provisions contained in these Terms and Conditions are distinct and severable, and if any provision is held or declared to be unenforceable, illegal or void in the whole or in part by any court, regulatory authority or other competent authority it will, to that extent only, be deemed not to form part of these Terms and Conditions, and the enforceability, legality and validity of the remainder of these Terms and Conditions will not in any event be affected.

11. DATA PROTECTION

The owner acknowledges that in order for Irish Water to carry out Works, it may be necessary for Irish Water to collect and use data relating to the owner. Irish Water shall comply with all applicable laws, including the Data Protection Acts 1988 and 2003, and data protection obligations in respect of such data. The owner hereby consents to Irish Water collecting and processing such personal data as is necessary for the performance by Irish Water of Works as contemplated by these Terms and Conditions, and acknowledges that this will include allowing the contractors to use such personal data in connection with carrying out of the Works. 59

12. DISPUTE RESOLUTION

12.1 To the extent that an owner has a complaint, then the complaint shall be dealt with, in the first instance, under the complaint handling provisions set out in the Irish Water Domestic Complaint Handling Code of Practice. If the processes and procedures outlined in the Domestic Complaint Handling Code of Practice have been exhausted and any complaint made by the owner remains unresolved then the complaint shall be dealt with pursuant to Section 8 of the Water Services Act 2014 and the procedures published by the Commission for Energy Regulation (the "CER") pursuant thereto (subject to the CER providing a dispute resolution service in relation to the particular complaint).

12.2 In all other circumstances (and subject to the owner exhausting the dispute resolution procedures detailed in clause 12.1 of these Terms and Conditions) a dispute between the parties may be referred by either party to the Irish Courts in which case the owner and Irish Water agree to submit to the exclusive jurisdiction of the Irish Courts as regards any such dispute.

13. ENTIRE AGREEMENT

13.1. These Terms and Conditions and the Acceptance Form constitute the entire agreement and understanding of Irish Water and the owner and supersedes any prior representations, warranties or arrangements relating to the Works.

1 No variation of these Terms and Conditions shall be effective unless made in writing and executed by authorised representatives of Irish Water and the owner.

2 GOVERNING LAW

These Terms and Conditions shall in all respects be governed by and construed in accordance with the laws of Ireland 60

Acceptance Form where External Supply Pipe is laid under a Specialist Surface

Irish Water Colvill House 24-26 Talbot Street Dublin 1 Date: ___ / ___ / 2015

Offer to investigate or carry out certain leak repair Works at the Property (as defined below)

External Supply Pipe laid under: Specialist Surface

Dear Sirs,

1. I confirm that I am the owner of the following Property: [«Address»] (the Property)
2. In consideration for Irish Water agreeing to carry out the proposed leak repair Works for free, I hereby accept the First Fix Leak Repair Scheme Offer made on [] and all associated Terms and Conditions.
3. I hereby acknowledge that Irish Water shall not be carrying out any internal works or repairing any internal leaks within the Dwelling.
4. I hereby acknowledge and agree that the pipework serving the Property is laid under a Specialist Surface (as such term is defined in the Terms and Conditions). In such circumstances Irish Water's reinstatement, resurfacing and making good Works shall relate only to the provision of backfill to the excavated area up to the surface level, together with a temporary finish (which will not be the same as the finish that was in place prior to the Works being carried out). I acknowledge and agree that I will be solely responsible and liable for all further reinstatement, resurfacing and making good works (including all of the costs thereof) in respect of such a Specialist Surface.

Signed by Property owner: _____

Printed Signature of Property owner: _____

Date: ___ / ___ / 2015

* Unless otherwise indicated in this letter of acceptance terms defined in the Terms and Conditions have the same meaning when used in this letter of acceptance. 61

Acceptance Form where External Supply Pipe is laid under Natural Ground, Tarmac or Concrete, a Modular Surface (or a combination of these surface types)

Irish Water Colvill House 24-26 Talbot Street Dublin 1 Date: ____ / ____ / 2015

Offer to investigate or carry out certain leak repair Works at the Property (as defined below)

External Supply Pipe laid under: Natural Ground or Tarmac or Concrete or a Modular Surface (or a combination of these surface types)

Dear Sirs,

1. I confirm that I am the owner of the following Property: [«Address»] (the Property)
2. In consideration for Irish Water agreeing to carry out the proposed leak repair Works for free, I hereby accept the First Fix Leak Repair Scheme Offer made on [] and all associated Terms and Conditions.
3. I hereby acknowledge that Irish Water shall not be carrying out any internal works or repairing any internal leaks within the Dwelling. Signed by the Property owner:

Printed Signature of Property owner: _____ Date:

____ / ____ / 2015

* Unless otherwise indicated in this letter of acceptance terms defined in the Terms and Conditions have the same meaning when used in this letter of acceptance. 62