

## Final Modification Report No.14

### Replacement of LIBOR

2<sup>nd</sup> August 2022

The Transporter has prepared this Final Modification Report No.14 in accordance with section A8 of the Code Modification Rules.

#### **A Description of the nature and purpose of the modification**

This proposal is being made as a result of the cessation of most London Inter-Bank Offered Rate (LIBOR) panels on 31<sup>st</sup> December 2021. LIBOR is the rate used in the NI Network Gas Transmission Code in circumstances where interest is applied.

Clauses within the NI Network Gas Transmission Code reflect the conditions in the Transporter's Licences with regard to the application of interest. On 27<sup>th</sup> January 2022, the Authority published Common Utility Regulator Letter No.4 which outlined the Authority's intention to replace references in the Licences to LIBOR with the Bank of England base rate. Licence modifications for this change are expected to be completed in 2022.

This Proposed Modification will update the NI Network Gas Transmission Code to reflect the proposed Licence Modifications.

#### **B How the modification better facilitates the relevant objective**

The Relevant Objective, (condition 2.4D.2 of the Transporter Licences) will be better facilitated by the NI Network Gas Transmission Code as a result of this modification. This change will support the efficient development and operation of the network by ensuring that interest rates can be applied by switching to the Bank of England base rate. The modification will also reflect the anticipated changes to the Transport Licences.

#### **C The clauses of the NI Network Gas Transmission Code that require amendment**

This proposal amends various sections of the NI Network Gas Transmission Code and adds or removes certain defined terms, as shown in the details in section H.

#### **D Impact on the networks of the Designated Pipeline Operators, Adjacent Transporters and/or relevant agreements in respect of the NI Network:**

The Transporter has considered the impacts the modification may have and has concluded as follows:

- Operation of the networks of the Designated Pipeline Operators: No impact
- Adjacent Transporters: No impact
- Relevant NI Agreements: No impact

#### **E Third Party Representations**

The Transporter received one response to the consultation on the Initial Modification Report. The respondent raised no objection to the proposal. No further comments were made.

**F Changes from the Initial Modification Report**

No changes have been made to the legal text following the consultation on the Initial Modification Report.

**G The date proposed for implementation**

The Transporter proposes that this Modification should take effect on the date of its approval by the Authority.

## H: Proposed Legal Text

### **Modify Section 17.7.3 (a) to read as shown below:**

17.7.3 The Transporter shall:

- (a) be entitled to recover from a Shipper a proportion of the aggregate of all Outstanding PS Code Charges, together with interest on such amount from any Due Date until the date of payment at ~~LIBOR~~BoEBR plus 0.75% compounded monthly, in the next Gas Year in 12 equal instalments not later than 10 Business Days after the end of each Month; and

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### **Modify Section 17.10.1 to read as shown below:**

17.10.1 If a Shipper or the Transporter fails to pay any sum due in accordance with this section 17 on the Due Date (other than payments which are notified by a Shipper as being the subject of a bona fide dispute in accordance with section 17.11.3), interest on such overdue amount shall accrue, both before and after judgement, at ~~LIBOR~~BoEBR plus 3% compounded monthly from the Due Date until the date payment is made.

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### **Modify Section 17.11 to read as shown below:**

#### **17.11 Set off and disputed invoices**

17.11.1 The Transporter shall be entitled to set off against any repayment due to a Shipper any amounts outstanding for payment by that Shipper to the Transporter in respect of PS Transmission Amounts.

17.11.2 Where any sum invoiced in a PS Invoice is the subject of a dispute (whether bona fide or not) the Shipper or the Transporter shall pay the full amount of the PS Invoice without set off or withholding. The Transporter and/or, where applicable, the Shipper shall after settlement of the dispute, pay any amount agreed or determined to be payable within 7 days of such agreement or determination and interest on such amount shall accrue and be payable from the Due Date to the date of payment (both before and after any judgement) at ~~LIBOR~~BoEBR plus 3% compounded monthly from such Due Date until the date payment is made.

17.11.3 Where any sum invoiced in a CC Invoice is the subject of a bona fide dispute and the Shipper provides the Transporter with full details of the reasons as to why the disputed portion is disputed within 14 Business Days of receipt by the Shipper of the CC Invoice to which the dispute relates, the Shipper or the Transporter, whichever is applicable, shall:

- (a) pay the undisputed portion of the CC Invoice by the Due Date; and
- (b) after settlement of the dispute, pay any amount agreed or determined to be payable within 7 days of such agreement or determination and interest on such amount shall accrue and be payable from the Due Date to the date of payment (both before and after any judgement) at ~~LIBOR~~BoEBR plus 3% compounded monthly from such Due Date until the date payment is made.

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**Modify Section 18.9.5(d) to read as shown below:**

18.9.5 For the purposes of section 18.9.4:

- (a) the Transporter shall procure that any balance of an Excess Amount which remains after the making of the payment described in section 18.9.3 shall be credited to an interest bearing account of the Transporter in the United Kingdom (which may include other Shipper's Excess Amounts);
- (b) such Excess Amount (and all interest thereon) shall be held on trust by the Transporter for the benefit of the Shipper and the Transporter in accordance with the provisions of this section 18.9.5;
- (c) the Transporter shall be entitled to withdraw all or part of the Excess Amount and apply the same in each of the circumstances where the Transporter would otherwise have been entitled to make a demand under a letter of credit or guarantee pursuant to section 18.9.2 had such an instrument been issued in its favour at such time but in no other circumstances.
- (d) if notwithstanding section 18.9.5(c) the Transporter withdraws all or part of the Excess Amount other than in such circumstances, the Transporter shall reimburse the same to the Shipper on demand, with interest at ~~LIBOR~~BoEBR plus 1% from the date of withdrawal to the date of such reimbursement;
- (e) if at any time at which monies are so held by the Transporter on trust for the Shipper pursuant to this section 18.9.5 the Shipper provides to the Transporter a guarantee, a cash deposit or a letter of credit for the amount then held on such trust which conforms with the provisions of section 18.5.4(b), 18.5.4(c) or 18.5.4(d) respectively, then the Transporter shall return to the Shipper all monies then so held by the Transporter on such trust;
- (f) if at any time following a Shipper ceasing to be a Party to this Code there are no amounts due and payable by the Shipper which are unpaid and no Party to the Code remains under any obligation actual or contingent the observance or performance of which would give rise to an obligation on the Shipper to make a payment under the Code any monies then held by the Transporter on trust pursuant to this section 18.9.5 shall be returned to the Shipper; and
- (g) the perpetuity period under the rule against perpetuities, if applicable to any trust arising pursuant to this section, shall be the period of 125 years from the date of such trust arising.

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**Modify Section 19.6.3 to read as shown below:**

19.6.3 The Transporter shall, subject to section 19.6.4, pay any such sums properly due to Shippers in respect of any liability referred to in section 19.6.2 in the first invoice issued in the next Gas Year together with interest on such payment from the date that the liability was incurred until the date of payment at ~~LIBOR~~BoEBR plus 1%.

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**Modify Section 20.3.1(a) to read as shown below:**

20.3.1 A Force Majeure event shall not relieve a Party from any liability or obligation to:

- (a) make payments due under this Code save to the extent that the failure to pay money is caused by a Force Majeure event affecting all reasonable means of payment, in which case, upon the cessation of the Force Majeure event, the Affected Party shall pay these unpaid monies together with interest on them at the rate of ~~LIBOR~~BoEBR calculated from the due date for payment to the actual date of payment; or
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**Modify Section 21.5 to read as shown below:**

**21.5 Consequences of termination**

21.5.1 A Shipper ceasing to be Party to this Code in accordance with this section 21.5.1, shall not extinguish or relieve either the Shipper or the Transporter from the performance of any obligation accrued under this Code as at the date the Shipper ceases to be Party to this Code.

21.5.2 Upon termination by the Transporter under sections 21.2, 21.3 or 21.4 the following payments shall immediately fall due and payable by the Shipper (and the "Due Date" in relation to such payments shall for the purposes of this Code be the date of termination):

- (a) all of the following which are due, accrued or outstanding to the Transporter under this Code in respect of the period up to and including the date of termination:
- (i) all PS Transmission Amounts; and
  - (ii) all PS Code Charges.
- (b) the following:
- (i) the Payable IP Capacity Price in respect of all IP Capacity (or in the case of the Stranraer Shipper, the Payable Non-IP Entry Capacity Price in respect of all Non-IP Entry Capacity) and the Payable Exit Capacity Price in respect of all Exit Capacity held by the Shipper in the remainder of the Gas Year after the date of termination; and
  - (ii) the Forecast Postalised Commodity Charge that would be payable in respect of the Shipper's aggregate Exit Allocations if such quantities together were taken to equal 80% of all Exit Capacity held by the Shipper in the remainder of the Gas Year after the date of termination; and
  - (iii) the Transporter's estimate of the PS Transmission Amounts that would be payable in respect of all Exit Capacity, Non-IP Entry Capacity and IP Capacity held by the Shipper in all future Gas Years (had no such termination occurred) provided that such sums shall be adjusted to take account of:
    - (aa) the Transporter's estimate of the amount (if any) by which it shall be able to mitigate the loss referred to in (iii) above;
    - (bb) inflation (which shall be assumed to continue at the rate of RPI at the date of termination); and

(cc) the net present value of the amount payable at ~~LIBOR~~BoEBR.

- 21.5.3 Upon termination under sections 21.2, 21.3 or 21.4, the Transporter shall, as soon as reasonably practicable, and in any event not later than the 5<sup>th</sup> Business Day following termination, issue the Shipper with an invoice (a “**Termination Invoice**”) which shall set out the following:
- (a) the identity of the Shipper;
  - (b) the period to which the Termination Invoice relates; and
  - (c) a detailed breakdown of each of the sums payable under section 21.5.2.
- 21.5.4 The Shipper shall, no later than 30 Business Days following receipt of the Termination Invoice pay to the PoT Account (or in the case of the Stranraer Shipper, the Transporter’s Account) all sums payable under section 21.5.2, with the exception of payments due under section 21.5.2(a)(ii), which shall be payable to the Transporter in accordance with the provisions of this Code.
- 21.5.5 If the Shipper fails to pay any sum due as detailed in the Termination Invoice by the date specified in section 21.5.4, interest on such overdue amount shall accrue at ~~LIBOR~~BoEBR plus 3% compounded monthly from the date specified in section 21.5.4 until the date payment is made.

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## Appendix 1: Definitions and Interpretation

**Add or remove, as applicable, the following defined terms to read as shown below:**

**“BoEBR”**

means the rate which is the applicable Bank of England base rate(s) for sterling as published by the Bank of England. Where this rate changes during the period over which unpaid amounts are outstanding the relevant rate shall be applied in respect of the relevant days during the period in which the payment remains outstanding (and should this rate be less than zero for any period it shall be deemed to be equal to zero for the relevant period) for the purposes of calculating interest payments in accordance with this Code.

**“LIBOR”**

means the rate which is the average of the figure or figures published by the Financial Times representing the mid-point of the rates (bid and ask) applicable to one month Interbank Sterling Interest Rates in the London Interbank Market on each fifteenth day of each month occurring between the date on which the unpaid amount(s) should have been paid to the Transporter and the date on which it is settled. If the LIBOR rate is available on any fifteenth day but is not published in the Financial Times in respect of such day for any reason, the LIBOR rate chosen shall be that offered by Barclays Bank plc to other leading banks in the London Interbank

~~Market for one month Sterling deposits. If such fifteenth day is not a day on which LIBOR rates are quoted in the London Interbank Market, the LIBOR rate to be used shall be that quoted on the next following day on which such rates are quoted;~~