

## ACE GREEN NATURAL GAS COMMODITY TERMS AND CONDITIONS

By receiving natural gas supply service from the Public Alliance from Community Energy, a Competitive Natural Gas Provider in the Nebraska Choice Gas<sup>®</sup> Program, you are agreeing to be bound by the terms and conditions of service set forth below and as agreed in correspondence, whether via telephone, electronic or written, mailed selection form, delegation agreement(s) (if any), and/or as a Default customer (collectively, the "Agreement"). In this Agreement, you are referred to as "you" and "your", and the Public Alliance for Community Energy is referred to as "ACE".

**Enrollment.** When you accept the terms and conditions of ACE natural gas service by verbal, written or electronic acknowledgment or as a Default customer within the meaning of the applicable tariff administered by the local gas distribution utility (hereinafter referred to as the "Utility" which is currently Black Hills Nebraska Gas, LLC and will include its successors and assigns), you sign up for ACE natural gas service under the terms set forth in this Agreement. Under the pricing option you select, ACE agrees to sell to you and deliver to your Utility, and you agree to purchase from ACE and receive from the Utility, your full requirements of natural gas for the account for which you subscribed to the ACE natural gas service (referred to herein as "Account"). The Utility will deliver the natural gas to the premise listed on the Account and shall invoice and collect ACE's charges. You and ACE agree to comply with all the requirements, terms and conditions of the Utility's Nebraska Choice Gas<sup>®</sup> program (hereinafter referred to as the "Choice Program") as approved by the Nebraska Public Service Commission, as such terms and conditions may be modified from time to time. You acknowledge that if the Choice Program is terminated or changed in any manner, then ACE reserves the right to modify or cancel the terms and conditions of this Agreement upon 10 days written notice to you.

**Your Rate Per Therm.** Your Supplier Commodity Charge for all of your natural gas usage for the Account will be the rate confirmed to you at the time you subscribed to ACE natural gas service. You acknowledge that in addition to the Supplier Commodity Charge amount you shall be responsible for paying any other charges assessed by the Utility. Furthermore, you acknowledge you shall be responsible for paying the ACE Green Carbon Offset Charge, equal to \$0.0165 per therm for the duration of the term of this Agreement. Unless expressly specified otherwise in your Agreement, your ACE natural gas rate may change if an upstream pipeline used for transportation services or the Utility adds or adjusts any surcharges or riders, or changes the rates charged to ACE.

**ACE Green Carbon Offset Charge.** In consideration of your payment of the ACE Green Carbon Offset Charge, ACE agrees to, (a) through a contract with its supplier, retire carbon offsets sufficient to offset ten percent (10%) of your natural gas usage at a rate of .65 cents (\$0.0065) per therm of your total natural gas usage, and (b) make a donation to the Arbor Day Foundation in an amount which is equivalent to one cent (\$0.01) per therm of your total natural gas usage. Your rate shall include the ACE Green Carbon Offset Charge for the duration of the term, and the corresponding purchase of carbon offsets shall be calculated on an annual basis following the completion of each one-year period beginning on the June 1 after enrollment and terminating the following May 31. "Carbon offset" means a verified avoidance, reduction, or removal in greenhouse gas emissions equivalent to one metric ton of carbon dioxide equivalent, as specified via the applicable carbon offset registry utilized through ACE's supplier. Carbon offsets shall not include any tax credits, depreciation allowances or third-party subsidies of any kind. Any carbon offsets retired pursuant to these Terms and Conditions shall be retired no later than two (2) years after your corresponding natural gas use.

**Change in Certification Standard.** In the event that the applicable certification standards for carbon offsets are modified or repealed, or if there is any new law or regulation enacted, after your selection of the ACE Green product but prior to retirement of the applicable carbon offsets by ACE's supplier, in such a way that ACE's supplier is no longer able to retire the required carbon offsets, ACE shall credit Customer for any payments previously made by you for the Carbon Offset Charge for any corresponding carbon offsets which were paid for but not actually delivered (if any).

**Carbon Offset Supplier Contingency.** Retirement of carbon offsets is subject to the terms and conditions of an agreement between ACE and its carbon offset supplier (the "Supplier Agreement"). In the event that, under the terms of the carbon offset Supplier Agreement, ACE's supplier fails to or is unable to purchase the required carbon offsets at any point following your selection of the ACE Green pricing option, ACE, at its option, will (a) automatically enroll you in ACE's fixed price per therm service, at a price which is equal to your selected ACE Green pricing option, less the ACE Green Carbon Offset Charge and refund you any portion of the Carbon Offset Charge for any carbon offsets which were paid for but not actually retired, or (b) make arrangements to purchase alternate carbon offsets in the same amount as set forth herein at no additional charge to the customer.

Choice Gas<sup>®</sup> is a registered trademark of Black Hills Gas, LLC

**Term.** This Agreement shall be in effect from the first day of the month for which you receive your first natural gas bill reflecting the agreed upon natural gas commodity price with ACE under this Agreement through the immediately succeeding May 31, if you select a one-year pricing option (as a new subscriber or as a renewal). If you select a two-year ACE pricing option (as a new subscriber or as a renewal), this Agreement shall be in effect from the first day of the month for which you receive your first natural gas bill reflecting the agreed upon natural gas commodity price with ACE under this Agreement through the second succeeding May 31. The term is subject to you meeting all requirements to receive and continue receiving service under the Choice Program. If you are already an ACE customer when entering into this Agreement, the term of this Agreement will not begin until the previous agreement expires.

**Billing.** The Utility's billing and payment procedures shall apply in accordance with the applicable tariff. You will receive a bill from the Utility for ACE natural gas commodity each month of the term of this Agreement.

**Questions or Errors.** If you have questions regarding your Supplier Commodity Charge, or believe there is a billing error, contact ACE at 800-454-4759 or 8377 Glynoaks Drive, Lincoln NE 68516. To dispute ACE natural gas commodity amounts on your bill, you must put your dispute in writing to ACE at the address listed above within sixty (60) days of the date of the Utility bill on which the suspected error appeared, and provide the following information: (1) your name and account number; (2) the dollar amount of the suspected error; and (3) a description of why you believe there is an error. Disputes regarding amounts billed by the Utility should be directed to the Utility.

**Force Majeure.** ACE shall be excused for performance under this Agreement for events of Force Majeure declared by ACE or the Utility. For purposes of this Agreement, Force Majeure Events include the right of ACE to cancel this Agreement if material changes are made to the Choice Program or if the Choice Program is discontinued. Force Majeure shall be defined as causes beyond the reasonable control of ACE. Events of Force Majeure shall include, but not be limited to, service interruptions of interstate and intrastate pipelines, unplanned distribution system maintenance, flooding and other acts of God or nature, civil disturbance, labor disturbance, sabotage, terrorism, war, or national emergency interruptions by government or court orders.

**LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES.** ACE'S TOTAL LIABILITY TO YOU SHALL NOT EXCEED THE AMOUNT PAID BY YOU HEREUNDER. IN NO EVENT WILL ACE BE LIABLE UNDER THIS AGREEMENT, WHETHER IN AGREEMENT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES. ACE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICE OR COMMODITIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Assignment.** This Agreement may not be assigned or transferred by you, and any such transfer or assignment shall be void.

**Notices.** You must notify the Utility promptly if you change your mailing address. All written notices from ACE to you will be considered given when placed in the United States mail, postage prepaid, and addressed to you at your current address as it appears in the records ACE receives from the Utility.

**Regulatory.** This Agreement is subject to any and all existing and future valid laws, orders, directives, rules and regulations of regulatory bodies having jurisdiction over the parties and this transaction. If any event or change in laws or the Utility's tariff occurs that results in the need to modify this Agreement, ACE may change the terms of this Agreement by providing notice of such change to you at least thirty (30) days prior to the effective date of the change. ACE shall be entitled to pass through to you any storage, transportation, fuel shrinkage and other charges, which may be variable, related to ACE providing natural gas service to you and any additional or increased fees or charges that are beyond ACE's reasonable control. These fees and charges include, but are not limited to, charges, surcharges or riders that are imposed or changed by any statute, rule, regulation, order or other law, or procedure, tariff, rate class or other process or charge, promulgated by any governmental authority or the Utility, or other regulated service provider.

Sweepstakes, Contests, and Promotions. Any sweepstakes, contests or other promotions (“Promotion”) that may be offered under this Agreement may be governed by a separate set of rules that may have eligibility requirements, such as certain age or geographic area restrictions, terms and conditions governing the Promotion, use of user content, and disclosures about how your personal information may be used. It is your responsibility to read these rules to determine whether or not you want to and are eligible to participate, register and/or enter, and to determine the applicable terms and conditions of the Promotion. By participating in a Promotion, you will be subject to those official rules, and you agree to comply with and abide by such rules and the decisions of the identified sponsor(s).

Other provisions. The services provided by ACE are governed by the terms and conditions of this Agreement and the Utility tariff and the Supplier Participation Agreement between ACE and the Utility and related amendments or attachments thereto. You and ACE agree that the purchase and sale of natural gas commodity is and shall remain subject to any existing or future changes made by the Utility or associated pipeline company. You acknowledge that you did not rely on any oral representations other than such as are reflected in writing herein. You agree that this Agreement shall be governed by and interpreted under the laws of the State of Nebraska. The provisions of this Agreement which by their nature are intended to survive termination or expiration will survive the termination or expiration of this Agreement. If any part of this Agreement is not valid, all other parts will remain enforceable.

Conflicts of Terms and Conditions. Any terms not defined herein will have the meanings set forth in the Black Hills Nebraska Gas, LLC Tariff on file with the Nebraska Public Service Commission, and any conflicts between these terms and conditions and the State Natural Gas Regulation Act (“Act”), the Black Hills Nebraska Gas, LLC Tariff or the Supplier Participation Agreement between ACE and Black Hills Nebraska Gas, LLC and related amendments or attachments will be resolved first in favor of the Act, the Black Hills Nebraska Gas, LLC Tariff, and then the Supplier Participation Agreement and related amendments or attachments.