

## AGREEMENT REGARDING ACE WEATHERSHIELD™ BILL - COMMERCIAL ACCOUNTS

This Agreement Regarding ACE WeatherShield™ Bill ("Agreement") for Commercial customers sets forth the terms and conditions with respect to your ACE WeatherShield™ bill. You acknowledge that this document is a binding and enforceable contract and by receiving natural gas supply from the Public Alliance for Community Energy, a Competitive Natural Gas Provider in the Nebraska Choice Gas® 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, or delegation agreement(s) (if any). In this Agreement, your commercial account is referred to as "you" and "your", and the Public Alliance for Community Energy is referred to as "ACE".

**Enrollment.** When your representative accepts the terms and conditions of ACE WeatherShield™ service by verbal, written or electronic acknowledgment on your behalf 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) or by a delegation agreement (if any), you sign up for the ACE WeatherShield™ fixed monthly bill option under the terms set forth in this Agreement. Under the ACE WeatherShield™ fixed monthly bill option, ACE agrees to sell to you and deliver to the 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 WeatherShield™ Bill option (referred to herein as "Account"). The Utility will deliver the natural gas to the premises 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® 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.

**Monthly Bill Amount.** Your monthly bill for all of your commercial natural gas usage for the Account will be the amount confirmed to you at the time you subscribed to ACE WeatherShield™ service. Your monthly ACE WeatherShield™ bill amount includes all of the following charges, as defined in the applicable tariff: Supplier Commodity Charge, Customer Charge, Distribution Charge, State Regulatory Assessment, Safety and Integrity Charge, and Tax and Franchise Fees. You acknowledge that in addition to the ACE WeatherShield™ bill amount, you shall be responsible for paying any other service fees, connection charges, non-sufficient funds fees, or late fees assessed by the Utility, or other charges unrelated to the ACE WeatherShield™ program, including without limitation Customer Appliance Protection Program charges or those charges imposed under the applicable tariff provisions regarding "Charges for Miscellaneous Services". The amount you will be required to pay for natural gas for ACE WeatherShield™ service during the term of this Agreement will not increase or decrease based on variations in weather conditions or changes in natural gas market prices. Your ACE WeatherShield™ monthly payment may change if (i) there is a material change in your natural gas usage on your part, including, but not limited to, building additions, building upgrades, adding a heated swimming pool, appliance conversions, or discontinuing supplemental heat sources, (ii) the Utility adds or adjusts any charges, taxes, fees, surcharges or riders, (iii) an upstream pipeline used for transportation services adds or adjusts any charges, taxes, fees, surcharges or riders, or (iv) your rate was based on inaccurate historical usage data. You agree to provide ACE with advance notice of any such material changes. ACE will provide written notice of the change in your monthly ACE WeatherShield™ bill amount and the reason therefor.

**Term.** This Agreement shall be in effect from the first day of the month for which you receive your first ACE WeatherShield™ bill under this Agreement through the immediately succeeding May 31, if you select the one-year ACE WeatherShield™ bill option (as a new subscriber or as a renewal). If you select the two-year ACE WeatherShield™ bill 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 ACE WeatherShield™ bill 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 WeatherShield™ subscriber when entering into this Agreement, the term of this Agreement will not begin until the previous ACE WeatherShield™ Agreement expires.

**Billing.** The Utility's billing and payment procedures shall apply in accordance with the applicable tariff, including but not limited to the Utility's right to assess late payment fees. You will receive a bill from the Utility for ACE WeatherShield™ service each month of the term of this Agreement. You agree to pay the amount shown on each bill on or before the due date and in the manner shown in each bill, plus any fees, if any, on your balance.

**Exit Fee/Termination Charges.** If you move out of the premises served hereunder during the Term of this Agreement, you will owe all outstanding billed ACE WeatherShield™ amounts plus an exit fee. If you subscribed to a multi-year ACE WeatherShield™ pricing option and you do not remain with ACE for the entire term, you will owe all outstanding billed ACE WeatherShield™ amounts plus an exit fee. The exit fee shall be \$150.00. If you do not inform ACE of material changes in your natural gas use, ACE reserves the right to bill you, via the Utility, for the exit fee plus the difference between the aggregate amount you were charged on your utility bill for ACE WeatherShield™ service from inception

through termination of this Agreement, and the cost of your actual consumption of gas at applicable market rates.

**Default.** You will be in default under this Agreement if any of the following events occur: (a) you do not comply with the payment terms or any other terms of this Agreement; (b) you move out during the term of this Agreement; or (c) you fail to inform ACE of material changes in your natural gas use. ACE has the right to terminate this Agreement in the event of default, without limiting ACE's rights to payment due from you as provided above.

**Questions or Errors.** If you have questions regarding your ACE WeatherShield™ bill or believe there is a billing error, contact ACE at 800-454-4759 or 8377 Glynoaks Drive, Lincoln, NE 68516. To dispute ACE WeatherShield™ 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 ACE WeatherShield™ 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, pandemic, 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. All rights and obligations under this Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the respective parties.

**Notices.** You must notify the Utility promptly if you change your mailing address. All written notices and statements 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.

**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, the Utility's 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 is and shall remain subject to any existing or future changes made by the Utility or associated pipeline company. Further, 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. You acknowledge that you did not rely on any oral representations other than those 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.

**Change in Law or Market Structure.** If a change in or implementation of law, rule, regulation, ordinance, statutes, judicial decision, administrative order, Utility tariffs, interstate transportation pipeline tariffs or the like causes ACE's costs under this Agreement to increase, ACE will have the right to pass such increased costs to you with or without prior notice. The changes described in this section may change any or all of the charges described in this Agreement.

**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.