



## **Natural Gas WinterGuard, Terms and Conditions**

This document sets forth all the applicable terms and conditions with respect to Customer's WinterGuard price option for the term of Customer's enrollment in the Residential/Commercial Choice Gas Program provided under the tariff of Black Hills Nebraska Gas ("Utility"), which is on file with the Nebraska Public Service Commission. Customer acknowledges that this document is binding and enforceable and that the terms and conditions set forth herein, along with provisions of the State Natural Gas Regulation Act, the Utility's Tariff, or other applicable Choice Gas Program documents, will become effective when Customer enrolls in WinterGuard service.

### **General Terms.**

Customer's monthly payment for all of Customer's natural gas usage will be the amount confirmed to Customer at the time Customer enrolled in WinterGuard Service. The amount Customer will be required to pay for natural gas for WinterGuard service will not increase or decrease based on variation in weather conditions or changes in natural gas market prices. BHES reserves the right to alter Customer's WinterGuard monthly payment based on any material change in Customer's usage of natural gas, such as increased usage due to additions or extensions, new equipment, leaks from Customer's gas piping or appliances, discontinuing supplemental heat sources (such as wood stoves) and other additional heating demands, or if the utility or the pipeline upstream of the utility subsequently adds or changes any charges or any governmental authority adds or increases taxes or surcharges, or allows for the imposition of a tax, surcharge, fee or other charge. Customer agrees to provide BHES with advance written notice of any such anticipated changes. BHES will provide the revised monthly dollar amount to the utility to be shown on the Customer's bill and will provide the reason for the change to customer upon request.

### **Changes in Law or Market Structure.**

If a change in or implementation of law, rule, regulation, ordinance, statute, judicial decision, administrative order, Utility tariffs, interstate transportation pipeline tariffs or the like causes BHES costs under this Utility program to increase, BHES will have the right to pass such increased costs on to you without prior notice. The changes described in this Section may change any or all of the charges described in this Agreement.

### **Term of Agreement and Payment Terms.**

The Utility will provide the monthly bills to Customer for the BHES WinterGuard fixed monthly bill price option provided by BHES. Customer will receive a bill from the Utility for WinterGuard service beginning in June and for each month of Customer's continuing Service. The WinterGuard contract term shall either be for a twelve (12) or twenty-four (24) month period starting with Customer's first billing month. Customer agrees to pay the Utility for BHES's monthly WinterGuard together with the applicable utility charges according to the payment terms of the Utility.

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### **Errors and Questions Regarding Customer's Natural Gas Commodity Service.**

Customer shall notify BHES in case of errors or questions about Customer's Service. If Customer thinks Customer's bill, or any adjustment thereto, is wrong, or if Customer needs more information about Customer's bill, Customer must contact BHES at Black Hills Energy Services Company, 4510 Airport Rd, Kearney, NE 68847, or at 1-844-371-4952, or email [bhes@blackhillscorp.com](mailto:bhes@blackhillscorp.com) as soon as possible. Customer may also contact the customer service location at the telephone or address stated on Customer's bill. However, no action may be taken by Black Hills Energy Services Company until it receives a written notice.

BHES must hear from Customer no later than 60 days after Customer's bill is sent on which the error or problem appeared. In Customer's letter, please provide this information: (1) Customer's full name and account number; (2) the dollar amount of the suspected error; (3) a description of the error; (4) an explanation of why Customer believes there is an error; and (5) if Customer needs more information, describe the item Customer is not sure about. BHES will acknowledge Customer's letter within thirty (30) days, unless BHES has corrected the error by then. Within ninety (90) days, BHES must either correct the error or explain why BHES believes the bill was correct.

If BHES finds that BHES did not make a mistake on Customer's monthly bill, then Customer agrees to make up any missed payments on the questioned amount. In either case, Customer will be sent a bill of the amount Customer owes and the date that amount is due.

### **Events of Default.**

Customer will be in default under this Agreement if any of the following events occur: (a) if Customer does not comply with the payment terms of the utility or (b) if Customer moves during the term of this agreement.

### **Cancellation.**

Customer may cancel this Agreement by sending a letter to BHES requesting that BHES discontinue providing Customer with WinterGuard service. However, Customer will be subject to an exit fee, and Customer's obligations under this Agreement and any changes made under it prior to cancellation will continue to apply. If Customer seeks to cancel this Agreement or if BHES canceled this Agreement, Customer will be responsible for all outstanding WinterGuard amounts (which, for customers who have moved out, will be prorated based on the number of days since the last meter reading) plus an exit fee, and the customer will be put on the default Fixed Rate per therm price option and billed for actual use starting with the last meter read date. For customers who do not inform BHES of material changes in natural gas use, to the extent the cost of Customer's actual consumption of gas exceeds the aggregate amount Customer was charged on Customer's WinterGuard bills from inception through cancellation of this Agreement, BHES reserves the right to bill Customer for the difference plus the applicable termination fee. The exit fee shall be \$120.00 and it shall be billed for all types of WinterGuard terminations occurring after the first October of the contract term.



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### **LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES.**

BHES IS NOT LIABLE FOR, AND CUSTOMER EXPRESSLY WAIVES, ANY AND ALL DAMAGES RESULTING FROM THE PROVISION OR FAILURE TO PROVIDE NATURAL GAS, INCLUDING WITHOUT LIMITATION ECONOMIC LOSS, PERSONAL INJURIES, PROPERTY DAMAGE, OR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. BHES MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICE, EQUIPMENT, OR COMMODITIES WHATSOEVER, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. This Agreement does not deprive Customer of any rights Customer may have against any party other than us.

### **Transfer.**

Customer may not transfer or assign enrollment, rights, and obligations under the price option and price to any other person, and any such transfer or assignment shall be void.

### **Force Majeure.**

If something happens that is beyond BHES' reasonable control that prevents BHES from performing its obligations under this Agreement, then BHES will be relieved from performance until the situation is resolved. Examples of such events include: acts of God, fire, flood, hurricane, war, terrorism; declaration of emergency by a governmental entity or the Utility; curtailment, disruption or interruption of natural gas distribution or supply; regulatory, administrative, or legislative action; and actions taken by third parties not under BHES' control, such as the Utility.

### **Other Provisions.**

Customer's natural gas commodity service has been applied for, considered, and issued in the state of Nebraska. Customer agrees that this service shall be governed by and interpreted under state or federal law where the service is provided. If any part of this Agreement is not valid, all other parts will remain enforceable.

### **Conflict of Terms and Conditions.**

Any terms not defined herein will have the meanings set forth in the Black Hills Nebraska Gas ("Regulated Utility") Tariff on file with the Nebraska Public Service Commission ("PSC"), and any conflict between these terms and conditions, and the State Natural Gas Regulation Act ("Act"), the Regulated Utility's Tariff, Supplier Participation Agreement and related amendments or attachments will be resolved first in favor of the Act, the Regulated Utility's Tariff, and then the Supplier Participation Agreement and related amendments or attachments.