



Nicor Gas
1844 Ferry Road
Naperville, IL 60563-9600

Mailing Address:
P.O. Box 190
Aurora, IL 60507-0190

Phone 630 983-8676
Internet www.nicor.com

ATTACHMENT 1

May 21, 2002

Mr. Jeffrey Mayer
MxEnergy Inc.
20 Summer St.
Stamford, CT 06901

Dear Jeffrey:

Enclosed, for your files, are copies of the following executed agreements for the Customer Select[®] program.

- Supplier Aggregation Agreement
- Nicor Gas Consolidated Billing Services Agreement
- Eligible Residential Customer Enrollment Data License Agreement

Sincerely,

A handwritten signature in cursive script that reads "Mary Lou Grzenia".

Mary Lou Grzenia
Senior Rate Analyst

Enclosures

**Northern Illinois Gas Company
D/B/A Nicor Gas Company
Small Customer Transportation Program
Supplier Aggregation Agreement**

This Agreement, dated January 24, 2002, is between Northern Illinois Gas Company, d/b/a Nicor Gas Company ("Company" or "Nicor Gas"), and Mx Energy Inc. ("Supplier") both in its individual capacity and as agent for its customer(s) ("Customer(s)"). Company or Nicor Gas and Supplier shall be collectively referred to as "parties" or singularly as "party".

Witnesseth That, the parties hereto agree as follows:

- 1.) **Scope of Agreement:** Service under this Agreement shall be in compliance with the Company's Rider 16, Supplier Aggregation Service, and Rider 15, Customer Select. Riders 15 and 16 detail the Customer Select® Program, ("Program"). Supplier has reviewed Riders 15 and 16 and agrees that the terms, provisions and requirements of Rider 15 and Rider 16 are incorporated into this Agreement. In the event of inconsistency between this Agreement and the applicable Riders, the Riders will prevail. In the event the conditions of service or charges are changed under authority of the Illinois Commerce Commission, such changes (including, without limiting the generality of the foregoing, changes to Riders 15 and 16) shall apply to this Agreement.
- 2.) **Gas Supply:** The Supplier agrees to deliver natural gas each day in accordance with daily delivery requirements established by Nicor Gas. The Supplier understands that it will incur daily non-performance charges to be imposed by the Company, if applicable. These charges are detailed in Rider 16.

The Company agrees to deliver Supplier-owned gas from the approved interconnections between the Company and interstate pipeline(s) to the Customer's service address. Supplier warrants that it will have valid legal title to or will have the right to deliver all Supplier-owned gas to the Company, free and clear of all liens, encumbrances, and claims. Supplier shall have the responsibility for and assume all liability with respect to Supplier-owned gas prior to its delivery to the Company hereunder. Supplier agrees to indemnify the Company and save it harmless from all suits, actions, debts, accounts, damages, costs, losses, liabilities (including reasonable attorney's fees) and expenses arising from or out of claims of title, personal injury or property damage from any or all entities or persons to said Supplier-owned gas or other charges thereon which attach to the Supplier-owned gas to be delivered to the Company.

- 3.) **Firm Capacity and Gas Supply Requirements:** The Supplier warrants that it has acquired or will acquire firm supply capacity and a volume of firm transportation capacity with a primary delivery point at Nicor Gas' city-gate for the time period specified in Rider 16 and equal to the percentage requirements (as set forth in Rider 16) of the initial aggregate Maximum Daily Contract Quantity ("MDCQ") of the Customers to be served by the Supplier and participating in the Program under this Agreement which capacity shall be utilized or dedicated to meet Supplier's obligations under this Agreement. The Company shall notify each Supplier of any future change in the percentage of maximum daily use of required firm supply and firm capacity to be held by the Supplier. The Supplier shall annually provide

copies to Nicor Gas of firm city-gate supply supported by firm interstate pipeline transportation or firm supply contracts or firm interstate pipeline transportation to the Company's city-gate. If released capacity is relied upon, documentation must demonstrate that the released capacity is non-recallable. In addition, each supplier must warrant that neither it nor its firm supplier, if applicable, has any firm obligations that are in conflict with the capacity to be used to serve Rider 15 Customers.

- 4.) **Supplier Charges:** The Supplier agrees to pay for all gas services rendered to it under Rider 16. Failure of Supplier to receive payment from its Customers will not excuse Supplier's obligation to Nicor Gas. The Supplier's group bill summary shall be mailed by the Company to the Supplier.
- 5.) **Customer Aggregation:** The Supplier agrees to be responsible for compiling the Customer group(s), as defined in Rider 16. Subject to the limitations in Rider 16, Supplier may submit listings of Customer group(s) in any quantity. Nicor Gas will verify the listing with its Customer database and then provide notification to each Customer of its enrollment in the Program and the Supplier serving the Customer. The Supplier will be notified of any exceptions. Transfer of Customer data between the Supplier and Nicor Gas and Nicor Gas and the Supplier shall be accomplished via the Customer Select Supplier Internet Web-site.

If any transmitted data is received in an unintelligible or garbled form, the receiving party shall promptly notify the originating party, within one business day, (if identifiable from the received transmitted data) in a reasonable manner. The originating party shall be obligated to retransmit the data upon notice from the receiving party. Notwithstanding the above, Nicor Gas will not be liable for the consequence of an unintelligible or garbled transmission. Nicor Gas will not recognize the receipt of any transmission data for purposes of enrollment in the Program until such data is in intelligible form.

The Supplier represents and warrants to the Company that the Supplier has been duly authorized to deliver gas on behalf of each Customer for each service location identified to the Company, and that each Customer has executed a valid agency agreement evidencing Supplier's authorization and binding the Customer to indemnify Nicor Gas for Supplier's obligations hereunder, and Supplier further covenants that the Supplier will indemnify and save Company harmless from and against any and all suits, (including reasonable attorney fees), causes of action, claims, demands or lost revenues arising from or out of any breach of this Agreement or representation or warranty made by the Supplier herein. The Supplier agrees to provide Company with evidence of authority to deliver gas on behalf of each Customer upon request by Company, and Company may terminate this Agreement if such evidence is inadequate, in the Company's sole discretion.

- 6.) **Supplier Deposit:** The Supplier agrees to provide an irrevocable letter of credit, cash deposit or parental guaranty to the Company, in form and substance satisfactory to Company, in an amount equal to the MDCQ of Customers to be served by Supplier multiplied by deposit factor set forth in Rider 16. The Company reserves the right to select the appropriate deposit vehicle. The amount of the deposit will be reevaluated at least annually by the Company.

- 7.) **Customer Solicitation:** The Supplier agrees to make a good faith effort to establish a Customer agreement, under the terms of Rider 16 and this Agreement, with any Customer that contacts the Supplier regarding participation into the Program.
- 8.) **Supplier Standards of Conduct:** The Supplier agrees to adhere to the Standards of Conduct as described in Rider 16.
- 9.) **Daily Nomination Requirement:** The Supplier agrees to deliver to Nicor Gas on a daily basis a volume of gas equal to the daily requirements of the Supplier's Customers, which shall be determined by Nicor Gas pursuant to Rider 16. Supplier recognizes that Nicor Gas will employ estimated use factors to determine the volume required, that the volume required will change daily and that Nicor Gas will provide the Supplier with notice of the required volume by 8:30 a.m. Central Time the day prior to the start of the gas day flow unless such day falls on a non-critical day which is a Company recognized holiday.

The Supplier recognizes that failure to deliver the volume required by Nicor Gas will result in an imposition of non-performance charge, as defined in Rider 16.

- 10.) **Customers Drops:**
Customer Initiated: The Supplier agrees to be responsible for compiling a list of Customers who notify the Supplier that the Customer elects to terminate their participation or pending participation in the Program. Suppliers shall forward these "Customer Drop" listings of Customers to Nicor Gas on a daily basis. Upon receiving these listings, the Customer's account will be canceled if the account is not yet activated or noted with a pending cancellation date and the Customer shall remain a Customer of the Supplier until a meter reading is posted to the Customer's account.

The Supplier represents and warrants to the Company that the Supplier has been authorized by the Customer to terminate the Customer's participation in the Program for each service location identified to the Company, and that each Customer has a valid agreement evidencing Supplier's authorization and binding the Customer to indemnify Nicor Gas for Supplier's obligation hereunder, and Supplier further covenants that the Supplier will indemnify and save Company harmless from and against any and all suits, (including reasonable attorney fees), causes of action, claims, demands, or lost revenues arising from or out of any breach of this Amendment or representation or warranty made by the Supplier herein.

Supplier Initiated Credit: Pursuant to Rider 15 of the Program, the Supplier warrants that Customers who are designated as being "Dropped for Credit" on the electronic drop file have been notified by the Supplier that they are being returned to Nicor Gas sales service for being forty-five (45) days or greater in payment arrears to Supplier for services rendered by Supplier.

The Supplier acknowledges that the Customer shall remain a Customer of the Supplier until a meter reading is posted to the Customer's account after notification is received and processed. The Supplier further acknowledges that its actions are in compliance with the United States Bankruptcy Code and assisted the Bankruptcy Trustee to the best of its ability in relation to receiving notice of a Customer of Supplier who has filed a Bankruptcy Petition

in any United States District Court during the term of the Customer and Supplier's contractual relationship.

Supplier Initiated Contract Expirations: The Supplier agrees to be responsible for compiling a list of 1.) Customers whose contracts have not been renewed with the Supplier and 2.) Customers who the Supplier no longer wishes to provide service to. Supplier represents and warrants to the Company that the listing comply with the Rider 15 requirements of "Termination of Service". Suppliers shall forward these listings of Customers to Nicor Gas on a daily basis by electronic means. Upon receiving these listings, the Customer's account will be noted with a pending cancellation date and the Customer shall remain a Customer of the Supplier until a meter reading is posted to the Customer's account.

Nicor Gas reserves the right, exercisable at its sole discretion, to request supporting documentation for any Customer termination or cancellation available under this Section 16.

- 11.) **Customer Billing:** Suppliers intending to provide a customer with a consolidated bill which is comprised of the the Company's distribution charges and the Supplier's commodity charges must enter into a separate agreement to provide such service to the Customer.
- 12.) **Other Services:** Nicor Gas may offer services in conjunction with the Program. Nicor Gas will offer to all Suppliers these services on a uniform and non-discriminatory basis. Separate agreements detailing these services shall be made available by the Company upon the Supplier's request.
- 13.) **Agreement Term:** This Contract shall remain in effect unless terminated by either the Company or the Supplier by written notice received by the non-terminating party not less than 90 days before termination from the Program. The termination notice time period may be different than 90 days if instructed by the Illinois Commerce Commission. The termination of service shall not release Supplier from any performance obligation or to make payment of any amounts due or to become due in accordance with the terms of this Agreement.
- 14.) **Failure to Comply:** Notwithstanding the Agreement Terms set forth in Section 13 of this Agreement, if the Supplier fails to comply with Program operations or conditions hereunder, Company may, at its sole discretion, in addition to all other remedies available at law or in equity, terminate this Agreement and, to the extent necessary, liquidate the Supplier Deposit as compensation for any costs the Company incurs in connection therewith.
- 15.) **Assignment:** This Agreement shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the respective parties hereto, and the representations, warranties, conditions, and obligations of this Agreement shall run for the full term of this Agreement. No assignment of this Agreement, in whole or in part, will be made without the prior written consent of the non-assigning party.
- 16.) **Choice of Law:** The interpretation and performance of this Agreement shall be governed by the laws of the State of Illinois, excluding any conflict of law rule which would apply the law of another jurisdiction.

- 17.) **Compliance:** The Supplier represents and warrants that all services to be rendered under this Agreement shall comply with all applicable federal, state, and local laws, rules and regulations, including, but not limited to, the Deceptive Advertising Act, Consumer Fraud and Deceptive Business Practices Act, Uniform Deceptive Trade Practices Act, and any other applicable statutes, regulations and orders of regulatory bodies having jurisdiction. The Supplier further represents that it shall obtain all necessary licenses and registrations required to perform the services hereunder.
- 18.) **Illinois Commerce Commission:** Subject to receipt of all necessary approvals of the Illinois Commerce Commission deemed necessary by the Company, service under Rider 15 and Rider 16 shall begin with the Customer's first bill with a beginning meter reading date at least 14 calendar days from the date the Company receives notification of the Customer's enrollment in the Program. Suppliers may begin sending Customer information to the Company no sooner than March 1, 2002.
- 19.) **Entire Agreement:** This Agreement constitutes the entire agreement of the parties with respect to the subject matter herein and cancels and supersedes any prior understandings and agreements of the parties with respect to such subject matter. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than those expressly set forth in this Agreement.

This Agreement shall not become effective until accepted by the Company as provided for below.

FOR Nicor Gas:

Submitted By: _____
Date Received from Supplier 1/24/02

1/30/2002

Accepted by (Please Print) John Madziarczyk

Accepted By (Signature) [Signature]

Director Rate Projects
Official capacity

Date Accepted 1/30/2002

FOR THE SUPPLIER AND FOR EACH CUSTOMER:

Supplier/
Authorized Agent [Signature]
Carole Roby Altman-Hodge
Chief Financial Officer, Executive Vice President

Accepted By _____
Please Print

Signature _____

Official capacity _____

Date Accepted _____