

# Nicor Advanced Energy LLC

## Commercial Flex Plan

### Terms and Conditions

**1. Flex Plan.** You agree to enter into this Flex Plan (Plan) Agreement (Agreement) with Nicor Advanced Energy, L.L.C. (Company). You hereby appoint Company as your sole and exclusive agent and natural gas supplier and hereby agree to purchase your natural gas commodity needs through the Company in accordance with the terms and conditions of this Agreement. You understand that this Agreement is with an alternative gas supplier, certified by the Illinois Commerce Commission, not the local natural gas distribution company, Nicor Gas (Utility). These terms and conditions are subject to your acceptance into the program by both the Company and your Utility.

**2. Pricing.** The monthly amount charged for this product at the premise(s) indicated on the attached letter is the sum of each daily index price, Gas Daily Daily (GDD) plus a set price-per-therm charge found on the accompanying letter multiplied by your allocated actual daily gas usage (AADU) at the aforeindicated premise(s) for each day of the month. In the event that your business has multiple premises that are served under this Agreement, each premise will likely have a differing AADU. Each premise's AADU will be calculated based on the premise's total usage during the billing period as determined by the Utility, with each day weighted by actual Heating Degree Days (HDDs) based on the temperature taken at Midway Airport and estimated consumption behavior related to HDDs and other factors. You will also be responsible for paying Nicor Gas' delivery charges and all taxes associated with your natural gas service and consumption. Although you will receive one bill from the Company for all of the charges set forth above, you will continue to receive natural gas delivery service from the utility. You agree that in addition to the Flex Plan charges you will still be responsible for paying all other service fees and late fees assessed by the Company or the utility or other charges unrelated to the Flex Plan. Your Flex Plan charges may be higher or lower than the Utility's monthly gas charges over the term of this Agreement.

**3. Agency.** You authorize the Company to initiate utility service for you and to make all rate and tariff selections necessary to meet its obligations under this Agreement, and to access your current and future gas utility customer account information. You authorize the Company and the utility to share account, payment status and history, and related information about you and authorize the Company to provide such information to third parties, such as suppliers and service providers, as may be allowed or required by contract or law and allow for such information to be utilized to offer other products and services of the Company and its affiliates to you. You consent and agree to the Company investigating your credit history and obtaining a credit report regarding the aforementioned or Dun & Bradstreet report, whichever is appropriate to your business. You consent to the recording of calls between the Company and you. You also authorize the Company to move any credit balances residing on your utility account to your Company account, and to remove you from the Nicor Gas Budget program and EFT payment program. You authorize and understand that the Company will transfer your natural gas supply from any Alternative Gas Supplier that may be serving you to the Company. You understand that you may be subject to cancellation or termination fees from an Alternative Gas Supplier by terminating that previous contract with that Alternative Gas Supplier for natural gas supply. This Agreement may only be assigned or transferred by the Company.

**4. Term/Renewal.** This Agreement begins at the time of your enrollment. After you enroll, you will receive at least one more Utility bill, which you will be responsible for paying. You will become active in Flex Plan at the first meter reading after the Utility accepts you into the Customer Select Program. **This Agreement renews each monthly billing period automatically unless you contact the Company by calling the Company at 1-866-799-2764 to terminate the Agreement.** These terms and conditions are subject to your acceptance into the program by both the Company and your utility. Each monthly billing period Plan term is a separate Agreement. The Company may change its price charged and the terms and conditions of its Agreement with you at each renewal of the Agreement. Notice of any change in the terms and condition or a change in the set price-per-therm charge of this Agreement will be provided to you.

**5. Indemnification.** You agree to indemnify and hold harmless your utility for any obligations of the Company contained within this Agreement. You also agree to indemnify the Company for any claims arising out of your failure to comply with this Agreement.

**6. Cancellation.** **YOU MAY CANCEL THIS AGREEMENT AT ANY TIME. YOU WILL RECEIVE ONE LAST BILL FROM THE COMPANY AFTER NOTIFYING US OF YOUR CANCELLATION. YOU WILL BE RESPONSIBLE FOR ALL CHARGES INCURRED DURING THE TIME YOU WERE ON THE PLAN.** If you elect to cancel this Agreement, you must enroll with a Customer Select Supplier in 45 days; otherwise you will not be eligible to participate in the Customer Select Program for one year. You must notify the Company 10 days prior to discontinuing utility service at your current premise(s). If such notice is not given, you will be responsible for new Flex Plan charges at your new premise(s) residence, and the Company reserves the right, with notice, to enroll you into a new Flex Plan Agreement at your new premise(s). If you choose to cancel your new Agreement at your new premise, you may do so without penalty for a period of 30 days of the postmark date of the new offer.

**7. Adjustments.** The Company reserves the right to amend this Agreement due to any regulatory, tariff, or procedural change that may affect the Company's ability to perform under this Agreement.

**8. Bill Payment and Past-Due Balances.** You will receive a monthly bill from the Company which shall be payable within 14 days of the postmarked date. Past-due balances under this Agreement shall be subject to a monthly late payment fee of one and one-half percent (1 ½%) of the past-due balance. The Company may terminate this Agreement at any time in the event that you fail to make timely payments.

**9. Force Majeure.** The Company shall be excused for performance under this Agreement for events of Force Majeure declared by the Company or the utility. Force Majeure shall be defined as causes beyond the reasonable control of the Company and the utility. 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 nature.

**10. Customer Service and Contact Information.** If you have any questions or concerns regarding the Flex Plan or any other products offered by the Company, please contact Nicor Advanced Energy at 1-866-799-2674, or you may write to us at Nicor Advanced Energy, L.L.C., P.O. Box 3042, Naperville, IL 60566-7042. If we are unable to resolve your billing issue, you may contact the Illinois Commerce Commission's Consumer Services Division via phone at 1-800-524-0795 or online at [www.icc.illinois.gov/ci/publicutility.aspx](http://www.icc.illinois.gov/ci/publicutility.aspx).

**11. Limitation of Liability.** **THE COMPANY'S TOTAL LIABILITY TO YOU AND YOUR EXCLUSIVE REMEDY SHALL NOT EXCEED THE AMOUNT PAID BY YOU HEREUNDER. IN NO EVENT SHALL THE COMPANY, ITS PARENT AND ITS AFFILIATES BE RESPONSIBLE UNDER THIS CONTRACT FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES.**

**12. Entire Agreement.** This Agreement, including the terms, conditions, limitations, exceptions and exclusions, and your charge shown on the reverse side of this Agreement, constitutes the entire Agreement. You acknowledge that you did not rely on any oral representations other than such as are reflected in writing herein. This Agreement will be governed by Illinois law, without regard to principles of conflicts of law.

For issues regarding safety (e.g. gas odor or leaks), utility rates, metering, or other issues regarding your utility service, contact Nicor Gas by telephone at 1-888-NICOR4U or in writing at P.O. Box 190, Aurora, IL 60507-0190. Nicor Advanced Energy is not the same company as Nicor Gas. It is an affiliate and its prices are not regulated by the Illinois Commerce Commission. Customers are not required to buy products or services from Nicor Advanced Energy in order to receive the same quality service from Nicor Gas.