

EX-10.2 3 dex102.htm CREDIT CARD PROGRAM AGREEMENT

EXHIBIT 10.2

CREDIT CARD PROGRAM AGREEMENT

by and among

THE NEIMAN MARCUS GROUP, INC.

BERGDORF GOODMAN, INC.

HSBC BANK NEVADA, N.A.

and

HOUSEHOLD CORPORATION

Dated as of June 8, 2005

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CREDIT CARD PROGRAM AGREEMENT

This Credit Card Program Agreement is made as of the 8th day of June, 2005, by and among The Neiman Marcus Group, Inc., a Delaware corporation ("NMG"), Bergdorf Goodman, Inc., a New York corporation ("BG"), and together with NMG, the "NMG Companies"), HSBC Bank Nevada, N.A., a national credit card bank ("Bank"), and Household Corporation, a Delaware corporation ("Primary Servicer").

WITNESSETH:

WHEREAS, the NMG Companies are engaged in, among other activities, operating retail department stores and the Credit Card Business (as hereinafter defined);

WHEREAS, concurrently with the execution of this Agreement, the NMG Companies, Bank and Bank Parent (as hereinafter defined) are entering a purchase and sale agreement (the "Purchase Agreement") pursuant to which Bank shall purchase specified assets related to the NMG Companies' Credit Card Business, including certain Credit Card and payment plan accounts and associated receivables ("Purchased Accounts");

WHEREAS, the NMG Companies have requested that Bank establish a program pursuant to which, following the Effective Date of this Agreement, Bank shall issue NMG Credit Cards (as hereinafter defined) and Non-Card Payment Plans (as hereinafter defined) to be serviced, marketed and promoted in accordance with the terms hereof; and

WHEREAS, the Parties hereto agree that the goodwill associated with the NMG Licensed Marks (as hereinafter defined) contemplated for use hereunder are of substantial value that is dependent upon the maintenance of high quality services and appropriate use of the trademarks pursuant to this Agreement;

NOW, THEREFORE, in consideration of the terms, conditions and mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS**

1.1 Generally. The following terms shall have the following meanings when used in this Agreement:

"Account" means any account (including any Private Label Account, Non-Store Account or Non-Card Payment Plan account) under which a purchase, cash advance, convenience check or balance transfer transaction may be or has been made by or to a Person (or any Person authorized by such Person) pursuant to a Cardholder Agreement established pursuant to the terms of this Agreement or acquired pursuant to the Purchase Agreement. For the avoidance of doubt, the term Account shall include the Purchased Accounts.

“Account Documentation” means, with respect to an Account, any and all documentation relating to that Account, including Cardholder Documentation, checks or other forms of payment with respect to an Account, notices to Cardholders, adverse action notices, change of terms notices, other notices, correspondence, memoranda, documents, stubs, instruments, certificates, agreements, magnetic tapes, disks, hard copy formats or other computer-readable data transmissions, any microfilm, electronic or other copy of any of the foregoing, and any other written, electronic or other records or materials of whatever form or nature, including tangible and intangible information, arising from or relating or pertaining to any of the foregoing to the extent related to the Program; provided that Account Documentation shall not include NMG’s or any of its Affiliates’ register tapes, invoices, sales or shipping slips, delivery or other receipts or other indicia of the sale of NMG Goods and Services, any reports, analyses or other documentation prepared by any of the NMG Companies or their Affiliates for use in the retail business operated by the NMG Companies and their Affiliates regardless of whether derived in whole or in part from the Account Documentation or any other document not directly related to the Credit Card Business.

“Accountants” has the meaning set forth in Section 12.3 hereof.

“Affiliate” means, with respect to any Person, each Person that controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” means this Program Agreement, together with all of its schedules and exhibits, as modified, altered, supplemented, amended and/or restated from time to time.

“Applicable Law” means all applicable federal, state and local laws (including common law), statutes, regulations, written regulatory guidance, orders or directives, as may be amended and in effect from time to time during the Term, including (i) the Truth in Lending Act and Regulation Z; (ii) the Equal Credit Opportunity Act and Regulation B; (iii) the Fair Debt Collection Practices Act; (iv) the Fair Credit Reporting Act; (v) the Gramm-Leach-Bliley Act; (vi) the USA PATRIOT Act; and (vii) the Unfair and Deceptive Trade Practices Act, and, in each case, any implementing regulations or interpretations issued thereunder.

“Applicable Order” means, with respect to any Person, a judgment, injunction, writ, decree or order of any Governmental Authority, in each case legally binding on that Person or on any material amount of its property.

“Application” means the credit application that must be completed and submitted in order to establish an Account (including any such application submitted at the POS, by phone or via the Internet).

“Approved Ancillary Products” means any Credit Card enhancement and other products (other than the NMG Credit Cards and the Non-Card Payment Plans) approved by the Management Committee for offering under the Program from time to time.

“Average Interest Free Receivables” means, for any Fiscal Year, the average for each Fiscal Month occurring in such Fiscal Year of the Fiscal Month-end Billed Cardholder Debt under Private Label Accounts that do not bear interest (other than CCCS Accounts and Accounts for which a payment plan was instituted in connection with the servicing and collection thereof).

“Average Private Label Receivables” means, for any Fiscal Year, the average for each Fiscal Month occurring in such Fiscal Year of the Fiscal Month-end Billed Cardholder Debt under Private Label Accounts.

“Bank” has the meaning set forth in the preamble hereof.

“Bank Companies” means, collectively, Bank and Primary Servicer.

“Bank Event of Default” means the occurrence of any one of the events listed in Section 15.2 hereof or an Event of Default where a Bank Company is the defaulting Party.

“Bank Guaranty” means the Guaranty by Bank Parent of Bank’s and Primary Servicer’s obligations under this Agreement and the Servicing Agreement.

“Bank Licensed Marks” means the trademarks, tradenames, service marks, logos and other proprietary designations of Bank listed on Schedule 1.1(a) and licensed to the NMG Companies under Section 10.2 hereof.

“Bank Matters” has the meaning set forth in Section 3.2(g) hereof.

“Bank Parent” means HSBC Finance Corporation, a Delaware corporation.

“Bank Systems” means Systems owned, leased or licensed by and operated by or on behalf of Bank or any of its Affiliates.

“Bankruptcy Code” means Title 11 of the United States Code, as amended, or any other applicable state or federal bankruptcy, insolvency, moratorium or other similar law and all laws relating thereto.

“BG” has the meaning set forth in the preamble hereof.

“Billed Cardholder Debt” means (i) all amounts charged and owing to Bank by Cardholders that were billed with respect to the Private Label Accounts (including principal balances from outstanding charges, charges for Approved Ancillary Products, finance charges, NSF fees, late charges, pay-by-phone fees and any other fees and charges), less (ii) the amount of any credit balances owing by Bank to such Cardholders, including in respect of any payments and any credits associated with returns of NMG Goods and Services and other credits and adjustments, in each case, that were reflected in the Billing Statement with respect to the Account.

“Billing Cycle” means the interval of time between regular periodic Billing Dates for an Account.

“Billing Date” means, for any Account, the day as of when the Account is billed.

“Billing Statement” means a summary of Account credit and debit transactions for a Billing Cycle including a descriptive statement covering purchases, charges, past due account information and Loyalty Program information.

“Business Day” means any day, other than (i) a Saturday or Sunday, or (ii) a day on which financial institutions in New York or Texas are authorized by law to close; provided that for purposes of Sections 8.4 and 9.1, “Business Day” shall exclude any day on which the Fedwire system is closed.

“Card Association” means American Express, Visa International Inc., Visa U.S.A., Inc. or MasterCard International Inc., or any other payment system that is generally acceptable to sellers of goods and services.

“Cardholder” means any Person who has been issued an NMG Credit Card or Non-Card Payment Plan (including any guarantor of the Account related to such NMG Credit Card) and includes authorized user(s).

“Cardholder Agreement” means the agreement between Bank and a Cardholder (and any replacement of such agreement), governing the use of an Account, together with any amendments, modifications or supplements that now or hereafter may be made to such Cardholder Agreement (and any replacement of such agreement).

“Cardholder Data” means all personally identifiable information about a Cardholder (A) received by or on behalf of Bank (including by NMG Servicer in its capacity as such) in connection with the Cardholder’s application for use of an NMG Credit Card, Non-Card Payment Plan or Account or (B) otherwise obtained by or on behalf of Bank (including information obtained by NMG Servicer in its capacity as such) for inclusion in its database of Cardholder information (including information about a Cardholder purchased by Bank), including all transaction and experience information collected by or on behalf of Bank (including by NMG Servicer in its capacity as such) with regard to each purchase charged by a Cardholder using his or her NMG Credit Card, Non-Card Payment Plan or Account (including NMG Charge Transaction Data with respect to charges on Private Label Accounts and transaction and experience information with respect to charges on Non-Store Accounts).

“Cardholder Documentation” means, with respect to the Accounts, all Applications, Cardholder Agreements, NMG Credit Cards, Loyalty Cards and Billing Statements relating to such Accounts.

“Cardholder Indebtedness” means all amounts charged and owing to Bank by Cardholders with respect to Accounts (including principal balances from outstanding charges, charges for Approved Ancillary Products, finance charges, NSF fees, late charges, pay-by-phone fees and any other fees and charges), whether or not billed, less the amount of any credit balances owing by Bank to Cardholders, including in respect of any payments and any credits associated with returns of goods and/or services and other credits and adjustments, whether or not billed.

“Cardholder List” means any list (whether in hardcopy, magnetic tape, electronic or other form) that identifies Cardholders, including any such listing that sets forth the names, addresses, email addresses (as available), telephone numbers or social security numbers of any or all Cardholders.

“Change of Control” means, with respect to NMG or Bank, as the case may be, (the “subject Person”), (i) a Person or group becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934 (except that a Person or group shall be deemed to own all securities it has the right to acquire)), directly or indirectly, of more than fifty percent (50%) of the total voting power of the subject Person, (ii) such subject Person merges, consolidates, acquires, is acquired by, or otherwise combines with any other Person in a transaction in which the subject Person is not the surviving entity or which constitutes a “merger of equals”, it being understood that a subject Person shall not be considered the “surviving entity” of a transaction if either (A) the members of the Board of Directors of the subject Person immediately prior to the transaction constitute less than a majority of the members of the Board of Directors of the ultimate parent entity of the entity surviving or resulting from the transaction or (B) the Persons who were beneficial owners of the outstanding voting securities of the subject Person immediately prior to the transaction beneficially own less than fifty percent (50%) of the total voting power of the ultimate parent entity of the entity surviving or resulting from the transaction, or (iii) the subject Person sells all or substantially all of its assets to a Person that is not an Affiliate of the subject Person.

“Closing” has the meaning set forth in the Purchase Agreement.

“Co-Branded Credit Card” means a Credit Card that bears a NMG Licensed Mark and the trademarks, tradenames, service marks, logos and other proprietary designations of a Card Association, including any Dual-Line Credit Card.

“Comparable Partner Programs” means from time to time other major Credit Card programs of Bank designated annually by the Management Committee that are comparable to the Program in terms of program size, public profile and brand image. As of the date hereof, the “Comparable Partner Programs” include those listed on Schedule 1.1(b).

“Competing Retail Programs” means from time to time major retailer Credit Card programs other than the Program, whether or not Bank or any of its Affiliates participate in such other programs.

“Competitive” with respect to any feature or aspect of the Program, means that such feature or aspect is both (i) no less favorable to the NMG Companies than comparable aspects and features of the Comparable Partner Programs and (ii) consistent and competitive with the comparable aspects and features of the Competing Retail Programs (to the extent publicly known in the case of Competing Retail Programs in which neither of the Parties or their respective Affiliates are participants).

“Confidential Information” has the meaning set forth in Section 13.1 hereof.

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, as published by the United States Department of Labor Bureau of Labor Statistics, or any successor organization.

“Credit Card” means a credit card pursuant to which the cardholder or authorized user may purchase goods and services, obtain cash advances or convenience checks, and transfer balances through open-end revolving credit, commonly known as a credit or charge card; provided that the term does not include: (i) any gift card; (ii) any debit card, stored value card, electronic or digital cash card or any other card that does not provide the holder thereof with the ability to obtain credit other than through an overdraft line or similar feature; or (iii) any card issued to the holder of a securities brokerage account that allows the holder to obtain credit through a margin account.

“Credit Card Business” means the business relating to the ownership, administration and management of the Accounts and Receivables (including the extension of credit to Cardholders, the processing of transactions under the Accounts and the servicing of the Accounts) and, following the Effective Date, includes all activities relating to the Program established pursuant to this Agreement.

“Credit Card Production Services” has the meaning set forth in the Servicing Agreement.

“Customer Management System” means the Systems developed by the Bank with the features set forth on Schedule 7.6.

“Development Period” has the meaning set forth in Section C of Schedule 2.2(c)(i).

“Disclosing Party” has the meaning set forth in Section 13.1(d) hereof.

“Documentation Services” has the meaning set forth in the Servicing Agreement.

“Documentation Services Transition Date” has the meaning set forth in Section 7.2(d) hereof.

“Dual-Line Card Deadline” has the meaning set forth in Section C of Schedule 2.2(c)(i).

“Dual-Line Credit Card” means a Credit Card that (i) bears a NMG Licensed Mark and the trademarks, tradenames, service marks, logos and other proprietary designations of a Card Association and (ii) is linked to a Non-Store Account and a Private Label Account.

“Dual-Line Testing Date” has the meaning set forth in Section C of Schedule 2.2(c)(i).

“Effective Date” means the Closing Date as the term is defined in the Purchase Agreement.

“Event of Default” means the occurrence of any one of the events listed in Section 15.1 hereof.

“Fair Market Value” has the meaning set forth in Section 17.3 hereof.

“Federal Funds Rate” means the offered rate as reported in *The Wall Street Journal* in the “Money Rates” section for reserves traded among commercial banks for overnight use in amounts of one million dollars or more or, if no such rate is published for a day, the rate published for the preceding Business Day, calculated on a daily basis based on a 365 day year.

“Finance Charge Reversal Percentage” means, with respect to any Fiscal Year, an amount, expressed as a percentage, equal to (i) the aggregate amount of all finance charges that had been assessed on the Accounts and then reversed by NMG during such Fiscal Year, divided by (ii) the aggregate amount of all finance charges assessed on the Accounts during such Fiscal Year; provided, however, that, for purposes of arriving at the foregoing percentage, the finance charges assessed and reversed on any Accounts that have undergone any change in any of the terms set forth in Schedule 4.7 in such Fiscal Year shall be excluded from both the numerator and denominator during the period of one hundred twenty (120) days after the effective date of such terms change.

“Fiscal Month” means each four (4) or five (5) week period designated as such in the calendar published by the National Retail Federation for retailers on a Fiscal Year-reporting basis; provided that the Fiscal Month in which the Effective Date occurs shall be deemed to begin on the Effective Date.

“Fiscal Quarter” means each three (3) Fiscal Month period set forth in the calendar published by the National Retail Federation for retailers on a Fiscal Year-reporting basis; provided that the Fiscal Quarter in which the Effective Date occurs shall be deemed to begin on the Effective Date.

“Fiscal Year” means the fiscal year set forth in the calendar published by the National Retail Federation setting forth the fiscal year for retailers on a 52/53 week fiscal year ending on the Saturday closest to July 31; provided that the first Fiscal Year under this Program shall be the period beginning on the Effective Date and ending on the Saturday closest to July 31, 2006.

“Force Majeure Event” has the meaning set forth in Section 19.22 hereof.

“Future Subcontractors” has the meaning set forth in Section 6.2(g)(i) hereof.

“GAAP” means United States generally accepted accounting principles, consistently applied.

“Governmental Authority” means any federal, state or local domestic, foreign or supranational governmental, regulatory or self-regulatory authority, agency, court, tribunal, commission or other governmental, regulatory or self-regulatory entity.

“Gross Receivables” means amounts owing (net of credit balances) from cardholders with respect to accounts in a Credit Card portfolio (including outstanding loans, cash advances and other extensions of credit; billed or unbilled finance charges and late charges; and any other billed or unbilled fees, charges and interest assessed on such accounts).

“High Collar” has the meaning set forth on Schedule 1.1(f) hereto

“Indemnified Party” has the meaning set forth in Section 18.3 hereof.

“Indemnifying Party” has the meaning set forth in Section 18.3 hereof.

“Initial Term” has the meaning set forth in Section 16.1 hereof.

“Inserts” has the meaning set forth in Section 5.3 hereof.

“In-Store Payment” means any payment on an Account made in a retail store owned or operated by NMG or any of its Subsidiaries by a Cardholder or a person acting on behalf of a Cardholder.

“Intellectual Property” means, on a worldwide basis, all intellectual property, including (i) rights associated with works of authorship, including copyrights, moral rights and mask-works; (ii) trademarks, service marks and other source indicators and the goodwill associated therewith; (iii) trade secret rights; (iv) patents, designs, algorithms and other industrial property rights; (v) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (vi) applications, registrations, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

“Interchange Fees” means the interchange fees or interchange reimbursement fees paid or payable to Bank (i) by the Card Association with respect to the Accounts or (ii) in connection with Cardholder usage of the Accounts.

“Internet Services” has the meaning set forth in Section 4.8.

“Joint Marketing Fund” has the meaning set forth in Section 5.2(d) hereof.

“Joint Marketing Commitment” means the obligation of the Bank to fund the amount per Fiscal Year set forth on Section B of Schedule 5.2 for the purposes set forth in Section 5.2(d).

“Knowledge” means, with respect to any of the NMG Companies or Bank Companies, the actual knowledge of the executive officers of the organization who have managerial responsibility for the Program, after reasonable inquiry.

“Late Fee Reversal Percentage” means, with respect to any Fiscal Year, an amount equal to (i) the aggregate amount of all late fees that had been assessed on the Accounts and then reversed by NMG or its Subsidiaries during such Fiscal Year, divided by (ii) the aggregate amount of all late fees assessed on the Accounts during such Fiscal Year; provided, however, that, for purposes of arriving at the foregoing percentage, the late fees assessed and reversed on any Accounts that have undergone any change in any of the terms set forth on Schedule 4.7 in such Fiscal Year shall be excluded from both the numerator and denominator during the period of one hundred twenty (120) days after the effective date of such terms change.

“Legal Opinion” means a written opinion of counsel to a Party in form and substance reasonably acceptable to the other Party and given by counsel (which, subject to the proviso below may be internal counsel) selected by the Party obtaining the opinion and reasonably

acceptable to the other Party; provided that the Party receiving any such opinion may require (and it shall be deemed reasonable to so require) any opinion rendered pursuant to this Agreement to be rendered by outside counsel selected by the Party obtaining the opinion and reasonably acceptable to the Party receiving the opinion.

“Licensee” means any Person authorized by NMG or any of its Subsidiaries to operate in and sell NMG Goods and Services from the NMG Channels under the NMG Licensed Marks, solely with respect to such Person’s or any of its Subsidiaries’ operation in and sale of NMG Goods and Services from the NMG Channels or under the NMG Licensed Marks.

“Low Collar” has the meaning set forth on Schedule 1.1(f) hereto.

“Loyalty Card” means a card issued for the Program pursuant to any Loyalty Program providing for access to an Account, including the Loyalty Cards listed in Section B of Schedule 1.1(c) hereto.

“Loyalty Programs” means a points-based system that rewards Credit Card usage or customer spending with points that may be redeemed for goods and/or services.

“Management Committee” has the meaning set forth in Section 3.2 hereof.

“Manager” has the meaning set forth in Section 3.3(a) hereof.

“Marketing Plan” means the document that outlines the objectives, strategies and tactics of new account solicitation, usage and awareness programs for the applicable Fiscal Year.

“Merchant Discount” means a discount rate generally applied against settlements due to merchants for transactions with respect to the use of a Credit Card, which includes the Interchange Fees as well as any other transaction fees.

“Monthly Settlement Sheet” has the meaning set forth in Section 7.1(b) hereof.

“Net Credit Sales” means, (i) for any Business Day, an amount equal to (A) gross credit sales on Accounts (including gift card sales, sales tax, delivery charges, Licensee sales and any other amount included in the full amount charged by Cardholders) reflected in the NMG Charge Transaction Data since the preceding Business Day, minus (B) the sum of credits for returned goods and cancelled services and other credits (such as concessions, discounts and adjustments) on Accounts reflected in the NMG Charge Transaction Data since the preceding Business Day and (ii) for any Fiscal Year, an amount equal to (A) gross credit sales on Accounts (including gift card sales, sales tax, delivery charges, Licensee sales and any other amount included in the full amount charged by Cardholders) reflected in the NMG Charge Transaction Data since the preceding Fiscal Year, minus (B) the sum of credits for returned goods and cancelled services and other credits (such as concessions, discounts and adjustments) on Accounts reflected in the NMG Charge Transaction Data since the preceding Fiscal Year.

“Net Yield” means, with respect to any Fiscal Year, the dollar amount equal to (a) the sum of assessed finance charges and late fees under the Program during such Fiscal Year, minus (b) the sum of all concessions, reversals and write-offs of such finance charges and late fees

during such Fiscal Year minus (c) the aggregate amount of all other Billed Cardholder Debt (other than that referred to in clause (b)) written-off during such Fiscal Year, net of all recoveries of Billed Cardholder Debt during such Fiscal Year.

“New Bank Mark” has the meaning set forth in Section 10.2(b) hereof.

“New NMG Mark” has the meaning set forth in Section 10.1(b) hereof.

“New Portfolio” has the meaning set forth in Section 14.1 hereof

“NMG” has the meaning set forth in the preamble hereof.

“NMG Channels” means (i) all retail establishments owned or operated by NMG or its Affiliates (including Licensee departments therein), (ii) all websites owned or operated by NMG or its Affiliates or their Licensees, and (iii) all mail order, catalog and other direct access media that are owned or operated by NMG or its Affiliates or their Licensees.

“NMG Charge Transaction Data” means the transaction information (in the form of electronic information) with regard to a charge on an Account with respect to each purchase of NMG Goods and Services or Approved Ancillary Products by a Cardholder on credit and each return of NMG Goods and Services or Approved Ancillary Products for credit.

“NMG Companies” has the meaning set forth in the preamble hereof.

“NMG Credit Card” means a (i) Private Label Credit Card or (ii) Dual-Line Credit Card after Dual-Line Credit Cards are offered pursuant to the terms of this Agreement;

“NMG Event of Default” means the occurrence of any one of the events listed in Section 15.3 hereof or an Event of Default where an NMG Company is the defaulting Party.

“NMG Goods and Services” means the products and services sold, charged or offered by or through NMG Channels, including for personal, household, or business purposes, and including accessories, delivery services, protection agreements, gift cards, shipping and handling, and work or labor to be performed for the benefit of customers of the NMG Channels.

“NMG Licensed Marks” means the trademarks, tradenames, service marks, logos and other proprietary designations of the NMG Companies listed on Schedule 1.1(d) and licensed to Bank by the NMG Companies under Section 10.1 hereof.

“NMG Marketing Commitment” means the obligation of the Bank to fund the amount per Fiscal Year set forth in Section B of Schedule 5.2 for the purposes set forth in Section 5.2(b).

“NMG Marketing Fund” means an accounting entry on the books of Bank representing the unused portion of the NMG Marketing Commitment, as set forth in Section 5.2(a).

“NMG Matters” has the meaning set forth in Section 3.2(f) hereof.

“NMG Prospect List” has the meaning set forth in Section 6.3(b) hereof.

“NMG Servicer” means NMG or such of its Affiliates responsible for performing the Services referred to in the Servicing Agreement.

“NMG Shopper” means any Person who makes purchases of NMG Goods and Services or otherwise uses or accesses NMG Channels.

“NMG Shopper Data” means all personally identifiable information regarding an NMG Shopper that is obtained by (or on behalf of) NMG or any of its Affiliates at any time (including prior to the date hereof), including personally identifiable information obtained in connection with such NMG Shopper making a purchase of NMG Goods and Services.

“NMG Systems” means Systems owned, leased or licensed by and operated by, or on behalf of, NMG or its Affiliates.

“NMG Transaction” means any purchase, exchange or return of NMG Goods and Services by a Cardholder using an Account.

“Nominated Purchaser” has the meaning set forth in Section 17.2(a) hereof.

“Non-Card Payment Plan” means the payment plans referred to in Section A of Schedule 1.1(e) and such other payment plans not associated with a Credit Card as may be offered by NMG pursuant to which the obligor thereunder may purchase NMG Goods and Services through revolving credit or pursuant to a retail installment sale arrangement.

“Non-Store Account” means an Account linked to any Dual-Line Credit Card and usable solely for the purpose of financing purchases (and all fees and charges relating thereto) of goods and services through sellers or channels other than the NMG Channels.

“Operating Procedures” means the operating procedures for the Program in effect from time to time in accordance with Section 4.1(b) hereof.

“Parties” means the collective reference to the NMG Companies and the Bank Companies; and unless the context otherwise requires, “Party” means either the collective reference to the NMG Companies, on the one hand, or the Bank Companies, on the other hand.

“Person” means any individual, corporation, business trust, partnership, association, limited liability company or similar organization, or any Governmental Authority.

“POS” means point of sale.

“Previously Disclosed” has the meaning set forth in the Purchase Agreement.

“Privacy Policy” means the privacy policy and associated disclosures to be provided by Bank to Cardholders in connection with the Program.

“Private Label Accounts” means (i) the Accounts linked to Private Label Credit Cards and (ii) Accounts linked to Dual-Line Credit Cards solely for the purpose of financing the purchase of NMG Goods and Services (and all fees and charges relating thereto) through any NMG Channel.

“Private Label Credit Card” means a Credit Card that bears an NMG Licensed Mark and may be used solely to finance purchases of NMG Goods and Services through any NMG Channel, including the Private Label Credit Cards listed in Section B of Schedule 1.1(e). Each Private Label Credit Card is linked to solely a Private Label Account (and not a Non-Store Account).

“Program” means the program established pursuant to this Agreement.

“Program Assets” means the Accounts, Account Documentation, Cardholder Data, Solicitation Materials and all Cardholder Indebtedness (whether held by Bank or a third party).

“Program Fee Percentage” has the meaning set forth on Schedule 9.1(a)(i) hereof.

“Program Loyalty Program” means the InCircle Rewards Program and the Bergdorf Goodman Rewards Program described in Section A of Schedule 1.1(c) or any other annual points-based loyalty program implemented pursuant to Article III from time to time and tied to the NMG Credit Cards.

“Program Objectives” has the meaning set forth in Section 3.1 hereof.

“Program Purchase Date” has the meaning set forth in Section 17.2(c) hereof.

“Program Website” has the meaning set forth in Section 4.8(a) hereof.

“Purchase Agreement” has the meaning set forth in the recitals hereof.

“Receiving Party” has the meaning set forth in Section 13.1(d) hereof.

“Renewal Term” has the meaning set forth in Section 16.1 hereof.

“Retail Merchants” has the meaning set forth in Section 8.1 hereof.

“Risk Management Policies” means the underwriting and risk management policies, procedures and practices applicable to the Program and adopted in accordance with the terms of this Agreement, including policies, procedures and practices for credit and Account openings, transaction authorization, collections, credit line assignment, increases and decreases, over-limit decisions, Account closures, payment crediting and charge-offs.

“Sales Tax Refunds” means refunds, rebates, credits or deductions of sales and use tax by any taxing authority in respect of an Account, and all allowable interest relating thereto.

“Second-Look Credit Card Program” has the meaning set forth in Section 2.2(b) hereof.

“Services” means the services required to be performed by NMG pursuant to the Servicing Agreement or the Primary Servicer pursuant to Article VII hereof.

“Servicing Agreement” means the Servicing Agreement, dated as of the Effective Date, between NMG and Bank, in the form set forth as Annex E to the Purchase Agreement.

“SLA” means each individual performance standard set forth on Schedule 7.3(a) and Schedule 2.04(a) of the Servicing Agreement.

“Solicitation Materials” means documentation, materials, artwork and copy, in any format or media (including television and radio), used to promote or identify the Program to Cardholders and potential Cardholders, including direct mail solicitation materials and coupons.

“Special Discounts” means non-POS discounts that are given to the customers specified in Schedule 1.1(g).

“Subsidiary” when used with respect to any Person, means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or similar governing body (or if there are not such voting interests, more than fifty percent (50%) of the equity interest of which) is owned directly or indirectly by such first Person or by another Subsidiary of such Person.

“Systems” means software, databases, computers, systems and networks.

“Systems Transition Date” has the meaning set forth in Section 7.4(a) hereof.

“Term” means the Initial Term and each Renewal Term.

“Termination Period” means the period beginning on the earlier of the date of expiration of this Agreement or the date of any notice of termination pursuant to Article XV and ending on either (i) the date the Program Assets are repurchased pursuant to Section 17.2, if NMG or a Nominated Purchaser purchases the Program Assets, or (ii) the date that either (A) the NMG Companies deliver written notice to Bank of their election not to purchase the Program Assets or (B) the right of the NMG Companies to purchase the Program Assets expires in accordance with the terms of this Agreement.

“Trademark Style Guide” means any rules governing the manner of usage of trademarks, tradenames, service marks, logos and other proprietary designations.

“Unapproved Matter” has the meaning set forth in Section 3.2(e)(ii)(B) hereof.

“Yearly Settlement Sheet” has the meaning set forth in Section 7.1(c) hereof.

1.2 Miscellaneous. As used herein: (a) all references to the plural number shall include the singular number (and vice versa); (b) all references to “herein,” “hereunder,” “hereof” or like words shall refer to this Agreement as a whole and not to any particular section, subsection or clause contained in this Agreement; (c) all references to “include,” “includes” or “including” shall be deemed to be followed by the words “without limitation”; (d) unless specified as Business Days or Fiscal Months, all references to days or months shall be deemed references to calendar days or months; and (e) all references to “\$” or “dollars” shall be deemed references to United States dollars.