



File - Mastercard

AGREEMENT

This Agreement ("Agreement") is made as of the 1st day of January, 1997, by and between MasterCard International Incorporated, a Delaware corporation having its principal place of business at 2000 Purchase Street, Purchase, NY 10577-2509 ("MasterCard") and Household Bank (Nevada), N.A., a national banking association having its principal place of business at 1411 Schilling Place, Salinas, CA 93901 for itself and on behalf of its parent, subsidiary and affiliated companies that may now or hereafter issue Card Products in the United States and Canada (collectively "Household").

WHEREAS, Household is a member of MasterCard and is licensed by MasterCard to issue Card Products (defined below) bearing the MasterCard name and mark pursuant to MasterCard rules and regulations; and

WHEREAS, the parties desire to provide terms for an arrangement for Household to issue MasterCard as its exclusive brand for Card Products except as otherwise expressly permitted herein,

NOW, THEREFORE, the parties do agree as follows:

1. HOUSEHOLD'S BRAND COMMITMENT AND EXCLUSIVITY

1.1 As used herein, "Card Products" shall include, without limitation, any bank card, credit card, charge card (other than a limited purpose, private label charge card accepted only at the co-branded entity named thereon), travel and entertainment card, commercial card, smart card or similar card, or other card based device for the purchase of goods or services, payment of debts and obligations, or transfer of value, however delineated or denominated.

1.2 Household will use commercially reasonable efforts to expand and grow its Card Products business and operations as MasterCard branded, and shall actively develop, market, advertise and promote MasterCard to consumers and businesses, and encourage MasterCard application, acceptance and use. Without limitation, such activities may consist of general and targeted marketing and promotion of MasterCard by means of all media activity including but not limited to "take one" placements, mailings, telemarketing, television, radio, web site and promotions to incent MasterCard application and usage. On a continuous basis, Household shall also make targeted pre-approved and non-pre-approved MasterCard offers to consumers identified through the active compilation and review of databases, mailing lists and other information sources. Household shall cause appropriate "merge/purge" or other overlays to minimize duplication of names and households. Household may include value-added offers and premiums to reward application and use of Card Products.

1.3 Household shall share with MasterCard a comprehensive Marketing Plan for MasterCard marketing, advertising and consumer targeting for all Card Products and shall provide quarterly updates to such Marketing Plan during the Term. Such Marketing Plan shall also include plans for the development and launch of new Card Products and the promotion of the MasterCard brand in connection therewith.

1.4 During the Term of this Agreement, Household shall cause all new Card Products to be MasterCard-branded, provided however that in the event any commercial co-brander of such a Card Product requires its co-branded card to be Visa branded, Household shall use best efforts to cause the co-brander to accept MasterCard as the brand of choice, but Household may issue such co-brander's Card

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Products as Visa only if failure to do so would preclude the co-branding arrangement. However, during the Term, in no event shall Household's aggregate portfolio of New Card Products in the United States and Canada (other than established Visa-branded cards acquired through bona fide portfolio acquisitions, agent bank arrangements, servicing/marketing agreements or similar co-branded relationships containing only the name or mark of Household and an unaffiliated regulated financial institution, and no other name or mark except as permitted by Section 1.4a) be less than 95% MasterCard, measured in terms of New Card Product usage volume ("95% Threshold"). Household's failure to maintain the 95% Threshold as of the last day of each Term Year during the Term of this Agreement shall entitle MasterCard, at its sole option and without limitation to other remedies, to cease incentive payments to Household as of such date. Roush

a. To the extent any agent bank, co-branded Visa card program containing the name or mark of Household, an unaffiliated regulated financial institution and another entity would cause Household to fail to maintain the 95% Threshold, such program shall not count against the 95% Threshold provided that: (i) Household uses reasonable efforts to convince the agent bank and co-branding entity to designate MasterCard as the brand of choice for the program; (ii) Household receives compensation only for the services it provides and is compensated in substantially the same manner as it is compensated for servicing other receivables; and (iii) Household does not earn, accept or qualify for any incentive from Visa International, Inc. or Visa USA, Inc. by reason of the program. Household shall inform MasterCard of the existence of the program and a senior officer of Household shall affirm to MasterCard the compliance with each of the preceding requirements prior to commencement of such program.

1.5 On or prior to December 31, 1997, Household shall launch, publicize and promote a World MasterCard program and Household shall use reasonable efforts to establish by the end of the Second Term Year not less than 200,000 World MasterCard accounts, at least 50% of which shall activate during such time. Household shall also use reasonable efforts to source at least 50,000 of such World MasterCard accounts via new customer applications and not from conversions or consolidations of existing Card Product relationships. If, using reasonable efforts, Household fails to meet any of these requirements, MasterCard shall have the right to withhold in its discretion a portion of the Second Term Year incentive payment to equal, but not be greater than or this purpose, "activate" shall mean the use by the cardholder of a Card Product for the purchase of goods and services or procurement of a cash advance in at least two consecutive billing cycles.

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1.6 Household shall obtain MasterCard's prior written consent to any solicitation, advertising, marketing, incentive or promotional material proposed for use by Household in the conduct of any activity relating to Card Products.

2. INCENTIVE PAYMENTS BY MASTERCARD

2.1 In consideration of Household's full and timely performance of this Agreement, MasterCard shall provide the following to Household with respect to new Card Products: **REDACTED**

a. During each Term Year (defined below), MasterCard will provide consultative services and support enhancements to Household having a value of not less than which services and enhancements may include, but shall not be limited to, MasterCard Online, Global Consumer Payment Study, Direct Mail Consultation, Custom Usage/Retention Programs, MasterCard-sponsored research and technology enhancements for new Card Products. MasterCard shall provide a periodic statement to Household of the value of such services and enhancements;

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b. MasterCard shall rebate a portion of Household's assessments on incoming (issuer) Purchase Volume generated by MasterCard Card Products (other than MasterCard Card Products acquired via conversion or balance consolidation of MasterCard accounts issued by Household or any other MasterCard issuer) for each Term Year. For this purpose, "Purchase Volume" shall mean for each Term Year, the principal amount of purchases of goods and services generated in respect of Card Products account activity, without regard to account fees, finance charges, delinquency, over-the-limit fees and the like, and excluding cash advances, balance transfers, convenience checks, and the like. Purchase Volume generated from Card Products acquired or converted on or after January 1, 1997, from other MasterCard accounts, without regard to issuer shall not be included in Purchase Volume for the year of acquisition. In succeeding years, only the incremental Purchase Volume for such Card Products in excess of the Purchase Volume amount on such Card Products for the 12 months prior to acquisition shall be included in the calculation. Purchase Volume Pct. Growth Rate shall mean the percentage by which Purchase Volume for each Term Year exceeds the Purchase Volume for the prior 12-month period. Such rebate shall be calculated as follows:

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*In the event Household's total MasterCard Card Product Purchase Volume at the end of any Term Year is less than the Purchase Volume as of 12 months prior thereto, the base figure of _____ shall be reduced for such Term Year in a percentage equal to the percentage of decrease, rounded up to the next whole percentage point. For example, if Household's portfolio MasterCard Card Product Purchase Volume decreased by 1.5% during Term Year 1, the base figure for Term Year 1 would be _____

In no event shall the sum calculated above exceed _____

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c. The sum of _____ for each new activated MasterCard Card Products account which is acquired by means of conversion or a Household Visa Card Products account to MasterCard. Such sum shall be paid quarterly co-extensively with assessment rebates subject to timely receipt and accuracy of the quarterly reports and supporting documentation.

2.2 MasterCard shall make all payments under Section 2.1 upon verification of Card Products accounts established and verification of Purchase Volume within forty-five (45) days of the conclusion of each Term Year. All payments by MasterCard shall be deemed inclusive of all sales, use, excise, income and similar taxes, the sole obligation for reporting and remittance of which shall be that of Household.

3. Periodic Reporting by Household

Commencing for the first calendar quarter of 1997, and within fifteen (15) days following the close of each succeeding calendar quarter ("Performance Quarter"), Household must accurately detail in the MasterCard Program Quarterly Statistics Report in such form and detail as MasterCard may require, the actual number of Card Product accounts established, Card Products issued and Purchase Volume by Card Product for the preceding Performance Quarter. MasterCard's receipt, validation and reconciliation of such reports shall be a condition precedent to MasterCard's obligations to make payments under Section 2.1. Household's failure to timely submit such Reports at anytime during the full term hereof shall constitute a basis for MasterCard to delay any payment due Household pursuant to this Agreement for the period of delay, validation and reconciliation. MasterCard shall have the right to inspect all records relevant to the calculation provided in the report referred to above. MasterCard shall use reasonable efforts to validate and reconcile the reports within 30 days of receipt of such reports from Household.

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4. Other Obligations of Household

4.1 Household shall use all reasonable efforts to support, incur and retain all Card Products accounts established during the Term and shall maintain all such Card Products as MasterCard for a period of six (6) years from the date of this Agreement. In no event shall Household convert, directly or indirectly, any Card Product to any Card Product other than a MasterCard-branded product at any time during a period of six (6) years from the date of this Agreement provided, however, in the event a Cardholder specifically requests an unsolicited brand change, Household shall use all reasonable efforts to attempt to convince cardholders to acquire or retain a MasterCard card (which may include, if economically feasible, the provision of incentives or value-added benefits to remain a MasterCard cardholder). If such efforts are unsuccessful, Household may, at the Cardholder's insistence and as the sole alternative to the Cardholder's insisting, offer an alternative Visa Card Product to the Cardholder.

4.2 Household agrees to abide by all present and future MasterCard rules, regulations and guidelines in effect from time to time, including by way of example and not limitation, those relating to the representation of the Card Products as MasterCard.

4.3 Household agrees to defend, protect, indemnify, and hold MasterCard, its member institutions, and any of their directors, officers, employees and agents harmless from and against any action or threatened action, suit, claim or proceeding, whether or not well grounded, arising out of any alleged act or omission of Household, its employees, agents, and subcontractors relating to this Agreement and against any and all expenses (including reasonable attorney's fees), judgments, fines, costs, amounts paid in settlement or any loss or damage incurred by MasterCard, its member institutions, or any of the above-named indemnified parties relating thereto.

5. Term and Termination

5.1 This Agreement shall be for a scheduled term to conclude at the end of three Term Years, each Term Year to commence on January 1 and conclude on the succeeding December 31, commencing January 1, 1997 ("Term"), provided that the obligations set forth in Sections 2.1, 4, and 6 shall survive termination for the indicated periods. Prior to the scheduled conclusion of the Term, either party may terminate this Agreement by giving notice to the other party:

a. Should the other party fail to observe or perform any of its other obligations of this Agreement, including, without limitation, use without approval of anything requiring the approval of either party hereunder, which failure is not cured within fifteen (15) days after notice thereof, or if cure cannot be effected in such time, such additional time as is necessary to cure using commercially reasonable efforts;

b. In the event any of the following occur (without prejudice to the rights and remedies of the other parties): (i) a party (the "defaulting party") admits in writing its inability to pay its debts generally as they become due; (ii) the defaulting party becomes insolvent (whether by balance sheet insolvency or a failure to meet obligations in the ordinary course) or makes an assignment for the benefit of creditors or calls a meeting of creditors; (iii) the defaulting party files any voluntary, or if there is filed against such party an involuntary, petition in bankruptcy under the U.S. Bankruptcy Code, or any similar state or local bankruptcy or insolvency laws (as now or in the future enacted or amended) or if the defaulting party makes an admission seeking relief as therein allowed; provided, that in the event of any involuntary petition, the defaulting party shall have a period of sixty (60) days from the date of filing thereof to discharge the same; (iv) the defaulting party consents to the appointment of a receiver for all or a substantial portion of its property or in the event such party is the subject of a takeover or extraordinary

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regulatory action such as a memorandum of understanding or intervention by its applicable regulator relating to its general management or operations and/or (v) a court of competent jurisdiction assumes custody, attaches or sequesters all or a material portion of the defaulting party's property or assets, which custody, attachment or sequestration is not suspended or terminated within sixty (60) days from the inception thereof; or

c. in the event any person or entity acquires or enters into an agreement to acquire (pending regulatory approval or other customary conditions to closing) "control" of such other party within the meaning of the Bank Holding Company Act, 12 U.S.C. §1841, or in the event such person or entity acquires or agrees in principal to acquire control of such other party's parent or a material part of such other party's assets, provided such person or entity does not have such control as of the date hereof.

5.2 Household shall have the right to terminate this Agreement by giving notice to MasterCard in the event the pending Department of Justice investigation of the bank card associations results in a settlement to which MasterCard is a party or a final judgment or order of a court of competent jurisdiction (after the exhaustion of all appeals and the expiration of the time to move for reconsideration or further appeal) mandating the termination of dual-association branded Card issuance and the designation of a single association brand for all bank card issuers. Household shall give such notice, if at all, within one hundred twenty (120) days of the settlement or the expiration of the time to appeal or move for reconsideration of such final judgment or order. In the event Household exercises this right, it shall pay an early termination fee to MasterCard in the sum of

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5.3. The above provisions shall be in addition to all other rights and remedies provided hereunder or that such party may otherwise possess at law or in equity.

6. Confidentiality

6.1 Both parties agree that all Confidential Information of the other party, as well as the terms and conditions of this Agreement, shall be treated as confidential, shall be disclosed only to those individuals with a reasonable need to know within their organizations (provided such individuals agree to be bound by the confidentiality obligations herein), and shall not be disclosed to third parties, without the other party's prior written approval, except that either party may disclose same to its auditors, regulators, outside Board members and outside counsel. In the event of any communication of the financial terms of this Agreement or MasterCard Confidential Information is made by Household or any of its officers, directors, agents and employees to any third parties, except as is provided for in this Section 6.1, MasterCard shall have the right, in its sole and absolute discretion, to require that Household return to MasterCard all payments made prior to the date thereof, and in such instance, Household agrees that it shall return to MasterCard all incentive dollars prior to such date. "Confidential Information" means all, or any part of, and originals or copies of, any information, in whatever form embodied (e.g., oral, written, electronic) that either party has identified, in writing, as confidential at the time of disclosure and all information concerning such party's past, current, and planned products, services, fees, account numbers, names, addresses, and phone numbers of consumers, member institutions, concepts, methodologies, research, services, business activities, marketing plans, other proprietary information and the like

6.2 The restrictions on the use or disclosure of Confidential Information shall not apply to any Confidential Information: (i) which is lawfully received free of restriction from another source; or (ii) which is generally available to the public independent of this Agreement; or (iii) which, at the time of

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disclosure, was already known to the recipient as evidenced by documentation in its possession which was not subject to a confidentiality obligation; or (iv) which is ordered to be released pursuant to a verifiable court order; or (v) which the parties agree in writing is free of such restrictions. Prior to the disclosure of Confidential Information, the recipient of a court order shall provide the other party with a copy of the court order and the opportunity to contest disclosure pursuant to such order.

6.3 The parties acknowledge that, in the event of a breach of Section 6 of this Agreement, the non-breaching party will likely suffer irreparable damage that cannot be fully remedied by monetary damages. Therefore, in addition to the remedy provided for hereunder or which the non-breaching party may possess pursuant to applicable law, the non-breaching party retains the right to seek and obtain injunctive relief against any such breach in any court of competent jurisdiction. In the event any such breach results in a claim by any third party, the breaching party shall indemnify, defend and hold harmless the non-breaching party from any claims, damages, interest, attorneys fees, penalties, costs, and expenses arising out of such third-party claim(s).

6.4 The parties' rights under this Section 6 shall survive for a period of three (3) years after the Term.

7. Miscellaneous Provisions

7.1. Unless otherwise provided herein, all notices, consents or other communications required or permitted to be given pursuant to this Agreement, must be in writing and shall be deemed duly given upon hand delivery or upon receipt if sent by an overnight courier delivery service of general commercial use and acceptance (such as Airborne, Federal Express or UPS) to the following addresses or such other address as may hereafter be designated by notice given by such party:

To Household:

Household Bank (Nevada), N.A.
1441 Sebillling Place
Salinas, CA 95901
Attn: President

To MasterCard:

MasterCard International
2000 Purchase Street
Purchase, NY 10577-2509
Attn: Senior Vice President and US Region Counsel

7.2 A failure or delay of either party to this Agreement to enforce at any time any of the provisions hereof, or the failure to exercise any right which is herein provided or to require at any time performance of any of the provisions hereto shall in no way be construed to be a waiver of such provisions of this Agreement in the event of a continuation or repetition of the circumstances which gave rise to such right. Except as otherwise provided herein, no waiver shall be effective unless made in writing.

7.3 If one or more of the provisions contained herein shall, for any reason, be held by a court of competent jurisdiction to be unenforceable or invalid in any respect under the law of any state or of the United States of America, such unenforceability or invalidity shall not affect any other provision of this

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Agreement, and this Agreement shall then be construed as if such unenforceable or invalid provisions had never been contained herein.

7.4 The captions in this Agreement are included for convenience only and shall not affect the meaning or interpretation of this Agreement.

7.5 Neither party shall be held responsible for any delay or failure in performance to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed party ("force majeure condition"). If any force majeure condition occurs, the party delayed or unable to perform shall give written notice to the other party, stating the nature of the force majeure condition, the steps the party has or will take to minimize the effect of that condition, and the amount of time the delay is expected to last. Thereafter, the time to perform the acts or obligations that were delayed by such condition (and any corresponding acts or obligations of the non-delayed party) shall be extended by the length of time the force majeure condition endured.

7.6 This Agreement evidences the entire agreement and understanding between MasterCard and Household with respect to the transactions contemplated hereby and supersedes all prior agreements between the parties with respect to the subject matter hereof including but not limited to, prior agreements with respect to co-branded card programs and prior incentive payment agreements. No modification, amendment, supplement to or waiver of this Agreement shall be binding upon the parties hereto unless made in writing and duly signed by both parties.

7.7 This Agreement and the respective rights and obligations of the parties hereto shall be governed by the laws of the State of New York, excluding any "conflict of laws" or similar provisions that would mandate or permit application of the substantive law of any other jurisdiction.

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7.8 This Agreement may be executed in one or more counterparts, each of which, taken together, shall constitute but one original document.

IN WITNESS WHEREOF, a duly authorized representative of each of the parties has executed this Agreement in duplicate, as of the date first set forth in this Agreement.

MASTERCARD-INTERNATIONAL INCORPORATED

Alan J. Heuck

By: *Alan J. Heuck*
Title: *PRESIDENT*

HOUSEHOLD BANK (Nevada), N.A.

Warren S. Wilcox

By: *Warren S. Wilcox*
Title: *Executive Vice President*

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