

## CARD MARKETING SERVICES AGREEMENT

This Agreement is made as of the 29 day of December, 1998 ("Effective Date") between American Express Travel Related Services Company, Inc., a corporation incorporated under the laws of New York, having its principal office at 200 Vesey St., New York, NY ("AMEX") and Banco Popular de Puerto Rico, a banking organization incorporated/organized under the laws of the Commonwealth of Puerto Rico and having its (registered) office at 209 Munoz Rivera, Hato Rey, Puerto Rico ("BP").

WHEREAS, AMEX and its subsidiaries and affiliates issue American Express Cards around the world, including, without limitation, the American Express Corporate Purchasing Card ("CPC") and the American Express Corporate Card (the "Corporate Card"), and;

WHEREAS, BP desires to market the CPC and the Corporate Card to its Commercial Customers and other prospects in Puerto Rico and the U.S. and British Virgin Islands; and;

WHEREAS, AMEX has created a market for American Express Cards and related products in the territory described in section 2.(a) below and wishes to develop and expand such market and BP is willing to provide AMEX with services designed to achieve this objective;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, BP and AMEX agree as follows:

### 1. Definitions.

- (a) The "American Express Corporate Card" or "Corporate Card" means the Card issued by AMEX or its subsidiaries or affiliates on an account established for a business entity or government agency with at least 50 employees for business-related expenditures where at least 5 cards will be issued.
- (b) The "American Express Corporate Purchasing Card" or "CPC" means the Card issued by AMEX or its subsidiaries or affiliates on an account established for a business entity with at least US \$50 million in annual sales or revenues or a government agency with at least US \$3 million in annual purchasing, for repetitive purchases of small items used in the day to day operation of the business or agency such as office supplies.
- (c) "Amex Entity" shall mean American Express Travel Related Services Company, Inc. or its parent company, subsidiary or affiliate.
- (d) "Card" shall mean the types of cards listed in (a) and (b) above.
- (e) "Cardmember" shall mean the Client and the individual holder of a Card.

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- (f) "Client" shall mean the business entity or government agency for which the Card account is established.
- (g) "Commercial Customers" shall mean BP deposit or lending customers who are business entities or government agencies.
- (h) "Marketing Program" shall mean the program described in this Agreement whereby BP markets Cards to its Commercial Customers and other prospects.

**2. General Description of the Marketing Program for the Corporate Card and the CPC.**

- (a) **Geographic Scope.** Pursuant to the Marketing Program, BP shall market Corporate Cards and/or CPCs to its Commercial Customers and other prospects in Puerto Rico, the U.S. Virgin Islands, and the British Virgin Islands. All such Cards shall be billed in U.S. dollars.
- (b) **Issuance of Cards.** Pursuant to the Marketing Program, AMEX and Amex Entities shall issue Cards to Commercial Customers of BP and other prospects who qualify in accordance with AMEX's and Amex Entities' criteria. AMEX and Amex Entities may change from time to time the respective criteria for qualification for the various Cards, and shall notify BP of such changes not less than sixty (60) days prior to the effective date thereof.

**3. Responsibilities of BP and AMEX under the Marketing Program.**

- (a) Responsibilities of AMEX and BP under the Marketing Program for CPC are set out in Exhibit A attached hereto.
- (b) Responsibilities of BP and AMEX under the Marketing Program for Corporate Cards are set out in Exhibit B attached hereto.

**4. Review of Marketing Program Effectiveness.**

AMEX shall establish performance measures to evaluate the effectiveness of the Marketing Program for each type of Card marketed by BP hereunder. The performance measures that apply to the CPC through December 31, 1999 are set out on Exhibit A-1. The performance measures that apply to the Corporate Card through December 31, 1999 are set out on Exhibit B-1. Thereafter, on an annual basis, and by no later than December 31<sup>st</sup> of each year, the parties shall mutually agree in writing on the performance measures that shall apply for the next calendar year. AMEX has the right to review on an annual basis the effectiveness of acquiring Cards through the Marketing Program against the performance measures and benefits to AMEX, and, based on AMEX's determination that the BP has failed to meet the performance measures, or that the costs of the Marketing Program outweigh the benefits to AMEX, AMEX has the right in its sole discretion to terminate BP's right to market one or both types of Cards listed above (and

therefore terminate either Exhibit A or Exhibit B or both Exhibit A and Exhibit B) on sixty (60) days advance written notice to BP without any liability for any statutorily imposed penalties or any other obligations. In the event the parties fail to reach agreement on the performance measures for one or both types of Cards by December 31<sup>st</sup> of each year, AMEX has the right to terminate BP's right to market one or both types of Cards (and therefore terminate either Exhibit A or Exhibit B, as applicable, or both) on sixty (60) days advance written notice to BP without any liability for any statutorily imposed penalties or any other obligations.

**5. Credit Responsibilities.**

- (a) **No Credit Responsibility.** Unless it has guaranteed payment for Cardmembers recommended to AMEX, BP shall not be responsible for payment of amounts incurred by Cardmembers on Cards issued by AMEX or Amex Entities pursuant to the Marketing Program. In the event of nonpayment by any Cardmembers referred to AMEX by BP, BP agrees to provide AMEX with the home and business addresses and telephone numbers of the Clients and Cardmembers in question.
- (b) **Fraud and Negligence.** BP will be responsible to AMEX for losses resulting from fraud or negligence of BP's employees or agents used by BP (if BP uses any agents) in providing services under this Agreement, including, without limitation, collusion with any applicant to improperly obtain a Card account or related benefits.

**6. Trademarks; Confidentiality.**

- (a) **American Express Name and Trademarks.** AMEX authorizes BP to mention BP's participation with AMEX in the Marketing Program in its promotional materials, provided that such use is approved in writing by AMEX in advance.
- (b) **BP's Name and Trademarks.** BP authorizes AMEX to use its name, service marks and trademarks for the Marketing Program, provided that such use is approved in writing by BP in advance.
- (c) **Termination of Right to use Name and Trademarks.** Upon notice to BP given in accordance with Section 4 or 9(b) hereof or upon termination of this Agreement, any and all right of BP to mention its participation in the Marketing Program shall cease and BP will, without cost to AMEX, remove and return to AMEX all symbols, decals, manuals, Card applications and other materials related to the Marketing Program bearing the name, servicemarks, trademarks or logos of AMEX or Amex Entities. On the occurrence of either such event, AMEX will cease to mention the participation of BP in the Marketing Program and will cease to use the name, service marks or trademarks of BP.

**(d) Confidential Information.**

- (1) BP acknowledges that by participating in the Marketing Program it will have access to and receive confidential information, data and materials about AMEX and Amex Entities, including, without limitation, marketing philosophies and objectives, product and systems capabilities, product and marketing economics, competitive advantages and disadvantages, and that disclosure or misuse of such information, data or materials would be damaging to AMEX and Amex Entities. Accordingly, BP agrees to receive and hold in confidence all information, manuals, instructions, materials and other items considered proprietary or confidential by AMEX, and agrees not to use such information, data and materials except as necessary to perform its obligations under this Agreement or unless permitted in writing by AMEX. BP also agrees to ensure that its employees and subcontractors comply with this Section and to take all other reasonable action to ensure protection of this confidential information, data and materials. BP agrees to destroy or return to AMEX such confidential information, data and materials upon termination of this Agreement.**
- (2) AMEX acknowledges that by participating in the Marketing Program it will have access to and receive confidential information, data and materials about BP, including, without limitation, marketing philosophies and objectives, marketing results, Commercial Customer lists and information, competitive advantages and disadvantages, and that disclosure or misuse of such confidential information, data or materials would be damaging to BP. Accordingly, AMEX agrees to receive and hold in confidence all such confidential information, data and materials considered proprietary or confidential by BP and agrees not to use such information, data and materials except as necessary to perform its obligations under this Agreement or unless permitted in writing by BP. BP acknowledges that AMEX and Amex Entities have the right to have access to and use information received in connection with their Card agreements and relationships. AMEX also agrees to ensure that its employees and subcontractors comply with this Section, and to take all other reasonable action to protect this confidential information, data and materials. AMEX agrees to destroy or return to BP such confidential information, data and materials upon termination of this Agreement.**
- (3) Confidentiality of this Agreement. Each party agrees to hold the terms of this Agreement in strict confidence and not to disclose this Agreement or any part thereof without the prior written consent of the other party; provided, however, that to the extent required in the specific circumstances, either party may disclose this Agreement or confidential information of the other party to its regulators, examiners, auditors and counsel who agree in writing to comply with the obligations of confidentiality set forth for each party herein. In addition either party may disclose this Agreement or confidential information of the other party without obtaining the other party's written consent if, in the**

opinion of such party's attorneys, such disclosure is required by subpoena, court order or other legal process. In the event a party receives a subpoena, court order or other legal process requiring disclosure of this Agreement or confidential information of the other party, such party shall notify the other party promptly thereof, and shall seek a protective order or other legally acceptable protection to limit such disclosure.

**7. Non-Exclusivity.**

BP understands and agrees that this Agreement does not grant BP any exclusive right to market Cards or any other AMEX or Amex Entities' products or services. AMEX, on its own behalf and on behalf of Amex Entities, reserves the right to market Cards and other products and services directly as well as through individuals and organizations other than BP. This Agreement does not affect any other agreement between the parties or their affiliates

**8. Representations and Warranties.**

- (a) BP and AMEX each represents and warrants that its participation in the Marketing Program shall at all times conform to high standards of business ethics and practices and that it will not permit any act to be done by its employees or representatives which will damage the name, reputation or goodwill of the other party or its affiliated companies.
- (b) **Legal Compliance.** BP and AMEX each further represents and warrants that its participation in the Marketing Program is and will remain during the term of this Agreement in compliance with all applicable laws, rules and regulations. Each party shall be solely responsible for its own legal compliance.
- (c) **No Conflict.** BP and AMEX each further represents and warrants that it is authorized to enter into this Agreement and that this Agreement does not violate any other agreement to which it is a party.

**9. Term and Termination.**

- (a) **Term and Termination.** This Agreement shall begin as of the Effective Date and shall remain in effect:
  - (i) with respect to the CPC for five (5) years from the date this Agreement and Exhibit A are executed by both parties (the "CPC Initial Term");
  - (ii) with respect to the Corporate Card for five (5) years from the date this Agreement and Exhibit B are executed by both parties hereto (the "Corporate Card Initial Term")

in either case, and both cases, unless earlier terminated as provided in Section 4 or Section 9(b) hereof. Subject to earlier termination provided in Section 4 and Section 9(b), this Agreement shall continue after the CPC Initial Term and the Corporate Card Initial Term (as applicable) unless or until terminated effective as of the end of the applicable Initial Term or thereafter by either party giving written notice of termination to the other party at least one hundred eighty (180) days in advance of the termination date.

- (b) (i) In the event that there is a material breach of this Agreement by a party hereto (the "Breaching Party") which breach remains uncured for thirty (30) days after the other party (the "Non-Breaching Party") has given written notice of such breach to the Breaching Party, the Non-Breaching Party may then terminate this Agreement immediately by written notice to the Breaching Party.
  - (ii) In the event AMEX determines in its sole discretion, on the basis of its annual review of the Marketing Program, that the Marketing Program is not successful as provided in Section 4, AMEX has the right to terminate this Agreement on sixty (60) days written notice to BP without any liability for statutorily imposed penalties for termination or any further obligation except as set forth in Section 9(c) regarding cooperation.
  - (iii) In addition, either party has the right to terminate this Agreement immediately on written notice in the event the other party enters bankruptcy, receivership, insolvency or similar proceedings voluntarily or involuntarily, or ceases a substantial portion of its operations; or if there is an attachment, levy, or foreclosure on or of all or substantially all of the party's assets which is not vacated within thirty (30) days.
  - (iv) The right to terminate this Agreement in accordance with this Section 9 shall not be subject to Section 10(c). Neither party shall have the right to invoke the provisions of Section 10(c) to delay or oppose any such termination.
- (c) **Obligation to Cooperate.** In the event of any termination of this Agreement or Exhibit A or Exhibit B, AMEX and BP agree that each party will cooperate with the other in conducting an orderly wind down of the Marketing Program. It is also agreed that each party will bear its own expenses in connection with such termination and wind down.
- (d) Notwithstanding termination of the Agreement or Exhibit A or Exhibit B, AMEX shall continue to pay BP amounts to which BP is entitled as a result of CPC or Corporate Card Clients BP has obtained for AMEX hereunder prior to termination.

10. **Miscellaneous.**

- (a) **Notices.** Unless and until otherwise specified by the parties, any notices, requests or other communications regarding this Agreement shall be in writing and delivered to the other party at the addresses specified below:

**If to AMEX:**

**With respect to the Corporate Purchasing Card Marketing Program:**

**American Express Travel Related Services Company, Inc.  
14901 NW 79 Court  
Miami Lakes, Florida 33016  
Attention: Frank J. Kelly, Vice President, Travel Service Network**

**With respect to the Corporate Card Marketing Program:**

**American Express Travel Related Services Company, Inc.  
14901 NW 79 Court  
Miami Lakes, Florida 33016  
Attention: Frank J. Kelly, Vice President, Travel Service Network**

with a copy to:

**American Express Travel Related Services Company, Inc.  
14901 NW 79 Court  
Miami Lakes, Florida 33016  
Attention: General Counsel's Office**

**If to BP:**

**Banco Popular de Puerto Rico  
Business Banking Division (709)  
P.O. Box 362708  
San Juan, PR 00936-2708  
Attention: Purchasing Card Product Manager**

- (b) **Indemnification.**

- (i) **Indemnification by BP.** BP will indemnify and hold AMEX and its parent, subsidiaries and affiliates, and their respective directors, officers, employees, agents, representatives and permitted assigns, harmless from and against any Losses, as defined in subsection 10(b)(iv) below, arising from claims asserted by third parties arising out of or in connection with:

- A. The intentional or negligent act or omission of BP, BP affiliates or the officers, directors, employees, or agents thereof in the performance of the duties and obligations of BP under this Agreement;
  - B. The failure by BP to comply with any of the terms of this Agreement;
  - C. The failure by BP to comply with its obligations under any and all laws, rules or regulations applicable to BP.
- (ii) **Indemnification By AMEX.** AMEX shall indemnify and hold BP and its parent, subsidiaries and affiliates, and their respective directors, officers, employees, agents, representatives and permitted assigns, harmless from and against any Losses, as defined in subsection 10(b)(iv) below, arising from claims asserted by third parties arising out of or in connection with:
- A. The intentional or negligent act or omission of AMEX, Amex Entities or the officers, directors, employees, or agents thereof in the performance of the duties and obligations of AMEX under this Agreement;
  - B. The failure by AMEX to comply with any of the terms of this Agreement;
  - C. The failure by AMEX or Amex Entities that issue Cards marketed by BP hereunder to comply with their obligations under any and all laws, rules or regulations applicable to AMEX or such Amex Entities.
  - D. The breach by AMEX or any Amex Entity of a contract with a BP Commercial Customer or Cardmember with respect to a Card issued under the Marketing Program.
- (iii) **Notice of Claim for Indemnification.** Each party shall promptly notify the other party of any claim, demand, suit, or threat of suit of which that party becomes aware (except with respect to a threat of suit either party might institute against the other) which may give rise to a right of indemnification pursuant to this Agreement. The indemnifying party will be entitled to participate in the settlement or defense thereof and, if the indemnifying party elects, to take over and control the settlement or defense thereof with counsel reasonably satisfactory to the indemnified party. The indemnifying party and the indemnified party shall cooperate (at no cost to the indemnified party) in the settlement or defense of any such claim, demand, suit, or proceeding.
- (iv) **Definitions of Losses.** "Losses" means any losses, damages, costs and expenses, liabilities, settlements including, without limitation, any attorneys fees and court costs reasonably incurred by an indemnified party, but shall not include any special, indirect, consequential or punitive damages.



The indemnifications given by each party hereunder shall survive any termination or expiration of this Agreement.

**(c) Governing Law/ Dispute Resolution.**

- (i) This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the choice of law provisions thereof. The parties agree that they subject themselves to the exclusive jurisdiction of the courts of New York. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- (ii) The parties agree that disputes between the parties should generally be settled in the ordinary course of business, except for the parties' right to terminate this Agreement in accordance with the provisions of Section 9 hereof. Therefore, neither party shall have the right, and hereby waives its right, to resort to arbitration, litigation, or any other dispute resolution procedure prior to exhausting, in good faith, the dispute resolution procedures set forth herein. If any dispute shall arise between the parties under this Agreement, except as provided in Section 9 hereof, the parties shall attempt to resolve such dispute promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement unless said persons have the authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and the response shall include, respectively (a) a statement of the party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within thirty (30) days after delivery of the disputing party's notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. The foregoing time deadlines may be extended by mutual written agreement. If the parties mutually agree that it would aid resolution of the dispute, each party may have its attorney attend such meeting(s).
- (iii) All negotiations pursuant to this paragraph shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

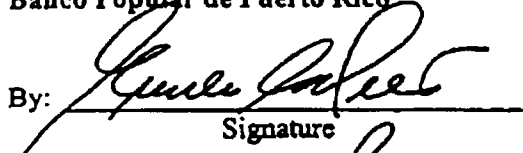
- (iv) If the dispute has not been resolved by negotiation between the executives referred to in subsection (ii), above, within ninety (90) days of the disputing party's notice, the parties shall endeavor to settle the dispute by mediation under the rules and procedures of JAMS/Endispute or the CPR Institute for Dispute Resolution in Miami, Florida. Each party shall bear its own costs of such mediation. The parties agree that the mediator, not the parties, shall decide when the parties are unable to reach agreement on the resolution of the dispute, and that mediation shall continue until the mediator so decides. The parties shall refrain from filing a lawsuit or demanding arbitration for a period of sixty (60) days from the date of the mediator's decision that the parties have failed to reach agreement. Any applicable Statutes of Limitation with respect to a dispute subject to this paragraph shall be tolled for the period beginning from the date of delivery of the original notice regarding the dispute referred to in 10(c)(ii) above through the period ending five (5) days after the end of the sixty (60) day "cooling off" period referred to in this Section 10(c)(iv) or, as applicable, through the period ending five (5) days after an arbitrator has rendered a decision under Section 10(c)(v) hereof.
- (v) After the expiration of the sixty (60) day period referred to in (iv) above, the parties may agree to non-binding arbitration by the American Arbitration Association in Miami, Florida and may further agree to refrain from the filing of a lawsuit during the arbitration. In the event the parties agree to continue with arbitration they may further agree to extend the tolling of the statute of limitations until a mutually agreed-to date. Each party shall bear half the costs of such arbitration proceedings.
- (vi) The parties hereto and the mediators and arbitrators utilized hereunder shall maintain the confidentiality of the proceedings, except to the extent otherwise required under applicable law. It shall be a condition to the engagement of any mediator and/or arbitrator that such mediator and/or arbitrator shall agree to maintain the confidentiality of the proceeding and the decision and any award thereunder.
- (vii) Any disputes arising with respect to Section 4 shall not be subject to the dispute resolution provisions of this Section 10(c).
- (d) **Parties in Interest; Assignment.** This Agreement shall inure to the benefit of and be binding upon the parties and their permitted assigns and shall not be construed or enforced so as to confer any benefit upon any other person except as expressly provided in this Agreement. This Agreement may not be assigned by either party without the prior written consent of the other, except that AMEX may assign part or all of this Agreement to its parent, or to any of its subsidiaries or affiliates without BP's prior consent and with thirty (30) days prior notice to BP.
- (e) **Amendments or Modifications.** This Agreement constitutes the entire agreement between the parties relating to the Marketing Program and supersedes any and all

prior agreements, letters, understandings and other communications between the parties relating to the subject matter hereof. No amendment or waiver of any provisions of this Agreement shall be effective unless made in writing and signed by an authorized officer of each party. No waiver of any breach of this Agreement shall be deemed a waiver of any other or subsequent breach.

- (f) **Rights, Remedies Cumulative.** The rights and remedies of the parties hereto are cumulative and not alternative.
- (g) **Severability.** If any provision of this Agreement shall be held to be invalid, void, or unenforceable, such provision shall be removed and replaced with a valid provision that comes closest to reflecting the intentions of the parties hereunder and all other provisions of this Agreement shall remain in full force and effect.
- (h) **Headings.** The headings contained in this Agreement are for the convenience of reference only, and if there is any conflict between the text of this Agreement and such headings, then the text shall control.
- (i) **Language.** This Agreement is in the English language only, which language shall be controlling in all respects.
- (j) **Independent Contractors.**
  - (i) AMEX and BP agree that in performing their obligations pursuant to this Agreement they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partners or joint venturers.
  - (ii) It is the express intention and agreement of the parties that BP shall not be deemed a "Distributor" or a "Sales Representative" of AMEX as such terms are defined in Puerto Rico's Law 75 of June 24, 1964, 10 LPRA §278 et seq. and Law 21 of December 5, 1990, 10 LPRA §279 et seq. and their interpretive case law and the provisions of said statutes shall not be applicable to this Agreement.
- (k) **Counterparts.** This Agreement may be executed in-counterparts, and each counterpart shall be deemed an original hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized officers effective as of the Effective Date shown above.

Banco Popular de Puerto Rico

By:   
Signature

Name: Emilio E. Rivera

Title: Executive Vice President

Date: 12/29/98

American Express  
Travel Related Services Company, Inc.

By:   
Signature

Name: FRANK J. KELLY

Title: VP

Date: 12/29/98

Exhibit A

Corporate Purchasing Card Marketing Program

1. **BP Responsibilities.**

(a) **Commercial Customer Solicitation.**

- (1) Within 30 days after the Effective Date of this Agreement and every 6 months thereafter, BP shall propose a list of Commercial Customers and other prospects to whom BP shall market the CPC, which proposed list shall be subject to the mutual agreement of BP and AMEX. AMEX's agreement to the inclusion of any name on the list shall take into consideration, among other things, any current AMEX marketing efforts and the strengths of any existing AMEX and/or BP commercial relationships. No Commercial Customer or other prospect to whom AMEX has marketed the CPC in the previous 6 months shall be included on such list. In the event BP is approached by such entity with respect to any corporate purchasing card services, BP shall refer such entity to AMEX; provided, however, that subject to AMEX's approval, other entities that have approached BP for corporate purchasing card services may be added to such list.
- (2) The mutually agreed-on list shall include no more than 100 names and shall be referred to as the "CPC Target List." The CPC Target List shall include (i) the name and address; (ii) the prior year's actual or estimated sales or revenue figures; and (iii) the industry category of each Commercial Customer and other prospect to whom the CPC is to be marketed hereunder. AMEX shall provide BP with AMEX's minimum credit criteria for the CPC and BP shall evaluate its Commercial Customers and other prospects against such criteria. In the event that AMEX determines that a particular Commercial Customer or other prospect should not be included on the CPC Target List because it does not meet AMEX's credit criteria, but BP wishes to market the CPC to such Commercial Customer or other prospect, AMEX will consider adding such Commercial Customer or other prospect to the CPC Target List and a CPC may be issued to such Commercial Customer if BP agrees to execute a guaranty in the form attached as Exhibit C hereto, of such Commercial Customer's or other prospect's obligations to AMEX or the Amex Entity that issued the CPC; provided, however that even if BP offers to provide such guaranty, AMEX reserves the right to decline the application.
- (3) The 6 month time period beginning on the date the name of a Commercial Customer or other prospect first appears on the CPC Target List shall be referred to as the "6 Month Solicitation Period." If a Commercial Customer or other prospect who is on the CPC Target List does not become a CPC

Client within the 6 Month Solicitation Period, such Commercial Customer and other prospect shall be removed from the CPC Target List and AMEX shall have the right to contact such Commercial Customer and other prospect directly to market the CPC. Notwithstanding the immediately preceding sentence, BP shall have the right, subject to AMEX's agreement (which shall not be unreasonably withheld), to designate certain Commercial Customers and other prospects to be included on the CPC Target List for the next 6 Month Solicitation Period. No Commercial Customer or prospect shall appear on a CPC Target List more than twice. Subject to the following sentence, AMEX shall not approach any Commercial Customer or other prospect who is on the CPC Target List to market the CPC during the applicable 6 Month Solicitation Period except in coordination with BP. BP acknowledges that, from time to time, a Commercial Customer or other prospect who is on the CPC Target List may inadvertently be solicited for a CPC by AMEX or others on behalf of AMEX during the applicable 6 Month Solicitation Period, and that such activity shall not be deemed a breach of this Agreement; provided, however, that if such Commercial Customer or other prospect becomes a CPC Client during the applicable 6 Month Solicitation Period, BP shall receive compensation for such CPC Client in accordance with this Agreement.

- (4) BP shall receive no compensation in the event any Commercial Customer or other prospect whose name has been removed from, or never appeared on, the CPC Target List becomes a CPC client. Any name of a Commercial Customer or other prospect which AMEX has not agreed to include on any CPC Target List shall not be included on any subsequent proposed CPC Target List.
  - (5) BP designates the Purchasing Card Product Manager from the Business Banking Division to be AMEX's contact to coordinate the Marketing Program.
  - (6) BP shall market the CPC to its Commercial Customers through a variety of methods, including in-person contacts, direct mail, and telephone solicitations, to communicate the benefits of the CPC program and encourage these Customers to become CPC Clients.
- (b) **Promotional and Advertising Materials.** BP shall submit to AMEX for AMEX's prior approval all advertising, marketing and promotional material that BP prepares which mentions the CPC, AMEX's name or any American Express products or services.
- (c) **Review and Transmittal of CPC Applications.** BP shall initially receive all CPC applications submitted under the Marketing Program, and shall, consistent with applicable law, promptly review all applications:
- (1) to verify that the applicant's account is in good standing with BP;

- (2) to confirm the applicant's name and address;
- (3) to confirm to AMEX that the applicant's sales/revenues are correct, as stated in the applications. BP shall forward all applications to AMEX for AMEX's credit review and approval/disapproval. BP acknowledges that AMEX has sole discretion over whether or not to approve an application for a CPC, and AMEX reserves the right to decline any application for a CPC even if the applicant was recommended by BP. Upon the written request of any Officer or Director of BP, AMEX will reconsider any application or any written request by BP that BP guarantee in writing all obligations of the Commercial Customer to AMEX; provided, however, that even if BP offers to provide such guaranty in the form attached as Exhibit C, AMEX reserves the right to decline the application.
- (d) **CPC Account Set-Up and Initial Account Development.** BP shall support the implementation of the CPC program with its Commercial Customers and other prospects who have been approved by AMEX to become CPC Clients, including helping to facilitate the CPC implementation, being a liaison and coordinator between AMEX and the CPC Client, and encouraging initial usage of the CPC and roll-out of the CPC program as part of BP's overall relationship with the CPC Client.
- (e) **Ongoing Relationship Management/Account Development.** BP shall, on an ongoing basis, encourage usage of the CPC by the CPC Client and coordinate with AMEX on relationship management with the CPC Client's Finance and Treasury departments and other relevant CPC Client departments.
- (f) **Credit Monitoring.** BP shall, consistent with applicable law, provide AMEX information about Clients to support AMEX in ongoing credit and risk assessment and risk management of CPC Clients.
- (g) **Reports.** On a monthly basis, BP shall provide AMEX with written reports of its marketing activity with respect to the CPC, including such information, and in a format, as mutually agreed by BP and AMEX (such agreement not to be unreasonably withheld).

2. **AMEX Responsibilities.**

- (a) **Training/Marketing Support.** In order to support BP in marketing the CPC to its Commercial Customers, AMEX shall provide the following:
  - (1) AMEX shall make available CPC product specialists to consult with BP on effective methods of marketing the CPC.

- (2) AMEX shall provide CPC applications, standard CPC contracts, and CPC marketing material. CPC applications, standard CPC contracts and promotional materials will be available in English. In the event that AMEX prepares any materials that include BP's name or logo, AMEX shall obtain BP's prior written approval of such use, which approval shall not be unreasonably withheld. AMEX will provide BP with 150 brochures per year at no charge. If BP requests any additional brochures, BP shall pay AMEX US \$300 for each 100 brochures requested.
  - (3) AMEX shall provide training in a form determined by AMEX for BP's employees who will be marketing the CPC on a time schedule as mutually agreed by AMEX and BP.
- (b) Credit Criteria/Credit Approval/Credit Monitoring.**
- (1) AMEX shall be solely responsible for establishing credit criteria for the CPC. AMEX shall have the sole right to decline any application for a CPC for any reason whatsoever, even if the applicant has been recommended by BP.
  - (2) Unless prohibited by applicable law, AMEX shall advise BP periodically of the approval or denial of CPC applications of BP's Commercial Customers and other prospects forwarded to AMEX by BP pursuant to the Marketing Program.
  - (3) AMEX shall monitor the ongoing credit risk and financial exposure with respect to CPC accounts.
- (c) AMEX Right to Cancel Cards.** AMEX retains the right at any time, with or without cause and at AMEX's sole responsibility, to cancel any CPCs. AMEX will use reasonable efforts to notify BP at or prior to the time AMEX cancels the CPC account of any CPC Client obtained through BP's efforts hereunder.
- (d) Operation of the CPC Program.** AMEX shall be responsible for operation of the CPC programs, including: plastic card issuance and delivery to approved CPC applicants, setting up CPC Client accounts on AMEX's systems, providing the system support for the CPC, providing reports and controls for CPC clients relating to the CPC, providing customer service, billing and collection with respect to CPC Client accounts.
- (e) Relationship Management.** AMEX shall manage the ongoing relationship with CPC Clients with respect to their CPC accounts, including, without limitation, maintaining relationships with CPC Client Finance and Treasury departments, and shall coordinate with BP as necessary.



**3. Compensation to BP.**

As compensation to BP for the marketing services performed by BP hereunder, BP shall receive the following amounts (all amounts shown are in U.S. Dollars):

**(a) Signing Fees.**

Public Sector (i.e., government agency) Clients with at least US \$3 million in annual purchasing	\$250. per new signing
Client Companies (including their 100% wholly owned subsidiaries) with annual sales or revenues of up to US \$200 million	\$750. per new signing
Client Companies (including their 100% wholly owned subsidiaries) with annual sales or revenues of more than US \$200 million	\$1,300. per new signing

All amounts shall be payable in U.S. Dollars within thirty (30) days after BP provides AMEX with the original CPC contract signed by the CPC Client. For the avoidance of doubt, a signing that qualifies for compensation hereunder is a signing that was obtained from BP's CPC Target List (as defined above) through BP's efforts during the applicable 6 Month Solicitation Period. No fees shall be paid on renewals.

For the purpose of determining signing fees hereunder, a Client Company and its subsidiaries and affiliates, and a government agency and its affiliated agencies, who become new CPC Clients hereunder shall be deemed to be one new signing irrespective of whether separate applications are completed and separate contracts executed.

- (b) Charge Volume Incentives.** In consideration for BP's encouragement of CPC Clients to use the CPC and roll out the CPC Program, AMEX shall pay BP the following fees for the first three (3) years of a new CPC Client's CPC contractual relationship with AMEX where the CPC Client was introduced to the CPC by BP pursuant to the Marketing Program. No fees shall be paid on renewals. Fees shall be based on the indicated percentage of the net annual charge volume of purchases made by each such CPC Client with the CPC and paid to AMEX.

<u>Net Annual CPC Charge Volume (US \$)</u>	<u>Fee Paid to BP</u>
\$0 - \$25 million	0.01% (1 basis point)
Over \$25 million - \$50 million	0.04% (4 basis points)
Over \$50 million - \$75 million	0.10% (10 basis points)
Over \$75 million - \$100 million	0.15% (15 basis points)
Over \$100 million	0.20% (20 basis points)

All fees shall be paid in U.S. Dollars within sixty (60) days after AMEX has determined the net annual charge volume for the CPC Clients. For each payment, AMEX shall provide BP with a report indicating the name of the CPC Client and its net annual charge volume. The amount of the net annual CPC charge volume achieved and paid to AMEX shall be solely determined by AMEX based on AMEX's records. At BP's request, and no more frequently than once per year, AMEX's internal auditors will provide a letter to BP certifying the accuracy of the payments made to BP under this Section 3(b).

- (c) **Card Fees.** BP shall receive fifty percent (50%) of the amount of the annual CPC fees paid to AMEX for the first three (3) years of a new CPC Clients' CPC contractual relationship with AMEX. No fees shall be paid to BP on renewals.

BP may reduce the annual Card fees a CPC Client would otherwise be obligated to pay by up to fifty percent (50%) of the applicable fee, in accordance with AMEX's then current schedule. AMEX shall share equally with BP the amount of any such reductions.

4. **Changes to CPC Contracts.** BP has no authority to agree with any prospective CPC Client on any amendment to AMEX's standard CPC contracts. Any requests for an amendment to any CPC standard contract must be directed to AMEX. AMEX has sole discretion over whether to agree to any amendments to its standard contracts.
5. **CPC Client Retention.** Notwithstanding anything in the Agreement to the contrary, in order not to undermine the effectiveness of the CPC Program, BP agrees not to market to any of its Commercial Customers or other prospects who are or become CPC Clients any competing purchasing card for a period of at least 18 months after such Commercial Customer or prospect has signed or otherwise entered into a new or renewal CPC contract with AMEX.

Banco Popular de Puerto Rico

By:

Signature

Name:

Title:

Date:

American Express

Travel Related Services Company, Inc.

By:

Signature

Name:

Title:

Date:

**Exhibit A-1**

**Performance Measures – Corporate Purchasing Card**

60 CPC Clients by the end of the first 12 months of this Agreement.

**Exhibit B**

**Corporate Card Marketing Program**

**1. BP Responsibilities.**

**(a) Commercial Customer Solicitation.**

- (1) Within 30 days after the Effective Date of this Agreement and every 6 months thereafter, BP shall propose a list of Commercial Customers and other prospects to whom BP shall market the Corporate Card, which proposed list shall be subject to the mutual agreement of BP and AMEX. AMEX's agreement to the inclusion of any name on the list shall take into consideration, among other things, any current AMEX marketing efforts and the strengths of any existing AMEX and/or BP commercial relationships. No Commercial Customer or other prospect to whom AMEX has marketed the Corporate Card in the previous 6 months shall be included on such list. In the event BP is approached by such entity with respect to any corporate or business card services, BP shall refer such entity to AMEX; provided, however, that subject to AMEX's approval, other entities that have approached BP for corporate or business card services may be added to such list.
- (2) The mutually agreed-on list shall include no more than 100 names and shall be referred to as the "Corporate Card Target List." The Corporate Card Target List shall include (i) the name and address; (ii) the prior year's actual or estimated sales or revenue figures; and (iii) the industry category of each Commercial Customer and other prospect to whom the Corporate Card is to be marketed hereunder. AMEX shall provide BP with AMEX's minimum credit criteria for the Corporate Card and BP shall evaluate its Commercial Customers and other prospects against such criteria. In the event that AMEX determines that a particular Commercial Customer or other prospect should not be included on the Corporate Card Target List because it does not meet AMEX's credit criteria, but BP wishes to market the Corporate Card to such Commercial Customer or other prospect, AMEX will consider adding such Commercial Customer or other prospect to the Corporate Card Target List and a Corporate Card may be issued to such Commercial Customer if BP agrees to execute a guaranty in the form attached as Exhibit D hereto, of such Commercial Customer's or other prospect's obligations to AMEX or the Amex Entity that issued the Corporate Card; provided, however that even if BP offers to provide such guaranty, AMEX reserves the right to decline the application.

- (3) The 6 month time period beginning on the date the name of a Commercial Customer or other prospect first appears on the Corporate Card Target List shall be referred to as the "6 Month Solicitation Period." If a Commercial Customer or other prospect who is on the Corporate Card Target List does not become a Corporate Card Client within the 6 Month Solicitation Period, such Commercial Customer and other prospect shall be removed from the Corporate Card Target List and AMEX shall have the right to contact such Commercial Customer and other prospect directly to market the Corporate Card. Notwithstanding the immediately preceding sentence, BP shall have the right, subject to AMEX's agreement (which shall not be unreasonably withheld), to designate certain Commercial Customers and other prospects to be included on the Corporate Card Target List for the next 6 Month Solicitation Period. No Commercial Customer or prospect shall appear on a Corporate Card Target List more than twice. Subject to the following sentence, AMEX shall not approach any Commercial Customer or other prospect who is on the Corporate Card Target List to market the Corporate Card during the applicable 6 Month Solicitation Period except in coordination with BP. BP acknowledges that, from time to time, a Commercial Customer or other prospect who is on the Corporate Card Target List may inadvertently be solicited for a Corporate Card by AMEX or others on behalf of AMEX during the applicable 6 Month Solicitation Period, and that such activity shall not be deemed a breach of this Agreement; provided, however, that if such Commercial Customer or other prospect becomes a Corporate Card Client during the applicable 6 Month Solicitation Period, BP shall receive compensation for such Corporate Card Client in accordance with this Agreement.
- (4) BP shall receive no compensation in the event any Commercial Customer or other prospect whose name has been removed from, or never appeared on, the Corporate Card Target List becomes a Corporate Card Client. Any name of a Commercial Customer or other prospect which AMEX has not agreed to include on any Corporate Card Target List shall not be included on any subsequent proposed Corporate Card Target List.
- (5) BP designates Carlos Toro to be AMEX's contact to coordinate the Marketing Program.
- (6) BP shall market the Corporate Card to its Commercial Customers through a variety of methods, including in-person contacts, direct mail, and telephone solicitations, to communicate the benefits of the Corporate Card program and encourage these Customers to become Corporate Card Clients.
- (b) **Promotional and Advertising Materials.** BP shall submit to AMEX for AMEX's prior approval all advertising, marketing and promotional material that BP prepares which mentions the Corporate Card, AMEX's name or any American Express products or services.

- (c) **Review and Transmittal of Corporate Card Applications.** BP shall initially receive all Corporate Card applications submitted under the Marketing Program, and shall, consistent with applicable law, promptly review all applications:
- (1) to verify that the applicant's account is in good standing with BP;
  - (2) to confirm the applicant's name and address;
  - (3) to confirm to AMEX that the applicant's sales/revenues are correct, as stated in the applications. BP shall forward all applications to AMEX for AMEX's credit review and approval/disapproval. BP acknowledges that AMEX has sole discretion over whether or not to approve an application for a Corporate Card, and AMEX reserves the right to decline any application for a Corporate Card even if the applicant was recommended by BP. Upon the written request of any Officer or Director of BP, AMEX will reconsider any application or any written request by BP that BP guarantee in writing all obligations of the Commercial Customer to AMEX; provided, however, that even if BP offers to provide such guaranty in the form attached as Exhibit D, AMEX reserves the right to decline the application.
- (d) **Corporate Card Account Set-Up and Initial Account Development.** BP shall support the implementation of the Corporate Card program with its Commercial Customers and other prospects who have been approved by AMEX to become Corporate Card Clients, including helping to facilitate the Corporate Card implementation, being a liaison and coordinator between AMEX and the Corporate Card Client, and encouraging initial usage of the Corporate Card and roll-out of the Corporate Card program as part of BP's overall relationship with the Corporate Card Client.
- (e) **Ongoing Relationship Management/Account Development.** BP shall, on an ongoing basis, encourage usage of the Corporate Card by the Corporate Card Client and coordinate with AMEX on relationship management with the Corporate Card Client's Finance and Treasury departments and other relevant Corporate Card Client departments.
- (f) **Credit Monitoring.** BP shall, consistent with applicable law, provide AMEX information about Clients to support AMEX in ongoing credit and risk assessment and risk management of Corporate Card Clients.
- (g) **Reports.** On a monthly basis, BP shall provide AMEX with written reports of its marketing activity with respect to the Corporate Card, including such information, and in a format, as mutually agreed by BP and AMEX (such agreement not to be unreasonably withheld).

2. **AMEX Responsibilities.**

(a) **Training/Marketing Support.** In order to support BP in marketing the Corporate Card to its Commercial Customers, AMEX shall provide the following:

- (1) AMEX shall make available Corporate Card product specialists to consult with BP on effective methods of marketing the Corporate Card.
- (2) AMEX shall provide Corporate Card applications, standard Corporate Card contracts, and Corporate Card marketing material. Corporate Card applications, standard Corporate Card contracts and promotional materials will be available in English. In the event that AMEX prepares any materials that include BP's name or logo, AMEX shall obtain BP's prior written approval of such use, which approval shall not be unreasonably withheld. AMEX will provide BP with 150 brochures per year at no charge. If BP requests any additional brochures, BP shall pay AMEX US \$300 for each 100 brochures requested.
- (3) AMEX shall provide training in a form determined by AMEX for BP's employees who will be marketing the Corporate Card on a time schedule as mutually agreed by AMEX and BP.

(b) **Credit Criteria/Credit Approval/Credit Monitoring.**

- (1) AMEX shall be solely responsible for establishing credit criteria for the Corporate Card. AMEX shall have the sole right to decline any application for a Corporate Card for any reason whatsoever, even if the applicant has been recommended by BP.
- (2) Unless prohibited by applicable law, AMEX shall advise BP periodically of the approval or denial of Corporate Card applications of BP's Commercial Customers and other prospects forwarded to AMEX by BP pursuant to the Marketing Program.
- (3) AMEX shall monitor the ongoing credit risk and financial exposure with respect to Corporate Card accounts.

(c) **AMEX Right to Cancel Cards.** AMEX retains the right at any time, with or without cause and at AMEX's sole responsibility, to cancel any Corporate Cards. AMEX will use reasonable efforts to notify BP at or prior to the time AMEX cancels the Corporate Card account of any Corporate Card Client obtained through BP's efforts hereunder.

(d) **Operation of the Corporate Card Program.** AMEX shall be responsible for operation of the Corporate Card programs, including: plastic card issuance and delivery to approved Corporate Card applicants, setting up Corporate Card Client -

accounts on AMEX's systems, providing the system support for the Corporate Card, providing reports and controls for Corporate Card clients relating to the Corporate Card, providing customer service, billing and collection with respect to Corporate Card Client accounts.

- (e) **Relationship Management.** AMEX shall manage the ongoing relationship with Corporate Card Clients with respect to their Corporate Card accounts, including, without limitation, maintaining relationships with Corporate Card Client Finance and Treasury departments, and shall coordinate with BP as necessary.

**3. Compensation to BP.**

As compensation to BP for the marketing services performed by BP hereunder, BP shall receive the following amounts (all amounts shown are in U.S. Dollars):

- (a) **Charge Volume Incentives.** In consideration for BP's encouragement of Corporate Card Clients to use the Corporate Card and roll out the Corporate Card Program, AMEX shall pay BP the following fees for the first three (3) years of a new Corporate Card Client's Corporate Card contractual relationship with AMEX where the Corporate Card Client was introduced to the Corporate Card by BP pursuant to the Marketing Program. No fees shall be paid on renewals. Fees shall be based on the indicated percentage of the net annual charge volume of purchases made by each such Corporate Card Client with the Corporate Card and paid to AMEX.

<u>Net Annual Corporate Card Charge Volume</u> (US \$)	<u>Fee Paid to BP</u>
\$0 - \$25 million	0.01% (1 basis point)
Over \$25 million - \$50 million	0.04% (4 basis points)
Over \$50 million - \$75 million	0.10% (10 basis points)
Over \$75 million - \$100 million	0.15% (15 basis points)
Over \$100 million	0.20% (20 basis points)

All fees shall be paid in U.S. Dollars within sixty (60) days after AMEX has determined the net annual charge volume for the Corporate Card Clients. For each payment, AMEX shall provide BP with a report indicating the name of the Corporate Card Client and its net annual charge volume. The amount of the net annual Corporate Card charge volume achieved and paid to AMEX shall be solely determined by AMEX based on AMEX's records. At BP's request, and no more frequently than once per year, AMEX's internal auditors will provide a letter to BP certifying the accuracy of the payments made to BP under this Section 3(a).

- (b) **Card Fees.** AMEX shall pay BP fifty percent (50%) of the amount of the annual Corporate Card fees collected by AMEX within the twelve (12) month period immediately following the date a new Corporate Card Client enters into its



Corporate Card account agreement with AMEX. AMEX shall make such payment at the end of each calendar year. No payment shall be made to BP on renewals.

4. **Changes to Corporate Card Contracts.** BP has no authority to agree with any prospective Corporate Card Client on any amendment to AMEX's standard Corporate Card contracts. Any requests for an amendment to any Corporate Card standard contract must be directed to AMEX. AMEX has sole discretion over whether to agree to any amendments to its standard contracts.
5. **Corporate Card Client Retention.** Notwithstanding anything in the Agreement to the contrary, in order not to undermine the effectiveness of the Corporate Card Program, BP agrees not to market to any of its Commercial Customers or other prospects who are or become Corporate Card Clients any competing corporate or business card for a period of at least 18 months after such Commercial Customer or prospect has signed or otherwise entered into a new or renewal Corporate Card contract with AMEX.

**Banco Popular de Puerto Rico**

By: 

Signature

Name: Emilio E. Pizarro

Title: Executive Vice President

Date: 12/29/98

**American Express**

**Travel Related Services Company, Inc.**

By: 

Signature

Name: FRANK J. KELLY

Title: VP

Date: 12/29/98

**Exhibit B-1**

**Performance Measures – Corporate Card**

40 Corporate Card Clients and 1,000 Corporate Cards in force by the end of the first 12 months of this Agreement.