

Washington Metropolitan Area Transit Authority  
**Board Action/Information Summary**

Action  Information

MEAD Number:  
201273

Resolution:  
 Yes  No

**TITLE:**

Indemnification: Bank Card Merchant Agreement

**PRESENTATION SUMMARY:**

Staff requests approval of additional indemnification language proposed by Vantiv for WMATA's bank card merchant agreement. The additional language is the same as the language in WMATA's existing agreement with a Vantiv competitor.

**PURPOSE:**

Approve the indemnification language for the new bank card merchant agreement between Vantiv and WMATA.

**DESCRIPTION:**

**Key Highlights:**

- By July 1 2015, assuming Board approval of this MEAD, Vantiv will process all of WMATA's debit and credit card transactions other than those generated by the New Electronic Payment Program (NEPP) pilot (see Vantiv MEAD 201249).
- The requested indemnification language mirrors the language in WMATA's existing merchant services agreement (also see MEAD 100464; Board Resolution 2009-66).
- Essentially, the additional indemnification language would require WMATA to reimburse Vantiv if Vantiv incurred a loss because WMATA's action or inaction violated the card organization operating regulations; resulted in a third party claim against Vantiv (e.g., for WMATA's infringement of intellectual property); compromised card or transaction data; or violated any law or regulation.
- Under the existing 2009 agreement, the current acquiring bank has never filed an indemnification claim against WMATA.

**Background and History:**

The Board is being asked to approve additional indemnification language for WMATA's agreement with its new acquiring bank, Vantiv. The contract WMATA awarded to Vantiv on 01/28/15 is subject to this approval. The additional language mirrors language in WMATA's existing merchant services agreements. Vantiv was selected as the new bank card merchant processor through a competitive process. Considering migration costs, WMATA stands to save \$1.7M over five years by entering into the Vantiv agreement.

**Discussion:**

Vantiv’s request for indemnification requires WMATA to reimburse Vantiv if the company incurs a loss due to WMATA's action or inaction that violates the card organization operating regulations, resulting in a third party claim against Vantiv; compromised card or transaction data; or violates any law or regulation.

To put the risk in perspective, under the existing 2009 agreement, Bank of America Merchant Services has never filed an indemnification claim against WMATA.

**FUNDING IMPACT:**

Define current or potential funding impact, including source of reimbursable funds.	
Project Manager:	Jim Bongiorno
Project Department/Office:	TRES

There is no funding impact per se because WMATA's indemnification risk remains the same whether it remains with its existing acquiring bank or moves to Vantiv.

**TIMELINE:**

<b>Previous Actions</b>	Conducted a competition for WMATA's bank card merchant services
<b>Anticipated actions after presentation</b>	Migrate to Vantiv by June 30, 2015 (the date when WMATA's current bank card merchant agreement expires)

**RECOMMENDATION:**

Approve the indemnification language for the new bank card merchant agreement between Vantiv and WMATA.

**PRESENTED AND ADOPTED: February 26, 2015**

**SUBJECT: INDEMNIFICATION OF VANTIV FOR PROCESSING CREDIT AND DEBIT CARD TRANSACTIONS**

**2015-13**

RESOLUTION  
OF THE  
BOARD OF DIRECTORS  
OF THE  
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, The Washington Metropolitan Area Transit Authority (WMATA) accepts debit and credit cards to pay for fares, goods and services; and

WHEREAS, WMATA is required to employ an acquiring bank to process these transactions; and

WHEREAS, Acquiring banks and card organizations require merchants to indemnify them for certain risks resulting from processing debit and credit card transactions; and

WHEREAS, WMATA wishes to enter into a Bank Card Merchant Agreement with a new acquiring bank, Vantiv; and

WHEREAS, Vantiv requires WMATA to amend its standard indemnification language to add indemnification clauses shown in Attachment A; and

WHEREAS, WMATA has granted similar indemnities to the current acquiring bank; and

WHEREAS, WMATA must provide notice of its intent to terminate the current acquiring bank contract on or before March 2, 2015; now, therefore be it

*RESOLVED*, That the Board of Directors approves inclusion of the indemnification provisions shown in Attachment A in the Vantiv Bank Card Merchant Agreement; and be it finally

*RESOLVED*, That this Resolution shall be effective immediately to ensure that notice can be timely provided to the current acquiring bank.

Reviewed as to form and legal sufficiency,



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Mark R. Pohl  
Acting General Counsel

WMATA File Structure No.:  
15.2.1 Grants of Indemnification

**Motioned by Mrs. Hudgins, seconded by Mr. Downs  
Ayes: 8 – Mr. Downey, Mr. Goldman, Mrs. Hudgins, Mr. Downs, Ms. Tregoning, Mrs. Hampshire-Cowan,  
Mr. Corcoran and Mr. Evans**

## 22. Indemnification.

**Merchant hereby agrees to present Indemnification language as requested by Processor to its Board for approval to incorporate into this Agreement. In the event Merchant's Board does not approve Merchant to indemnify the Processor using language as agreed upon by the parties, the Processor may exercise the option to terminate for convenience without penalty no later than 12:00 p.m. EST on March 2, 2015 provided that Processor has actually received notification from Merchant that Merchant's Board did not approve no later than 5:00 p.m. EST on February 26, 2015. Merchant agrees that Processor shall in good faith provide support and services upon Merchant providing a Notice to Proceed and Notice of Award to Processor. Merchant agrees Processor shall not process transactions until the inclusion of the Indemnification language into this Agreement via a written amendment signed by both parties.**

Merchant will indemnify Processor from and against any claim, suit, demand, action, dispute or other proceeding (including reasonable attorneys' and collection fees and expenses) brought by any third party against Processor ("Third Party Claim") and all losses, liabilities, damages, and expenses suffered, incurred or sustained by Processor or to which Processor becomes subject, arising out of any Third Party Claim, to the extent any Third Party Claim or any losses result from or arise out of any breach of any warranty, covenant, duty, obligation or agreement or any misrepresentation by Merchant under this Agreement, or arising out of any gross negligence or willful misconduct of Merchant its agents and employees in connection with Merchant's Card transactions or otherwise arising from Merchant's provision of goods and services to Cardholders. In addition, Merchant will reimburse Processor all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by Processor to enforce and protect Processor's rights under this Agreement in connection with (or in anticipation of) any event described in Section 13 Merchant will indemnify Processor for any claims, liabilities or losses, including reasonable costs and attorney's fees, resulting from Processor's compliance with the instructions of any Card Organization. Processor will indemnify Merchant for all losses, costs, damages, including royalties and license fees, reasonable attorney's fees associated with any claim, suit or proceeding arising from or alleging infringement, misappropriation or other violation of any intellectual property right of any third party, including appeals, negotiations, and any settlement or compromise thereof arising due to the actions of Processor.

Processor will indemnify Merchant from and against all losses, liabilities, damages and expenses (including reasonable attorneys' fees and expenses) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by Processor under this Agreement or arising out of the gross negligence or willful misconduct of

Processor or its employees in connection with this agreement. IN NO EVENT WILL PROCESSOR BE RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MERCHANT MAY INCUR AS A RESULT OF ENTERING INTO OR RELYING UPON THIS AGREEMENT, EVEN IF PROCESSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING.

Merchant will indemnify Processor for all losses, costs, and damages, including royalties and license fees and reasonable attorney's fees, associated with any claim, suit or processing arising from or alleging infringement, misappropriation or other violation of any intellectual property right of any third party, including appeals, negotiations and any settlement or compromise thereof arising out of Merchant's performance under this Agreement.

Merchant will indemnify Processor for all losses, claims, costs and damages, including reasonable attorney's fees associated with any claim, suit or proceeding arising from or alleging Cardholder Data or transaction data compromise or disclosure, including appeals, negotiations, and any settlement or compromise thereof. Additionally, Merchant will indemnify Processor for all losses, claims, costs, expenses fines, and assessments imposed upon Processor by any Card Organization as a result of any act or omission of Merchant except to the extent any such penalties arise due to any error of the Processor.

In addition to Merchant's obligation and notwithstanding any other provisions in this Agreement, the following will apply: Merchant will indemnify Processor and any third party providing services hereunder and each Card Organization and the Card Organization's participants for all claims, liabilities, or losses, including reasonable costs and attorney's fees, arising or resulting from Merchant's or its employees', agents, or representatives' (1) failure to abide by a requirement of this Agreement including the Bank Rules, (2) violation of any applicable law or regulation or order, (3) misuse of any protected mark of a card organization, (4) willful misconduct, fraud, or gross negligence, (5) effecting transactions with the use of a lost, stolen, counterfeit, or misused card, (6) failure to follow instructions of a Card Organization, or (7) conduct of the Merchant's business.