

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

<input checked="" type="radio"/> Action <input type="radio"/> Information	MEAD Number: 100464	Resolution: <input checked="" type="radio"/> Yes <input type="radio"/> No
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TITLE:

MTA Credit Card Indemnification Contract

PURPOSE:

Board approval of indemnification agreements for Bank of America and MTA contracts.

DESCRIPTION:

The regional SmarTrip® card requires convenient places to reload the card, utilizing Metro`s point of sales devices, as well as the point of sale devices of Metro`s Regional Partners in the entire transit region, in support of Metro`s goal to deliver quality service. In order to implement credit card processing for legal entities, other than Metro, Bank of America Merchant Services (BAMS) requires Metro to sign a third-party processing contract and a special addendum, holding Metro liable for losses associated with Metro`s processing of all regional card transactions. The regional operator, Maryland Transit Administration (MTA), will sign Metro`s Credit Card Processing Agreement to indemnify Metro against loss due to the processing of MTA transactions.

The SmarTrip® Regional Operating Agreement provides all of the regional partners the opportunity to either allow Metro to own their debit/credit card transactions processed through the point of sale network or to own their transactions. If Metro owns the transactions, then the partner receives its funds as part of the monthly reconciliation with the Regional Customer Service Center. If the partner wishes to own the transactions, it receives payment directly from BAMS. In either case the transactions run through the Metro switch software. Under Metro`s Third Party Processing Agreement with BAMS, Metro is responsible for losses of any kind related to any transaction that runs through its switch software. Where Metro owns the transaction, it is assumed that the earnings on the funds would offset any losses incurred. However, as selected by MTA, if the operator elects to own the transactions and receive immediate payment, Metro does not have any funds to offset any losses. Metro still must provide BAMS and the card issuers certain assurances and indemnities as

described in the accompanying resolution. Since Metro must provide those assurances and indemnities, it should receive identical assurances and indemnities from the regional partner to avoid having a financial exposure for transactions for which it receives no benefit.

These indemnifications are identical to those granted when Metro began accepting debit and credit cards for its own use. Metro will have the regional partner, MTA, sign our Credit Card Processing Agreement, ("The Jurisdictional Merchant Agreement") that includes their indemnification of Metro for the same actions as Metro indemnifies BAMS. In addition, the regional partner, MTA, will also directly sign a merchant processing agreement with BAMS, also containing these indemnifications. Metro also must indemnify MTA against intellectual property infringement claims by third parties and for the breach of the Credit Card Processing Agreement by Metro or the gross negligence or willful misconduct of Metro or its employees in connection with the Credit Card Processing Agreement.

The Metro-BAMS Third Party Processing Agreement also needs to be amended to conform the Dispute Resolution process for MTA disputes to the Metro-MTA Processing Agreement.

Without the execution of the indemnification agreements, the MTA would not be able to offer credit cards as a payment option for their customers.

FUNDING IMPACT:

No impact on funding.

RECOMMENDATION:

Approval to (1) Indemnify Bank of America Merchant Services (BAMS), the credit card issuers, and Maryland Transit Administration (MTA) for the MTA credit transactions using SmarTrip®; (2) authorize the execution of an amendment to the BAMS Third Party Processing Agreement with Metro to conform the dispute resolution process for MTA disputes with the Metro-MTA Processing Agreement; and (3) execute the Metro-MTA Credit Card Processing Agreement.

SUBJECT: INDEMNIFICATION OF BANK OF AMERICA MERCHANT SERVICES AND
CARD ISSUERS FOR THIRD PARTY PROCESSING OF CREDIT AND DEBIT
TRANSACTIONS

2009-66

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, Part of the regional use of the SmarTrip[®] card involves the loading of funds at remote locations and the use of the SmarTrip[®] card on local bus systems; and

WHEREAS, The loading of funds may be done with the use of credit and debit cards; and

WHEREAS, The Maryland Transit Administration wishes to own the transactions but have the transactions processed through the Metro's switch software; and

WHEREAS, Bank of America Merchant Services and the various card-issuing companies require Metro to indemnify them for risks resulting from processing the third party transactions such as the proposed Maryland Transit Administration transactions; and

WHEREAS, Those risks include any claim, suit, demand, action, dispute, or other proceeding, including reasonable attorneys' fees, collection fees and expenses brought by any third party against Bank of America Merchant Services ("Third Party Claim") and all losses, liabilities, damages and expenses incurred by Bank of America Merchant Services or which Bank of America Merchant Services may become liable arising out of such Third Party Claims to the extent that any Third Party Claim or losses there from result from or arise out of any breach of any warranty, covenant, duty, obligation or agreement or any misrepresentation by Metro under the Third Party Agreement, or arising out of any gross negligence or willful misconduct of Metro, its agents or employees in connection with Metro credit/debit card transactions or otherwise arising from Metro's provision of goods and services credit or debit card customers; and

WHEREAS, Metro must reimburse Bank of America Merchant Services for all reasonable costs and expenses including reasonable attorney's fees and expenses incurred by Bank of America Merchant Services to enforce its rights under the Third Party Processing Agreement in connection with any actual or potential default under the Agreement by Metro; and

WHEREAS, The indemnification also covers: 1) Bank of America Merchant Services' compliance with the instructions of Mastercard, Visa, or any other card organization; and 2) any alleged infringement, misappropriation or other violation of a third party's intellectual property arising out of Metro's performance under the Third Party Processing Agreement as well as third party service providers to Bank of America Merchant Services, card organizations, and the participants of the card organizations for events arising from Metro's or its employees, agents or representatives; (a) failure to abide by a requirement of this Agreement including the Rules; (b) violation of any applicable law or regulation or order; (c) misuse of any protested trademark of a card organization; (d) willful misconduct, fraud, or gross negligence; (e) effecting transactions with the use of a lost, stolen, counterfeit or misused card; (f) failure to follow instructions of a card organization; or (g) conduct of Metro's business; and

WHEREAS, These indemnifications are similar to those granted when Metro began accepting debit and credit cards for its own use; and

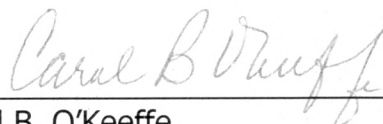
WHEREAS, The Maryland Transit Administration's chosen dispute resolution process with Metro will necessitate an amendment to the Metro-Bank of America Merchant Services Third Party Processing Agreement to conform the dispute resolution process involving the Maryland Transit Administration's transactions to the dispute resolution process in the Metro-Maryland Transit Administration Credit Card Processing Agreement; now, therefore be it

RESOLVED, That the Board of Directors approves the provision of indemnifications referenced in this Resolution to the parties so referenced and the execution of the documents necessary to implement the processing of the Maryland Transit Administration transactions, provided that the Maryland Transit Administration extends an identical indemnity to Metro in the Credit Card Processing Agreement to be executed by Metro and the Maryland Transit Administration; and be it further

RESOLVED, That as specified in the Credit Card Processing Agreement to be executed by Metro and the Maryland Transit Administration, the Board of Directors approves the provision of indemnifications to the Maryland Transit Administration for infringements on the intellectual property of third parties due to the actions of Metro or for Metro's breach of the provisions of the Credit Card Processing Agreement or for the gross negligence or willful misconduct of Metro or its employees relating to the Credit Card Processing Agreement; and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Carol B. O'Keeffe
General Counsel

Motioned by Mr. Graham, seconded by Mrs. Hudgins

Ayes: 6 - Mr. Graham, Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett and Mr. Zimmerman