



Contractual Indemnification Policy

History: Adopted by the Board of Trustees May 23, 2016

1.0 BACKGROUND AND PURPOSE

Colorado Revised Statute 23-5-106 allows governing boards of institutions of higher education to indemnify and hold harmless an entity if the governing board determines that the contract serves a valid public purpose and any risks to the institution that may arise from entering into the contract are sufficiently limited and outweighed by the benefits of the contract. Any liability claim or expense that arises from a contract in which the governing board has agreed to indemnify or hold harmless another entity will not be payable from the State Risk Management fund and will be payable solely from the revenues of the institution. The Colorado School of Mines Board of Trustees (Board) is the governing board for, and delegates certain authority to, the Colorado School of Mines (Mines) to ensure operation and administration of the university to support the mission of teaching, research, and service.

2.0 POLICY

Mines shall not contract to indemnify or hold harmless any entity, except as authorized in this policy or otherwise expressly provided by law, without express prior approval of the Board. This policy shall not otherwise modify or amend prior delegations of authority from the Board and Mines' President regarding the authority to approve and execute contracts and other binding legal instruments.

In accordance with Colorado Law, C.R.S. 23-5-106, the Board authorizes Mines to contract to indemnify or hold harmless certain entities only if the contract is specifically reviewed and approved in accordance with this policy and the procedures listed herein. Contracts requiring Mines to indemnify or hold harmless an entity not covered within this policy require express approval by the Board on a case-by-case basis.

2.1 Approved Contracts:

Mines may only contract to indemnify or hold harmless those entities whose contracts meet all of the following criteria (Approved Contracts):

1. The contract is necessary and appropriate to the normal operations of the Mines and within the budgeted expenditures as approved by the Board; and is a purchase, donation, lease or license of information technology goods and services used for instructional purposes only.
2. The required indemnification or hold harmless clause is considered standard in the industry or no standard exists, as determined by Mines' General Counsel or a designated reviewing attorney for Mines;
3. The required indemnification or hold harmless clause is non-negotiable;



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4. The potential liability attributable to the indemnification or hold harmless clause is sufficiently limited and reasonably likely to be covered by insurance, bonds, surety instruments, loss reserves or other source of funds.

2.2 Public Purpose: Approved Contracts in this context are intended to serve a valid public purpose and the risks to Mines are outweighed by the benefits of such contracts, provided the procedures listed herein for approving such contracts have been followed.

3.0 PROCEDURES

3.1 Approved Contracts:

If Mines desires to enter into an Approved Contract the following procedures will be followed:

1. Mines' General Counsel or designated reviewing attorney, in consultation with the Risk Manager, shall make a prior, written determination that (1) the indemnification or hold harmless clause is (a) considered standard in the industry, or, no standard exists, and (b) is reasonable and non-negotiable, and (2) the contract is otherwise consistent with Mines' Financial Policies.
2. The Chief Information Officer shall make a prior, written determination that any purchase, donation, lease or license of information technology goods and services is (a) used for instructional purposes only and (b) poses limited risk to Mines' network or systems as provided in the contract.
3. The Assistant Vice President for Business Operations shall make a prior written determination that the potential liability attributable to the indemnification or hold harmless clause is reasonably likely to be covered by insurance, bonds, surety instruments, loss reserves, a risk management fund, or other source of funds specific to the transaction.
4. The Executive Vice President and Chief Operating Officer shall make a prior, written determination that the contract meets the requirements of an Approved Contract outlined in section 2.0 above, including (a) the contract serves a valid public purpose, (b) any risks resulting from the contract are sufficiently limited, reasonable, and warranted under the particular circumstances and (c) that the risks are outweighed by the benefits of the contract.



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3.2 Approval of Other Contracts:

Mines shall not enter into any contract that contains an indemnification or hold harmless clause, if the contract does not satisfy all the requirements to be an Approved Contract, without the prior approval of the Board.

4.0 RESPONSIBILITIES

4.1. Executive Vice President:

The Executive Vice President and Chief Operating Officer shall submit to the Board:

1. An annual report of all Approved Contracts entered into on behalf of Mines; and
2. All contracts requiring Mines to indemnify or hold harmless an entity for review and approval as necessary at any properly noticed meeting.

4.2 Risk Manager:

The Risk Manager shall coordinate and maintain the required documentation outlined in the procedures above for all contracts (Approved Contracts and other) in which Mines agrees to indemnify or hold harmless an entity.

5.0 COMPLIANCE

Failure to follow this policy by any Mines' community member may result in personal liability to the signatory.

6.0 REVIEW CYCLE & HISTORY

The Board shall review this policy at least once every two (2) years.

Policy promulgated by the Mines Board of Trustees September 16, 2011 as the Policy on Indemnification of Contractors.

Policy renamed, amended, and expanded by the Mines Board of Trustees May 23, 2016.