



Board of Trustees

Policy Statement
University Policy Library

Operational Area:	Business and Finance
Responsible Executive:	Chief Financial Officer
Responsible Office:	Controller's Office
Effective:	July 1, 2020

Contractual Indemnification

Business and Finance

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I. Introduction

- A. **Authority:** Colorado Revised Statutes (C.R.S.) § 23-54-102, *et seq.* (2020) authorizes the Trustees of Metropolitan State University of Denver ("MSU Denver" or "University") to establish rules and regulations to govern and operate the University and its programs. The MSU Denver Trustees retain authority to approve, interpret, and administer policies pertaining to University governance. The MSU Denver Trustees authorize the MSU Denver President to approve, administer, and interpret policies pertaining to University operations.
- B. **Purpose:** This policy prohibits MSU Denver employees and organizations from contracting to indemnify or hold harmless contractors without Board of Trustees (or designee) approval, in accordance with C.R.S. § 23-5-106.
- C. **Scope:** This policy applies to all contracts entered into by MSU Denver. This policy will not otherwise modify or amend prior delegations of authority from the Board of Trustees to the University President regarding the authority to approve and to execute contracts, agreements, and other, binding, legal instruments.



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II. Roles and Responsibilities

- A. **Responsible Executive:** Chief Financial Officer
- B. **Responsible Administrator:** Contracts and Business Services Manager
- C. **Responsible Office:** Office of the Controller
- D. **Policy Contact:** Contracts and Business Services Manager, 303-605-5265

III. Policy Statement

Metropolitan State University of Denver will not contract to indemnify or hold harmless any other person or party, except as authorized in this policy or otherwise expressly provided by law, without express approval by or on behalf of the Board of Trustees.

IV. Procedures

The University President will promulgate a policy or procedures necessary to implement this policy.

V. Limitations on Authority

In accordance with C.R.S. § 23-5-106, the Board of Trustees authorizes the University to agree to indemnify and hold harmless certain contractors only if the contract being entered into is specifically identified and approved in accordance with this Board policy, and the President's policy for such indemnification have been satisfied. Contracts in which the University agrees to indemnify contractors must serve a valid, public purpose, and the risks to the University created by agreeing to indemnify a contractor are outweighed by the benefits of such contracts, provided that the President's policy for approving such contracts has been followed.

- A. The University may agree to indemnify and hold harmless a contractor only when the contract meets all of the following criteria:



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1. The contract falls into one of the following types:
 - a. License of intellectual property;
 - b. Lease, license, sale, purchase or donation of information technology goods and services;
 - c. Lease, license, sale, purchase, donation or like agreement for specialized equipment, tools, services and/or supplies predominantly for research activities;
 - d. License, permit or other similar agreement to enter upon or utilize land or other facilities or space;
 - e. Agreement where only the chosen product, equipment, or service will meet the needs of the University because it is an approved sole source procurement or donation, or after reasonable due diligence, it has specifications that others lack and there has been a determination, after reasonable due diligence, that the product, equipment or service is not reasonably available from another contractor and the indemnification clause is not negotiable; or
 - f. Agreement where the party seeking indemnification is the federal government or a state or local government or agency thereof, and the responsible agency or entity has declined a request to remove or nullify the indemnity clause; and
2. The contract is necessary and appropriate to the normal operation of the University; and
3. The contract clause requiring indemnification is considered standard in the industry, or, if no standard exists, is reasonable under the circumstances and is non-negotiable, as determined by the Office of General Counsel or a designated reviewing attorney for the University; and



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4. The maximum amount of liability to which the University is agreeing to be exposed under the indemnification or hold harmless clause of the contract does not exceed \$250,000; and
5. The potential liability attributable to the indemnification or hold harmless clause in the contract is reasonably likely to be covered by insurance, bonds, surety instruments, loss reserves, or other such source of funds.

VI. Related Information

- A. President’s Contractual Indemnification Policy
- B. Contractual Indemnification Approval Request Form
- C. C.R.S. § 23-5-106 (4), Authority of governing boards – contracts of indemnity

VII. Policy History

- A. **Effective:** July 1, 2020
- B. **Review:** This policy will be reviewed every five years or as deemed necessary by University leadership.

VIII. Policy Approval

Janine Davidson, Ph.D.
President, Metropolitan State University of Denver

Barbara Grogan
Chair, Board of Trustees, Metropolitan State University of Denver