

Exhibit A  
Colorado School of Mines Special Provisions  
These Special Provisions apply to all contracts except where noted in *italics*.

**A. FUND AVAILABILITY. CRS §24-30-202(5.5).**

Financial obligations of Mines payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**B. GOVERNMENTAL IMMUNITY.**

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, and no such waiver is intended, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §§24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

**C. INDEPENDENT CONTRACTOR.**

Berry Companies, Inc. ("Contractor") shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of Mines. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through Mines and Mines shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Contractor shall not have authorization, express or implied, to bind Mines to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by Mines, and (c) be solely responsible for its acts and those of its employees and agents.

**D. COMPLIANCE WITH LAW.**

Contractor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination, unfair employment practices, and data privacy or protection.

**E. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement, without regard to conflict of law provisions. Any provision included or incorporated herein by reference which conflicts with said laws, rules, or regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held exclusively in the State of Colorado and exclusive venue shall be in the City and County of Denver. Contractor consents to jurisdiction in the State of Colorado.

**F. BINDING ARBITRATION PROHIBITED.**

Neither the State of Colorado nor Mines agrees to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

**G. PROHIBITED TERMS.**

Any term included in this Agreement that requires Mines to indemnify or hold Contractor harmless; requires Mines to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void *ab initio*. Nothing in this Agreement shall be construed as a waiver of any provision of CRS §24-106-109.

**H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

Mines' or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Agreement and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If Mines determines that Contractor is in violation of this provision, Mines may declare a breach of this Agreement and exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.**

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**J. DATA PROTECTION [Not Applicable when Mines does not provide Contractor with any Data].**

During the course of this Agreement, Contractor may receive personally identifiable information or other confidential information that is considered data ("Data"). Contractor will only collect Data necessary to fulfill its duties as outlined in this Agreement. Except as permitted under the terms of this Agreement, Contractor is prohibited from using the Data for any other purposes, including mining or scanning of content within the data. Contractor will store and process Data in accordance with industry best practices, including appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Contractor will maintain a written incident response plan that requires prompt notification to Mines of any security or privacy incident, as well as best practices for responding to a breach of PII. Contractor agrees to share its incident response plan upon request. Contractor and any subcontractors shall securely destroy Data upon expiration of the retention period set forth in this Agreement or within ninety (90) days of termination of this Agreement and return of the information in a form that is accessible and readable in accordance with C.R.S. § 24-73-101, 102, and FERPA.

**K. EXTERNAL TERMS AND CONDITIONS (CLICK-THROUGH).**

Notwithstanding anything to the contrary in the Agreement, or incorporated into the Agreement, or executed in writing separately by the Parties; Mines shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a subcontractor's website or any provision incorporated into any click-through or online agreements related to the purpose of this Agreement, unless that provision is specifically referenced in this Agreement.

**L. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]**

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor (a)

shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §§8-17.5-101 *et seq.*, the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Contractor shall be liable for damages.

**M. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §§24-76.5-101 *et seq.*, and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

**N. PROTECTION OF MINORS.**

Mines is committed to the safety of all individuals in its community and has implemented a Policy on the Protection of Minors at <https://www.mines.edu/policy-library/protection-of-minors/>. The Contractor affirms that they are aware that individuals under the age of 18 may be present on campus during the performance of this Agreement and the Contractor has taken reasonable precautions regarding their employees, volunteers, or participants to protect the safety and wellbeing of minors and ensure compliance with applicable laws. By signing this agreement, the Contractor certifies that they are aware of, and will comply with, all aspects of Mines' Policy on the Protection of Minors at <https://www.mines.edu/policy-library/protection-of-minors/>.