

SERVICE LEVEL AGREEMENT

ENTERED INTO BETWEEN

COLLIERY TRAINING COLLEGE (PTY) LTD
Trading as COLLIERY TRAINING COLLEGE
(Hereafter referred to as “CTC”)

And

COMPANY

(Hereafter referred to as “the Company”)

Colliery Training College (PTY) Ltd		Service Level Agreement			
DOCUMENT N°	MAN - 016	REVISION DATE	05 February 2015		
REVISED BY	I.D.Mclaggan	REVISION N°	3	Pages	15

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1. INTRODUCTION

With effect from (DATE), the Company appoints CTC to perform the function of:

1. Learnership and / or Apprenticeship Training – Engineering
2. Short Courses in Skills Training
3. Mining Training
4. Assessment of Training completed in the workplace (On-Job Training assessments)
5. Lump Ore Beneficiation (Coal Processing) Training

The terms of the Company's engagement of CTC are set out hereunder.

NB: Please note that the agreement is applicable to either all 5 points above, or to any combination of specific training requested.

2. DEFINITIONS

- 2.1. In this agreement, clause headings and sub-headings are for convenience and shall not be used to interpret such agreement, unless the context clearly indicates a contrary intention.
- 2.2. Any expression which denotes any gender includes the other gender.
- 2.3. The following expressions shall bear the meanings assigned to them below:
 - 2.3.1 "this agreement" shall mean this document and all annexures to it, as may be amended from time to time ;
 - 2.3.2 "business day" shall mean any day other than a Saturday, Sunday or official public holiday;
 - 2.3.3 "effective date" means 2015
 - 2.3.4 "entity" includes any association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, person, trust, undertaking, voluntary association and any other similar entity;
 - 2.3.5 "Industrial Property" includes any computer programme, material, name concept, training material, copyright work, patentable or non-patentable invention, patent, know-how, trade mark, trade name or other industrial property;

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2.3.6 “ The CTC Representative” shall mean the person appointed by CTC to liaise with the Company on a day to day basis in respect of services provided by CTC to the Company in terms of this agreement;

2.3.7 “The Company Representative” shall mean the person appointed by the Company to liaise with CTC on a day to day basis in respect of services provided by the CTC to the Company in terms of this agreement;

3. APPOINTMENT

3.1 The Company appoints CTC and CTC accepts such appointment as

3.1.1 As per “Instructions”

3.1.2 Order number: _____

3.2 CTC warrants that it has sufficient knowledge and expertise in all aspects of the training services and has the level of skill and experience to perform the training services. CTC further warrants it will use care and skill in performing all its obligations in terms of this agreement.

4. DURATION

4.1. This agreement shall commence on the “effective date” and shall continue indefinitely or until either party wishes to terminate the agreement.

4.2. Either party may cancel this agreement by giving the other party three (3) months written notice.

5. REVIEW

The terms of this agreement and the performance of the parties in terms of the agreement will be reviewed annually by the parties.

6. SCOPE OF SERVICE

6.1. CTC shall provide the training services as set out in point 7 and 8 below in accordance with practices, policies and standards prescribed by the Act and which are in accordance with those applicable in the conduct by CTC of its training programme.

6.2. The training services shall be carried out at the site scheduled by CTC for the provision of the training services and agreed upon by both CTC and the Company.

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7. CTC'S OBLIGATIONS

7.1 Subject to the terms of this agreement, CTC undertakes to train according to the prescribed criteria and time period required for the following:-

- (a) Learnership and / or Apprenticeship – Engineering Training
- (b) Short Courses in Skills Training
- (c) Mining Training
- (d) Assessment of Training completed in the workplace (On-Job Training assessments)
- (e) Lump Ore Beneficiation Training

8. THE COMPANY'S OBLIGATIONS

Without derogating from the generality of clause 8.3, the performance of the training services by CTC shall be dependent upon the Learner's meeting the following entry requirements prescribed by the DHET and the specific in – house requirements

8.1 Statutory requirements

WHERE APPLICABLE	PRE-REQUISITES
Learnership Training – Engineering	RELEVANT SETA / LAW
Apprenticeship Training – Engineering	RELEVANT SETA / LAW
Short Courses – Engineering	RELEVANT SETA / INHOUSE
Assessments – On Job	RELEVANT SETA / INHOUSE
Mining Training	RELEVANT SETA / LAW
Lump Ore Beneficiation Training	RELEVANT SETA

8.2 Undertakings

In addition to the above, the performance of the training by CTC shall be further dependent upon, and the Company agrees to abide by, the following:

8.2.1 The employer Company and each learner agrees and undertakes to abide by all of CTC's Health and Safety rules and regulations as detailed above and to the extent that it is reasonably practical, that all Learners shall comply with the provisions of the Act.

Should any of the Learners fail to comply with any of the said health and safety requirements, CTC will be entitled to terminate forthwith the training of the said Learner.

8.2.2 Unless otherwise agreed between CTC and the Company, the Company must, as far as reasonably practicable:

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- 8.2.2.1 Provide its Learners with any information, instruction, training or supervision that is necessary to enable them to undergo the training in terms of this agreement safely and without risk to health;
- 8.2.2.2 Ensure that all Learners are familiar with work-related hazards and risks and the measures that must be taken to eliminate, control and minimize those hazards and risks.
- 8.2.2.3 Ensure that all Learners are properly trained to deal with every risk to such trainee personnel's health and safety that is associated with any training that the learners have to perform and which has been recorded as a significant risk in terms of the Act.

8.3 Conduct

All learners' receiving training services in terms of this agreement must comply with all the reasonable instructions by CTC in respect of the training services to be rendered by CTC and shall undergo all training services faithfully and diligently and shall furthermore comply with all the security and other regulations and procedures as may apply.

9. FEES AND REMUNERATION

9.1 Payment

Any and all payments required to be made in terms of this agreement shall be made in accordance with the rates set out below, which rates are exclusive of VAT and free of set-off or deduction as follows:

Without limiting the rights of CTC, CTC shall be entitled to charge interest on overdue amounts at the publicly quoted overdraft rate charged by the First National Bank of South Africa Limited from time to time plus 2% from the due date of payment until the date of payment.

9.2 Schedule of Fees

All rates are exclusive of VAT.

Course fees include delegate's manuals and notes. Delegates should however provide their own stationery and pocket calculators.

Rates for training provided as per Annexure A.

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Out of the remuneration provided in this clause, CTC shall be responsible for its own payroll expenses such as salaries, wages, etc. The Service Provider shall, on reasonable advance notice from the Company, prove to the satisfaction of the Company that it is duly and promptly discharging all its responsibilities which rest upon it in law in respect of its employees and agents and indemnifies the Company against any liability which the Company may incur as a result of the Service Provider's failure to discharge such responsibilities.

During November of each year, CTC will publish a schedule of fees applicable to its service for the following year. This schedule is determined by its anticipated costs during the following year, mainly the salaries of training staff and will super cede "Annexure's A" from previous years.

9.3 Payment terms

Payment will be made to CTC by the Company on presentation of an original invoice. This invoice shall be presented to the Company within 10 days of each month end from the commencement date of the training service.

Any amounts due by the Company to CTC in terms of this agreement shall be paid by the Company to CTC within 30 (thirty) days of receipt of an invoice from CTC requesting such payment.

Interest will accrue on any unpaid amounts in terms of any invoice at a rate of the prime overdraft-lending rate plus 2% per annum.

Should any dispute arise relating to the amount of the charges to which CTC is entitled, such dispute shall be determined by CTC auditors for the time being, who shall act as experts and not as an arbitrator. The cost of the determination shall be paid by the party against which the determination is made, or as determined by the said auditors.

Under no circumstances will the Company be entitled to withhold or defer payment of any amount or charge in terms of this agreement.

9.4 Penalty rates

100% of the rates for the month set out in Section 9 shall apply if the Company's delegate has registered and attended the first day of the training and subsequently fails to complete the training as a result of being absent, withdrawn and/or being incapable of completing the training for any reason whatsoever.

50% of the rates for the month set out in Section 9 will apply if the Company's delegate has been accepted and fails to attend the training for which he/she has been accepted (a non-arrival). The Company may however replace the delegate with another – provided that the replacement complies with the statutory requirements and CTC is notified of the intended replacement by no later than 09h00 on the last working day prior to the commencement of the training service.

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10. ADDITIONAL SERVICE

The price for any additional training services will be charged in accordance with the rates set out in Section 9.

11. BREACH AND CANCELLATION OR TERMINATION OF AGREEMENT

Should either party commit a breach of any provision of this agreement and fail to remedy such breach within fifteen (15) working days after receiving written notice from the aggrieved party requiring the defaulting party to remedy such breach, the aggrieved party shall be entitled to cancel this agreement with immediate effect or claim immediate specific performance of all of the defaulting party's obligations under this agreement, whether such obligations would otherwise have fallen due for performance. Such claim by the aggrieved party shall be without prejudice to its right to claim damages, or cancel the agreement.

12. CONFIDENTIALITY

Both parties warrant that all information made available to them by the other party, including but not limited to any contracts signed, materials developed, trade secrets, financial and other details, assistance or advice given or requested, operating methods and costs, will be kept as strictly confidential and will not be divulged to any third parties without permission. Each party and their employees, contractors or service providers, will maintain the utmost secrecy in respect of all such information.

13. CONTRACT MANAGEMENT

13.1 CTC

CTC has assigned a training manager to co-ordinate and provide overall guidance in terms of strategy, policy standards and priorities as deemed appropriate for the provision of the training services and as a single point of contact. In addition it shall be the responsibility of the training manager to attend to all contractual and operational matters relating to the training services provided in terms of this agreement.

The CTC Representative shall be available Monday to Friday, 07H30 to 15H30 in order to liaise with the Company on a day to day basis in respect of services provided by CTC to the Company in terms of this agreement.

In the event that the Company requires the assistance of the CTC Representative outside of working hours, they will notify him or her timeously.

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13.2 The Company

The Company will appoint a representative, who from the effective date, shall have overall responsibility for managing and coordinating the performance of the Company's obligations' under this agreement and who will have the authority to act for and on behalf of the Company in respect of all matters relating to the agreement.

14. REPORTING

Monthly and annual reports will be prepared for the Company by CTC only if requested and the format agreed to by the parties in respect of training undertaken by CTC in terms of this agreement.

Should the Company require an additional report from CTC, such a report will be submitted to the Company within 7 days of a request in writing.

15. WARRANTIES, ACKNOWLEDGEMENT, INDEMNITIES AND LIMITATION OF LIABILITY

The parties warrant that they shall perform their obligations under this agreement with due diligence, skill and care and in a prompt, diligent and professional manner and in accordance with applicable legislation.

The Employer Company shall have no claim from whatever cause against CTC and CTC accepts no responsibility or liability for any interruption, defect or failure on the part of CTC in respect of the maintenance of or any faults or defects in any system, equipment, service or facility used or made available by CTC in fulfilling its obligations under this agreement, subject to CTC acting reasonably.

Employer Company hereby indemnifies CTC, its employees or agents against all claims of whatsoever nature arising out of any loss, damage, death or injury to persons or property resulting from the performance of the training services by CTC, its agents or employees in terms hereof except where such loss, damage, death or injury is caused by the willful default or negligence of CTC, its agents or employees.

16. EXCLUSION OF LIABILITY

Except for the willful default or negligence of CTC or otherwise expressly provided herein to the contrary, CTC shall not be liable for:

any direct damages suffered by the Company; or

any consequential damages, which the Company may suffer as a result of a breach by CTC of any of the obligations imposed on it by the agreement.

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For the purpose of this agreement, consequential damages shall mean indirect damage or special damages (whether within the contemplation of the parties at the time of entering into the agreement or not) which terms shall include without limitation, any loss of profit, loss of business or trade, or loss of business reputation or business opportunities suffered by Company as a result of any breach by CTC of its obligations.

Without derogating from the generality of clause 15, CTC shall not be liable either to the Company nor any third party for any loss or damage of whatsoever nature and/or howsoever arising from the provision of the training service by CTC or this agreement (including consequential or incidental loss or damage such as without limitation, loss, damage, death or injury to persons or to property or of profit, business, goodwill, revenue or anticipated sayings) except for loss or damage caused by the willful default or negligence of CTC, its agents or employees.

However CTC will be liable for any direct damages incurred in relation with this agreement by the Company in circumstances where CTC was negligent and/or acted with willful intent.

17. FORCE MAJEURE

If any party is prevented or delayed in performing any obligation under this agreement for any reason beyond the reasonable control of that party, then that party shall be excused from performing or timeously performing that particular obligation for the duration of that prevention or delay.

Any party so prevented or delayed shall inform the other in writing of that prevention or delay as soon as reasonably possible after the circumstances causing such prevention or delay has arisen.

The parties shall do everything reasonably possible to prevent, avoid or limit the duration or effects of any such prevention or delay. Upon termination of the circumstances giving rise to any such prevention or delay, the party so prevented or delayed shall forthwith give written notice to the other party.

While any such prevention or delay continues, the parties shall continue to comply with their obligations under this agreement which are not affected by it, to the extent that they are able lawfully to do so, subject to the right of the other party not prevented from continuing with all its obligations under this agreement to cancel this agreement by giving written notice of such termination to the other party.

For the purpose of this agreement "Force Majeure" shall mean any circumstances beyond the reasonable control of the party concerned and shall include but not be limited to:

war, revolution, riot, mob violence, sabotage, epidemic, accident, breakdown of machinery or facilities where such are not part of a party equipment or under a party's control;

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industrial action by workers or employees;

Earthquake, flood, fire or other natural physical disaster.

The mere shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances, which are themselves, Force Majeure.

18. ARBITRATION

Any dispute or difference which may arise, at any time between the parties relating to any matter out of or in connection with this agreement including its formation, its interpretation of the rights and obligations of the parties thereof or its cancellation, shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the foundation.

Any party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other party.

This clause shall not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

The arbitration shall be held:

In Emalahleni, Mpumalanga in the English language;

Immediately in an informal manner on such basis as the arbitrator may determine with a view to it being completed within 90 days after it is demanded.

The parties irrevocably agree that the decision in arbitration proceedings:

shall be final and binding upon the parties;

shall be carried into effect;

may be made an order of any court of competent jurisdiction.

This clause is severable from the rest of the agreement and will remain valid and binding on the parties notwithstanding any termination of this agreement.

19.CO-OPERATION

The parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such steps as may be reasonably open to them and necessary for putting into effect or maintenance of the terms, conditions and/or import of this agreement.

20. DOMICILUM CITANDI ET EXECUTANDI

The parties choose as their domicilium citandi et executandi for all purposes under this agreement, whether in respect of court processes, notices or other documents or communication of whatsoever nature (including the exercise of any option) the following addresses:

CTC

Physical address: **Cnr OR Tambo & Stevenson Street
Emalahleni**

Postal address: **Private Bag X 14 Leraatsfontein 1038**

Telephone: **013 692 3122**

Fax: **013 692 3028**

Reference: **Klasie La Grange**

Email: **klg@ctctraining.co.za**

The Company

Physical address:

Postal address:

Telephone:

Fax:

Reference:

Email:

Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing. It shall be competent to give such notice by facsimile.

Either party may give notice to the other party to change the physical address chosen as its domicilium citandi et executandi to another physical address in South Africa, provided that such change shall become effective on the 7th day from the deemed receipt of the notice by the other party.

Any notice sent by facsimile to the facsimile number stipulated in the domicilium citandi et executandi, shall be deemed to have been received on

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the date of dispatch (unless the contrary is proved). Any notice sent by prepaid registered post in a correctly addressed envelope sent to the address stipulated in the domicilium citandi et executandi, shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved).

Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered to the address chosen as the domicilium citandi et executandi.

21. SEVERABILITY

Each of the provisions of this agreement shall, be considered as separate terms and conditions and in the event that, this agreement is affected by legislation or any amendment thereto, or if the provision herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, than any such provisions shall be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part thereof.

22. COSTS

Each party to this agreement shall be liable for its own costs in respect of, and incidental to, the negotiation and execution of this agreement.

23. ENTIRE AGREEMENT

This agreement constitutes the entire contract between the parties with regard to the matters dealt with in this agreement and no representations, terms, conditions or warranties not contained in this agreement will be binding on the parties.

24. VARIATION AND CANCELLATION

No agreement varying, adding to, or deleting from or canceling this agreement will be effective unless reduced to writing and signed by or on behalf of the parties.

25. INDULGENCES

No indulgences granted by a party shall constitute a waiver of any of that party's rights, under this agreement. Accordingly that party will be precluded as a consequence of having granted such indulgence, from exercising any

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rights against the other which may have arisen in the past or which may arise in the future.

26. EXECUTION

This agreement may be executed by the parties in two or more counterparts with one of such counterparts to be executed by each. Such executed counterparts together will constitute the executed agreement.

27. GOVERNING LAW

The agreement will be construed in accordance with the laws prevailing in the Republic of South Africa.

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THUS DONE AND ENTERED INTO AT Colliery Training College ON THIS

THE _____ DAY OF _____ 2015

FOR COLLIERY TRAINING COLLEGE

Who warrants that he/she is duly authorized hereto

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

1. _____
WITNESS

2. _____
WITNESS

THUS DONE AND ENTERED INTO AT _____ ON THIS

THE _____ DAY OF _____ 2015

FOR THE EMPLOYING COMPANY

Who warrants that he/she is duly authorized hereto

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

1. _____
WITNESS

2. _____

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WITNESS

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