

MUTUAL TERMINATION AND SEPARATION AGREEMENT

Made and entered into by and between

BYTE ORBIT PTY LTD

Registration Number:

Registered Address:

(“THE COMPANY”)

And

HELLY BERRY

Identity Number:

780000000000000000

Address:

(“THE EMPLOYEE”)

(collectively referred to as **“the Parties”** and this document hereinafter referred to as the **“Agreement”**)

WHEREAS:

The Employee is employed by the Company as Customer Service Officer for the Company's Supply Chain business.

- I. The Employee is employed by the Company in terms of a written contract of employment dated 17th March 2008 and attached hereto as Annexure "A" ("**the Employment Contract**").
- II. The Parties have mutually agreed to terminate the Employment Contract and the Employee's employment with the Company.
- III. The Employee acknowledges that he enters into this agreement freely, voluntarily, and without any coercion.
- IV. Arising from the Parties' agreement as aforesaid, the Parties have agreed on various issues relevant to the termination of the employment relationship and have agreed to record the terms of their agreement in writing on the bases as set out herein.

NOW THEREFORE IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS: -

1. INTERPRETATION

- 1.1 The clause headings in this agreement are inserted for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify, nor amplify the terms of this agreement nor any clause herein.
- 1.2 In this agreement, unless the context indicates a contrary intention, an expression which denotes –
 - 1.2.1 words importing the masculine gender shall include the female gender and *vice versa*;
 - 1.2.2 the singular shall include the plural and *vice versa*;
 - 1.2.3 natural persons include juristic persons and *vice versa*;
 - 1.2.4 where any term is defined within the context of any particular clause in this agreement, the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that the term has not been defined in the definitions clause;
 - 1.2.5 when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or Public Holiday, in which case the last shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday;

1.2.6 where figures are referred to in numerals and in words, to the extent that there is any conflict between the two, the words shall prevail.

1.3 All annexures, if any, to this agreement shall be deemed to have been incorporated herein and shall form an integral part hereof.

1.4 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply herein.

2. TERMINATION OF EMPLOYMENT

2.1 Notwithstanding the signature date of this Agreement, the Employment Contract and Employee's employment with the Company will terminate by mutual agreement on 30 September 2018. ("**the Termination Date**"). The parties agree that the reason for the termination is redundancy.

2.2 The Employee's notice period is deemed to commence on 1st September 2018 and terminate on 30th September 2018 ("**the notice period**"). As per the LOA the employee is on a 1 months' notice period. As per this agreement the payment of such notice is included on the package below.

2.2.1 with effect from 30th September 2018, all rights and entitlements of the Employee's employment with the Company, including but not limited to contributions, if any, to the Employee's medical aid, life cover, disability and provident fund, shall terminate; and

2.2.2 insofar as the Employee is/was a member of the Company's Provident Fund and/or medical aid fund, her membership of such funds, and any entitlement which the Employee may have to any accrued benefit in terms thereof shall be dealt with in terms of the rules of the relevant fund.

1.

3. PAYMENTS TO THE EMPLOYEE

3.1 The Company shall make the following payments to the Employee on the terms and conditions set out herein below:

3.1.1 On or before 25th September 2018, the Company shall make payment to the Employee in respect of all her accrued annual leave as at 30th September 2018 taking into account any Annual Leave taken prior to the 30th September 2018.

3.1.2 For the sake of clarity, all benefits to which the Employee is entitled in terms of this Agreement have been calculated and this calculation is attached hereto as Annexure "B".

3.2 The Employee shall be paid the amounts set out hereinabove, less any deductions including but not limited to income tax, as the Company may be required to deduct.

3.3 The Company shall pay the amounts set out hereinabove, less any deductions including but not limited to income tax, into the Employee's bank account and as per the Employee's banking details that currently prevail with the Company's payroll system, unless otherwise directed by the Employee in writing on or before the Notice Date.

3.4 It is recorded that the aforesaid payments are in respect of all amounts which are now or may in future be owing by the Company or any entity within the Group of Companies to the Employee howsoever arising.

3.5 No additional payments, save for what is recorded herein, will be made by the Company to the Employee, howsoever arising.

2.

4. RETURN OF COMPANY ASSETS

4.1 The Employee will, on or before a date agreed by the parties and prior to any Separation package payment being made to the Employee, return to the Company's nominated representative all of its assets in her possession, including but not limited to and where applicable:

4.1.1 Access cards.

4.1.2 Office Keys.

4.1.3 Company Credit card(s).

4.1.4 Computer access code(s).

4.1.5 Laptop and its accessories.

4.1.6 Company Manuals, books, correspondence, reports, papers, records and/or other documentation (in both hard copy and electronic copy).

4.1.7 All documents and records relating to the Company or its employees, customers, clients, principles and suppliers, which were provided to the Employee or

obtained by the Employee in the course of the Employee's employment with the Company.

4.1.8 Safety and/or other uniform items.

4.1.9 Mobile Phone, sim and 3G card.

4.2 The Employee acknowledges and undertakes that she shall not under any circumstances delete and/or destroy any electronic and/or hard copy records or data.

4.3 The Employee acknowledges and undertakes that she will not retain any copies of correspondence, reports, papers, records, accounting records and/or any other documents which have been prepared by him or have come into her possession during the course of him rendering services to the Company, and she further acknowledges and undertakes that as at the Termination Date, she will not have in her possession and/or control any of the Company's movable property or documents (in whatever format) embodying or incorporating any of the Company's intellectual property, proprietary and/or confidential information.

5. FULL AND FINAL SETTLEMENT

5.1 Save for the obligations contained in this Agreement, this Agreement is a full and final settlement of all and any claims which the Employee may have against the Company or any entity within the Group of Companies, whether such claims arise from contract, delict, operation of law or otherwise including, but not limited to, any claims that the Employee may have arising from her Employment Contract or the termination of the employment relationship.

5.2 Without derogating from the generality of the a foregoing, the Employee acknowledges that she will have no claim against the Company or any entity within the Group of Companies including its subsidiary companies and sister companies arising out of any alleged unfair dismissal, unfair labour practice and/or unfair discrimination.

5.3 This Agreement and/or the circumstances that gave rise thereto is not an admission by the Company that it has acted unfairly, perpetrated an unfair labour practice or is guilty of any misconduct. The Employee acknowledges and agrees that the Company acted lawfully and fairly at all material times.

5.4 The Employee acknowledges and understands that any and all payments made by the Company to him in terms of this Agreement are in settlement of any and all claims as aforesaid and in consideration for the undertakings given by him in terms of this Agreement.

6. CONFIDENTIALITY

6.1 In performing her duties and functions with the Company, the Employee has had access to information or materials relating to the Company, clients and/or third parties and she has a duty of confidentiality including, but not limited to materials describing or relating to the business affairs, trade secrets, client lists, trade connections, policies and procedures of the Company, formulae, strategies, methods, processes and computer materials (including but not limited to source of object codes, data files, computer listings, computer programs and other computer materials regardless of the medium in which they are stored); and/or any other confidential information of the Company, related to its employees, the Company's clients and/or third parties ("**confidential information**").

3.

6.2 With regard to such confidential information, the Employee agrees that after the termination of employment, she shall:

6.2.1 hold the confidential information in strict confidence and will not, nor will she permit any other person to copy, reproduce, sell, resign, license, market, transfer or otherwise dispose of, or give, and/or disclose the confidential information to any unauthorized person; and

6.2.2 not use for her own benefit or for the benefit of any other person or divulge or communicate to any person or persons, except to those officials of the Company, any of the Company's secrets or other confidential information which she received or obtained in relation to the Company or Group of Companies affairs or the clients or the working of any process or invention or any marketing technique which is carried on or used by the Company.

6.3 The Parties agree that the contents of this Agreement, as well as the negotiations leading up thereto, will not be disclosed by any person or party in the absence of written permission of the other party, save in the event that such disclosure is required by court order and/or in order to enforce the provisions of this Agreement.

4.

7 NON-SOLICITATION

7.1 The Employee hereby irrevocably and unconditionally, undertakes in favour of the Company and its successors-in-title or assigns, that she will not, for a period of 12 months following the termination of her employment with the company, whether directly or indirectly, and whether for her own benefit or otherwise, without the prior written consent of the Company:

7.1.1 encourage, entice, incite, persuade, induce, solicit or canvass any of the Company's customers away from the Company or to terminate its relations with the Company or to change its contractual arrangements with the Company;

7.1.2 encourage, entice, incite, persuade, induce, solicit or canvass any employee of the Company to terminate her employment with the Company;

5.

7.1.3 furnish any information or advice to any employee then employed by the Company or to any prospective employer of such employee, or use any other means which are directly or indirectly designed, or in the ordinary course of events calculated, to result in any such employee terminating her employment with the Company and/or becoming employed by, or directly or indirectly in any way interested in, or associated with, any other person, or entity.

7.2 The Employee acknowledges and agrees that notwithstanding the manner in which the undertakings given in terms of clause 7.1 have been grouped or linked grammatically, each of them constitutes a separate and independent undertaking severable from and independent of each of the other undertakings in regard to all aspects thereof.

7.3 If any of the provisions of the undertakings in this clause 7 are declared invalid or unenforceable for any reason, the remaining provisions shall not be invalidated but shall continue to be and remain of full force and effect.

8 STATEMENTS

8.1 The Company and the Employee shall mutually agree on a proper internal communication regarding the Employee's exit from the Company.

8.2 The Employee shall not perform any act and/or take any step to procure the doing of anything the performance of which may result in causing the Company any reputational harm and/or damage. Without derogating from the generality of the foregoing, the Employee shall not make any written or oral statements injurious to, or of a disparaging nature about the Company, any company within the Group of Companies, any associated companies, and/or the Company's directors, employees and/or business associates and/or clients.

8.3 The Parties agree that the terms of this Agreement are confidential and record that neither Party will initiate discussion with any unrelated third party regarding the provisions of this Agreement, unless compelled to do so by a court processes. The latter confidentiality will

include that the Employee will not discuss, with any client nor employee nor supplier, the reason(s) that gave rise to this Agreement nor its contents.

6.

9 WARRANTIES

9.1 The Employee warrants that she will not present an originating application, summons or any other legal proceedings to any employment tribunal or court in respect of any claim in connection with her employment with the Company or its termination.

10 BREACH

10.1 Should the Employee commit any breach of her obligations as set out above, the termination of the Employee's employment shall continue to be of full force and effect but the Company shall be entitled, in its absolute discretion, to claim damages from him arising out of her breach provided that the Company shall not be entitled to exercise any right arising from any breach by the Employee unless she has been afforded five (5) days after receipt of a written notice calling upon him to remedy such alleged breach and, despite such notice and the elapse of five (5) days, the breach has not been remedied.

10.2 Should the Company commit any breach of its obligations set out above, then the termination of the Employee employment shall continue to be of full force and effect but the Employee shall be entitled to institute a claim for damages against the Company in respect of such breach; provided that the Employee shall not be entitled to exercise any right arising from any alleged breach by the Company unless the Company has been afforded five (5) days after receipt of a written notice calling upon it to remedy such alleged breach and, despite such notice and the elapse of five (5) days, the breach has not been remedied.

11 DOMICILIUM CITANDI ET EXECUTANDI

11.1 The Parties addresses contained on the first page of this Agreement will be the Parties' chosen *domicilium* address for the purpose of all legal process and proceedings which may arise in terms of this agreement.

11.2 Any notice or communication required or permitted to be given in terms of this Agreement will be valid and effective only if in writing but it will be competent to give notice by telefax or electronic mail and if delivered by hand.

7.

- 11.3 Any party may by written notice to the other party change its chosen address to any physical address, provided that the change will become effective on the 14th day after the receipt of the notice by the addressee.

12 GENERAL PROVISIONS

- 12.1 The Parties agree that all the provisions of the Employee's Employment Contract, survive its termination, including but not limited to the restraint provision at clause 18 of the Employee's Employment Contract shall remain in force and be binding on the Parties.
- 12.2 No variation, modification or waiver of any of the provisions of this Agreement or consent to any departure therefrom will in any manner be of any force or effect unless confirmed in writing and signed by the Parties and such verification, modification, waiver or consent will be effective only in this specific instance and for this specific purpose and to the extent to which it was made or given.
- 12.3 This document constitutes the sole record of the agreement between the Parties in regard to the subject matter contained in this Agreement.
- 12.4 No party will be bound by any express or implied term, representation, warranty, promise or the like, not recorded in this Agreement.
- 12.5 No other payment/s and/or benefits shall be due to the Employee from the Company and the Employee shall have no claim in this regard whatsoever.
- 12.6 All the terms set out in this Agreement are material.
- 12.7 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this Agreement will operate as a waiver of such right, nor will any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this Agreement.
- 12.8 Neither Party will be entitled to cede, assign or otherwise transfer all or any of its rights, interest or obligations under and in terms of this Agreement except with the prior written consent of the other Party.
- 8.
- 12.9 If any provision of this Agreement is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12.10 This Agreement shall be governed by and construed in accordance with the laws of South Africa

12.11 The costs of drafting, preparing and implementing this Agreement shall be borne by the Company, save where the Employee appoints her own legal representative to advise him in connection herewith, in which event the Employee shall be liable for the costs of such legal representative.

12.12 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall constitute the same agreement.

12.13 No Party may cede any of its rights or delegate or assign any of its obligations in terms of this agreement without the prior written consent of the other Party.

12.14 This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be original and which, or when taken together, shall constitute the same instrument.

9.

THUS SIGNED AT _____ ON THIS THE _____ DAY OF _____ 2018.

.....

EMPLOYEE

AS WITNESS:

.....

Name:

THUS SIGNED AT PLUMBAGO ON THIS THE of September 2018.

.....

Head of HR

who warrants that she
is duly authorised to represent
the Company

AS WITNESSES:

.....

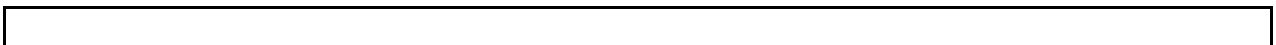
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MD

who warrants that he
is duly authorised to represent
the Company

AS WITNESSES:

.....



Name:	[REDACTED]	
Employee Number:	[REDACTED]	
Job Title:	[REDACTED]	
Service Years Rounded:	3	[REDACTED]
Appointment Date:	17-Mar-2008	yyyy/mm/dd
Service Termination Date:	30-Sep-2018	yyyy/mm/dd
Date of Notice Start:	01-Sep-2018	t 31-Dec-2018
Notice months:	4	o [REDACTED]
Leave days Due:	14,73	

Cost to Company

Basic Salary	R		[REDACTED]
Car Allowance	R	-	
Employer Medical Aid	R	-	
Employer Retirement	R		

Total Cost to Company		R	[REDACTED]
Annual Cost		R	
Weekly Cost		R	
Number of Full Years of Service	10		
Pro Rata Years of Service	0,538		
Total Years of Service			
Benefit Weeks per Year of Service			2
Retrenchment Package 1 weeks per year of service			
Bonus payment			
Leave Pay Due		R	
Notice pay (inclusive of benefits) (4 month/s)		R	
Total Package payment		R	

