**EXECUTION COPY**

**CHARGED ACCOUNT CONTROL DEED**

**(Third Party Security)**

This Deed is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, among **Coriant GmbH** ("**Company**"), **Cerberus Business Finance LLC** ("**Lender**"), and Bank of America, N.A. ("**Bank**") with respect to the following:

A. Bank has agreed to establish and maintain for Company an account 600857559018 (the "**Account**"), in accordance with the terms of an International Account Agreement between the Bank and the Company dated 22 May 2013 (the “**IAA**”).

B. Company has granted to Lender a security interest in the Account and in amounts standing from time to time to the credit of the Account pursuant to a security agreement dated [\_\_\_\_\_\_\_\_\_\_\_] between Company and Lender (the “**Security Agreement**”).

C. Company, Lender and Bank are entering into this Deed to regulate their respective rights and obligations with regard to the Account.

Accordingly, Company, Lender and Bank agree as follows:

1. Until the Effective Time (as defined in Section 16 below), Company may operate the Account in accordance with the terms of the IAA.

1. With effect from the Effective Time:

(a) Bank shall, subject to the provisions of this Deed, act only in accordance with the instructions of the Lender; and

(b) Bank shall (and Company irrevocably authorises Bank to) transfer all or any part of the credit balance in the Account to Lender in accordance with any instructions received by Bank from Lender. Such instructions are required to be in writing and to be a) delivered to Bank by post or courier or by personal delivery or b) delivered electronically and authenticated in accordance with such electronic transfer agreement(s) as may be agreed in writing between Lender and Bank from time to time. Such instructions may not be given by facsimile and shall not include instructions (standing or otherwise) for regular payments out of the Account.

Funds are available unless, in the reasonable determination of Bank, they are subject to a hold, dispute or legal or internal process preventing their withdrawal.

The Lender may not deliver an Activation Notice until such time as the Bank has notified it that the Bank has received, in form and substance satisfactory to it, a list of the Lender’s representatives authorised to operate the Account (“**Authorised Signatories**”), specimen signatures for each Authorised Signatory, a copy of the picture page of the valid passport of each Authorised Signatory and any other document or item of evidence the Bank may reasonably request in accordance with usual “know your client” best practice.

3. Bank agrees it shall not set off, charge, deduct or otherwise withdraw funds from the Account, except as permitted by Section 4, until it has been advised in writing by Lender that all of Company's obligations that are secured by the Account are paid in full. Lender shall notify Bank promptly in writing upon payment in full of Company's obligations.

Except as set out expressly in this Deed, the Security Agreement has no effect on Bank’s set-off rights whether arising by contract, statute or otherwise and does not affect the mutuality of obligations between Bank and Company insofar as necessary for the exercise of any set-off right.

4. Notwithstanding anything to the contrary in this Deed, Bank is permitted to debit or set off against the Account at any time:

(a) for its fees, commissions, charges, costs and expenses relating to the Account and this Deed and any other amount due to it under this Deed;

(b) for any reversal of a credit entry that Bank is entitled to reverse pursuant to clause 2.4 of the IAA;

(c) in relation to any amount credited to the Account pursuant to a direct debit arrangement, for the whole or any part of such amount (the “**Relevant Amount**”) where Bank is obliged to repay the Relevant Amount in accordance with that direct debit arrangement; and

(d) subject to Lender’s prior written consent, for any other amount due by Company to Bank,

together, the “**Permitted Debits**”.

5. (a) If the balances in the Account are not sufficient to compensate Bank for any fees, commissions, charges, costs or expenses due to Bank in connection with the Account or this Deed, Company agrees to pay Bank on demand the amount of such fees, charges or costs.

(b) If as the result of a Permitted Debit the Account becomes overdrawn in any amount (an “**Overdrawn** **Amount**”), Company shall pay Bank on demand an amount equal to that Overdrawn Amount together with related interest and the Bank’s reasonable costs. If, after the Effective Time, Company fails to so pay Bank immediately upon demand, Lender agrees, within five days after Bank’s demand to Lender, to pay any amount received by Lender with respect to the Overdrawn Amount.

(c) Company hereby authorises Bank, without prior notice, from time to time to debit any other account Company may have with Bank for the amount or amounts due to Bank under subsection 5(a) or 5(b).

6. (a) Bank will send to Lender at its address specified below a copy of each paper statement of account that Bank sends to Company in respect of the Account at the same time as Bank sends such statement to Company.

(b) In addition, at any time after the Effective Time, Bank shall provide Lender with such additional information regarding the Account as the Lender may reasonably request.

(c) Company consents to the disclosure of information relating to the Account by Bank to Lender pursuant to this Deed.

7. (a) Bank will not be liable to Company or Lender for any liability, expense, claim, loss, damage or cost of any nature ("**Damages**") suffered or incurred by Company or Lender and arising out of or relating to this Deed or Bank’s performance under this Deed other than those Damages which result directly from its gross negligence or intentional misconduct.

(b) In no event will Bank be liable for any loss, damage, cost or expense of any nature arising from or in relation to economic loss, loss of business, profits, revenue, goodwill and anticipated savings, special damages, loss of or corruption to data, loss of operation time, loss of contracts or any indirect, consequential, exemplary or punitive loss.

(c) Bank will be excused from failing to act or delay in acting, and no such failure or delay shall constitute a breach of this Deed or otherwise give rise to any liability of Bank, if (i) such failure or delay is caused by circumstances beyond Bank's reasonable control, including but not limited to legal or judicial constraint (for example, attachment or freeze of account), emergency conditions, action or inaction of governmental, civil or military authority, fire, strike, lockout or other labor dispute, war, riot, theft, flood, earthquake or other natural disaster, breakdown of public or private or common carrier communications or transmission facilities, equipment failure, or negligence or default of Company or Lender or (ii) such failure or delay resulted from Bank's reasonable belief that the action would have violated any law, guideline, decree, rule or regulation of any governmental authority.

(d) Bank shall have no duty to inquire or determine whether Company’s obligations to Lender are in default or whether Lender is entitled to provide the Activation Notice and any subsequent written or electronic instructions to Bank. Bank may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party.

(e) Notwithstanding any of the other provisions in this Deed, in the event of the commencement of proceedings under any applicable law providing for the relief of debtors or the protection of creditors by or against Company, Bank may act as Bank deems necessary so as to comply with any applicable law and Lender and Company each agree that Bank shall not be in violation of this Deed as a result.

(f) Bank shall be permitted to comply with any judicial or regulatory order, process or request concerning the Account or any amount deposited to the Account and shall not be in violation of this Deed for so doing.

(g) Bank shall not be obliged to comply with any request, instruction, direction, notice or other communication referred to or contemplated in this Deed if to do so would be contrary to Bank’s policy (such policy being a policy generally applicable to Bank’s account holding customers from time to time) or to the request, requirement, order or directive of any court or regulatory, governmental, fiscal, monetary or other body or authority to which Bank is subject or submits, whether or not such request, requirement or policy has the force of law.

8. Company shall indemnify Bank against, and hold it harmless from, any and all Damages (including but not limited to allocated costs of in-house legal counsel and other legal fees and expenses) suffered or incurred by Bank and in any way arising out of or in connection with this Deed or the Bank's provision of the services described in this Deed. The Lender shall indemnify Bank against, and hold it harmless from, any and all Damages (including reasonably incurred legal fees) suffered or incurred by Bank directly from Bank complying with any express instructions provided by the Lender after the Effective Time. This section does not apply to any Damages attributable to the gross negligence or intentional misconduct of Bank. Company's and Lender's obligations under this section shall survive termination of this Deed.

9.

(a) Company shall pay to Bank the amount of all costs, expenses and legal fees (including but not limited to allocated costs of in-house legal counsel) incurred by Bank in connection with the enforcement of, or the preservation of any rights under, this Deed. Company agrees to pay Bank all costs, expenses and legal fees (including allocated costs for in-house legal services) incurred by Bank in the preparation and administration of this Deed (including any amendments hereto or instruments or agreements required hereunder).

(b) The Lender shall pay to Bank within five business days of written demand the amount of all documented costs, expenses and legal fees reasonably incurred by Bank solely to the extent such costs, expenses and legal fees result directly from Bank complying with instructions provided by the Lender after the Effective Time.

10. Termination and Assignment of this Deed shall be as follows:

(a) Lender may terminate this Deed by providing notice to Company and Bank that all of Company's obligations which are secured by the Account are paid in full. Lender may also terminate this Deed upon 30 day's prior written notice to Company and Bank. Bank may terminate this Deed upon 30 days' prior written notice to Company and Lender. Company may not terminate this Deed except with the written consent of Lender and upon prior written notice to Bank. Lender may not assign any of its rights under this Deed.

(b) Notwithstanding subsection 10(a), Bank may terminate this Deed at any time by written notice to Company and Lender if either Company or Lender breaches any of the terms of this Deed, or any other agreement with Bank.

11. (a) Each party represents and warrants to the other parties that (i) this Deed constitutes its duly authorized, legal, valid, binding and enforceable obligation; (ii) the performance of its obligations under this Deed and the consummation of the transactions contemplated hereunder will not (A) constitute or result in a breach of its constitutional documents, or the provisions of any material contract to which it is a party or by which it is bound or (B) result in the violation of any law, regulation, judgment, decree or governmental order applicable to it; and (iii) all approvals and authorizations required to permit the execution, delivery, performance and consummation of this Deed and the transactions contemplated hereunder have been obtained.

(b) The parties each agree that it shall be deemed to repeat each representation and warranty in subsection 11(a) on and as of each day on which an amount is deposited to the Account.

12. (a) This Deed may be amended only in writing signed by Company, Lender and Bank.

(b) This Deed may be executed in counterparts; all such counterparts shall constitute but one and the same agreement.

(c) This Deed prevails in the event of any conflict between this Deed and any other document or written or oral statement including the IAA. This Deed supersedes all prior understandings, writings, proposals, representations and communications, oral or written, of any party relating to the subject matter hereof.

(d) This Deed constitutes notice to Bank and acknowledgement by the Bank of Lender’s security interest in the Account. This Deed shall prevail over the terms of any other communication from Lender or Company purporting to notify Bank of Lender’s security interest in the Account and the Bank shall be entitled to disregard any such communication.

(e) Save as expressly provided otherwise in this Deed, the Account shall be operated and maintained in accordance with the provisions of the IAA, a copy of which the Lender acknowledges as having received.

(f) This Deed, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with English law.

(g) The courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligations arising out of in connection with this Deed) (a "**Dispute**").

(h) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

(i) Without prejudice to any other mode of service allowed under any relevant law, Company:

* 1. irrevocably appoints Tellabs U.K. Limited, of 1 Park Row, Leeds LS1 5AB - UK as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed; and
  2. agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

13. Any written notice or other written communication to be given under this Deed shall be addressed to each party at its address set forth on the signature page of this Deed or to such other address as a party may specify in writing and only the Activation Notice may be delivered by facsimile to the facsimile number identified for that purpose on Exhibit A. Such notice shall be effective upon receipt.

14. Company and Lender shall ensure that all information (in whatever form, and including information given orally) received from Bank and relating to the Account, this Deed or the IAA, is kept strictly confidential and is not disclosed to anyone except as may be required by law or regulation.

15. Nothing contained in the Deed shall create any trust, agency, fiduciary, joint venture or partnership relationship between Bank, Company and/or Lender.

16. In this Deed:

“**Activation Notice**” means a written notice from Lender to the Bank substantially in the form of Exhibit A.

“**Business Day**" means each day (except Saturdays and Sundays) on which banks are open for general business in London.

“**Effective Time**” means:

(i) if the Activation Notice is received by Bank before 11:00am (London time) on any Business Day, 11:00am (London time) the following Business Day; and

(ii) if the Activation Notice is received by Bank on any day which is not a Business Day or if it is received by Bank after 11:00am (London time) on any Business Day, 11:00am (London time) on the second Business Day following receipt by Bank of the Activation Notice.

17. A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 (as amended or re-enacted from time to time) to enforce any term of this Deed.

In Witness Whereof, the parties hereto have executed this Deed as a deed by their duly authorized officers as of the day and year first above written.

|  |  |  |
| --- | --- | --- |
| **By Company:** |  |  |
| [signature of Director] |  |  |
| [signature of Director/Secretary] |  |  |
| SIGNED as a DEED by **Coriant GmbH** acting by  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Director  and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Director/Secretary |  | Address for notices:  *St-Martin-Straβe 76, München, Deutschland* |

|  |  |  |
| --- | --- | --- |
| **By Lender:** |  |  |
| **Cerberus Business Finance LLC** |  |  |
|  |  |  |
| By:  Name:  Title: |  | Address for notices:  Cerberus Business Finance LLC  875 Third Avenue  New York  New York 10022 |

|  |  |  |
| --- | --- | --- |
| **By Bank:** |  |  |
| [signature of authorized signatory] |  |  |
| SIGNED as a DEED by **Bank of America, N.A.** acting by Maurizio Lecci under its authority |  |  |
| Name:  Title: |  | Address for notices:  Bank of America, N.A.  26 Elmfield Road  Bromley  BR1 1WA  England  Att: Contract Management  Client Service and Delivery (CD&S) EMEA  Facsimile: +44 208 313 2170  +44 208 313 2278 |

**EXHIBIT A**

**CHARGED ACCOUNT CONTROL DEED**

[Letterhead of Lender]

**URGENT ATTENTION REQUIRED**

To: Bank of America, N.A.

26 Elmfield Road

Bromley

BR1 1WA

UK

[***Date***]

Fax: +44 208 313 2170 and +44 208 313 2278

Attention: Client Service Representative for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dear Sirs

Re: [***Name of Company***] - Account No.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "**Account**")

We refer to the Charged Account Control Deed dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "**Deed**") among [**Company name**], us and you regarding the Account. This is an Activation Notice. Terms defined in the Deed have the same meaning in this Activation Notice.

We hereby give you notice of our exercise of control of the Account.

Yours faithfully

For and on behalf of

[***Name of Lender***]