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COMPANIES FORM No. 395

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395

CHFP000

Please do not
write in
this margin

A fee of £10 is payable to Companies House in respect of
each register entry for a mortgage or charge.

Pursuant to section 395 of the Companies Act 1985

Please complete
legibly, preferably
in black type, or
bold block lettering

To the Registrar of Companies
(Address overleaf - Note 5)

For official use

Company number

W188

02906057

Name of company

* insert full name
of Company

*OPT-TEL SYSTEMS MANAGEMENT LIMITED (the "Company")

Date of creation of the charge

17 June 1999

Description of the instrument (if any) creating or evidencing the charge (note 2)

Debenture (the "Debenture")

Amount secured by the mortgage or charge

Paper Apart A

Names and addresses of the mortgagees or persons entitled to the charge

Paper Apart B

Postcode

Presentor's name address and
reference (if any) :

MacRoberts Solicitors
27 Melville Street
EDINBURGH EH3 7JF
DX ED207 MMK/MMM/1BPRO 004

For official Use
Mortgage Section

Post room



Time critical reference

Paper Apart C

Please do not
write in
this margin

Please complete
legibly, preferably
in black type, or
bold block lettering

Particulars as to commission allowance or discount (note 3)

Nil

Signed



Date 24 June 1999

On behalf of ~~XXXXXX~~ [mortgagee/chargee]†

A fee of £10 is
payable to
Companies House
in respect of each
register entry for a
mortgage or
charge.
(See Note 5)

† delete as
appropriate

Notes

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.
- 2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage", or "Legal charge", etc, as the case may be, should be given.
- 3 In this section there should be inserted the amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his:
 - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
 - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional,for any of the debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered.
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.
- 5 Cheques and Postal Orders are to be made payable to **Companies House**.
- 6 The address of the Registrar of Companies is:-
Companies House, Crown Way, Cardiff CF4 3UZ

**THIS IS THE PAPER APART REFERRED TO
IN THE FOREGOING FORM 395 RELATIVE TO
OPT-TEL SYSTEMS MANAGEMENT LIMITED (COMPANY NUMBER 02906057)
DATED 24 JUNE 1999.**

In this paper apart and in the foregoing Form 395 references to :-

"Assets" shall mean the whole of the property (including uncalled capital) which is or may be from time to time comprised in the property and undertaking of the Company;

"BoS" means The Governor and Company of the Bank of Scotland, 110 St Vincent Street, Glasgow, G2 5EJ;

statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force;

"control" of any company shall be interpreted in accordance with Section 840 of the Income and Corporation Taxes Act 1988;

"including" shall not be construed as limiting the generality of the words preceding it;

"the Debenture" shall include the Schedule;

any term or phrase defined in the Companies Act 1985 (as amended from time to time) shall bear the same meaning in the Debenture;

words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

the Debenture and to any provisions of it or to any other document referred to in the Debenture shall be construed as references to it in force for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;

any person are to be construed to include references to a corporation, firm, company, partnership, joint venture, unincorporated body of persons, individual or any state or agency of a state, whether or not a separate legal entity;

any person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

clause headings are for ease of reference only and are not to affect the interpretation of the Debenture.

PAPER APART A

All or any monies and liabilities which will for the time being (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to **BoS** by the Company, whether actually or contingently, solely or jointly and whether as principal or surety and whether or not **BoS** shall have been an original party to the relevant transaction, and including interest, discount, commission and other lawful charges or expenses which **BoS** may in the course of its business charge or incur in respect of any of those matters or for keeping the Company's account, and so that interest shall be computed and compounded according to the usual **BoS** rates and practice as well after as before any demand made or decree obtained under the Charge (the "Secured Liabilities").



PAPER APART B

BoS

PAPER APART C

Clause 3 of the Debenture

3.1 The Company charges to **BoS** as a continuing security and with full title guarantee for the payment or discharge of the Secured Liabilities:-

3.1.1 by way of legal mortgage all the freehold and leasehold property (including the property described in the Schedule) now vested in it whether or not the title to the property is registered at H.M. Land Registry together with all present and future buildings, fixtures (including trade and tenant's fixtures), plant and machinery which are at any time on the property;

3.1.2 by way of fixed charge:-

3.1.2.1 all future freehold and leasehold property belonging to the Company together with all buildings, fixtures (including trade and tenant's fixtures), plant and machinery which are at any time on the property;

3.1.2.2 all present and future interests of the Company in or over land or the proceeds of sale of it and all present and future licences of the Company to enter upon or use land and the benefit of all other agreements relating to land to which it is or may become party or otherwise entitled and all fixtures (including trade and tenant's fixtures), plant and machinery which are at any time on the property charged under the Debenture;

3.1.2.3 all the Company's goodwill and uncalled capital for the time being;

3.1.2.4 all present and future stocks, shares and other securities owned (at law or in equity) by the Company and all rights and interests accruing or offered at any time in relation to them, all rights and interests in and claims under all policies of insurance and assurance held or to be held by or insuring to the benefit of the Company and the benefit of all rights and claims to which the Company is now or may be entitled under any contracts;

3.1.2.5 all patents, patent applications, trade marks, trade mark applications, trading names, brand names, service marks, copyrights, rights in the nature of copyright, moral rights, inventions, design rights, registered designs, all trade secrets and know-how, computer rights, programmes, systems, tapes, disks, software, all applications for registration of any of them and other intellectual property rights held or to be held by the Company or in which it may have an interest and the benefit of all present and future agreements relating to the use of or licensing or exploitation of any such rights



(owned by the Company or others) and all present and future fees, royalties or similar income derived from or incidental to any of the foregoing in any part of the world;

- 3.1.2.6 all present and future book and other debts and monetary claims of the Company whether payable now or in the future and the benefit of all present and future rights and claims of the Company against third parties relating to them and capable of being satisfied by the payment of money (save as charged under sub-clause 3.1.2.4 of the Debenture);
- 3.1.2.7 all present and future plant and machinery not otherwise charged under Clause 3 of the Debenture and all other present and future chattels of the Company (excluding any of the same for the time being forming part of the Company's stock in trade or work in progress); and
- 3.1.2.8 all present and future bank accounts, cash at bank and credit balances of the Company with any bank or other person whatsoever and all rights relating or attaching to them (including the right to interest);
- 3.1.3 by way of floating charge all the Assets not effectively otherwise charged by this Clause 3 of the Debenture, including (without limitation) any immovable property of the Company in Scotland and any Assets in Scotland falling within any of the types mentioned in sub-clause 3.1.2 of the Debenture, but so that the Company is prohibited from creating any fixed security or mortgage or any other floating charge over the Assets having priority over or ranking pari passu with the floating charge created by this sub-clause (otherwise than in favour of **BoS**) and the Company will have no power without the consent of **BoS** to part with or dispose of any part of those Assets except by way of sale in the ordinary course of its business.
- 3.2 **BoS** may at any time, by notice to the Company, immediately convert the floating charge created under sub-clause 3.1.3 of the Debenture into a fixed charge over any Assets specified in that notice and the floating charge will, without notice from **BoS**, automatically be converted with immediate effect into a fixed charge:-
 - 3.2.1 in respect of any Assets which become subject to a fixed charge in favour of any other person or to a disposition otherwise than by way of sale in the ordinary course of the Company's business immediately upon such charge or disposition;
 - 3.2.2 in respect of all the Assets charged under sub-clause 3.1.3 of the Debenture if and when the Company ceases to carry on business or to be a going concern; and
 - 3.2.3 in respect of all Assets on the making of an order for the compulsory winding-up of the Company or on the convening of a meeting for the passing of a resolution for the voluntary winding-up of the Company or on the presentation of a petition for the making of an administration order in relation to the Company or on the presentation of an application for a warrant of execution, writ of fieri facias, garnishee order or charging order.
- 3.3 Sub-clause 3.2 of the Debenture will not apply to any Assets situated in



Scotland.

3.4 The Company will not without the previous written consent of **BoS**:-

- 3.4.1 create or attempt to create or permit to subsist any mortgage, charge, lien (other than a lien arising in the ordinary course of business by operation of law) or encumbrance on any Asset charged under the Debenture; or
- 3.4.2 dispose of or part with possession in any way (except on the determination of any lease, tenancy or licence) or share occupation of any Asset; or
- 3.4.3 in any way dispose of the equity of redemption of any such Asset or any interest in any such Asset

and the Company applies (and will apply), to the Chief Land Registrar for a restriction to be entered on the register of title of all present and future registered freehold and leasehold property of the Company in the following terms:-

"Except under an order of the Registrar no disposition by the proprietor of the land is to be registered without the consent of the proprietor for the time being of the charge hereby created".

3.5 The Company will, if required to do so by **BoS**, deposit with **BoS** during the continuance of this security and **BoS** will be entitled to hold all deeds and documents of title relating to the Company's freehold, leasehold and heritable property and stocks, shares and other securities and all policies of insurance and assurance.

3.6 The Company (at its own cost) will on demand in writing by **BoS** execute and deliver in such form as **BoS** may reasonably require:-

- 3.6.1 a legal mortgage of any freehold or leasehold property of the Company which is not effectively charged by sub-clause 3.1.1 of the Debenture and of any freehold or leasehold property acquired by the Company after the date of the Debenture;
- 3.6.2 a standard security or other fixed security over the Company's heritable freehold, leasehold or other property;
- 3.6.3 a fixed charge or assignment in security of any Asset subject to a floating charge under sub-clause 3.1.3 of the Debenture; and
- 3.6.4 a chattel mortgage over such chattels, plant and machinery as **BoS** may specify;

and the Company will do and concur in all such other acts or things as **BoS** may deem necessary to vest in **BoS** title to all or any of the Assets.

3.7 Any fixed mortgage, charge or other security hereafter created by the Company in favour of **BoS** shall have priority over the floating charge created by the Debenture, except insofar as **BoS** shall declare otherwise whether at or after the time of creation of such fixed security.

3.8 The Company will pay into its account with **BoS** (or as **BoS** may direct) all moneys which it receives in respect of any policies of insurance or assurance,



fees, royalties, income or book or other debts or any other of the rights and claims charged to **BoS** under sub-clause 3.1.2 of the Debenture and until such payment hold all moneys so received upon trust for **BoS** and will not without the prior written consent of **BoS** charge, factor, discount, or assign any of those policies, fees, royalties, income, debts, rights or claims in favour of any other person or purport to do so.

Clause 10 of the Debenture

10. While the Debenture subsists:-

- 10.1 no statutory or other power of granting or agreeing to grant or of accepting or agreeing to accept surrenders of leases or tenancies of the whole or any part of the freehold and leasehold property charged under the Debenture will be capable of being exercised by the Company without the previous written consent of **BoS**;
- 10.2 the Company shall not be entitled to part with possession (otherwise than on the determination of any lease, tenancy or licence) of any property hereby charged, or to share the occupation thereof with any other person or persons, or to surrender or purport to surrender or permit to be forfeited the lease of any leasehold property hereby charged without such consent as aforesaid;
- 10.3 Section 93 of the Law of Property Act 1925 (consolidation of mortgages) will not apply to the Debenture.



FILE COPY



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 401(2) of the Companies Act 1985

COMPANY No. 02906057

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 17th JUNE 1999 AND CREATED BY OPT-TEL SYSTEMS MANAGEMENT LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND ON ANY ACCOUNT WHATSOEVER WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 25th JUNE 1999.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 29th JUNE 1999.



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

A handwritten signature in black ink, consisting of a stylized, cursive 'S' followed by a flourish.



C O M P A N I E S H O U S E