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COMPANIES FORM No. 395

# 395

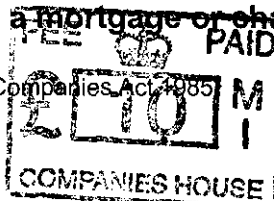
CHFP014

## Particulars of a mortgage or charge

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

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



For official use

Company number

3

03334623

Name of company

\* Chelsfield RL Limited (the "Company")

Date of creation of the charge

17 October 2002

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

Debenture dated 17 October 2002 and made between the Company and Deutsche Bank Luxembourg S.A. (the "Debenture")

Amount secured by the mortgage or charge

(NB. UNLESS OTHERWISE DEFINED HEREIN OR IN ANY OTHER SECTION OF THIS FORM M395, CAPITALISED TERMS SHALL HAVE THE MEANING ASCRIBED TO THEM IN ANNEXURE 1 ATTACHED HERETO, WHICH ALSO FORMS PART OF THIS FORM 395)

All Indebtedness owed by the Obligors to the Finance Parties under the Facility Documents excluding any obligation or liability to the extent that it would constitute unlawful financial assistance within the meaning of Sections 151 and 152 of the Companies Act 1985 or any other applicable laws in any applicable jurisdiction (the "Secured Obligations").

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

Deutsche Bank Luxembourg S.A. , 2 Boulevard Konrad Adenauer,

L-115 Luxembourg (the "Security Agent")

Postcode N/A

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

Latham & Watkins

99 Bishopsgate, London  
EC2M 3XF

027094-0029 LEE/DJN/JC

Time critical reference

For official Use

Mortgage Section

Post room



A26  
COMPANIES HOUSE

\*A97R0FD9\*

0252  
26/10/02

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Please do not  
write in this  
binding margin

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

**(a) Fixed Security**

By clause 3.1 of the Debenture, with full title guarantee and as continuing security for the payment and discharge of the Secured Obligations, the Company has charged to the Security Agent (for the benefit of the Finance Parties):-

(i) by way of first legal mortgage all estates or interest in any freehold or leasehold property and any rights under any licence or other agreement or document which gives the Company a right to occupy or use property wheresoever situate now belonging to it and all buildings and Fixtures thereon, the proceeds of sale of all or any part thereof and the benefit of any covenants for title given or entered into by any predecessor in

(continued on page 4 of continuation sheet no.1)

Particulars as to commission allowance or discount (Note 3)

NIL

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

Signed

*Latham + Watson*

Date 24<sup>th</sup> October 2002

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

† 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", "Debentures", "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 CF14 3UZ

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

title and any moneys paid or payable in respect of such covenants subject, in the case of any leasehold properties, to any necessary third party's consent to such mortgage being obtained; and

(ii) by way of first fixed charge:

(A) (to the extent that they are not the subject of a legal mortgage under paragraph (i) above) all present and future estates or interests in any freehold or leasehold property and any rights under any licence or other agreement or document which gives the Company a right to occupy or use property wheresoever situate now or hereafter belonging to it and all buildings and Fixtures thereon, the proceeds of sale of all or any part thereof and the benefit of any covenants for title given or entered into by any predecessor in title of the Company and any moneys paid or payable in respect of such covenants subject, in the case of any leasehold properties, to any necessary third party's consent to such charge being obtained;

(B) all plant and machinery (to the extent they are not the subject of a mortgage under paragraph (a) above), computers and vehicles now or in the future owned by the Company (subject to any necessary third party's consent to such charge being obtained) and the Company's interest in any plant or machinery in its possession;

(C) all moneys standing to the credit of any of the Accounts (including without limitation, all interest accrued on any such Account and any investment made out of any such moneys or Accounts and the debts represented by any such Account), provided that without prejudice to any other provision of Clause 3 of the Debenture, any such moneys paid out of such accounts without breaching the terms of the Facility Documents and not paid into another such Account in the name of the Company shall be released from the fixed charge described in this sub-paragraph (C) upon the proceeds being so paid out;

(D) (to the extent that they do not fall within any other sub-paragraph of this paragraph (ii) or are not effectively assigned pursuant to Clause 3.2 (Assignment) of the Debenture) the Company's rights and benefits under the Contracts;

(E) (to the extent not effectively assigned pursuant to Clause 3.2 (Assignment) of the Debenture) all benefits in respect of the Insurances and all claims and returns of premiums in respect thereof;

(F) all of the Company's present and future book and other debts, the proceeds of the same and all other moneys due and owing to it or which may become due and owing to it at any time in the future and the benefit of all rights, securities and guarantees of any nature now or at any time enjoyed or held by it in relation to any of the foregoing;

(G) any beneficial interest, claim or entitlement which the Company has in any pension fund;

(H) the Company's present and future goodwill;

(continued on page 4 of continuation sheet no.2)

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**(I) (to the extent a charge may be created over such licences, consents and authorisations in accordance with applicable law) the benefit of all present and future licences, consents and authorisations (statutory or otherwise) held in connection with its business or the use of any Security Asset and the right to recover and receive all compensation which may be payable to it in respect of them;**

**(J) the Company's present and future uncalled capital;**

**(K) the Company's present and future Intellectual Property Rights; and**

**(L) all stocks, shares, debentures, bonds, warrants, coupons or other securities and investments now or in the future owned by it from time to time not charges pursuant to Clause 3.3 (Charge on Shares) of the Debenture.**

**(b) Assignment**

**By Clause 3.2 of the Debenture, with full title guarantee as continuing security for the payment, discharge and performance of the Secured Obligations, the Company has assigned and agreed to assign absolutely to the Security Agent (for the benefit of the Finance Parties) all of its rights, title and interest (if any) in and to:-**

**(i) the Contracts to which it is a party;**

**(ii) the Insurances and all proceeds and benefits in respect thereof; and**

**(iii) the indemnity granted by the Shareholder Guarantor in favour of the Company relating to any charges arising under section 111 of the Finance Act 2002, in the letter dated on or about the date of the Debenture between the Shareholder Guarantor and the Company.**

**(c) Charge on Shares**

**By Clause 3.3 of the Debenture, with full title guarantee and as continuing security for the payment, discharge and performance of the Secured Obligations, the Company has equitably mortgaged and charged and agreed to equitably mortgage and charge to the Security Agent (for the benefit of the Finance Parties):**

**(i) all Group Shares held now or in the future by it and/or any nominee on its behalf; and**

**(ii) all Related Rights accruing to all or any of the Group Shares held now or in the future by it and/or any nominee on its behalf.**

**(d) Floating Charge**

**By Clause 3.5 of the Debenture, with full title guarantee and as continuing security for the payment, discharge and performance of the Secured Obligations, the Company has charged in favour of the Security Agent (for the benefit of the Finance Parties) by way of a first floating charge all its undertaking and assets both present and future not effectively mortgaged, charged or assigned by or pursuant to Clause 3.1 (Fixed Security), 3.2 (Assignment) or 3.3 (Charges on Shares) of the Debenture.**

**(e) Negative Pledge**

**By Clause 7.2 of the Debenture, the Company undertook that, save with the prior written consent of the Security Agent or as otherwise permitted by any Facility Document, it would not:**

**(i) create or permit to exist any Encumbrance of any kind or any trust over any of the Security Assets other than as contemplated by the Deed of Priority;**

**(ii) sell, transfer, grant, lease or otherwise dispose (or agree to do the same) of any Security Asset; or**

**(iii) do or cause to permit to be done anything which may materially depreciate, jeopardise or otherwise materially prejudice the market value or collateral value of any Security Asset of the rights of the Security Agent or the Finance Parties under any Facility Document.**

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

**ANNEXURE 1**

**Of Form M395**

**in respect of the registration of the Debenture (as defined herein)**

**("Form M395")**

**THIS ANNEXURE 1 FORMS PART OF FORM M395 REFERRED TO ABOVE**

**Definitions**

In this form M395, including this Annexure 1, the following words and expressions shall have the following meanings:

**"Accounts"** means all accounts or sub-accounts opened or maintained now or in the future by the Company with any bank, financial institution or other person;

**"Contracts"** means all contracts and agreements to which the Company is a party and/or that confer any rights upon the Company (including, without limitation, all Material Contracts, any letters of credit issued in its favour and all bills of exchange and other negotiable instruments held by it);

**"Deed of Priority"** means the Deed of Priority dated on or about the date of the Debenture between, inter alia, the Obligors, the Junior Banks, the Junior Agent and the Security Agent (each as defined therein);

**"Encumbrance"** means (a) a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person, (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts so as to effect payment of sums owed or payable to any person or (c) any other type of preferential arrangement or agreement including title transfer, sale and leaseback, sale and reacquisition and title retention arrangements) having a similar effect;

**"Facility Agreement"** means the Senior Facility Agreement dated 31 August 2001, as amended and restated by an amendment agreement dated 20 March 2002, and made between, among others, the Borrower, the Guarantors, the Banks and the Security Agent (each as defined therein);

**"Facility Documents"** means all those documents listed or referred to in Schedule 9 of the Facility Agreement;

**"Finance Parties"** means together the Facility Agent, the Security Agent, the Lead Arranger and the Banks (each as defined in the Facility Agreement);

**"Fixtures"** means all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery from time to time thereon owned by any Obligor;

**"Group Shares"** means all the shares owned by the Company as specified in Schedule 3 of the Debenture together with all other stocks, shares, debentures, bonds, warrants, coupons or other securities and investments now or in the future owned by the Company from time to time;

**"Indebtedness"** means any obligation (whether incurred jointly, severally, as principal or as surety or in any other capacity whatsoever) for the payment or repayment of money, whether present or future, actual or contingent;

**"Insurances"** means all contracts and policies of insurance of any kind taken out or to be taken out by or on behalf of the Company or in which the Company has an interest;

**"Intellectual Property Rights"** means any patent, trademark, service mark, registered design, trade name or copyright required to carry on the business of any Obligor;

**"Material Contracts"** means those contracts set out in Schedule 8 of the Facility Agreement;

**"Obligor"** means Global Switch S.à r.l. and the Guarantors from time to time under the Facility Agreement (as defined therein);

**"Related Rights"** means in relation to any Group Shares:

(a) any dividend or interest paid or payable in relation thereto;

(b) any stock, shares, securities, rights, moneys or property accruing or offered at any time (whether by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise) or in substitution or exchange therefore or otherwise derived therefrom; and

(c) any dividend, interests or other income in respect of any asset referred to in paragraph (b) above;

**"Security Assets"** means all assets, rights and property of the Company that are the subject of any security created by the Debenture; and

**"Shareholder Guarantor"** means Chelsfield PLC.

**FILE COPY**



**CERTIFICATE OF THE REGISTRATION  
OF A MORTGAGE OR CHARGE**

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

COMPANY No. 03334623

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 17th OCTOBER 2002 AND CREATED BY CHELSFIELD R L LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE OBLIGORS TO THE FINANCE PARTIES UNDER THE TERMS OF THE AFOREMENTIONED INSTRUMENT CREATING OR EVIDENCING THE CHARGE WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 26th OCTOBER 2002.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 30th OCTOBER 2002.



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*

— for the record —