

Company Number: 03128044

**THE COMPANIES ACT 2006**

**COMPANY LIMITED BY SHARES**

**DECISION OF THE SOLE SHAREHOLDER**

**OF**

**TIVOLI SYSTEMS (UK) LIMITED**

**Passed 22 December 2009**

**TUESDAY**



A03 \*A0EETHYA\* 145  
02/03/2010  
COMPANIES HOUSE

On 22 December 2009, the sole member of the Company made the following decision which might otherwise have been taken by the Company in general meeting and which has effect as if it had been agreed by the Company in general meeting:

**THAT:**

- (a) the Articles of Association of the Company be amended by deleting all the provisions of the Company's Memorandum of Association which, by virtue of section 28 of the Companies Act 2006, are to be treated as provisions of the Company's Articles of Association; and
- (b) the Articles of Association contained in the document attached to this resolution be adopted as the Articles of Association of the Company in substitution for, and to the exclusion of, the existing Articles of Association.

*A. M. C. Sullivan*

Alison Sullivan  
Company Secretary

**Company No: 03128044**

**THE COMPANIES ACT 2006**

**ARTICLES OF ASSOCIATION  
OF  
TIVOLI SYSTEMS (UK) LIMITED  
(THE "COMPANY")**

**PRIVATE COMPANY HAVING A SHARE CAPITAL  
(ADOPTED BY SPECIAL RESOLUTION PASSED ON 22 DECEMBER 2009)**

## **INDEX**

### **PART 1 : INTERPRETATION AND LIMITATION OF LIABILITY**

- 1 Defined terms
- 2 Liability of members

### **PART 2 : DIRECTORS**

#### **DIRECTORS' POWERS AND RESPONSIBILITIES**

- 3 Directors' general authority
- 4 Shareholders' reserve power
- 5 Directors may delegate
- 6 Committees

#### **DECISION-MAKING BY DIRECTORS**

- 7 Directors to take decisions collectively
- 8 Decisions
- 9 Calling a directors' meeting
10. Participation in directors' meetings
- 11 Quorum for directors' meetings
- 12 Chairing of directors' meetings
- 13 Casting vote
- 14 Conflicts of interest
15. Records of decisions to be kept
- 16 Directors' discretion to make further rules
- 17 Directors' interests
- 18 Directors' conflicts

#### **APPOINTMENT OF DIRECTORS**

- 19 Methods of appointing directors
- 20 Termination of director's appointment
21. Alternate directors

- 22 Directors' remuneration
- 23 Directors' expenses
- 24. Secretary

### **PART 3 : SHARES AND DISTRIBUTIONS**

#### **SHARES**

- 25. All shares to be fully paid up
- 26. Allotment of shares
- 27. Powers to issue different classes of share
- 28. Company not bound by less than absolute interests
- 29. Share certificates
- 30. Replacement share certificates
- 31. Share transfers
- 32. Transmission of shares
- 33. Exercise of transmitters' rights
- 34. Transmitters bound by prior notices

#### **DIVIDENDS AND OTHER DISTRIBUTIONS**

- 35. Procedure for declaring dividends
- 36 Payment of dividends and other distributions
- 37. No interest on distributions
- 38. Unclaimed distributions
- 39 Non-cash distributions
- 40. Waiver of distributions

#### **CAPITALISATION OF PROFITS**

- 41. Authority to capitalise and appropriation of capitalised sums

### **PART 4 ; DECISION-MAKING BY SHAREHOLDERS**

#### **ORGANISATION OF GENERAL MEETINGS**

- 42 Attendance and speaking at general meetings

- 43. Quorum for general meetings
- 44. Chairing general meetings
- 45 Attendance and speaking by directors and non-shareholders
- 46 Adjournment

#### **VOTING AT GENERAL MEETINGS**

- 47 Voting. general
- 48 Errors and disputes
- 49 Poll votes
- 50 Content of proxy notices
- 51 Delivery of proxy notices
- 52 Amendments to resolutions

#### **PART 5 : ADMINISTRATIVE ARRANGEMENTS**

- 53 Deemed delivery of documents and information
- 54 Means of communication to be used
- 55. Company seals
- 56 No right to inspect accounts and other records
- 57 Provision for employees on cessation of business

#### **DIRECTORS' INDEMNITY AND INSURANCE**

- 58 Indemnity
- 59 Funding of expenditure
- 60 Insurance

## **PART 1 : INTERPRETATION AND LIMITATION OF LIABILITY**

### **Defined terms**

**1.** In the articles, unless the context requires otherwise—

**"Act"** means the Companies Act 2006 including any modification or re-enactment thereof for the time being in force,

**"article"** means the appropriate section of these articles,

**"articles"** means the company's articles of association,

**"bankruptcy"** includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy,

**"chairman"** has the meaning given in article 12;

**"chairman of the meeting"** has the meaning given in article 44,

**"Companies Acts"** means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company,

**"director"** means a director of the company, and includes any person occupying the position of director, by whatever name called,

**"distribution recipient"** has the meaning given in article 36,

**"document"** includes, unless otherwise specified, any document sent or supplied in electronic form,

**"electronic form"** has the meaning given in section 1168 of the Companies Act 2006,

**"fully paid"** in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company,

**"Group Company"** means the company or any other body (whether or not incorporated) which is or was its parent undertaking or subsidiary undertaking or another subsidiary undertaking of any such parent undertaking and "Group" shall be construed accordingly,

**"hard copy form"** has the meaning given in section 1168 of the Companies Act 2006,

**"holder"** in relation to shares means the person whose name is entered in the register of members as the holder of the shares,

**"instrument"** means a document in hard copy form,

**"ordinary resolution"** has the meaning given in section 282 of the Companies Act 2006,

**"paid"** means paid or credited as paid,

**"participate"** in relation to a directors' meeting, has the meaning given in article 10,

**"proxy notice"** has the meaning given in article 50,

**"shareholder"** means a person who is the holder of a share;

**"shares"** means shares in the company,

**"special resolution"** has the meaning given in section 283 of the Companies Act 2006,

**"subsidiary"** has the meaning given in section 1159 of the Companies Act 2006;

**"transmittee"** means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law, and

**"writing"** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise

Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company.

### **Liability of members**

**2.** The liability of the members is limited to the amount, if any, unpaid on the shares held by them

## **PART 2 : DIRECTORS**

### **DIRECTORS' POWERS AND RESPONSIBILITIES**

#### **Directors' general authority**

**3.** Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company

#### **Shareholders' reserve power**

**4.—(1)** The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution

#### **Directors may delegate**

**5.—(1)** Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—

(a) to such person or committee,

- (b) by such means (including by power of attorney),
- (c) to such an extent,
- (d) in relation to such matters or territories, and
- (e) on such terms and conditions,

as they think fit

(2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

### **Committees**

**6.—**(1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

## **DECISION-MAKING BY DIRECTORS**

### **Directors to take decisions collectively**

**7.—**(1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8

(2) If—

- (a) the company only has one director, and
- (b) no provision of the articles requires it to have more than one director, the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making

### **Decisions**

**8.—**(1) A decision of the directors is taken in accordance with this article when a majority of the directors indicate to each other by any means that they share a common view on a matter.

(2) Such a decision may take the form of a resolution in writing, where a majority of voting directors have each signed one or more copies of it or to which each voting director has otherwise indicated agreement in writing, and either method of signifying agreement may be validly effected by electronic means.

### **Calling a directors' meeting**

**9.—**(1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such



notice The company secretary may call a board meeting by giving notice to the directors

(2) Notice of a directors' meeting must be given to each director, but need not be in writing

(3) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company either before or after the date on which the meeting is held Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it

### **Participation in directors' meetings**

**10.**—(1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

(a) the meeting has been called and takes place in accordance with the articles, and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is

### **Quorum for directors' meetings**

**11.**—(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, and unless otherwise fixed it is one

(3) If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision—

(a) to appoint further directors, or

(b) to call a general meeting so as to enable the shareholders to appoint further directors

### **Chairing of directors' meetings**

**12.**—(1) The directors may appoint a director to chair their meetings

(2) The person so appointed for the time being is known as the chairman.

(3) The directors may terminate the chairman's appointment at any time

(4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it

### **Casting vote**

**13.**—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote

(2) But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes

### **Conflicts of interest**

**14.**—(1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) But if paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes

(3) This paragraph applies when—

(a) the director declares their interest in an actual or proposed transaction or arrangement with the company and, after consideration and subject always to article 16(1), either the company by ordinary resolution or the directors pursuant to article 16,

(i) waives the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process, or

(ii) approves the director's participation, or

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest

(4) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting

(5) Subject to paragraph (6), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.

(6) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes

### **Directors' Interests**

**15.**—(1) Provided that he has disclosed to the directors the nature and extent of any interest of his in accordance with and to the extent required by the Act or the

interest is deemed disclosed by article 15(2), a director notwithstanding his office

(a) may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise interested,

(b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate in which the company is interested or any Group Company or any body corporate in which any such Group Company is interested,

(c) may act, by himself or through a firm in which he is interested, in a professional capacity for the company or any Group Company or any body corporate in which any Group Company is interested (otherwise than as auditor),

(d) may hold any other place of profit with the company (otherwise than as auditor) in conjunction with his office as the directors may determine, and

(e) shall not, by reason of his office or the fiduciary relationship thereby established, be accountable to the company for any remuneration or other benefit which he or any other person derives from any such office or employment or from any such transaction or arrangement or from acting in a professional capacity or from any interest in any such undertaking or body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or remuneration or other benefit and receipt of any such remuneration or other benefit shall not constitute a breach of his duty under section 176 of the Act.

(2) For the purposes of this article 15 a director shall be deemed to have disclosed the nature and extent of an interest which consists of him being a director, officer or employee of any other Group Company

(3) For the purposes of this article 15 a conflict of interest includes a conflict of interest and duty and a conflict of duties

### **Directors' Conflicts**

**16.**—(1) For the purposes of section 175 of the Act, the directors (or in the case of a sole director company, the shareholder) may authorise to the fullest extent permitted by law any matter proposed to them which would, if not so authorised, constitute or give rise to an infringement of duty by a director under that section

(2) Any authorisation of a matter pursuant to article 16(1) shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised

(3) Any authorisation of a matter under article 16(1) shall be subject to such conditions or limitations as the directors may specify, whether as the time such authorisation is given or subsequently, and may be terminated or varied by the directors at any time. A director shall comply with any obligations imposed on him by the other directors pursuant to any such authorisation

(4) A director shall not, by reason of his office or the fiduciary relationship thereby established, be accountable to the company for any remuneration or

other benefit which derives from any matter authorised by the directors under article 16(1) and any transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such remuneration or other benefit or on the ground of the director having any interest as referred to in the said section 175

(5) A director shall be under no duty to the company with respect to any information which he obtains or has obtained otherwise than as a director or officer or employee of the company and in respect of which he owes a duty of confidentiality to another person. However, to the extent that his connection with that other person conflicts, or possibly may conflict, with the interests of the company, this article 16(5) applies only if the existence of that connection has been authorised by the directors (or in the case of a sole director company, the shareholder) under article 16(1) above. In particular, the director shall not be in breach of the general duties he owes to the company by virtue of sections 171 to 177 of the Act because he fails

(a) to disclose any such information to the directors or to any director or other officer or employee of the company, and/or

(b) to use any such information in performing his duties as a director or officer or employee of the company

(6) Where the existence of a director's connection with another person has been authorised by the directors (or in the case of a sole director company, the shareholder) under article 16(1) and his connection with that person conflicts, or possibly may conflict, with the interests of the company, the director shall not be in breach of the general duties he owes to the company by virtue of sections 171 to 177 of the Act because he

(a) absents himself from meetings of the director or any committee thereof at which any matter relating to the conflict of interest or possible conflict of interest will or may be discussed or from the discussion of any such matter at a meeting or otherwise, and/or

(b) makes arrangements not to receive documents and information relating to any matter which gives rise to the conflict of interest or possible conflict of interest sent or supplied by the company and/or for such documents and information to be received and read by a professional adviser, for so long as he reasonably believes such conflict of interest (or possible conflict of interest) subsists

(7) The provisions of articles 16 (5) and 16 (6) are without prejudice to any equitable principle or rule of law which may excuse the director from

(a) disclosing information, in circumstances where disclosure would otherwise be required under these articles or otherwise, or

(b) attending meetings or discussions or receiving documents and information as referred to in article 16(6) in circumstances where such attendance or receiving such documents and information would otherwise be required under these articles.

## **Records of decisions to be kept**

**17.** The company must cause minutes of all proceedings at meetings of its directors to be recorded and these must be kept for at least ten years from the date of the meeting.

## **Directors' discretion to make further rules**

**18.** Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors

## **APPOINTMENT OF DIRECTORS**

### **Methods of appointing directors**

**19.—(1)** Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

(a) by the holder or holders for the time being of more than one-half of the issued ordinary shares of the company, or

(b) by a decision of the directors

(2) Any appointment under article 19(1)(a) shall be effected by a notice in writing signed by or on behalf of the member or members exercising the power and shall take effect upon lodgement at the registered office of the company or upon presentation at a board meeting or general meeting of the company, or upon such later date as may be specified in the notice

(3) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(4) For the purposes of paragraph (3), where two or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder

### **Termination of director's appointment**

**20.—(1)** The holder or holders of more than one-half of the issued ordinary shares of the company may remove from office any director howsoever appointed. Any such removal shall be effected by a notice in writing signed by or on behalf of the member or members exercising the power and shall take effect upon lodgement at the registered office of the company or upon presentation at a board meeting or general meeting of the company or upon such later date as may be specified in the notice

(2) A person ceases to be a director as soon as—

(a) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law,

(b) a bankruptcy order is made against that person,

(c) a composition is made with that person's creditors generally in satisfaction of that person's debts,

(d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months,

(e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have,

(f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

(3) Any director who is an employee of any Group Company is deemed to resign their directorship when their employment with that and any other Group Company ends, subject to a board resolution noting their resignation

### **Alternate directors**

**21.—**(1) Any director may appoint as an alternate any other person to

(a) exercise that director's powers, and

(b) carry out that director's responsibilities,

in relation to the taking of decisions by the director(s) in the absence of the alternate's appointor provided that such appointment shall, where the proposed alternate is not an employee of a Group Company, be subject to approval by a decision of the directors

(2) Any appointment or removal of an alternate must be effected by notice in writing to the company signed by the appointor, or in any other manner as provided for in article 8

(3) The notice must:

(a) identify the proposed alternate,

(b) in the case of a notice of appointment, contain a statement either signed by the proposed alternate or sent by electronic means by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice, and

(c) specify any conditions attaching to the appointment

(4) An alternate director has the same rights in relation to any directors' meeting, and all meetings of committees of directors of which the appointor is a member, or directors' written resolution, or other decision of the directors reached in accordance with Article 8, as the alternate's appointor

(5) Except as the articles specify otherwise, alternate directors are subject to the same restrictions as their appointors

(6) A person who is an alternate director but not a director

(a) may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and

(b) may sign (or otherwise indicate his agreement in writing to) a written resolution (but only if that person's appointor has not signed or otherwise indicated his agreement in writing to such written resolution).

No alternate may be counted as more than one director for such purposes

(7) A director who is an alternate director has an additional vote on behalf of each appointor who is

(a) not participating in a directors' meeting, and

(b) would have been entitled to vote if they were participating in it

(8) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company

(9) An alternate director's appointment as an alternate terminates

(a) when the appointment terminates in accordance with any termination conditions pursuant to article 21(3)(c) or when the appointor revokes the appointment by notice to the company in writing specifying when it is to terminate,

(b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the appointor, would result in the termination of the appointor's appointment as a director;

(c) on the death of the appointor, or

(d) when the appointor's appointment as a director terminates

### **Directors' remuneration**

**22.—**(1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

(a) for their services to the company as directors, and

(b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

(a) take any form, and

(b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested

### **Directors' expenses**

**23.** The company may pay any reasonable expenses which the directors (including alternate directors) properly incur in connection with their attendance at—

(a) meetings of directors or committees of directors,

(b) general meetings, or

(c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company

### **Secretary**

**24.** It shall not be necessary for the company to have a secretary

## **PART 3 : SHARES AND DISTRIBUTIONS**

### **SHARES**

#### **All shares to be fully paid up**

**25.** No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue

#### **Allotment of shares**

**26.—(1)** The directors may exercise any power of the company to allot shares or grant rights to subscribe for or convert any security into shares pursuant to section 550 of the Act

(2) The directors may exercise any power of the company pursuant to section 551 of the Act if they are authorised to do so by resolution of the company in accordance with that section

(3) In accordance with section 567 of the Act, the requirements of section 561 and 562 of the Act are excluded in relation to allotments of equity securities either by the company or the directors

#### **Powers to issue different classes of share**

**27.—(1)** Subject to the articles, but without prejudice to the rights attached to any existing share, either the company or the directors may issue shares with such rights or restrictions as may be determined by, respectively, either an



ordinary resolution of the company or by a resolution of the majority of the directors

(2) Either the company or the directors may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares

### **Company not bound by less than absolute interests**

**28.** Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it

### **Share certificates**

**29.—**(1) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds

(2) Every certificate must specify—

- (a) in respect of how many shares, of what class, it is issued,
- (b) the nominal value of those shares,
- (c) that the shares are fully paid, and
- (d) any distinguishing numbers assigned to them

(3) No certificate may be issued in respect of shares of more than one class.

(4) If more than one person holds a share, only one certificate may be issued in respect of it

(5) Certificates must—

- (a) have affixed to them the company's common seal, or
- (b) be otherwise executed in accordance with the Companies Acts

### **Replacement share certificates**

**30.—**(1) If a certificate issued in respect of a shareholder's shares is—

- (a) damaged or defaced, or
- (b) said to be lost, stolen or destroyed,

that shareholder is entitled to be issued with a replacement certificate in respect of the same shares

(2) A shareholder exercising the right to be issued with such a replacement certificate—

- (a) may at the same time exercise the right to be issued with a single certificate or separate certificates,
- (b) must return the certificate which is to be replaced to the company if it is damaged or defaced, and
- (c) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide

### **Share transfers**

**31.**—(1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor

(2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any instrument of transfer which is registered

(4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it

(5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent

### **Transmission of shares**

**32.**—(1) If title to a share passes to a transmittee, the company may only recognise the transmittee as having any title to that share

(2) A transmittee who produces such evidence of entitlement to shares as the directors may properly require—

- (a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person, and

- (b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had

(3) But transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares

### **Exercise of transmittees' rights**

**33.**—(1) Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish

(2) If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it

(3) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in

respect of the share, and as if the event which gave rise to the transmission had not occurred

### **Transmittees bound by prior notices**

**34.** If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of members

## **DIVIDENDS AND OTHER DISTRIBUTIONS**

### **Procedure for declaring dividends**

**35.—**(1) The company may by ordinary resolution declare final dividends, and the directors may decide to pay interim dividends

(2) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors

(3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights

(4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment

(7) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights

### **Payment of dividends and other distributions**

**36.—**(1) Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means—

(a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide,

(b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide,

(c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide,

(d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide; or

(e) by an intra-group accounting adjustment in the case of payments to a Group Company

(2) In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable—

(a) the holder of the share, or

(b) if the share has two or more joint holders, whichever of them is named first in the register of members, or

(c) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee

#### **No interest on distributions**

**37.** The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

(a) the terms on which the share was issued, or

(b) the provisions of another agreement between the holder of that share and the company

#### **Unclaimed distributions**

**38.—**(1) All dividends or other sums which are—

(a) payable in respect of shares, and

(b) unclaimed after having been declared or become payable, may be invested or otherwise made use of by the directors for the benefit of the company until claimed

(2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it

(3) If—

(a) six years have passed from the date on which a dividend or other sum became due for payment, and

(b) the distribution recipient has not claimed it, the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company

#### **Non-cash distributions**

**39.**—(1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company)

(2) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—

- (a) fixing the value of any assets,
- (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients, and
- (c) vesting any assets in trustees

#### **Waiver of distributions**

**40.** Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

- (a) the share has more than one holder, or
- (b) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise, the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share

### **CAPITALISATION OF PROFITS**

#### **Authority to capitalise and appropriation of capitalised sums**

**41.**—(1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—

- (a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve, and
- (b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions

(2) Capitalised sums must be applied—

- (a) on behalf of the persons entitled, and
- (b) in the same proportions as a dividend would have been distributed to them

(3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct

(4) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct

(5) Subject to the articles the directors may—

(a) apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another,

(b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and

(c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article

#### **PART 4 : DECISION-MAKING BY SHAREHOLDERS**

##### **ORGANISATION OF GENERAL MEETINGS**

###### **Attendance and speaking at general meetings**

**42.—**(1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting

(2) A person is able to exercise the right to vote at a general meeting when—

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them

###### **Quorum for general meetings**

**43.** No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum in accordance with section 318 of the Act

### **Chairing general meetings**

**44.**—(1) If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so

(2) If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present, or

(b) (if no directors are present), the meeting, must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting

(3) The person chairing a meeting in accordance with this article is referred to as "the chairman of the meeting"

### **Attendance and speaking by directors and non-shareholders**

**45.**—(1) Directors may attend and speak at general meetings, whether or not they are shareholders

(2) The chairman of the meeting may permit other persons who are not—

(a) shareholders of the company, or

(b) otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting

### **Adjournment**

**46.**—(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it

(2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment, or

(b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner

(3) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting

(4) When adjourning a general meeting, the chairman of the meeting must—

(a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting

(5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—

(a) to the same persons to whom notice of the company's general meetings is required to be given, and

(b) containing the same information which such notice is required to contain

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place

## **VOTING AT GENERAL MEETINGS**

### **Voting: general**

**47.** A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles

### **Errors and disputes**

**48.—**(1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid

(2) Any such objection must be referred to the chairman of the meeting, whose decision is final

### **Poll votes**

**49.—**(1) A poll on a resolution may be demanded—

(a) in advance of the general meeting where it is to be put to the vote, or

(b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared

(2) A poll may be demanded by—

(a) the chairman of the meeting,

(b) the directors,

(c) two or more persons having the right to vote on the resolution, or

(d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution



(3) A demand for a poll may be withdrawn if—

- (a) the poll has not yet been taken, and
- (b) the chairman of the meeting consents to the withdrawal

(4) Polls must be taken immediately and in such manner as the chairman of the meeting directs

### **Content of proxy notices**

**50.**—(1) Proxies may only validly be appointed by a notice in writing (a “proxy notice”) which—

- (a) states the name and address of the shareholder appointing the proxy,
- (b) identifies the person appointed to be that shareholder’s proxy and the general meeting in relation to which that person is appointed;
- (c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine, and
- (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes

(3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions

(4) Unless a proxy notice indicates otherwise, it must be treated as—

- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
- (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself

### **Delivery of proxy notices**

**51.**—(1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person

(2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given

(3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates

(4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor’s behalf

## **Amendments to resolutions**

**52.—**(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and

(b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution

(3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution

## **PART 5 : ADMINISTRATIVE ARRANGEMENTS**

### **Deemed delivery of documents and information**

**53.—**(1) Any notice, documents or other information sent or supplied by the company

(a) sent by post (whether in hard copy or electronic form) to an address in the United Kingdom (provided that the company is able to show that the notice, documents or other information (or the envelope) was properly addressed, prepaid and posted) shall be deemed to have been received by the intended recipient on the day following that on which the notice, documents or other information (or an envelope containing the notice, documents or other information) was put in the post if first class post was used or 48 hours after the notice, documents or other information was posted if first class post was not used,

(b) sent by post (whether in hard copy or electronic form) to an address outside the United Kingdom (provided that the company is able to show that the notice, documents or other information (or the envelope) was properly addressed, prepaid and posted) shall be deemed to have been received by the intended recipient on the seventh calendar day following that on which the notice, documents or other information (or an envelope containing the notice, documents or other information) was put in the post,

(c) sent or supplied by electronic means, (provided that the company is able to show that the notice, documents or other information was properly addressed) shall be deemed to have been received by the intended

recipient on the day on which the notice, documents or other information was sent or supplied,

(d) sent or supplied by means of a website, shall be deemed to have been received by the intended recipient

(i) when the material was first made available on the website, or

(ii) if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website,

(e) left at a shareholder's registered address or such other postal address as notified by the shareholder to the company for the purpose of receiving company communications, shall be deemed to have been received on the day it was left,

(f) sent by courier or recorded or otherwise registered delivery shall be deemed delivered at the time noted by the delivery organisation that confirmation of receipt was provided

(2) For the purposes of this Article, no account shall be taken of any part of a day that is not a working day

(3) A shareholder whose registered address is not within the United Kingdom and who gives to the company an address within the United Kingdom at which notice may be given to him, or an address to which notices may be sent by electronic means, shall be entitled to have notices, documents or other information sent to him at that address, but otherwise no such shareholder shall be entitled to receive any notice, document or other information from the company

### **Means of communication to be used**

**54.**—(1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours

### **Company seals**

**55.**—(1) Any common seal may only be used by the authority of the directors

(2) The directors may decide by what means and in what form any common seal is to be used

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature

(4) For the purposes of this article, an authorised person is—

(a) any director of the company,

(b) the company secretary (if any), or

(c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied

### **No right to inspect accounts and other records**

**56.** Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

## **DIRECTORS' INDEMNITY AND INSURANCE**

### **Indemnity of directors and company officers**

**57.** Subject to the provisions of the Companies Acts (but so that this article does not extend to any matter insofar as it would cause this article or any part of it to be void under the Companies Acts) but without prejudice to any indemnity to which the person concerned may otherwise be entitled, every person who is or was at any time a director or officer of the company or any Group Company may be indemnified out of the assets of the company against all costs, charges, expenses, losses or liabilities (together "Liabilities") which he may sustain or incur in or about the actual or purported execution and/or discharge of his duties (including those duties, powers and discretions in relation to any Group Company or any company that is a trustee of an occupational pension scheme (as defined in section 235(6) of the Act)) and/or the actual or purported exercise of his powers or discretions and/or otherwise in relation thereto or in connection therewith, including (without prejudice to the generality of the foregoing) any Liability suffered or incurred by him in disputing, defending, investigating or providing evidence in connection with any actual or threatened or alleged claims, demands, investigations, or proceedings, whether civil, criminal, or regulatory or in connection with any application under section 661(3), section 661(4) or section 1157 of the Act

### **Funding of expenditure**

**58.** The company may also provide funds to any director or officer of the company or of any Group Company to meet, or do anything to enable a director or officer of the company or any Group Company to avoid incurring, expenditure to the extent permitted by the Companies Acts

### **Insurance**

**59—(1)** The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss

(2) In this article –

(a) a "relevant director" means any director or former director of the company or a Group Company, and

(b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, Group Company or any pension fund or employees' share scheme of the company or Group Company

3128044



THE COMPANIES ACTS 1985 TO 1989

PRIVATE COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION OF

TIVOLI SYSTEMS (UK) LIMITED

1. The name of the company is "TIVOLI SYSTEMS (UK) LIMITED".
2. The registered office of the company is to be situated in England and Wales.
3. The objects for which the company is established are:
  - (A) To carry on all or any of the businesses of development, marketing, sales and support of software products of every description; to act as advisors, consultants, organisers and implementers of computerised systems and services; and to manufacture, export, import, buy, sell, lease, rent, or license and deal in all plant, machinery, tools, appliances, materials, and equipment of all kinds used in connection with any of the foregoing businesses, or likely to be required by customers of, or persons having dealings with the company.
  - (B) To purchase, take on lease or on hire or otherwise acquire, hold, develop, sell, hire out, grant leases or licences or otherwise dispose of or deal with real and personal property of all and any kinds and any interest, right or privilege therein, for such consideration and on such terms as may be considered expedient.

704111

- (C) To purchase, subscribe for or otherwise acquire, and hold and deal with, any shares, stocks, debentures, bonds or securities of any other company.
- (D) To sell or otherwise dispose of the whole or any part of the business and/or undertaking of the company, either together or in portions for such consideration and on such terms as may be considered expedient.
- (E) To purchase or otherwise acquire and undertake, and to supervise and manage, all or any part of the business, property, assets and liabilities of any person or company.
- (F) To invest and deal with the monies of the company not immediately required for the purpose of its business in or on such investments or securities and in such manner as may be considered expedient, and to dispose of or vary any such investments or securities.
- (G) To enter into any partnership or into any arrangement for sharing profits or to amalgamate with any person or company carrying on or proposing to carry on any business.
- (H) To lend or advance money or give credit to such persons or companies and on such terms as may be considered expedient, and to receive money on deposit or loan from any person or company.
- (I) To borrow or raise money on such terms and on such security as may be considered expedient and, in particular, but without limiting the generality of the foregoing, by the issue or deposit of debentures, and to secure the repayment of any money borrowed, raised or owing by mortgage, charge or lien upon the whole or any part of the undertaking, property and assets of the company both present and future, including its uncalled capital.
- (J) To give indemnity for, or to guarantee, support or secure the performance of all or any of the obligations of any person or company whether by personal covenant or by mortgage, charge or lien on the whole or any part of the undertaking, property and assets of the company both present and future, including its uncalled capital, or by all or any of such methods; and in particular, but without limiting the generality of the foregoing, to give indemnity for, or to guarantee, support or secure whether by personal covenant or by any such mortgage, charge, or lien, or by all or any of such methods, the performance of all or any of the obligations (including the repayment or payment of the principal and premium of, and interest on, any securities) of any company which is for the time being the company's holding company or subsidiary or another subsidiary of any such holding company

- (K) To pay for any property, assets or rights acquired by the company, and to discharge or satisfy any debt, obligation or liability of the company, either in cash or in shares with or without preferred or deferred rights in respect of dividend or repayment of capital or otherwise, or by any other securities which the company has power to issue, or partly in one way and partly in another, and generally on such terms as may be considered expedient.
- (L) To accept payment for any property, assets or rights disposed of or dealt with or for any services rendered by the company, or in discharge or satisfaction of any debt, obligation or liability to the company, either in cash or in shares, with or without deferred or preferred rights in respect of dividend or repayment of capital or otherwise, or in any other securities, or partly in one way and partly in another, and generally on such terms as may be considered expedient.
- (M) To form, promote, finance or assist any other company, whether for the purpose of acquiring all or any of the undertaking, property and assets of the company or for any other purpose which may be considered expedient.
- (N) To issue, place, underwrite or guarantee the subscription of, or concur or assist in the issuing or placing, underwriting or guaranteeing the subscription of shares, stocks, debentures, bonds and other securities of any company on such terms as to remuneration and otherwise as may be considered expedient.
- (O) To apply for, purchase or otherwise acquire and hold, use, develop, sell, licence or otherwise dispose of or deal with patents, copyrights, designs, trade marks, secret processes, know-how and inventions and any interest therein.
- (P) To draw, make, accept, endorse, negotiate, discount, execute, and issue promissory notes, bills of exchange, scrip warrants and other transferable or negotiable instruments.
- (Q) To establish and maintain or procure the establishment and maintenance of, any pension superannuation funds or retirement benefit schemes (whether contributory or otherwise) for the benefit of, and to give or procure the giving of donations, gratuities, pensions, allowances, emoluments and any other relevant benefits to any persons who are or were at any time in the employment or service of the company, or of any company which is a subsidiary or holding company of the company or which is a subsidiary of any such holding company or is allied to or associated with the company, or any such subsidiary or of any of the predecessors of the company or any such other company as aforesaid, or who may be or have been Directors or officers of the company, or of any such other company as aforesaid, and the wives, widows, families and dependants of any such persons, and to establish, subsidise and subscribe to any institutions, associations, societies, clubs or funds calculated to be for the benefit of, or to advance the interests and well being of, the



company or of any other company as aforesaid, or of any such persons as aforesaid, and to make payments for or towards the insurance of any such persons as aforesaid, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object, and to do any of the matters aforesaid either alone or in conjunction with any such other company as aforesaid and without prejudice to the generality of the foregoing to act either alone or jointly as trustee or administrator for the furtherance of any of the aforesaid purposes.

- (R) To establish, on and subject to such terms as may be considered expedient, a scheme or schemes for or in relation to the purchase of, or subscription for, any fully or partly paid shares in the capital of the company by, or by trustees for, or otherwise for the benefit of, employees of the company or of its subsidiary or associated companies.
- (S) To the extent permitted by law, to give financial assistance for the purpose of the acquisition of shares of the company or for the purpose of reducing or discharging a liability incurred for the purpose of such an acquisition and to give such assistance by means of a gift, loan, guarantee, indemnity, the provision of security or otherwise.
- (T) To subscribe or guarantee money for any national, charitable, benevolent, public, general, political or useful object, and to undertake and execute any trusts the undertaking whereof may be considered expedient, and either gratuitously or otherwise
- (U) To enter into any arrangement with any Government or other authority, supreme, municipal, local or otherwise, and to obtain from any such Government or authority any rights, concessions, privileges, licences and permits, and to promote any legislation, as may be considered expedient.
- (V) To distribute among the members in specie any property of the company, or any proceeds of sale or disposal of any property of the company, and for such purpose to distinguish and separate capital from profits, but so that no distribution amounting to a reduction of capital shall be made except with the sanction (if any) for the time being required by law.
- (W) To remunerate any person or company rendering service to the company in any manner and to pay all costs, charges and expenses incurred or sustained in or about the promotion and establishment of the company and of any other company formed, promoted, financed or assisted by the company, or which the company shall consider to be in the nature of preliminary expenses in relation to the company or any such other company, including the cost of advertising, commissions for underwriting, brokerage, printing and stationery, and the legal and other expenses of the promoters.
- (X) To carry on any business which, in the opinion of the directors of the

company, may seem capable of being conveniently carried on in connection with or as ancillary to any of the above businesses or calculated directly or indirectly to enhance the value of or render profitable any of the property of the company or to further any of its objects and to do all other things as may be incidental or conducive to the attainment of any of the objects of the company.

- (Y) To do all or any of the above things in any part of the world, either alone or in conjunction with others, and either as principals, agents, contractors, trustees or otherwise and either by or through agents, contractors, trustees or otherwise.
- (Z) To procure the company to be registered or recognised in any part of the world.

It is hereby declared:-

- (1) that the expressions "subsidiary" and "holding company" where they appear in this clause shall have the meanings ascribed to those expressions by Section 736 of the Companies Act 1985;
  - (2) that, where the context so admits, the word "company" in this Clause shall be deemed to include any partnership or other body of persons whether or not incorporated and, if incorporated, whether or not a company within the meaning of the Companies Act 1985; and
  - (3) that the objects specified in each of the sub-clauses of this clause shall be regarded as independent objects and accordingly shall in no way be limited or restricted (except where otherwise expressed therein) by reference to or inference from the terms of any other sub-clause or the name of the company, but may be carried out in as full and ample a manner and construed in as wide a sense as if each defined the objects of a separate and distinct company.
- 4. The liability of members is limited.
  - 5. The share capital of the company is £100,000 divided into 100 shares of £1,000 each.

We, the subscriber to this Memorandum of Association, wish to be formed into a Company pursuant to this Memorandum; and we agree to take the numbers of shares shown opposite our name.

---

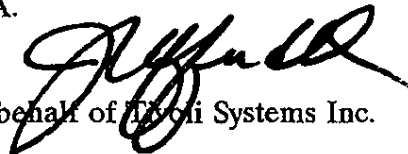
Names and address of Subscriber

Number of  
shares taken  
by Subscriber

- 
1. Tivoli Systems Inc.  
9442 Capital of Texas Highway North  
Aboretum Plaza One, Suite 500  
Austin, Texas,  
78759, U.S.A.

One

Signed  
For and on behalf of Tivoli Systems Inc.



Total shares taken

One

---

Dated the 27th day of October 1995

Witness to the above signature:-

Linda G. Hamann  
9442 Capital of Texas Highway North  
Aboretum Plaza One, Suite 500,  
Austin, Texas  
78759, USA