

WEDNESDAY



A19 *A6ZS021M* 14/02/2018 #228
COMPANIES HOUSE

Company Number: 09256482

PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTION OF

TOTO ENERGY LTD.

(the Company)

Circulated on *22nd January* 2018 (Circulation Date)

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006 (the Act), the directors of the Company propose that the resolution below be passed as a special resolution (the Resolution):

SPECIAL RESOLUTION

- 1 **THAT** the draft articles of association attached to the Resolution be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the existing articles of association.

AGREEMENT

Please read the notes at the end of this document before signing it.

The undersigned, being the sole member of the Company entitled to vote on the Resolution at the date of circulation of the Resolution hereby irrevocably agrees to the Resolution:

[Signature]
.....

Duly authorised for and on behalf of

BRIGHTON & LEEDS UTILITY HOLDINGS LIMITED

Date: *22nd January 2018*
.....

NOTES

- 1. If you wish to vote in favour of the Resolutions please sign above where indicated by your name and return to the Company by post at 1st Floor Locksview East Lockside, Brighton Marina Village, Brighton, East Sussex, England, BN2 5HA.
- 2. If you do not wish to vote in favour of the Resolution, you do not need to do anything. You will not be deemed to agree if you fail to reply.
- 3. Once you have indicated your agreement to the Resolution, you may not revoke your agreement.
- 4. Where, by the end of 28 days beginning with the circulation date stated on page 1, insufficient agreement has been received for the Resolution to pass, such resolution

will lapse. If you agree to the Resolution, please ensure that your agreement reaches the Company before or during this date.

5. If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this document.

Company Number: 09256482

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

- OF -

TOTO ENERGY LTD.

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THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

- OF -

TOTO ENERGY LTD.

(the "Company")

(Adopted by special resolution passed on 22nd January 2018)

1 **Application of model articles**

1.1 The model articles of association for private companies contained in Schedule 1 to The Companies (Model Articles) Regulations 2008 ("**Model Articles**") as in force at the date of adoption of these Articles shall apply to the Company, save insofar as they are excluded or modified by, or are inconsistent with, the following Articles.

1.2 In these Articles, reference to a particular Model Article is to that article of the Model Articles.

2 **Definitions and interpretation**

2.1 The Model Articles shall apply as if the following paragraph were included in the list of defined terms in Model Article 1:

"**clear days:** in relation to a period of a notice means that period excluding the day when the notice is deemed to be received (or, if earlier, received) and the day of the meeting,"

and as if the following words were deleted from Model Article 41(5):

"(that is, excluding the date of the adjourned meeting and the day on which the notice is given)—".

2.2 In these Articles the following words and expressions have the following meanings:

the **Act:** the Companies Act 2006;

Conflict Situation: a situation in which a director has, or can have, a direct or indirect interest that conflicts, or may possibly conflict, with the interests of the Company, including in relation to the exploitation of any property, information or opportunity and regardless of whether the Company could take advantage of the property, information or opportunity itself, but excluding a situation which could not reasonably be regarded as likely to give rise to a conflict of interest;

Controlling Shareholder: the registered holder for the time being of more than one half in nominal value of the issued ordinary share capital of the Company including (for the avoidance of doubt) any member holding all of the issued ordinary share capital of the Company;

Finance Documents: a facility agreement dated [] between Magnum Utilities Ltd. (as guarantor), Brighton & Leeds Utility Holdings Limited and Company (as borrowers) and [Crius Energy LLC] (as lender) (the “**Lender**”);

member: a person who is the holder of a share; and

Nominee: any person holding shares in the Company as nominee or otherwise on trust for the Controlling Shareholder.

2.3 Save as expressly provided otherwise in these Articles, words or expressions contained in the Model Articles and in these Articles bear the same meaning as in the Act as in force from time to time. The Model Articles shall apply as if the last paragraph of Model Article 1 (beginning “Unless the context otherwise requires”) were deleted.

2.4 In the Model Articles and in these Articles, save in Article 1.1 or as expressly provided otherwise in these Articles:

2.4.1 any reference to any statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, whether before or after the date of adoption of these Articles;

2.4.2 any reference to any legislation including to any statute, statutory provision or subordinate legislation (“**Legislation**”) includes a reference to that Legislation as from time to time amended or re-enacted, whether before or after the date of adoption of these Articles;

2.4.3 any reference to re-enactment includes consolidation and rewriting, in each case whether with or without modification.

3 **Company name**

The name of the Company may be changed by:

3.1 special resolution of the members; or

3.2 a decision of the directors; or

otherwise in accordance with the Act.

4 **Directors to take decisions collectively**

4.1 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 5.

4.2 If:

4.2.1 the Company only has one director, and

4.2.2 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 including, for the avoidance of doubt, Article 6.

4.3 Model Article 7 shall not apply.

5 **Unanimous decisions**

- 5.1 Model Article 8(2) shall apply as if the words “copies of which have been signed by each eligible director” were deleted and replaced with the words “of which each eligible director has signed one or more copies”.
- 5.2 References in Model Article 8 and in this Article 5 to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors’ meeting (but exclude in respect of the authorisation of a Conflict Situation, the director subject to that Conflict Situation). Model Article 8(3) shall not apply.

6 **Quorum for directors’ meetings**

- 6.1 The quorum for directors’ meetings may be fixed from time to time by a decision of the directors, but, save as set out in Article 6.2, it must never be less than two, and unless otherwise fixed it is two. Model Article 11(2) shall not apply.
- 6.2 For the purposes of any directors’ meeting (or part of a meeting) at which it is proposed to authorise a Conflict Situation in respect of one or more directors, if there is only one director in office other than the director or directors subject to the Conflict Situation, the quorum for such meeting (or part of a meeting) shall be one director.

7 **Authorisation of directors’ conflicts of interest**

If a Conflict Situation arises, the directors may authorise it for the purposes of s.175(4)(b) of the Act by a resolution of the directors made in accordance with that section and these Articles. At the time of the authorisation, or at any time afterwards, the directors may impose any limitations or conditions or grant the authority subject to such terms which (in each case) they consider appropriate and reasonable in all the circumstances. Any authorisation may be revoked or varied at any time in the discretion of the directors.

8 **Directors voting and counting in the quorum**

- 8.1 Save as otherwise specified in these Articles or the Act and subject to any limitations, conditions or terms attaching to any authorisation given by the directors for the purposes of s.175(4)(b) of the Act, a director may vote on, and be counted in the quorum in relation to any resolution relating to a matter in which he has, or can have:
- 8.1.1 a direct or indirect interest or duty which conflicts, or possibly may conflict, with the interests of the Company; and
- 8.1.2 a conflict of interest arising in relation to an existing or a proposed transaction or arrangement with the Company.
- 8.2 Model Article 14 shall not apply.

9 **Appointing and removing directors**

The Controlling Shareholder shall have the right at any time and from time to time to appoint one or more persons to be a director or directors of the Company. Any such appointment shall be effected by notice in writing to the Company by the Controlling Shareholder and the Controlling Shareholder may in like manner at any time and from time to time remove from office any director (whether or not appointed by it pursuant to this Article).

10 **Termination of director’s appointment**

In addition to the circumstances set out in Model Article 18, a person also ceases to be a director if he is removed from office pursuant to Article 9 of these Articles.

11 **Directors' remuneration and other benefits**

- 11.1 A director may undertake any services for the Company that the directors decide.
- 11.2 A director is entitled to such remuneration as the directors decide (i) for his services to the Company as director, and (ii) for any other service which he undertakes for the Company.
- 11.3 Subject to the Articles, a director's remuneration may (i) take any form, and (ii) 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.
- 11.4 Unless the directors decide otherwise, a director's remuneration accrues from day to day.
- 11.5 Unless the directors decide otherwise, no director is accountable to the Company for any remuneration or other benefit which he receives as a director or other officer or employee of any of the Company's subsidiary undertakings or of any parent undertaking of the Company from time to time or of any other body corporate in which the Company or any such parent undertaking is interested.
- 11.6 Model Article 19 shall not apply.

12 **Share capital**

- 12.1 The share capital of the Company at the date of adoption of these Articles comprises ordinary shares of £1 each.
- 12.2 Notwithstanding any other provision of these Articles, no payment shall be made or agreed to be made by the Company in respect of any shares or share capital (whether by way of dividend, distribution, purchase or redemption, or by way of reduction or return of share capital) if such payment is prohibited or restricted by the terms of the Finance Documents.
- 12.3 No dividend, distribution or other amount payable in respect of shares in the capital of the Company (whether made pursuant to the provisions of these Articles or otherwise) will constitute a debt of the Company unless permitted to be paid and paid strictly in accordance with the provisions of the Finance Documents.
- 12.4 Any resolution of the shareholders, any class of shareholders, the board of directors or any committee of the board of directors which conflicts with the provisions of this Article will be null and void.
- 12.5 In their application to the Company:
- 12.5.1 Model Article 30(1) shall be modified by the inclusion of the words "Subject to Article 11 (Share capital) of these Articles" at the beginning of that Model Article;
- 12.5.2 Model Article 34(1) shall be modified by the inclusion after the words "on the recommendation of the directors" of the words "and subject to Article 11 (Share capital) of these Articles."

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

- 13.1 No share is to be issued other than fully paid.
- 13.2 Article 13.1 does not apply to shares taken on the formation of the Company by the subscribers to the Company's memorandum.
- 13.3 Model Article 21 shall not apply.

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

Model Article 22(2) shall apply as if the words “, and the directors may determine the terms, conditions and manner of redemption of any such shares” were deleted.

15 **Issue of new shares**

15.1 The Company has the power to allot and issue shares in the capital of the Company and to grant rights to subscribe for, or to convert any security into, shares in the capital of the Company pursuant to those rights.

15.2 The directors may only exercise the power of the Company to allot and issue shares or to grant rights to subscribe for, or to convert any security into, shares, in order to allot or issue shares to the Controlling Shareholder or some other person expressly approved by the Controlling Shareholder in writing. The powers of the directors pursuant to s.550 of the Act shall be limited accordingly.

15.3 The provisions of ss.561 and 562 of the Act shall not apply to the Company.

16 **Transfer of shares**

16.1 The directors shall register any transfer of shares made to or by, or with the express written consent of, the Controlling Shareholder, or made pursuant to Article 16.3 or 16.4.

16.2 Subject to Article 16.1, the directors may, in their absolute discretion, refuse to register the transfer of any 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. Model Article 26(5) shall not apply.

16.3 The Controlling Shareholder may at any time by notice given to the Nominee at the registered address of the Nominee shown in the register of members of the Company require the Nominee to transfer all or any shares registered in his name to the Controlling Shareholder or any other person specified in the notice for no consideration. If the Nominee shall fail within 48 hours after service of the notice to transfer the shares in question, the directors may authorise any person to execute on behalf of and as attorney or agent for the Nominee any necessary instrument of transfer and shall cause the name of the transferee to be entered in the register as the holder of the shares in question. After the name of the transferee has been entered in the register in purported exercise of these powers, the validity of the proceedings shall not be questioned by any person.

16.4 Notwithstanding anything contained in these articles, the directors may not decline to register any transfer of shares and may not suspend any registration thereof, where that transfer is:

- (a) to a Secured Party;
- (b) is delivered for registration by a Secured Party in order to perfect its security over the shares; or
- (c) is executed by a Secured Party pursuant to the power of sale or otherwise under such security,

and, furthermore, notwithstanding anything to the contrary contained in these articles no transferor of any shares (or proposed transferor of those shares) and no Secured Party shall be required to offer the shares which are or are to be the subject of any such transfer to the members for the time being or any of them, and no such member shall have any right under these articles or otherwise to require such shares to be transferred to them whether for consideration or not. Furthermore, notwithstanding anything contained in these articles, the directors shall not be entitled to exercise any lien in respect of those shares.

16.5 For the purposes of this Article, "**Secured Party**" means a bank, financial institution, trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets to which a security interest (including by way of mortgage or charge) has been granted over shares and any affiliate of any such person, an agent or trustee acting for any such person or such affiliate or nominee of any of the foregoing.

17 **Procedure for declaring dividends**

17.1 Except as otherwise provided by the rights attached to any shares from time to time, all dividends shall be paid to the holders of shares in proportion to the numbers of shares on which the dividend is paid held by them respectively, but if any share is issued on terms that it shall rank for dividend as from a particular date, or *pari passu* as regards dividends with a share already issued, that share shall rank for dividend accordingly.

17.2 Model Article 30(4) shall apply as if the words "the terms on which shares are issued" were deleted and replaced with the words "the rights attached to shares".

18 **No interest on distributions**

Model Article 32(a) shall apply as if the words "the terms on which the share was issued" were deleted and replaced with the words "the rights attached to the share".

19 **Quorum for general meetings**

19.1 If the Company has more than one member, the quorum for a general meeting shall be:

19.1.1 one member holding more than one half in nominal value of the issued ordinary share capital of the Company and present in person or by proxy or by representative (and the presence of such a member shall be deemed for this purpose to constitute a valid meeting); or

19.1.2 if no such member is present, two members present in person or by proxy or representative.

19.2 If the Company has only one member, s.318 of the Act shall apply.

20 **Communications**

20.1 The company communications provisions (as defined in the Act) shall also apply to any document or information not otherwise authorised or required to be sent or supplied by or to a company under the Companies Acts (as defined in the Act) but to be sent or supplied by or to the Company pursuant to these Articles:

20.1.1 by or to the Company; or

20.1.2 by or to the directors acting on behalf of the Company.

20.2 The provisions of s.1168 of the Act (hard copy and electronic form and related expressions) shall apply to the Company as if the words "and the Articles" were inserted after the words "the Companies Acts" in ss.1168(1) and 1168(7).

20.3 Section 1147 of the Act shall apply to any document or information to be sent or supplied by the Company to its members under the Companies Acts or pursuant to these Articles as if:

20.3.1 in s.1147(2) the words "or by airmail (whether in hard copy or electronic form) to an address outside the United Kingdom" were inserted after the words "in the United Kingdom";

20.3.2 in s.1147(3) the words "48 hours after it was sent" were deleted and replaced with the words "when sent, notwithstanding that the Company may be aware of the failure in delivery of such document or information.";

20.3.3 a new s.1147(4)(A) were inserted as follows:

"Where the document or information is sent or supplied by hand (whether in hard copy or electronic form) and the Company is able to show that it was properly addressed and sent at the cost of the Company, it is deemed to have been received by the intended recipient when delivered.";

20.3.4 Section 1147(5) were deleted.

20.4 Proof that a document or information sent by electronic means was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the document or information was properly addressed as required by s.1147(3) of the Act and that the document or information was sent or supplied.

20.5 In the case of members who are joint holders of shares, anything to be agreed or specified by the holder may be agreed or specified by the holder whose name appears first in the register of members. Sched 5, Part 6, para 16(2) of the Act shall apply accordingly.

20.6 Model Article 48 shall not apply.

21 **Company seals**

Model Article 49(4)(b) shall not apply.

22 **Indemnities, insurance and funding of defence proceedings**

22.1 This Article 22 shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent permitted by, and subject to the restrictions of, the Act. It does not allow for or provide (to any extent) an indemnity which is more extensive than is permitted by the Act and any such indemnity is limited accordingly. This Article 22 is also without prejudice to any indemnity to which any person may otherwise be entitled.

22.2 The Company:

22.2.1 shall indemnify every person who is a director of the Company, and shall keep indemnified each such person after he ceases to hold office; and

22.2.2 may indemnify any other person who is an officer (other than an auditor) of the Company;

in each case out of the assets of the Company from and against any loss, liability or expense incurred by him or them in relation to the Company by reason of his being or having been a director or other officer of the Company.

22.3 The Company may indemnify any person who is a director of a company that is a trustee of an occupational pension scheme (as defined in s.235(6) of the Act) out of the assets of the Company from and against any loss, liability or expense incurred by him or them in connection with such company's activities as trustee of the scheme.

22.4 The directors may purchase and maintain insurance at the expense of the Company for the benefit of any person who is or was at any time a director or other officer (other than an auditor) of the Company or of any associated company (as defined in s.256 of the Act) of the Company or a trustee of any pension fund or employee benefits trust for the benefit of any employee of the Company.

22.5 The directors may, subject to the provisions of the Act, exercise the powers conferred on them by ss.205 and 206 of the Act to:

22.5.1 provide funds to meet expenditure incurred or to be incurred in defending any proceedings, investigation or action referred to in those sections or in connection with an application for relief referred to in s.205; or

22.5.2 take any action to enable such expenditure not to be incurred.

22.6 Model Articles 52 and 53 shall not apply.