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**1<sup>st</sup> ADVISORY ON THE IMPLEMENTATION OF DC2018-08-0021**

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**TO :**           **Generation Companies and/or Energy Resource  
Developers**

**Distribution Utilities**

**Designated Beneficiaries**

**Indigenous Cultural Communities and Indigenous People**

**FROM :**       **Secretary ALFONSO G. CUSI**

**DATE :**       **\_\_\_ May 2019**

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To accelerate and effectively implement **Department Circular No. DC2018-08-0021** entitled, "*PROVIDING FOR THE AMENDMENTS TO RULE 29 PART (A) OF THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9136*" and to promote the harmonious relationship and cooperation among the Designated Beneficiaries, referring to Host LGUs including the identified Non-Host LGUs by the Regional Development Council (RDC), concerned Distribution Utilities (DUs), Indigenous Cultural Communities and Indigenous People (ICCs/IPs) and Generation Companies and/or Energy Resource Developers (GenCos and/or ERDs), the Department of Energy (DOE) hereby issues the following guidelines:

**A. "Trust Accounts"** shall mean the interest-bearing current accounts intended exclusively for ER 1-94 funds held in trust by the GenCos and/or ERDs, concerned DUs, Designated Beneficiaries and ICCs/IPs pursuant to Section 8 of DC2018-08-0021.

**B. Generation Companies and/or Energy Resource Developers**

1. All GenCos and/or ERDs shall establish separate Trust Accounts consisting the EF, DLF and RWMHEEF with the following format:

GenCo and/or ERD - EF (ER 1-94)  
GenCo and/or ERD - DLF (ER 1-94)  
GenCo and/or ERD - RWMHEEF (ER 1-94)

All accrued financial benefits after the effectivity of the DC shall be deposited to the Trust Accounts established and shall thereafter be allocated and

remitted directly to the concerned DUs for EF and to the Designated Beneficiaries for the DLF & RWMHEEF, provided the latter has already established their own trust accounts.

2. For the succeeding quarterly billing periods, the GenCos and/or ERDs' remittance of financial benefits are deemed certified, however said remittance shall still be subject to post-audit by the DOE. Said financial benefits shall be remitted to the concerned DUs, Designated Beneficiaries and ICCs/IPs and to the General Fund Account of the Non-Host LGUs within fifteen (15) calendar days after the end of each billing quarter (**Section 7.2.2 DC2018-08-0021**). Provided, that the concerned DUs, Designated Beneficiaries, and ICCs/IPs have complied with the requirements as per **Section 7.3 of DC2018-08-0021**.

In the event that the concerned DUs, Designated Beneficiaries and ICCs/IPs fail to submit and comply with the requirements under Section 7.3 of DC2018-08-0021 (**Section 8.3 in relation to Section 7.4 of DC2018-08-0021**), the GenCos and/or ERDs shall deposit the quarterly remittance to the GenCo and/or ERD Trust Accounts.

3. Upon compliance with the requirements of **Section 7.3 of DC2018-08-0021**, the GenCos and/or ERDs shall remit the accumulated amount maintained in the GenCos' and/or ERDs' Trust Accounts to the concerned DUs, Designated Beneficiaries and ICCs/IPs.
4. The GenCos and/or ERDs shall require the concerned DUs, Designated Beneficiaries and ICCs/IPs to issue an Official Receipt (OR) and shall provide a copy to the DOE.
5. Any adjustments based on the post-audit shall be reflected and applied in the immediate succeeding remittance. Thereafter, the GenCos and/or ERDs shall furnish the DOE with proof of remittance.

### ***C. Concerned Distribution Utilities***

1. Pursuant to **Section 8.3 of DC2018-08-0021**, concerned DUs shall establish a Trust Account with any AGDB specific for the Electrification Fund. For this purpose, the DU shall provide the concerned GenCos and/or ERD with a AGDB certification, copy furnished the DOE, with format as shown below:

Distribution Utility - GenCo and/or ERD - EF (ER 1-94)

2. The disbursements made by the concerned DUs from the EF, in accordance with the AWP, are subject to post-audit by the National Electrification Administration (NEA) Resident Commission on Audit (COA) for the Electric Cooperatives (ECs), and by the COA for the other DUs.
3. The AWP for the DUs shall be incorporated in their respective Distribution Development Plans (DDPs). All pending projects in the previous AWP shall be



incorporated in the succeeding AWP, subject to the requirements provided in **Section 10.3 of DC2018-08-0021**.

**D. Host Beneficiaries\***

1. Pursuant to **Section 8.1 of DC2018-08-0021**, host LGUs and ICCs/IPs shall establish a Trust Account with the AGDB. For this purpose, the Designated Beneficiaries, and ICCs/IPs shall provide the concerned GenCo and/or ERD with a AGDB certification, copy furnished the DOE; with format as shown below:

Host Beneficiary - GenCo and/or ERD - DLF (ER 1-94)

Host Beneficiary - GenCo and/or ERD -RWMHEEF (ER 1-94)

2. The Host LGUs and ICCs/IPs shall accept all remittances made by the GenCos and/or ERDs, subject to post-audit by the DOE. The non-remittance of the financial benefits shall not be a ground to withhold or delay the issuance of the necessary permits required for the operations of the energy resource and/or the energy-generating facility.
3. The disbursements made by the Host LGUs and IPPs/ICs from the DLF and RWMHEEF, in accordance with AWP, are subject to post-audit by the COA.

**E. Non-Host LGUs**

1. The allocated fund from the Regional Share of all Non-Host LGUs shall be remitted in the General Fund Account of the identified LGU, subject to their MOA with the RDC and concerned GenCo and/or ERD. For this purpose, the identified LGU by the RDC shall provide the concerned GenCo and/or ERD with an AGDB certification of their General Fund Account.
2. The disbursements made by the Non-Host LGUs from the DLF and RWMHEEF, in accordance with AWP, are subject to post-audit by the COA.

**F. Establishment of Trust Accounts**

1. A Memorandum of Agreement (MOA) on the Establishment of Trust Accounts shall be executed by and between the concerned GenCos and/or ERDs and Concerned DUs/Host LGUs/ICCs/IPs. The said MOA must contain the following minimum provisions:
  - a. Parties;
  - b. Coverage, Purpose and Scope of Agreement;
  - c. Responsibilities of the Parties including the administration of the established accounts;
  - d. Miscellaneous provisions; and

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\* This does not include Local Government Units that get their DLF and/or RWMHEEF from the Regional Share.

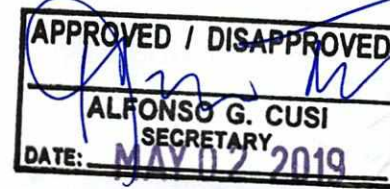
e. Effectivity and Separability Clauses.

Parties may include additional provisions as may be deemed necessary provided it is consistent with the EPIRA, DC2018-08-0021 and other related issuances.

Attached is the recommended template MOA.

For your guidance and compliance.

Thank you.



**MEMORANDUM OF AGREEMENT**  
**Between the GenCo/ERD and**  
**Distribution Utility (DU)**

*(For the Establishment of Trust Accounts on the Accrued Financial Benefits from  
the commercial operations of \_\_\_MW/kW\_\_\_\_\_GenCo/ERD  
at\_\_\_\_\_)*

**KNOW ALL MEN BY THESE PRESENTS:**

This Memorandum of Agreement (the “**Agreement**”), made and entered into by and between:

**GenCo/ERD**, a private corporation duly organized and existing under the laws of the Philippines, with principal office address at \_\_\_\_\_, duly represented by its \_\_\_\_\_, hereinafter, referred to as “**GenCo/ERD**”.

**and**

**Distribution Utility**, a non-stock, non-profit organization, created and organized under Presidential Decree No. 269, as amended, with principal office address at \_\_\_\_\_, represented herein by its [Representative Name and Position Title], duly authorized to represent it in this Agreement, hereinafter referred to as “**DU**”;

**GenCo/ERD and DU** shall hereinafter be collectively referred to as “**Parties**” and individually as a “**Party**”.

**WITNESSETH: That**

**WHEREAS**, Section 5 (i) of Republic Act No. 7638 (R.A. No. 7638), otherwise known as the “Department of Energy Act of 1992” mandates the Department of Energy (DOE) to devise ways and means of giving direct benefits to the province, city or municipality, specially the community and people affected and equitable and preferential to the region that Hosts the energy resource and/or the energy-generating facility;

**WHEREAS**, Energy Regulations No. 1-94 (ER 1-94) was promulgated by the DOE on 01 August 1994 to operationalize the implementation of section 5 (i) of R.A. No. 7638;

**WHEREAS**, Energy Regulations (“**ER**”) No. 1-94 implementing Section 5(i) of Republic Act No. 7638, otherwise known as the “Department of Energy Act of 1992”, grant financial benefits to the host communities of the energy-generation company and/or energy resources;

**WHEREAS**, Section 66 of R. A. No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” and Rule 29(A) of its Implementing Rules and Regulations (EPIRA-IRR) require all energy generation companies (GenCos) and/or energy resource developers (ERDs) to provide financial benefits equivalent to one centavo per kilowatt-hour (P0.01/kWh) of the total electricity sales of the generation facility to the region, province, city or municipality and barangay that host the

generation facility and energy resource facility, as well as the establishment of corresponding trust accounts and the administration thereof by the DOE;

**WHEREAS**, on 07 August 2018, DOE issued Department Circular No. DC2018-08-0021, amending for the purpose Rule 29 (A) of the EPIRA-IRR, to accelerate socio-economic development and to have a more effective and efficient utilization of the funds and to enforce the immediate provision of benefits to Host communities;

**WHEREAS**, pursuant to Section 6 of DC2018-08-0021 the financial benefit shall be allocated in the following manner:

“6.1. Electrification Fund

Fifty percent of one centavo per kilowatt-hour (P0.0050/kWh) of the Electricity Sales shall set aside as EF.

The EF shall be applied in the following radiating order:

- 6.1.1. Community and People Affected
- 6.1.2. Host Barangay/s
- 6.1.3. Host Municipality/ies or City/ies
- 6.1.4. Host Province/s
- 6.1.5. Host Region/s; and
- 6.1.6. Other prioritized areas by the DUs, as may be approved by

DOE”

**NOW, THEREFORE**, in view of the foregoing, the **Parties** hereby stipulate and agree as follows:

**Section I. Scope of Agreement**

This **Agreement** shall cover the establishment and administration of a separate trust account for **EF**, that shall accrue based on the electricity sales as financial benefit for the Host LGUs/Regions through the DU (the “EF Trust Account”).

**Section II. Responsibilities of the Parties**

1. **The GenCo/ERD** shall:
  - 1.1. Remit directly to the **DU** its share EF in the manner set forth in Section 6 of DC2018-08-0021;
  - 1.2. The EF shall be remitted quarterly based on the reported Electricity Sales and in accordance with the following:
    - a) The EF accruing from the billing period 26 September 2018 to 25 December 2018 shall be directly remitted to the DU on or before 28 February 2019, provided the latter has already established its own trust account;
    - b) For the succeeding quarterly billing periods, the remittance shall be made within fifteen (15) calendar days after the end of each billing quarter.
  - 1.3. Establish separate **regular accounts** in trust and/or for the benefit of the ER 1-94 Funds in accordance with the **1<sup>st</sup> Advisory on the Implementation of DC2018-08-0021**

2. **The DU** shall:

2.1. Be responsible for the opening and maintenance of the EF Trust Account

a) If the DU has an existing EF Trust Account, it shall request the Authorized Government Depository Bank (AGDB) to adopt the account name stated below and subsequently issue a certification of the said account, its status and current available balance.

DU - GenCo/ERD - EF (ER 1-94)

b) If the DU does not have an existing EF Trust Account, its shall establish a trust account specific for the EF, under the account name below:

DU-GenCo-EF (ER 1-94)

2.2. Maintain the required balance in the EF Trust Account (the "Maintaining Balance"), which shall not be withdrawn by the DU.

The fees and charges relative to the maintenance of such trust account shall be considered as administrative expenses and shall be deducted from the EF Trust Account.

2.3. Accept all remittances made by the GenCo/ERD as deemed certified by the DOE, subject to post audit rules and regulations.

2.4. Issue Official Receipt (OR).

2.5. Prepare and submit to the GenCo/ERD the AWP as provided in Section 10 of Circular No. DC2018-08-0021. The AWP shall be submitted in print and in electronic copy to the GenCo and/or ERD not later than March 15 of every year. It shall identify the priority tangible projects under the EF that can be implemented within the reference year of the AWP. The AWP shall be prepared by the DU in accordance with its Distribution Development Plan (DDP);

**Section IV. Effectivity of Agreement**

This Agreement shall take effect immediately upon signing by both Parties and remain valid and effective unless revoked, modified and/or amended.

**Section V. Amendments**

Any amendment or modification of this Agreement will only be effective upon written consent by the **Parties**.

**IN WITNESS WHEREOF**, the Parties hereby set their hands this \_\_\_\_ day of \_\_\_\_\_, Two Thousand \_\_\_\_\_ in \_\_\_\_\_.

**GenCo/ERD**  
By:

**DU**  
By:

**Signed in the presence of Witnesses**

\_\_\_\_\_

**ACKNOWLEDGMENT**

**REPUBLIC OF THE PHILIPPINES)**  
\_\_\_\_\_ ) **ss**

**BEFORE ME**, this \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_  
personally appeared:

<b>Name</b>	<b>Designation</b>	<b>Company</b>	<b>ID Number</b>
<b>GenCo/ERD</b>			
<b>DU</b>			

This instrument which consists of five (5) pages, including this page on which this acknowledgment is written, has been signed by the above Party and his instrumental witnesses on each and every page thereof and sealed with my notarial seal.

**WITNESS MY HAND** and **SEAL**, at the place and on the date first above written.

Notary Public

Doc. No. \_\_\_\_\_ ;  
Page No. \_\_\_\_\_ ;  
Book No. \_\_\_\_\_ ;  
Series of \_\_\_\_\_



**MEMORANDUM OF AGREEMENT**  
**Between the GenCo/ERD and**  
**Host Beneficiary**

*For the Establishment and Administration of Trust Accounts in Accordance with  
DC2018-08-0021 of (Name of Generating Facilities)*

**KNOW ALL MEN BY THESE PRESENTS:**

This Memorandum of Agreement (the “**Agreement**”), made and entered into by and between:

**GenCo/ERD**, a private corporation duly organized and existing under the laws of the Philippines, with principal office address at \_\_\_\_\_, duly represented by its \_\_\_\_\_, hereinafter, referred to as “**GenCo/ERD**”.

**and**

**Host Beneficiary**, a local government unit of the Republic of the Philippines, with office address at \_\_\_\_\_ duly represented herein by its \_\_\_\_\_, per Sangguniang \_\_\_\_\_ under Resolution No. xx series of \_\_\_\_\_, and hereinafter referred to as “**HB**”.

**GenCo/ERD and HB** shall hereinafter be collectively referred to as “**Parties**” and individually as a “**Party**”.

**WITNESSETH: That**

**WHEREAS**, Section 5 (i) of Republic Act No. 7638 (R.A. No. 7638), otherwise known as the “Department of Energy Act of 1992” mandates the Department of Energy (DOE) to devise ways and means of giving direct benefits to the province, city or municipality, specially the community and people affected and equitable and preferential to the region that Hosts the energy resource and/or the energy-generating facility;

**WHEREAS**, Energy Regulations No. 1-94 (ER 1-94) was promulgated by the DOE on 01 August 1994 to operationalize the implementation of section 5 (i) of R.A. No. 7638;

**WHEREAS**, Energy Regulations (“**ER**”) No. 1-94 implementing Section 5(i) of Republic Act No. 7638, otherwise known as the “Department of Energy Act of 1992”, grant financial benefits to the host communities of the energy-generation company and/or energy resources;

**WHEREAS**, Section 66 of R. A. No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” and Rule 29(A) of its Implementing Rules and Regulations (EPIRA-IRR) require all energy generation companies (GenCos) and/or energy resource developers (ERDs) to provide financial benefits equivalent to one centavo per kilowatt-hour (P0.01/kWh) of the total electricity sales of the generation facility to the region, province, city or municipality and barangay that host the generation facility and energy resource facility, as well as the establishment of corresponding trust accounts and the administration thereof by the DOE;

**WHEREAS**, in accordance with Republic Act No. 8371 (RA 8371) also known as “The Indigenous Peoples’ Rights Act of 1997”, the DOE promulgated Department Circular No. DC2018-03-0005 on 20 March 2018 recognizing the rights of the Indigenous Cultural Communities (ICCs) and Indigenous Peoples (IPs) to their ancestral domain and the natural resources therein and provides for reasonable share in the development and livelihood fund (DLF) and for the reforestation, watershed management, health and/or environment enhancement fund (RWMHEEF) components of the ER 1-94 funds;

**WHEREAS**, on 07 August 2018, DOE issued Department Circular No. DC2018-08-0021, amending for the purpose Rule 29 (A) of the EPIRA-IRR, to accelerate socio-economic development and to have a more effective and efficient utilization of the funds and to enforce the immediate provision of benefits to Host communities. In this regard, by virtue of the transition to an efficient distribution of funds, the Host Communities shall not withhold or delay issuance of the necessary permits required for the operations of the energy resource and/or energy-generating facility;

**WHEREAS**, pursuant to Section 6 of DC2018-08-0021 the financial benefit shall be allocated in the following manner:

“6.2. Twenty-five percent (25%) of one-centavo per kilowatt-hour (P0.0025/kWh) for Development and Livelihood Fund (“DLF”); and Twenty-five percent (25%) of one centavo per kilowatt-hour (P0.0025/kWh) for Reforestation, Watershed Management, Health and/or Environment Enhancement Fund (“RWMHEEF”);

The DLF and RWMHEEF shall be allocated in the following manner:

- |  |       |
|--|-------|
| 6.2.1. Community and People Affected     | - 5%  |
| 6.2.2. Host Barangay/s                   | - 20% |
| 6.2.3. Host Municipality/ies or City/ies | - 35% |
| 6.2.4. Host Province/s                   | - 30% |
| 6.2.5. Host ICCs/IPs                     | - 5%  |
| 6.2.6. Host Region                       | - 5%  |

In the absence of Community and People Affected, funds allocated for the same shall form part of the fund for the Host Barangay.

In the absence of ICCs/IPs, the funds allocated for the same shall form part of the fund for the Host Region.”

**NOW, THEREFORE**, in view of the foregoing, the **Parties** hereby stipulate and agree as follows:

#### **Section I. Scope of Agreement**

This **Agreement** shall cover the establishment and administration by the HB of separate trust accounts for **DLF** and **RWMHEEF** (the “DLF and RWMHEEF Trust Accounts”).

#### **Section II. Responsibilities of the Parties**

1. **The GenCo/ERD** shall:

- 1.1. Remit directly to **HB** its share of the DLF and RWMHEEF in the manner set forth in Section 6 of DC2018-08-0021;

- 1.2. The DLF and RWMHEEF shall be remitted quarterly based on the reported Electricity Sales and in accordance with the following:
  - a) The DLF and RWMHEEF accruing from the billing period 26 September 2018 to 25 December 2018 shall be directly remitted to HB on or before 28 February 2019, provided the latter has already established its own trust accounts.
  - b) For the succeeding quarterly billing periods, the remittance shall be made within fifteen (15) calendar days after the end of each billing quarter.
- 1.3. Establish separate **regular accounts** in trust and/or for the benefit of the ER 1-94 Funds in accordance with the **1<sup>st</sup> Advisory on the Implementation of DC2018-08-0021**.

2. **The HB** shall:

2.1. Be responsible for the opening and maintenance of the DLF and RWMHEEF Trust Accounts in accordance with DC2018-08-0021;

- a) If HB has existing DLF and RWMHEEF Trust Accounts, it shall request the Authorized Government Depository Bank (AGDB) to adopt the account names stated below and subsequently issue a certification of the said accounts, its status and current available balance.

HB - GenCo/ERD - DLF (ER 1-94)

HB - GenCo/ERD - RWMHEEF (ER 1-94)

- b) If HB does not have existing DLF and RWMHEEF Trust Accounts, it shall establish trust accounts specific for DLF and RWMHEEF, under the following account names:

HB - GenCo/ERD - DLF (ER 1-94)

HB - GenCo/ERD - RWMHEEF (ER 1-94)

All costs related to the opening of such trust accounts shall be considered as administrative expenses and shall be deducted from the DLF and RWMHEEF Trust Accounts.

2.2. Maintain the required balance in the DLF and RWMHEEF Trust Accounts (the "Maintaining Balance"), which shall not be withdrawn by HB.

The fees and charges relative to the maintenance of such trust accounts shall be considered as administrative expenses and shall be deducted from the DLF and RWMHEEF Trust Accounts.

2.3. Prepare and submit to the GenCo/ERD the AWP as provided in Section 10 of Circular No. DC2018-08-0021. The AWP shall be submitted in print and in electronic copy to the GenCo and/or ERD not later than March 15 of every year. It shall identify the priority tangible projects under the DLF and RWMHEEF that can be implemented within the reference year of the AWP. The HB shall post the validated AWP in its website and in absence thereof, in two (2) conspicuous places within its area. The AWP shall be supported by a Resolution from the Sanggunian for the LGUs, or Council for the Region and ICCPs/IPs, certifying that the said list of tangible projects is in accordance with their respective CDP, CLUP, RDP, RFPF, ADSDPP, and IPDP, whichever is applicable;

- 2.4. Conduct minimum social preparation activities such as, but not limited to, community consultations and orientations in the preparation of the AWP.
- 2.5. Accept all remittances made by the GenCo/ERD as deemed certified by the DOE, subject to post audit rules and regulations; and
- 2.6. Issue Official Receipt (OR).

**Section IV. Effectivity of Agreement**

This Agreement shall take effect immediately upon signing by both Parties and remain valid and effective unless revoked, modified and/or amended.

**Section V. Amendments**

Any amendment or modification of this Agreement will only be effective upon written consent by the **Parties**.

**IN WITNESS WHEREOF**, the Parties hereby set their hands this \_\_\_\_ day of \_\_\_\_\_, Two Thousand \_\_\_\_\_ in

**GenCo/ERD**  
By:

**HB**  
By:

\_\_\_\_\_

\_\_\_\_\_

**Signed in the presence of Witnesses:**

\_\_\_\_\_

\_\_\_\_\_



**ACKNOWLEDGMENT**

**REPUBLIC OF THE PHILIPPINES)**  
\_\_\_\_\_ ) **ss**

**BEFORE ME**, this \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_  
personally appeared:

<b>Name</b>	<b>Designation</b>	<b>Company</b>	<b>ID Number</b>
<b>GenCo/ERD</b>			
<b>HB</b>			

This instrument which consists of five (5) pages, including this page on which this acknowledgment is written, has been signed by the above Party and his instrumental witnesses on each and every page thereof and sealed with my notarial seal.

**WITNESS MY HAND** and **SEAL**, at the place and on the date first above written.

Notary Public

Doc. No. \_\_\_\_\_ ;  
Page No. \_\_\_\_\_ ;  
Book No. \_\_\_\_\_ ;  
Series of \_\_\_\_\_