



Forest Carbon Partnership Facility

Pre-PC18 Workshop on ERPA General Conditions

Arusha, Tanzania, October 31, 2014

Overview

- I. Brief History of Process to Prepare FCPF ERPA General Conditions**
- II. ERPA (Commercial Terms) vs. General Conditions**
- III. Main Comments (by FCPF participants) & Responses (by FMT)**
- IV. PC Resolution Sought at this PC Meeting**



I.

Brief History

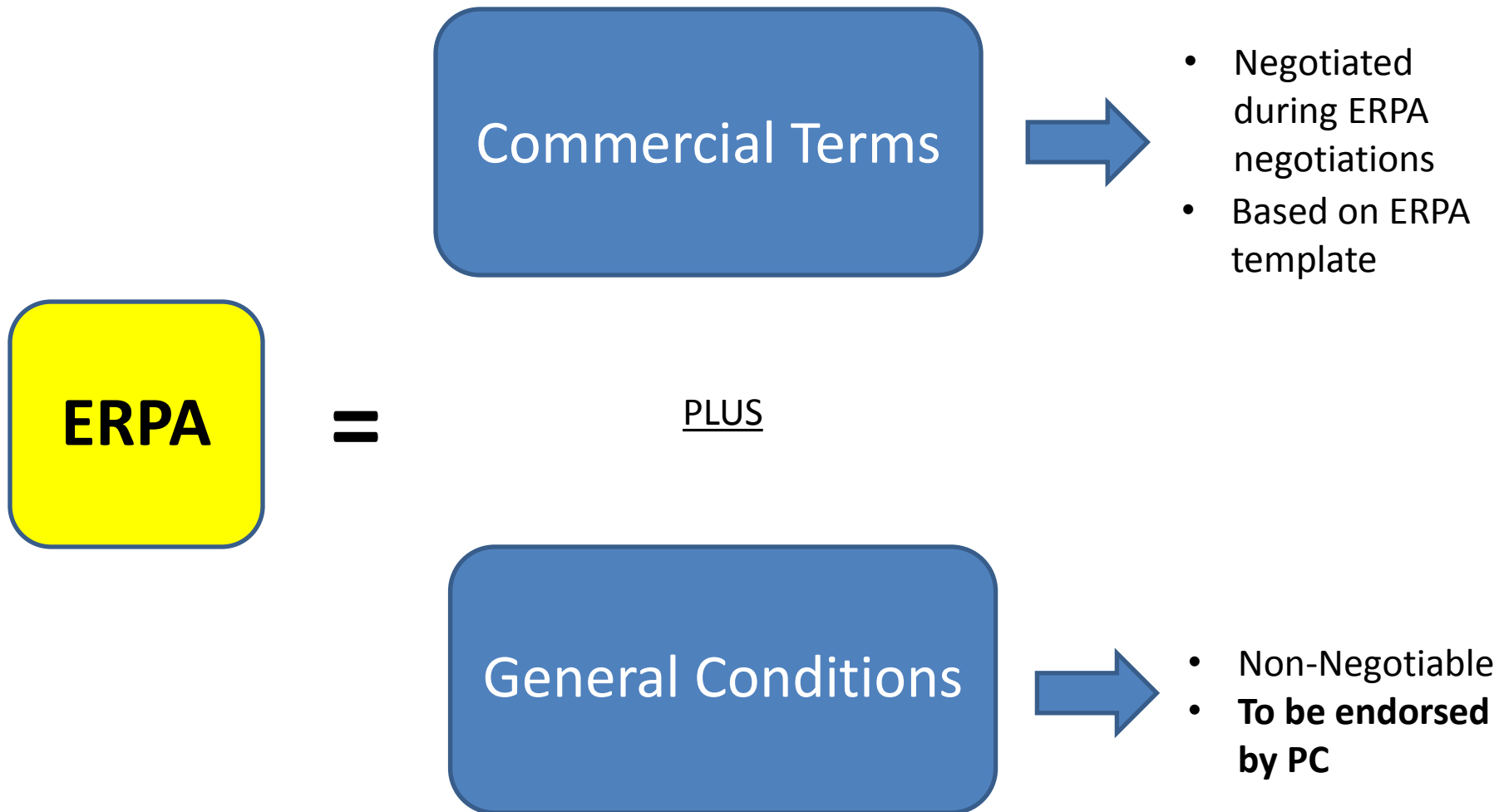
Time	Action
June 2012	PC12 (Santa Marta, Colombia) endorsed guiding principles on the Methodological Framework (MF) per PC Resolution
October 2012 & March, June & October, 2013	Meetings of Carbon Fund MF Working Group in Brazzaville, Washington DC , Oslo and Paris (incl. REDD Country and Observer representatives)
March 2013	PC14 (Washington DC, USA) endorsed general principles of future ERPA General Conditions (Term Sheet) per PC Resolution
June/July 2013	Presentation of first draft of the ERPA General Conditions (GC) at PC15 (Lombok, Indonesia)
December 2013	CF8 (Paris, France) endorsed MF
June 2013 - July 2014	Various presentations/workshops on ERPA GCs at PC level (PC15, PC16, PC17) and CF level (CF7, CF8, CF9, CF10, CF11)
September/October 2014	Review & Commenting of revised ERPA GCs by FCPF Participants and circulation of (final) draft ERPA GCs
October/November 2014	Pre-PC18 workshop on ERPA GCs & approval of ERPA GCs sought at PC18 (Arusha, Tanzania)



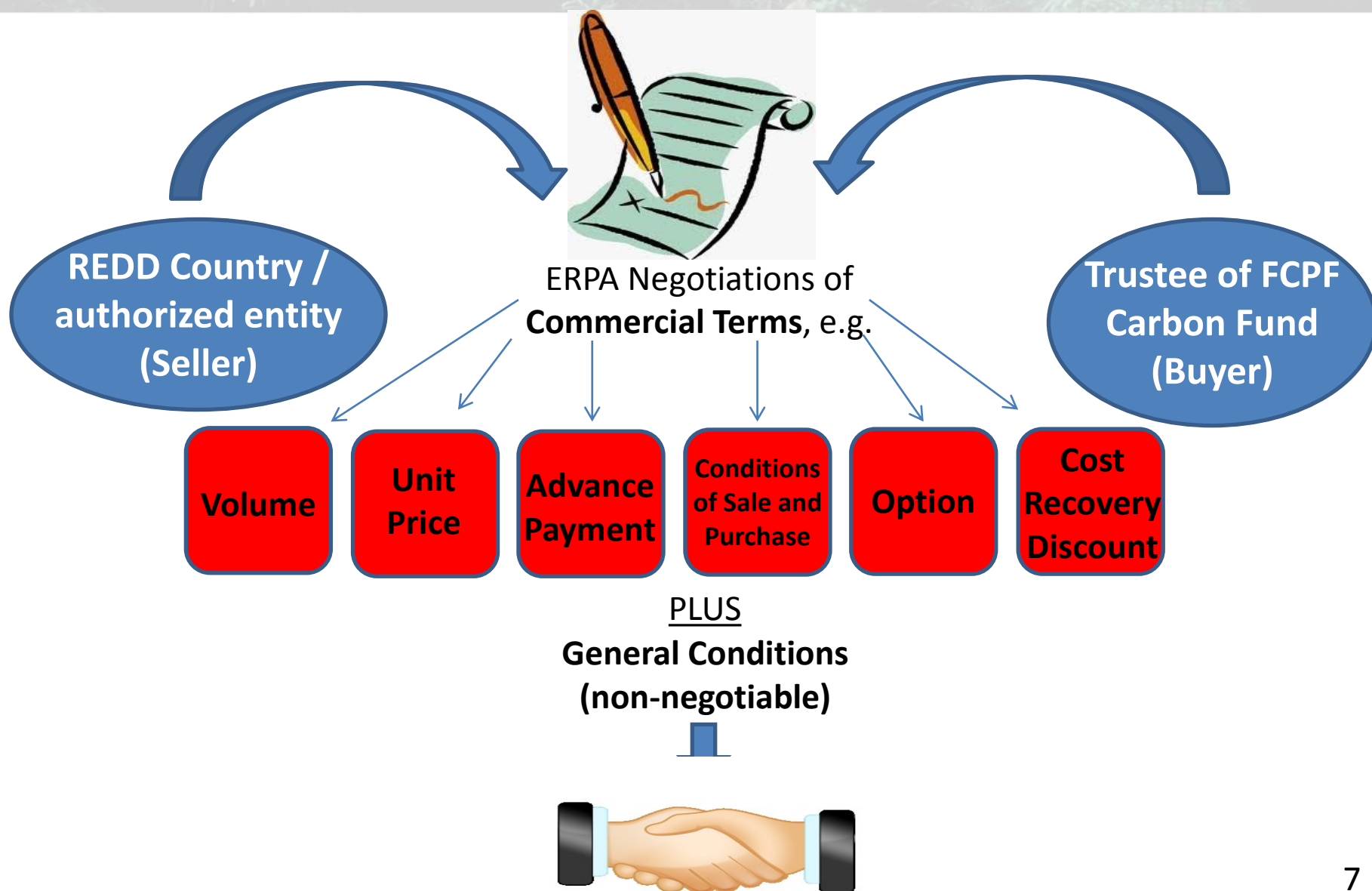
II.

**ERPA Commercial Terms
vs.
General Conditions**

Structure of ERPA



ERPA Negotiations



Commercial Terms (negotiable)

- **Contract ER Volume**
- **Unit Price**
- **Advance Payment**
- **Conditions of Sale and Purchase**
- **Options**
- **Cost Recovery Discount**

General Conditions (non-negotiable)

- **Transfer & Payment**
- **Title to ERs**
- **ER Program Operation & Management**
- **Benefits & Benefit Sharing**
- **ER Program Buffer**
- **Events of Default & Remedies**
- **Dispute Resolution**
- **Governing Law**



III.

Comments Received & Recommended Responses

Main Comments (FCPF Participants)	Responses (FMT)	References (ERPA/GCs)
On the General Conditions:		
1. General comments		
a) Some REDD Countries and CFPs have expressed their satisfaction with the GCs. b) GCs seem quite long and complex; should be more easily replicable (CFP and REDD Country)	GCs mainly in line with past practice (with some new features); experience shows that GCs are critical to clarify expectations, rules and procedures to ensure successful ER Program implementation FCPF will help REDD Countries address and meet requirements most likely also to be imposed by future investors and provide them with post-ERPA competitive advantage	

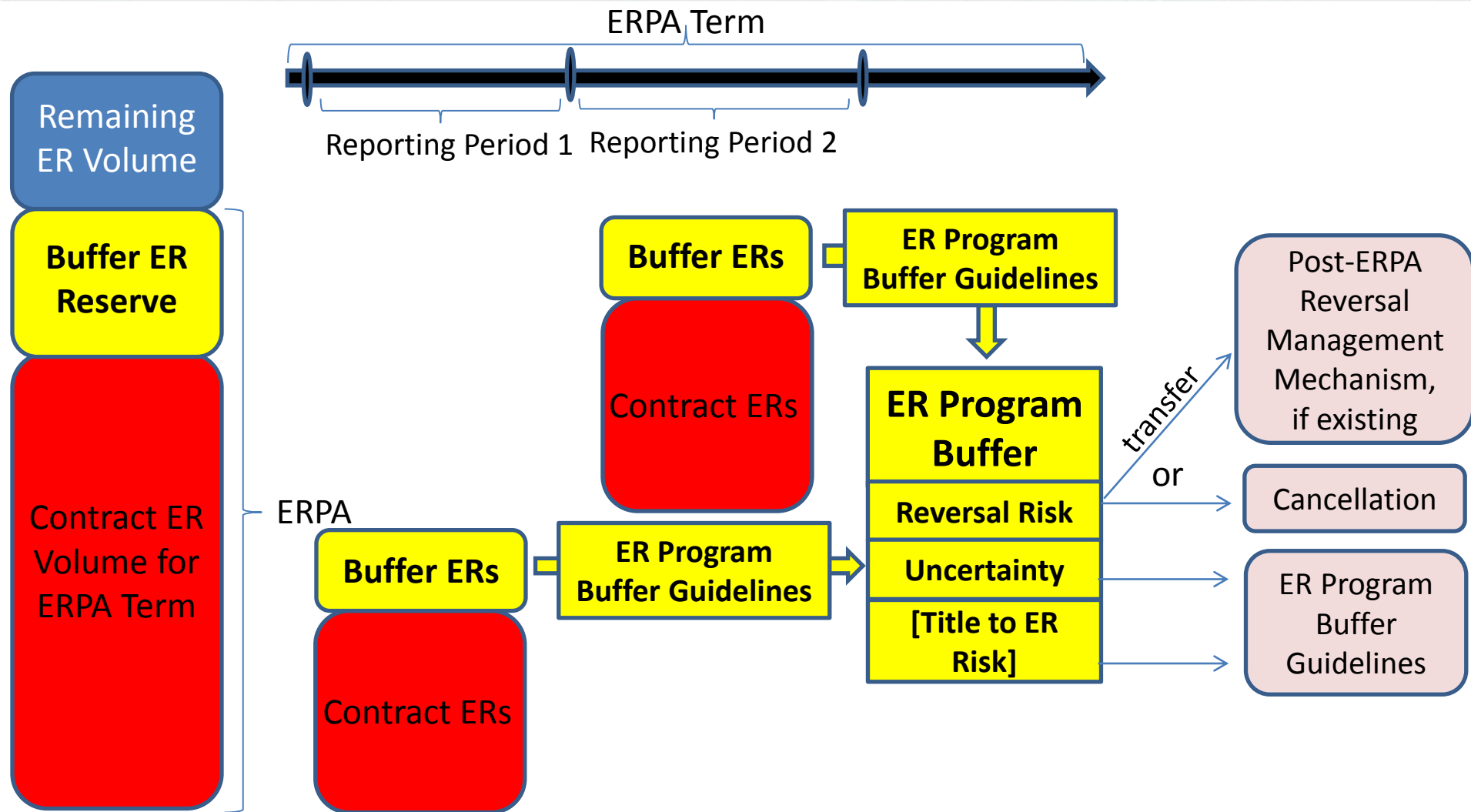
Main Comments (FCPF Participants)	Responses (FMT)	References (ERPA/GCs)
2. Transfer of (Title to) ERs		
Seller should be able to use transferred ERs for their domestic/compliance needs (REDD Country)	GCs prohibit ‘double counting’ of ERs to ensure environmental integrity; GCs repeat text agreed on in ERPA Term Sheet; once ERs are paid for and transferred to CFPs, CFPs may decide on ER usage (not Seller) <i>GCs have been revised to provide for process to allow REDD Countries to use ERs for own domestic/compliance needs <u>subject to Trustee’s express prior written consent</u></i>	Sec. 5.02(g) GCs

Main Comments (FCPF Participants)	Responses (FMT)	References (ERPA/GCs)
3. Benefit Sharing		
a) Benefit Sharing Plan (BSP) to be most fitting to Seller’s national circumstances without having to seek approval by Trustee/CFPs (REDD Country)	BSP to be satisfactory to Trustee (and the CFPs). However, Seller has broad flexibility in finding a design that best fits its national circumstances. Seller only advised to take into account certain elements specified in Methodological Framework	Sec. 6.03 GCs / Indicator 30.1 of Meth Framework
b) Why establish such specific criteria for distribution of Benefits (“significant part”) (REDD Country)	FCPF Charter requires “ensuring equitable benefit sharing”; the “significant part” language was agreed in ERPA Term Sheet and endorsed by PC at PC14; important to CSOs and IPs	Sec. 6.03(a) of GCs
c) Term “relevant stakeholder” deemed to be not specific enough (REDD Country)	<i>GCs revised to replace term with “Beneficiaries”</i>	Sec. 6.03(a) of GCs

Main Comments (FCPF Participants)	Responses (FMT)	References (ERPA/GCs)
4. ER Program Buffer (-> see separate slide)		
a) ‘Title to ER Risk’ should only be covered by ER Program Buffer if ER Program Buffer Guidelines include this risk as a covered risk category (CFP)	<i>GCs revised to have ER Program Buffer Guidelines determine whether ‘Title to ER Risk’ is a risk to be covered by ER Program Buffer</i>	Sec. 11.01(c) and (f) of GCs
b) What happens to Buffer ERs at end of ERPA term; can they be transferred back to Seller? (REDD Countries)	<i>GCs revised to state that Buffer ERs shall be dealt with at the end of ERPA term in accordance with ER Program Buffer Guidelines .</i>	Sec. 11.01 and 11.03 GCs
c) Shouldn’t REDD Countries participate in preparation of ER Program Buffer Guidelines? (REDD Countries)	ER Program Buffer Guidelines are set up by CFPs; however ‘Review Group’ process (with participation of REDD Countries and Observers) may be agreed on in Resolution	

ER Program Buffer

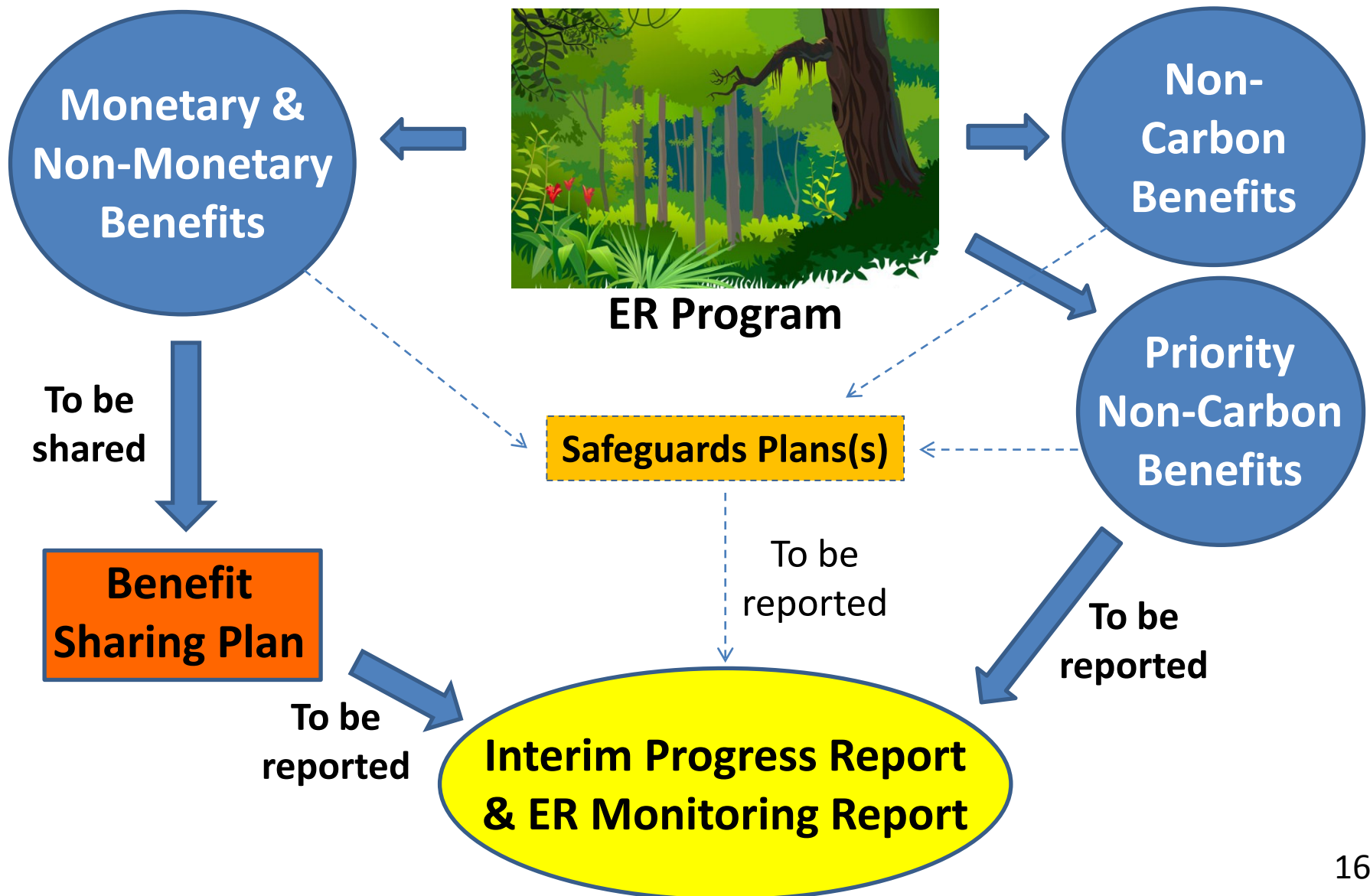
- Use of Buffer ERs by End of ERPA Term -



Main Comments (FCPF Participants)	Responses (FMT)	References (ERPA/GCs)
5. (Priority) Non-Carbon Benefits (-> see separate slide)		
Definition of “Non-Carbon Benefits” (NCB) excludes many potential co-benefits (<i>Observer</i>)	Definition of the term “NCB” has been determined and agreed on during the MF Working Group process. It seems broad enough to cover a wide range of potential co-benefits In accordance with the MF, Program Entity expected to identify one or more of those NCBs as “Priority NCBs” in the ERPD. The types and numbers of identified Priority NCBs may impact perceived quality of an ER Program and, thereby, decision of CFPs to select an ERPD into its portfolio	Sec. 2.01 of and Sec. 6.04 of GCs

General Conditions

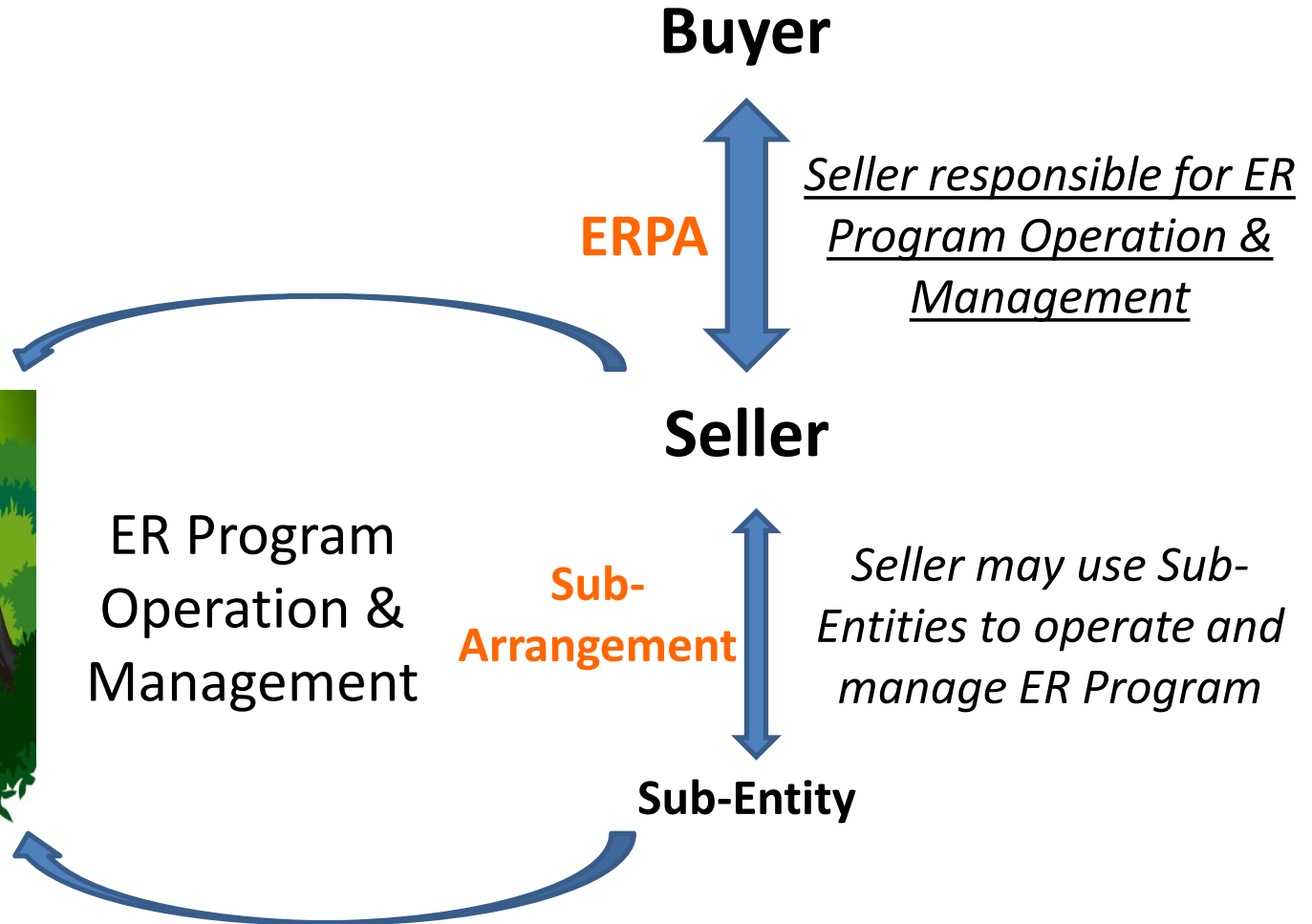
- Benefits -



Comments Received (FCPF Participants)	Recommended Responses (FMT)	References (ERPA/GCs)
6. ER Program Operation & Management (-> see separate slide)		
a) How shall Seller “keep Trustee informed” on ER Program development, operation and management? (REDD Country)	<i>GCs revised to delete Sec. 9.01(c) of GCs and merge it with Sec. 6.01 of GCs which only requires notification of Trustee in case of ‘material delays or complications in ER Program development, operation and implementation’</i>	Sec. 9.01(c) and Sec. 6.01 of GCs
b) Sec. 9.01 and 9.02 of GCs quite long and cumbersome (REDD Country)	Provisions (in particular those related to Sub-Project Entities) deemed necessary to ensure ERPA compliance at Sub-Project level. However, GCs revised to delete, clarify and move certain provisions in and between Sec. 9.01 and 9.02 of GCs	Sec. 9.01 and Sec. 9.02 of GCs

General Conditions

- ER Program Operation & Management -



Main Comments (FCPF Participants)	Responses (FMT)	References (ERPA/GCs)
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7. Trustee's Remedies

10% seems a very low threshold for termination right in case of Transfer Failure; 30% more appropriate (<i>REDD Country</i>)	<i>GCs revised to allow for 20% threshold</i>	Sec. 16.03(a)(i)(D) of GCs
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8. Focal Point

Current role of Focal Point too broad and bureaucratic (<i>REDD Country</i>)	<i>To clarify and limit role of Focal Point, the term 'Focal Point' has been revised to any communication related to ER issuance, serialization, acquisition, holding, retirement, cancellation and transfer and submission of Distribution Letter</i>	Sec. 2.01 of GCs
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Main Comments (FCPF Participants)	Responses (FMT)	References (ERPA/GCs)
On the ERPA (Commercial Terms):		
1. General comments (by FMT)		
- FMT emphasizes that <u>only</u> General Conditions will be subject to PC adoption at PC18 in Arusha, Tanzania - All elements of the ERPA (Commercial Terms) will be subject to negotiations - ERPA template only provides a framework for ERPA negotiations, but does not intend to limit ERPA negotiation scope		
2. Cost recovery		
How can Buyer cost recovery be limited (cost cap?)? (REDD Country)	ERPA provides for ‘Cost Recovery Discount’ as a negotiable ERPA term; intended to create more cash flow predictability for Seller; if ER Program fails, no cost recovery (Buyer risk)	Sec. 4.03(b) ERPA

Main Comments (FCPF Participants)	Responses (FMT)	References (ERPA/GCs)
3. Options (for Additional ERs)		
Decisions regarding Additional ERs seem to favor Buyer (REDD Country)	ERPA provides for 3 Options for Additional ERs, including Put Option (right of Seller to sell) and Call Option/Right of 1st Refusal (right of Buyer to buy); freely negotiable	Sec. 5.01 of ERPA
4. Reporting		
a) Why are there many reporting requirements on title, safeguards, etc.? (REDD Country)	Certain World Bank policies and procedures must be complied with, and reporting must be done accordingly	
5. Conditions of Effectiveness		
Safeguards Plans/Benefit Sharing Plans should only qualify as ‘advanced drafts’ prior to ERPA signature if they reflect MF stakeholder engagement process (Observer)	Footnotes 1 and 3 to Schedule 1 of ERPA (Commercial Terms) clarified accordingly	Schedule 1 to ERPA

Main Comments (FCPF Participants)	Responses (FMT)	References (ERPA/GCs)
6. Confidentiality		
Why and on the basis of which process does ERPA allow for the ERPA to be confidential? (<i>CFP</i> and <i>Observer</i>)	As a general rule, the ERPA is a public (non-confidential) document However, ERPA Term Sheet (endorsed by PC at PC14) allowed a party to request confidentiality, provided that the requesting party makes its rationale publicly available; this process is included in each signed Letter of Intent (LoI) Carbon Fund Disclosure Guidelines (FMT Note CF-2013-2) also provide for this process.	Sec. 18.07(a) GCs Sec. 10.02 ERPA (Clause 5 of each LoI)



IV.

Next Steps

Next Steps

- **Today afternoon (and, if needed, tomorrow morning):**
Opportunity to further discuss ERPA GCs at PC18 level
- **Tonight:** Informal dinner discussion on ERPA GCs
(voluntary)
- **Today & Tomorrow:** FMT invites FCPF participants, in particular PC members and those REDD Countries engaging with the Carbon Fund, and Observers to seek further clarification on ERPA GCs
- **Tomorrow afternoon:** PC Resolution sought on ERPA GC approval

A photograph of a wooden boardwalk or bridge in a forest during autumn. The boardwalk is covered with a thick layer of fallen yellow and orange leaves. The wooden railings on either side have a crisscross pattern. The background is filled with trees with vibrant autumn foliage. The text "THANK YOU" is overlaid in the center in a white, bold, sans-serif font.

THANK YOU