



Forest Carbon Partnership Facility

Pre-PC15 Workshop

ERPA General Conditions

FCPF Participants Committee Meeting (PC15)

Lombok, Indonesia, June 30 – July 1, 2013

Overview

I. Process of Endorsing ERPA General Conditions

II. Structure of ERPA General Conditions

III. Issues for Discussion

- Legal title to ERs
- Reversal Events
- Costs

Process of Endorsing ERPA General Conditions

| Date/Time Period | Action |
|------------------------------|--|
| March 21, 2013 | PC14 endorsed ERPA Term Sheet per PC Resolution requesting first draft of the ERPA General Conditions (GCs) by PC15 (June 30-July 1, 2013 in Lombok, Indonesia) with the objective of endorsement of ERPA GCs at PC16 (October 2013) |
| June 21-23, 2013 | Meeting of the CF Working Group on the Methodological Framework |
| June 24-25, 2013 | CF7 in Paris France to discuss remaining issues of ERPA GCs |
| June 29, 2013 | Pre-PC15 Workshop (Lombok, Indonesia) on ERPA GCs |
| June 30-July 1, 2013 | PC15 (Lombok, Indonesia) to present the first draft of the ERPA GCs and discuss remaining issues |
| August-October 2013 | Review & Commenting Period(s) / Revisions(s) of ERPA GCs / Telephone-/Videoconference(s) |
| October/December 2013 | Pre-PC16 Workshop (ERPA GCs); Endorsement of ERPA GCs at PC16 |

Structure of ERPA General Conditions (1)

| ERPA - Commercial Terms (negotiable) | General Conditions (non-negotiable) |
|---|--|
| Application of General Conditions <ul style="list-style-type: none">• Incorporated into ERPA by reference | Application of General Conditions <ul style="list-style-type: none">• In case of inconsistency, ERPA prevails |
| ER Program Description | Definitions |
| Conditions of Effectiveness <ul style="list-style-type: none">• Letter of Approval (authorization)• Benefit Sharing Plan• Safeguards Plans• Sub-Project Arrangements (signed)• Reversal Event Mitigation Plan (<i>new</i>) | - |
| Purchase & Sale <ul style="list-style-type: none">• Contract ER Volume & Unit Price• Periodic Payments (for transferred ERs)• Advance Payment | Purchase & Sale <ul style="list-style-type: none">• ERs only (no rights to land)• Transfer of & Payment for ERs<ul style="list-style-type: none">➤ Legal Title➤ Transfer & Payment Process➤ Costs & Taxes• 'Sweep' Clause |



Structure of ERPA General Conditions (2)

| ERPA - Commercial Terms (negotiable) | General Conditions (non-negotiable) |
|---|---|
| <p>Option (for Additional ERs)</p> <ul style="list-style-type: none"> • Option types: <ul style="list-style-type: none"> ➤ Call Option (Buyer) ➤ Right of First Refusal (Buyer) ➤ Put Option (Seller) • Exercise Price | <p>Option (for Additional ERs)</p> <ul style="list-style-type: none"> • Grant & Exercise of Option • Transfer of Additional ERs • Termination of Option |
| <p>ER Program Development</p> <ul style="list-style-type: none"> • Expected ER Program Commissioning Date • Focal Point (sole/joint) • [Cost Caps] or [Cost Recovery Discount] | <p>ER Program Development</p> <ul style="list-style-type: none"> • Changes to Documentation (if needed) • Benefit Sharing Plan • Non-Carbon Benefits |
| - | <p>Distribution Letter</p> |
| - | <p>Registration & Verification</p> |
| <p>ER Program Operation/Management</p> <ul style="list-style-type: none"> • [Potentially additional Covenants (Seller), if needed] | <p>ER Program Operation/Management</p> <ul style="list-style-type: none"> • Covenants (Seller) for Project/Sub-Project operation/management |

Structure of ERPA General Conditions (3)

| ERPA - Commercial Terms (negotiable) | General Conditions (non-negotiable) |
|--|--|
| - | Communication regarding ERs |
| - | Reversal Events <ul style="list-style-type: none"> • Reversal Event Mitigation Plan (<i>new</i>) • [Buffer Reserve / 'Replacement ERs'] |
| - | Force Majeure |
| Representations & Warranties <ul style="list-style-type: none"> • [Potentially additional Representations & Warranties, if needed] | Representations & Warranties <ul style="list-style-type: none"> • Buyer & Seller • Sanctionable Practices |
| - | Events of Default & Remedies <ul style="list-style-type: none"> • Events of Default • Cure Period / Action Plan • Remedies |
| - | Other Termination Events <ul style="list-style-type: none"> • Termination of Carbon Fund • Seller ineligible for World Bank funds |

Structure of ERPA General Conditions (4)

| ERPA - Commercial Terms (negotiable) | General Conditions (non-negotiable) |
|--|---|
| Miscellaneous <ul style="list-style-type: none">• Term of ERPA• Confidentiality Clause (only if requested)• Notices (contacts) | Miscellaneous <ul style="list-style-type: none">• ERPA Amendments• Governing Law• Dispute Resolution<ul style="list-style-type: none">➤ UNCITRAL Conciliation/Arbitration• World Bank Capacity, Non-Recourse & Privileges and Immunities• Assignment & Novation• Public Disclosure Clause (principle)• Carbon Fund Participant Payment Failure |
| Annexes <ul style="list-style-type: none">• Conditions of Effectiveness• Minimum Reporting Period Amounts• ER Transfer Form• Exercise Notice• Form of Sub-Project Arrangement | Annexes <ul style="list-style-type: none">• Assignment Notice• Novation Agreement• World Bank Carbon Finance Anti-Corruption Guidelines |

Issues for Discussion

| Issues | Questions |
|--------------------|--|
| Legal title to ERs | <ul style="list-style-type: none">• How can the Seller ensure its ability to transfer to the Buyer legal title to ERs (e.g. land tenure/carbon rights assessments, title transfer authorizations, assignments, etc.)?• How can the Benefit Sharing Plan help minimize the risk of any legal title disputes? |
| Reversal Events | <ul style="list-style-type: none">• Can a Reversal Event Mitigation Plan process provide for sufficient protection to address Reversal Event risks?• Could a Buffer Reserve be part of a Reversal Event Mitigation Plan?• How can Reversal Events be addressed after termination of the ERPA/FCPF? |
| Costs | <ul style="list-style-type: none">• Should the Buyer be reimbursed for its incurred Costs?• Which types of 'Costs' should be reimburseable?• What is the preferred Costs reimbursement method:<ul style="list-style-type: none">➤ Cost reimbursement (subject to capped amounts)➤ Cost Recovery Discount? |