

DRAFT VERSION ONLY

Forest Carbon Partnership Facility (FCPF)

OCTOBER 12, 2012

FCPF ERPA TERM SHEET

FOR DISCUSSION

Note: The FCPF ERPA term sheet is intended to reflect the understanding of FCPF Participants Committee (“PC”) members of the basic (general and commercial) elements that will form part of a future Emission Reductions Payment Agreement (“ERPA”) to be used in the sale and purchase of Emission Reductions under the Carbon Fund of the FCPF. For this purpose, it needs to be endorsed by the PC. The FCPF ERPA term sheet is not intended to be a legal document but, instead, following its endorsement by the PC, is intended to form the basis for the subsequent efforts of the International Bank for Reconstruction and Development (“IBRD”), as Trustee of the Carbon Fund of the FCPF, to draft a set of detailed General Conditions (non-negotiable) and Commercial Terms (negotiable) for future ERPAs. Only once such General Conditions and Commercial Terms are finalized and the General Conditions are endorsed by the PC at a later stage, the IBRD, as Trustee of the Carbon Fund of the FCPF, may start negotiating an ERPA with a REDD Country Participant/authorized entity for the sale and purchase of Emission Reductions generated and verified under an Emission Reductions Program (“ER Program”). During such ERPA negotiations, the (negotiable) commercial elements listed in the term sheet (i.e., clauses 5 (Contract ER Volume), 7 (Price per Contract ER), 8 (Additional ER Volume and Price per Additional ER), 12 (Advance Payment) and 15 (Costs)) will form part of the Commercial Terms of the ERPA and will be negotiated and agreed upon prior to ERPA signature.

In addition, the term sheet includes an annex containing the basic elements of a Sub-Arrangement between the Seller and one or more Sub-Entities in the event that the Seller intends to avail itself of the support of Sub-Entities to implement an ER Program.

Unless otherwise defined in the term sheet, all capitalized terms used have the same meanings as in the FCPF Charter.

FCPF ERPA TERM SHEET

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| 1. Buyer | International Bank for Reconstruction and Development (IBRD) as Trustee of the Carbon Fund of the FCPF (Carbon Fund) on behalf of the participants of Tranche A and Tranche B of the Carbon Fund (Carbon Fund Participants) |
| 2. Seller | REDD Country Participant/authorized entity ¹ |
| 3. Parties | Buyer and Seller |
| 4. Type of Emission Reductions | One ER represents one tonne of CO ₂ equivalent (tCO ₂ e) reduced or removed by sinks from REDD+ activities under an ER Program (ER); eligibility of an ER to be used by Tranche A Carbon Fund Participants for compliance purposes under any existing or future compliance carbon market, or resale, will not be a requirement for the sale and purchase obligations under the ERPA. |
| 5. Contract ER Volume | Prior to the date of the ERPA, the Parties will negotiate and agree on a total amount of ERs to be generated under the ER Program by the Seller and transferred to the Buyer during the term of the ERPA (e.g., based on certain percentage of overall ERs estimated to be generated under the ER Program) (Contract ERs). |
| 6. Minimum Reporting Period Amount | Portion of the Contract ER Volume required to be transferred for each Reporting Period (as defined below) over the term of the ERPA on a seniority basis (i.e., in priority to other buyers), as set out in a transfer schedule (Transfer Schedule) to be attached to the ERPA. |
| 7. Price per Contract ER | Prior to the date of the ERPA, the Parties will negotiate and agree on the price per transferred Contract ER. The price per transferred Contract ER will be determined in accordance with the 'Pricing Approach for the Carbon Fund of the FCPF' following the guidance received from the FCPF Participants Committee in the 'Methodological Framework and Pricing Approach for the Carbon Fund of the FCPF' (as approved in Resolution PC/12/2012/3) and as further specified by Carbon Fund Participants (Pricing Approach). |
| 8. Additional ER Volume and Price per Additional ER | Prior to the date of the ERPA, the Parties may negotiate and agree on the potential purchase of additional ERs, i.e., ERs generated under the ER Program in excess of the Minimum |

¹ An 'authorized entity' would be an entity other than the REDD Country Participant that has been authorized by the REDD Country Participant to implement the ER Program and enter into an ERPA (as Seller) with the Buyer for the sale and purchase of ERs generated under that ER Program.

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Reporting Period Amount during a Reporting Period (as defined below)² and/or in excess of the Contract ER Volume (**Additional ERs**). The Parties may agree on one of the following options as part of the ERPA:

- No Additional ER Volume under the ERPA³;
- Seller has a right, but not an obligation, to sell to the Buyer all or part of Additional ERs subject to a certain capped amount to be agreed (**Put Option**);
- Buyer has (1) a right, but not an obligation, to purchase all or part of Additional ERs (**Call Option**); or (2) a right of first refusal regarding the sale and purchase of any Additional ERs (**Right of First Refusal**), i.e., Seller has to offer any Additional ERs first to the Buyer and can sell Additional ERs to a Third Party only after the Buyer has rejected the offer.

Prior to the date of the ERPA, the Parties will negotiate and agree on the price per transferred Additional ER. The price per transferred Additional ER will be determined in accordance with the Pricing Approach or may be the same as the agreed price for transferred Contract ERs (see above).

9. Conditions of Effectiveness of Sale and Purchase

Whereas the ERPA becomes effective upon signature of both Parties, the respective Party's obligations under the ERPA regarding the sale, transfer and payment for Contract ERs and Additional ERs will only become effective upon the following conditions being fulfilled by the Seller (**Conditions of Effectiveness**), in form and substance satisfactory to the Buyer:

- (1) Submission of a letter of approval by the relevant authority in the REDD Country Participant regarding the ER Program (which, if an entity other than the REDD Country Participant is the Seller, will be accompanied by an express authorization of such entity to participate in the ER Program by the REDD Country Participant);
- (2) Submission of a Benefit-Sharing Plan (as defined below); ~~together with evidence that the Seller has undertaken comprehensive prior consultations with stakeholders and that the submitted Benefit-Sharing Plan (as defined below) has received broad community support;~~

² The Parties may also opt to allow the Seller to transfer any ERs generated in excess of the Minimum Reporting Period Amount during a Reporting Period as Contract ERs to the Buyer, thereby accelerating the transfer of the full Contract ER Volume ("sweep clause").

³ Instead, the Seller may enter into separate ERPAs with third parties (including individual FCPF Carbon Fund Participants) for the sale and purchase of Additional ERs.

(3) If relevant, submission of copies of one or more executed Sub-Arrangements (as defined below) between the Seller and the Sub-Entities (as defined below) required to implement the ER Program;

(4) [\[Submission of one or more Safeguards Plans \(as defined below\) required as a result of the Buyer's environmental and social safeguards due diligence\]⁴.](#)

If any of the conditions are not fulfilled by [a given date] or within [X months of date of ERPA] (**Condition Fulfillment Date**), Buyer may opt to:

- Extend Condition Fulfillment Date and, possibly, reduce the Contract ER Volume/one or more Minimum Reporting Period Amount(s) by the amount of ERs that, in the Buyer's reasonable opinion, can no longer be expected to be generated/transferred due to the delay in the Condition Fulfillment Date; or
- Terminate the ERPA [and recover incurred Costs (defined below) [up to a certain capped amount]].

10. Transfer of ERs

The purchase, sale and transfer relates to ERs only (not to any land or territories).

In the event that one or more registry system(s) required for the transfer(s) of ERs has/have not been set up at the date of the ERPA to record the transfer(s) of Contract ERs and/or Additional ERs under the ERPA, any transfer of ERs will be deemed completed upon receipt by the Buyer of:

- A final Verification Report (as defined below) verifying the amount of ERs generated and measured under the ER Program during a given Reporting Period (as defined below) and contracted for under the ERPA or, as an exception and at the Buyer's sole and absolute discretion [\(following consultations with Tranche A and Tranche B Carbon Fund Participants\)](#) and pending subsequent Verification, a Performance Report (as defined below), in form and substance satisfactory to the Buyer, that documents the amount of ERs generated and measured under the ER Program during a given Reporting Period and contracted for under the ERPA; and
- An invoice that documents the ER transfer and requests

⁴ [Such Safeguards Plans are usually submitted to the Buyer prior to ERPA signature. However, in the event that such Safeguards Plans have not been submitted to the Buyer prior to ERPA signature, such Safeguards Plans will be another Condition of Effectiveness.](#)

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payment (**ER Transfer Form**), a template of which will be attached to the ERPA.

In the event that one or more registry system(s) required for the transfer(s) of ERs has/have been set up at the date of the ERPA to record the transfer(s) of Contract ERs and/or Additional ERs under the ERPA, any transfer of Contract ERs and/or Additional ERs will be deemed completed upon:

- Receipt by the Buyer of (1) a final Verification Report (as defined below) verifying the amount of ERs generated and measured under the ER Program during a given Reporting Period (as defined below) and contracted for under the ERPA, and (2) an ER Transfer Form from the Seller; and
- Crediting of such ERs to one or more registry account(s) nominated by the Buyer in accordance with the rules of the respective registry system.

Any ER transfer will include all rights/titles/interests attached to such ERs (e.g., future ER credits to which such ERs may be converted). Any tonne of CO₂ equivalent reduced or removed by sinks from REDD+ activities under the ER Program and sold and transferred to the Buyer as Contract ER and/or Additional ER under the ERPA will not be used again by the Seller for sale, public relations, compliance or any other purposes (double counting).

Legal title to each transferred ER will pass from the Seller to the Buyer upon payment.

11. Payment for transferred ERs

Payment will occur upon completion of each ER transfer.

However, in the event that one or more registry system(s) required for the transfer(s) of ERs has/have not been set up at the date of the ERPA to record the transfer(s) of Contract ERs and/or Additional ERs under the ERPA and an ER transfer occurs on the basis of a Performance Report (as defined below) only (see above), the following will apply:

- Any payment for transferred ERs based on a Performance Report (as defined below) only will be made in two installments: (1) [X]% of the value of the reported and contracted amount of ERs (i.e., reported and contracted ER amount times price per transferred ER) upon completion of the ER transfer; and (2) the remaining payment amount (which will be equal to the difference of the value of the subsequently verified and contracted amount of ERs and the first installment payment amount)

upon receipt of a final Verification Report.

- In the event that a subsequent Verification Report (as defined below) verifies an ER amount that is less than the amount reported in the Performance Report and the value of such verified and contracted ER amount is less than the first installment payment amount (see above), the Buyer will be entitled to recover the overpaid amount from any future payments under the ERPA for transferred ERs or, if no subsequent payment will be due, request prompt repayment of such overpaid amount from the Seller.

12. Advance Payment^(s)

Prior to the date of the ERPA, the Parties may negotiate and agree on one or more advance payment(s). Such advance payment(s) may be made upfront, i.e., prior to the transfer of any ERs (**Upfront Advance Payment(s)**), and/or during Reporting Periods (as defined below) to ensure a regular flow of revenue to the Seller (and/or Beneficiaries (as defined below)) (**Interim Advance Payment(s)**).

Any Upfront Advance Payment will be subject to certain conditions:

- Upfront Advance Payment amount may be capped at certain % of ERPA value (i.e., Contract ER Volume times price per transferred Contract ER);
- Disbursement(s) may be linked to certain [agreed](#) milestone(s) evidencing certain progress in the ER Program implementation process ⁵and fulfillment of the Conditions of Effectiveness⁵;
- Security may be required (e.g., letters of credit/bank, insurance or government or other guarantees).

Any Interim Advance Payment will be subject to certain conditions:

- The sum of any yet unrecovered Upfront Advance Payment amount plus any (additional) Interim Advance Payment amount will be capped at certain % of ERPA value (i.e., Contract ER Volume times price per transferred Contract ER), as assessed immediately prior to any scheduled Interim Advance Payment disbursement;
- Disbursement(s) will be linked to certain [agreed](#) milestone(s)⁵ related to interim progress to be achieved in

⁵ [The \(progress\) milestone\(s\) that must be fulfilled and reported on in the Interim Progress Report will be agreed between the Parties prior to ERPA signature and will describe reasonable events that have the ability to demonstrate progress made in ER Program implementation.](#)

	the ER Program implementation process as documented in interim progress reports to be issued by the Seller and submitted to the Buyer [and, if requested by the Buyer, verified by an Independent Reviewer (as defined below)] (Interim Progress Reports); • Security may be required (e.g., letters of credit/bank, insurance or government or other guarantees). Any advance payment(s) will be recovered for the Buyer through deductions from future payments under the ERPA for transferred ERs or, if no subsequent payment will be due, through prompt repayment of the outstanding advance payment amount from the Seller to the Buyer.
13. Reporting Period	The period(s), agreed between the Parties, for which the Seller has to measure and report on generated ERs and Non-Carbon Benefits (as defined below) under the ER Program in the form of Performance Reports (as defined below).
14. Taxes	Taxes and other charges levied in connection with the transfer of ERs (Taxes) will be borne by the Buyer, unless such taxes or other charges are levied by the REDD Country Participant (in which case such taxes and other charges will be borne by the Seller).
15. Costs	Whereas the Seller is expected to cover the costs it incurs with respect to ERPA negotiations and the preparation and implementation of the ER Program (Costs) from (advance and other) payments made to or on behalf of the Seller by the Buyer in accordance with the ERPA, the Parties may, prior to the date of the ERPA, negotiate and agree on how to share the Costs incurred by the Buyer through, e.g., • Cost recovery by the Buyer from the Seller by deducting such Costs from future payments under the ERPA for transferred ERs, subject to a certain capped amount to be agreed; or • Cost recovery discounts on the price to be paid per transferred ER. Any additional costs incurred by the Buyer with respect to the process of converting a transferred ER into an ER credit that may be eligible to be used by Carbon Fund Participants for compliance or resale purposes under any existing or future compliance carbon market will be borne by the Buyer.
16. Communication with respect to ER Program and ERs	Parties will cooperate in good faith with respect to how they communicate with the media and other third parties on

issues related to the ER Program. Buyer will be authorized to [solely][jointly] communicate with all relevant authorities, entities and registries in connection with ER Program registration and ER verification/certification/conversion/issuance/transfer/forwarding.

17. Measurement, Reporting and Verification (MRV)

Seller will collect and record all relevant data related to the generation of ERs under the ER Program (including the occurrence of any Reversal Events (as defined below)) {and the achievement of any non-carbon benefits specified in the ER Program Document (which may include, but not be limited to, the improvement of local livelihoods, building of transparent and effective forest governance structures, making progress on securing land tenure and enhancing or maintaining biodiversity and/or other ecosystem services) (**Non-Carbon Benefits**)} in accordance with the REDD Country Participant's MRV system and the 'Methodological Framework for the Carbon Fund of the FCPF' following the guidance received by the FCPF Participants' Committee in the 'Methodological Framework and Pricing Approach for the Carbon Fund of the FCPF' (as approved in Resolution PC/12/2012/3) and as further specified by Carbon Fund Participants (**Methodological Framework**), which will include a plan of how to measure the ERs generated under the ER Program (**ER Program Monitoring System**), and issue and submit to the Buyer reports on the amount of measured ERs generated under the ER Program {and the achievement of Non-Carbon Benefits under the ER Program} during the preceding Reporting Period (**Measurement and Reporting**) in accordance with the REDD Country Participant's MRV system and the evolving Methodological Framework (**Performance Report**).

{The measurement and reporting process for Non-Carbon Benefits will take into account existing and emerging guidance on the measurement of non-carbon benefits by the United Nations Framework Convention on Climate Change and other relevant platforms.}

Parties will agree whether the Buyer or the Seller will be responsible for contracting an independent third party auditor (**Independent Reviewer**) to carry out an ex post verification of the Performance Reports to verify the actual amount of ERs generated under the ER Program {and the achievement of Non-Carbon Benefits under the ER Program} during a given Reporting Period in accordance with the REDD Country Participant's MRV system and the evolving Methodological Framework (**Verification**) and to issue to the

Parties a verification report (**Verification Report**).

18. Reversals

Risk that a tCO₂e sequestered in the forest and transferred as an ER to the Buyer is released (Reversal) through a reversal event (e.g., fire, logging, conversion to agriculture) (**Reversal Event**). The occurrence of a Reversal Event will be identified in accordance with the ER Program Monitoring System and, if requested by the Buyer, verified by an Independent Reviewer. The consequences of a Reversal Event will be addressed in accordance with the Methodological Framework. In accordance with the evolving Methodological Framework, the consequences of a non-intentional⁶ Reversal Event during the ERPA term may be addressed through various ways, e.g., the creation of buffer reserves (i.e., the establishment of a separate account, administered by an agreed entity, to which a certain % of ERs generated and verified under the ER Program will be transferred), use of insurance, effective forest management practices, or other approaches.

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The occurrence of an intentional⁷ Reversal Event will result in an Event of Default.

19. Additional covenants

In addition to any other covenant included in the term sheet elsewhere, each party will assume certain obligations to be implemented over the term of the ERPA, e.g.,

- **Seller:** Proper implementation and operation of the ER Program in accordance with the ER Program Document (including the feed-back and grievance redress mechanism for the ER Program) and all applicable laws and regulations; compliance with the REDD Country Participant's MRV system, the Methodological Framework and the ER Program Monitoring System; not to cause, tolerate or authorize the occurrence of any Reversal Event; cooperation with Buyer and other relevant authorities/entities regarding ER verification/certification/issuance/transfer/forwarding; etc.
- **Buyer:** Contracting an Independent Reviewer for Verifica-

⁶ A 'non-intentional Reversal Event' may be defined to include any Reversal Event other than an 'intentional Reversal Event' (see definition in footnote 8 below) that has not been the result of an act or omission by the Seller made (A) with the intent to cause, tolerate or authorize the occurrence of a Reversal Event or (B) with reckless disregard to the consequence of the occurrence of a Reversal Event.

⁷ An 'intentional Reversal Event' may be defined to include any Reversal Event that has been the result of an act or omission by the Seller made (A) with the intent to cause, tolerate or authorize the occurrence of a Reversal Event or (B) with reckless disregard to the consequence of the occurrence of a Reversal Event.

tion and other purposes referred to in the ERPA, subject to the Methodological Framework, and provided that Parties agree to assign this responsibility to the Buyer; etc.

20. Conversion of ERs to other ER Credits

Without prejudice to clause 4 (Type of Emission Reduction) above, the ~~Seller~~^{Buyer} will cooperate with the Buyer and other relevant authorities/entities to help the Buyer convert the transferred ERs into other ER credits that may be used by Tranche A Carbon Fund Participants for compliance purposes under any existing or future compliance carbon market or for resale purposes. If the conversion process requires any changes to the ER Program Document, the ER Program Monitoring System or the ERPA, the Parties will work together in good faith to change the relevant documents accordingly, provided that such changes do not adversely affect the Seller's rights under the ERPA.

21. Benefit sharing

The Seller will share all or a significant part of the monetary or other benefits achieved in connection with the implementation of the ER Program (including received payments for transferred ERs and advance payments) with relevant stakeholders. For this purpose, the Seller will develop and submit to the Buyer a plan on how it will share such benefits with relevant stakeholders~~undertake comprehensive prior consultations with stakeholders and develop a benefit-sharing mechanism that has received broad community support~~ **(Benefit-Sharing Plan)**. The Benefit-Sharing Plan will have to be in full compliance with applicable World Bank policies, build on the ER Program Document as well as any relevant domestic laws and regulations, and will include, among others, the benefit-sharing process, related distribution criteria, distribution timelines, a grievance redress mechanism, as well as a list of benefit recipients⁸ **(Beneficiaries)**. The Seller will report to the Buyer on the proper implementation of the Benefit-Sharing Plan as part of each Performance Report/Interim Progress Report. The Buyer may request an Independent Reviewer to verify the Seller's proper implementation of the Benefit Sharing Plan.

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Failure to properly implement the Benefit-Sharing Plan will result in an Event of Default.

22. Sub-Arrangements

The Seller may enter into one or more sub-agreements or

⁸ The list of Beneficiaries ~~will be developed during the comprehensive prior consultation process with stakeholders and~~ may include Sub-Entities and other relevant~~local~~ stakeholders (including, e.g., forest-dependent indigenous peoples and other forest dwellers, affected communities/groups, local civil society organizations, etc.) and may have to be updated from time to time.

other sub-arrangements (together referred to as **Sub-Arrangements**) with ER Program implementing sub-entities (**Sub-Entities**) which, among others, will reflect certain basic elements specified in the Annex ('Sub-Arrangement') to this term sheet to ensure proper ER Program implementation in accordance with the ERPA, the ER Program Document, the ER Program Monitoring System, the Safeguards Plans (as defined below) and the World Bank's sanctions regime for Sanctionable Practices (as defined below).

The Seller will remain ultimately responsible for the proper performance of its obligations under the ERPA and ER Program implementation.

23. World Bank's Operational Policies and Procedures

The Seller will be required to comply with the World Bank's environmental and social safeguard policies⁹ requirements with respect to the implementation and operation of the ER Program. As a result of the Buyer's safeguards due diligence, the Seller may be required to prepare and submit to the Buyer one or more documents (**Safeguards Plans**) that describe the measures to be taken by the Seller during the implementation and operation of the ER Program to eliminate, offset or reduce adverse environmental and social impacts, in accordance with World Bank requirements.¹⁰ [The Seller will report to the Buyer on the proper implementation of the Safeguards Plans as part of each Performance Report/Interim Progress Report.](#)

24. Sanctions

The Seller will be subject to the World Bank's sanctions regime for coercive, corrupt, collusive, obstructive or fraudulent practices¹¹, as specified in the IBRD Carbon Finance Anti-Corruption Guidelines (to be attached to the ERPA), in relation to the ER Program (**Sanctionable Practices**).

25. Representations and Warranties of Seller at the time of signing the ERPA and at the time of each transfer of ERs

- a) Seller has power and authority to execute and deliver the ERPA and perform its obligations thereunder.
- b) Seller has taken all necessary action to authorize the entry into and performance of its obligations under the

⁹ The World Bank's environmental and social safeguard policies can be reviewed on its external website under: <<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,menuPK:584441~pagePK:64168427~piPK:64168435~theSitePK:584435,00.html>>

¹⁰ Depending on the results of the Buyer's safeguards due diligence, these documents may include, among others, e.g., an Environmental Management Plan, a Resettlement Action Plan and/or an Indigenous Peoples Plan.

¹¹ Information on the World Bank's sanctions process can be found on its external website under: <<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:21254834~pagePK:41367~piPK:51533~theSitePK:40941,00.html>>

ERPA.

- c) All information provided to the Buyer regarding the ER Program and the ER Program Document is true and correct.
- d) To the best of the Seller's knowledge, there is no litigation or arbitration pending or threatened against the Seller, including as related to the resources, land or territory utilized for the ER Program or the Contract ERs which could materially adversely affect the Seller's ability to meet its obligations under the ERPA.
- e) To the best of the Seller's knowledge, there are no outstanding agreements or liabilities that could materially adversely affect the Seller's ability to meet its obligations under the ERPA.
- f) At the time of any ER transfer, Seller has full legal and beneficial title and exclusive rights to Contract ERs, free of any third party interests.
- g) Seller has not sold or assigned any interest in the Contract ERs to any third party.
- h) By the end of the Condition Fulfillment Date, Seller has obtained, and is not in default under, any material contract or license relating to the ownership, development or operation of the ER Program.
- i) Seller, or entities controlled by it or entities controlling it, have not committed or engaged in Sanctionable Practices.

26. Seller Events of Default

- a) Failure to transfer the Minimum Reporting Period Amount as set out in a schedule to the ERPA (**Transfer Failure**).
- b) Failure to properly implement the Benefit-Sharing Plan or the feed-back and grievance redress mechanism under the ER Program.
- c) Material delay in the development of the ER Program.
- d) Failure to comply with any Safeguards Plan.
- e) Material breach of other terms of the ERPA.

27. Buyer Events of Default

- a) Failure to make payment when due (**Payment Failure**).

b) Material breach of other terms of the ERPA.

28. Cure Period

The defaulting party will be notified by the non-defaulting party of an Event of Default (**Default Notice**). As of receipt of the default notice, the defaulting party has a period of [*X calendar days*] to cure the Event of Default (**Cure Period**), provided that such Event of Default is curable.

29. Remedies

If an Event of Default is not remedied within the Cure Period, if applicable, the non-defaulting party will have the following remedies:

Remedies of Buyer:

a) In case of a non-intentional Transfer Failure,

- Allow the shortfall of the Minimum Reporting Period Amount to be generated and transferred in the subsequent Reporting Period;
- Reduce the Contract ER Volume/one or more Minimum Reporting Period Amounts by the amount of the shortfall (and convert that reduced Contract ER amount into a Call Option); or
- Terminate the ERPA [and recover incurred Costs [up to a certain capped amount]].

b) In case of an intentional Event of Default¹² (including Transfer Failure),

- Terminate the ERPA, recover any unrecovered payments/Costs [and liquidated damages¹³].

c) In case of a material delay in the development of the ER Program,

- Reduce the Contract ER Volume/one or more Minimum Reporting Period Amounts by the amount of the shortfall (and convert that reduced Contract ER amount into a Call Option).

d) In any other case,

¹² An intentional Event of Default would be defined as an Event of Default that has occurred as a result of: (A) the provision of false or misleading information or representations by the defaulting party, (B) an act or omission made with the intent to breach such party's obligations under the ERPA, or (C) conduct by such party which recklessly disregards the rights of the other (non-defaulting) party under the ERPA.

¹³ Please note that in the case of variable pricing, liquidated damages will be difficult to calculate.

- Terminate the ERPA and recover any unrecovered payments/Costs.

Remedies of Seller:

a) In case of a Payment Failure,

- Require payment plus interest at the rate of LIBOR from the date triggering the Payment Failure Event of Default; and/or
- Terminate the ERPA.

b) In case of an intentional Event of Default¹⁴ (including Payment Failure),

- Terminate the ERPA [and][recover liquidated damages¹⁵] [and, in the event of a Payment Failure, require payment plus interest at the rate of LIBOR from the date triggering the Payment Failure Event of Default].

c) In any other event,

- Terminate the ERPA.

30. Termination Event

Determination by the IBRD that Seller, or entities controlled by it or controlling it, have committed or engaged in Sanctionable Practices. In this event, the Buyer may terminate the ERPA and recover any unrecovered payments/Costs.

Upon such termination and unrecovered payment/Costs recovery, neither Seller nor Buyer will have any surviving obligations under the ERPA.¹⁶

31. Seller withdrawal from FCPF

Withdrawal from the FCPF by the REDD Country Participant hosting the ER Program will not terminate or alter any ER transfer or other obligations resulting from any signed ERPAs.

32. Force Majeure

If the Seller is unable to transfer Contract ERs and/or Additional ERs in accordance with the terms of the ERPA due

¹⁴ See footnote 9 above.

¹⁵ Please note that in the case of variable pricing, liquidated damages will be difficult to calculate.

¹⁶ The only survival provision will be the confidentiality provisions.

to a Force Majeure Event¹⁷, the Contract ERs/one or more Minimum Reporting Period Amounts will be reduced accordingly. If non-performance continues for [180 calendar days] without the Parties reaching agreement on an alternative means to carry out the intention of the ERPA, the non-affected party may terminate the ERPA.

33. Carbon Fund Participants
Payment Default

Notwithstanding any other provision of the ERPA, Seller will have recourse only to the assets of the Carbon Fund for the payment of any obligations of the Buyer under or in connection with the ERPA, which consist of the funding to be provided to the Buyer by Carbon Fund Participants.

Under the FCPF Charter, Carbon Fund Participants are required to make payment to the Buyer as trustee of the Carbon Fund up to their respective contribution to the Carbon Fund upon periodic demands for payment issued by the Buyer. In the event one or more Carbon Fund Participants fails to make payment to the Buyer as trustee of the Carbon Fund for whatever reason (**Carbon Fund Participants Payment Default**), the Buyer may not have sufficient funds available to meet its payment obligations when due under or in connection with the ERPA, in which case the Buyer will not have any liability whatsoever in connection with such lack of available funding.

The payment obligations of each Carbon Fund Participant towards the Buyer as trustee of the Carbon Fund under and in connection with the FCPF Charter are separate and no Carbon Fund Participant is obliged to make additional payments to the Buyer as trustee of the Carbon Fund in excess of its respective contribution to the Carbon Fund to compensate for any Carbon Fund Participants Payment Default under or in connection with the ERPA.

34. Governing Law

English law

35. Dispute Resolution

Parties will endeavor to settle amicably any dispute between them arising out of or relating to the ERPA (**Settlement**).

If Settlement cannot be agreed, amicable resolution of the dispute by conciliation in accordance with UNCITRAL

¹⁷ A Force Majeure Event is defined as an extraordinary and unavoidable event beyond the reasonable control of the party affected by it, including but not limited to cyclone, storm, flood, fire and insect plague, except that such an event will not be considered a Force Majeure Event if the occurrence of the event could have been prevented or mitigated by the party affected by it.

Conciliation Rules (**Conciliation**) with place of Conciliation in [REDD Country].

If Conciliation is unsuccessful, UNCITRAL Arbitration (**Arbitration**) with place of Arbitration in [X].

36. Confidentiality

Unless the Parties agree otherwise, the terms of the ERPA will be confidential unless disclosure is required under any legislation or judicial process. For the purposes of the World Bank Group Policy on Access to Information¹⁸, ERPAs will be deemed confidential and all reports (including Performance Reports, Verification Reports, Interim Progress Reports) and plans (including Benefit-Sharing Plan, and Safeguards Plans) to be issued under the ERPA will be deemed non-confidential. The confidentiality obligation will survive the termination of the ERPA for 5 years.

37. Term of the ERPA

The ERPA will become effective on the date of execution by both Parties. Unless terminated earlier, the ERPA will terminate when all obligations with respect to the sale, transfer and payment for Contract ERs and/or Additional ERs have been fulfilled, but in any case by no later than [a given date].

¹⁸ The World Bank Group Policy on Access to Information can be reviewed on its external website under: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTANDOPERATIONS/EXTINFODISCLOSURE/0,,menuPK:64864911~pagePK:4749265~piPK:4749256~theSitePK:5033734,00.html>.

ANNEX
SUB-ARRANGEMENT
DRAFT FOR DISCUSSION

*Note: This annex to the ERPA term sheet lays out the basic elements of a sub-agreement or other sub-arrangement (**Sub-Arrangement**) between the Seller and one or more Sub-Entities to ensure proper implementation of the ER Program.*

Unless otherwise defined in this annex, all capitalized terms used have the same meanings as given to those terms in the ERPA term sheet and the FCPF Charter.

While the basic elements listed in this Annex are open for discussion and may be negotiated between the parties to the Sub-Arrangement, the IBRD will have to issue a ‘no-objection’ regarding the content of the final Sub-Arrangement template to be used by the Seller to ensure that any subsequent Sub-Arrangements reflect the basic elements listed in this Annex and can be deemed in form and substance satisfactory to the Buyer as a Condition of Effectiveness.

- | | |
|---|---|
| 1. Parties | Seller and Sub-Entity |
| 2. Works | Parties have to agree on a list of works to be carried out by Sub-Entity to help the Seller implement the ER Program (Works). |
| 3. Covenants | <p>Sub-Entity will:</p> <ul style="list-style-type: none"> a) Properly implement the Works in accordance with the ER Program Document, the ER Program Monitoring System, the Safeguards Plans and the World Bank's sanctions regime for Sanctionable Practices. b) Fully cooperate with the Seller, Buyer and other relevant authorities/entities regarding ER verification/certification/conversion/issuance/ transfer/forwarding. |
| 4. Assignment of legal title to ERs | To the extent that Sub-Entity holds, or may hold, any legal or beneficial interest in the ERs or underlying greenhouse gas (GHG) reductions at any time, the Sub-Entity irrevocably assigns and transfers in full to the Seller, with full legal and equitable title and guarantee, all its right, title, benefit and interest, present and future, in and to any ERs or GHG reductions generated under the Sub-Arrangement. |
| 5. Payment | The Seller will compensate the Sub-Entity for its Works under the Sub-Arrangement. All or part of that compensation may be paid through a share of the revenues the Seller receives under the ERPA, in accordance with the Benefit-Sharing Plan. |
| 6. Representations and Warranties of Sub-Entity | <ul style="list-style-type: none"> a) Sub-Entity has power and authority to execute and deliver the Sub-Arrangement and perform its obligations thereunder. b) Sub-Entity has taken all necessary action to authorize the entry into and performance of its obligations under the Sub-Agreement. c) Sub-Entity has taken all necessary actions and has the capacity to meet all requirements set out in the ER Program Monitoring System and the Safeguards Plans. |

- d) All information provided to the IBRD or the Seller regarding the Sub-Arrangement and the ER Program Document is true and correct.
- e) Sub-Entity is a financially viable entity and is not insolvent or at risk of becoming insolvent.
- f) To the best of the Sub-Entity's knowledge, no litigation pending or threatened against the Sub-Entity, the Sub-Arrangement or the ERs to be generated under the Sub-Arrangement which could materially adversely affect Sub-Entity's or Seller's ability to meet its obligations under the Sub-Arrangement or the ERPA, respectively.
- g) To the best of the Sub-Entity's knowledge, there are no outstanding agreements or liabilities that could materially adversely affect the Sub-Entity's ability to meet its obligations under the Sub-Arrangement.
- h) Sub-Entity has not sold or assigned any interest in any ERs generated under the Sub-Arrangement to any third party.
- i) Sub-Entity has obtained, and is not in default under, any material contract or license relating to the ownership, development or operation of the Sub-Arrangement.
- j) Sub-Entity (including entities controlled by them or entities controlling them) has not committed or engaged in Sanctionable Practices.

7. Sub-Entity Events of Default

- a) Dissolution, liquidation, insolvency or bankruptcy (voluntary or involuntary).
- b) Failure to meet all requirements contained in the ER Program Monitoring System, ER Program Document or any Safeguards Plan for the ER Program.
- c) Material breach of other terms of the Sub-Arrangement.

8. Seller Events of Default

- a) Failure to make payment when due.

- b) Material breach of other terms of the Sub-Arrangement.
- 9. Termination Event
 - Determination by the IBRD that Sub-Entity, or entities controlled by it or controlling it, have committed or engaged in Sanctionable Practices.
- 10. Other provisions
(to be negotiated between Seller and Sub-Entity)
 - a) Remedies for Events of Default
 - b) Force Majeure
 - c) Governing Law and Dispute Resolution
 - d) Confidentiality
 - e) Term