



Forest Carbon Partnership Facility

Pre-PC14 Workshop

ERPA Term Sheet

FCPF Participants Committee Meeting (PC14)

Washington DC, March 18-21, 2013

Overview

- I. Purpose of ERPA Term Sheet**
- II. Process of Endorsing ERPA Term Sheet**
- III. Basic Elements of ERPA Term Sheet**

Purpose of ERPA Term Sheet

- To **discuss** with, seek **feed-back** from, **inform** and – finally - **agree** among members of the FCPF Participants Committee (PC) regarding certain basic (general and commercial) principles of a future FCPF ERPA
- To **familiarize** PC members with certain FCPF ERPA-related terminology
- To serve as the **first step to the subsequent process of drafting, discussing and endorsing the FCPF ERPA General Conditions (non-negotiable) and Commercial Terms (negotiable)** among PC members

Process of Endorsing ERPA Term Sheet

Date / Time Period	Action
Sep. 18, 2012	Circulation of a first draft proposal of ERPA Term Sheet to PC
Sep. 18 – Oct. 5, 2012	Review & Commenting Period (w/ conference calls)
Oct. 5-8, 2012	Preparation of Q&A and of revised draft proposal of ERPA Term Sheet following Review and Commenting Period
October 9, 2012	Circulation of Q&A as well as a revised draft proposal of ERPA Term Sheet
October 20, 2012	Pre-PC13 Workshop (ERPA Term Sheet) - (advance) payments, MRV, Non-Carbon Benefits, Benefit Sharing
Nov.-Dec. 2012	Further Review & Commenting Period
March 18, 2013	Pre-PC14 Workshop (ERPA Term Sheet)
March 21, 2013	Endorsement by PC14

Basic Elements of ERPA Term Sheet (1)

#	Issue	Basic Elements
1.-3.	Parties to ERPA	Trustee of FCPF Carbon Fund (Buyer) and REDD Country Participant/authorized entity (Seller)
4.	Type of Emission Reduction	<ul style="list-style-type: none"> • One Emission Reduction (ER) equals one tonne of CO₂ equivalent (tCO₂e) reduced or removed by sinks from REDD+ activities under an ER Program • Eligibility of ER for compliance or resale purposes will not be a requirement under ERPA
5.-6.	Contract ER Volume <i>(negotiable & agreed in ERPA)</i>	<ul style="list-style-type: none"> • Total ER amount that Seller will generate and transfer to the Buyer as 'Contract ERs' during the term of the ERPA (based on certain % of estimated ER generation) • Each Reporting Period (as defined below) the Seller commits to generate/transfer certain minimum amount of Contract ERs (Minimum Reporting Period Amount) on a seniority basis (i.e., in priority to other buyers)

Basic Elements of ERPA Term Sheet (2)

#	Issue	Basic Elements
8.	Additional ER Volume <i>(negotiable & agreed in ERPA)</i>	<p>ER amount that ER Program may generate in excess of the Contract ER Volume (Additional ERs)</p> <p><u>Options:</u></p> <ul style="list-style-type: none"> (1) No Additional ER Volume under ERPA (2) Seller's right, but not obligation, to sell Additional ERs to Buyer (capped at certain amount) (Put Option) (3) Buyer's right, but not obligation, to purchase Additional ERs from Seller (capped at certain amount) (Call Option) (4) Buyer's right of 1st refusal; i.e. Seller may sell Additional ERs to 3rd parties but has to offer such Additional ERs first to the Buyer (Right of 1st Refusal)
7.-8.	Price per Contract ER/Additional ER <i>(negotiable & agreed in ERPA)</i>	<p>The price the Buyer will pay the Seller per transferred Contract ER/Additional ER (if any) determined in accordance with the 'Pricing Approach for the Carbon Fund of the FCPF' (Pricing Approach)</p>

Basic Elements of ERPA Term Sheet (3)

#	Issue	Basic Elements
9.	Conditions Precedent of Sale and Purchase	<ul style="list-style-type: none">• ERPA itself will become effective upon signature• Sale/purchase obligations under ERPA become effective upon fulfillment of certain conditions, in form and substance satisfactory to Buyer (Conditions of Effectiveness), e.g.:<ul style="list-style-type: none">➤ Letter of approval by relevant authority in REDD Country regarding ER Program (to be accompanied by authorization if Seller is an entity other than REDD Country Participant);➤ Benefit-Sharing Plan (as defined below);➤ If required to implement ER Program, one or more Sub-Arrangements between Seller and Sub-Entities;➤ Safeguards Plan(s)• Conditions have to be fulfilled at certain date/within certain time period (Condition Fulfillment Date)• If conditions are not fulfilled by Condition Fulfillment Date, Buyer may (a) extend Condition Fulfillment Date/reduce Contract ER Volume or (b) terminate ERPA/recover incurred Costs (defined below) [up to a certain capped amount]

Basic Elements of ERPA Term Sheet (4)

#	Issue	Basic Elements
10.	Transfer of ERs	<ul style="list-style-type: none">• If no registry system(s) available to record ER transfer at date of ERPA , ER transfer deemed completed upon receipt by Buyer of:<ul style="list-style-type: none">➤ Final Verification Report (as defined below); and➤ ER Transfer Form (documenting ER transfer/requesting payment)• If registry system(s) available to record ER transfer at date of ERPA , ER transfer deemed completed upon:<ul style="list-style-type: none">➤ Receipt by Buyer of (a) final Verification Report (as defined below) and (b) ER Transfer Form; and➤ Crediting of ERs to registry account(s) nominated by Buyer• Any ER transfer includes all rights/titles/interests attached to such ERs (e.g., future ER credits to which such ERs may be converted)• No double-counting allowed

Basic Elements of ERPA Term Sheet (5)

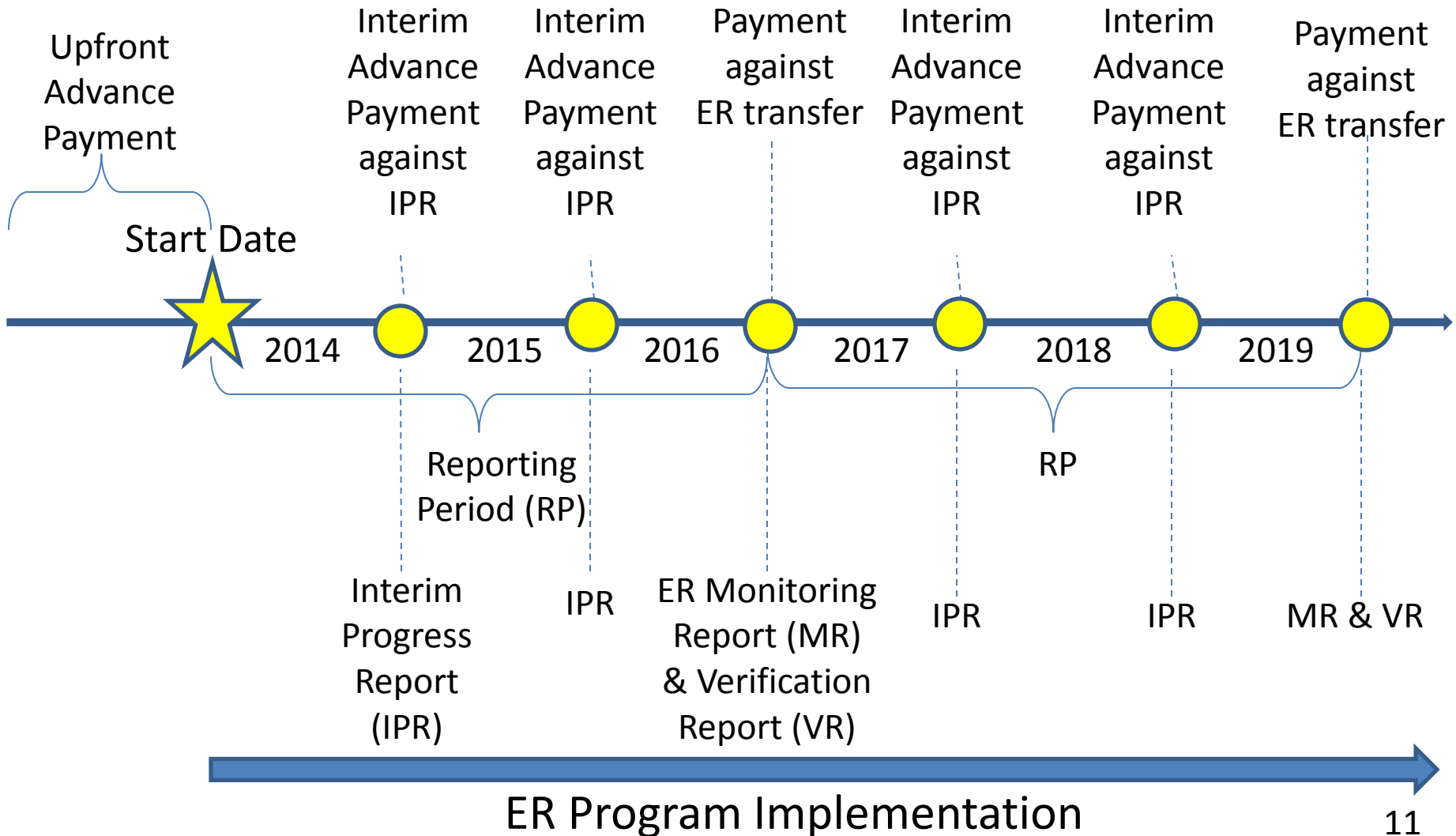
#	Issue	Basic Elements
11.	Payment for transferred ERs	<ul style="list-style-type: none"> • Upon completion of ER transfer • Legal title to ERs passes to Buyers upon payment
12.	Advance Payment (<i>negotiable & agreed in ERPA</i>)	<p>Buyer may agree to make an upfront advance payment to the Seller, i.e. prior to any ER transfer (Upfront Advance Payment), and/or one or more advance payment(s) during Reporting Periods (Interim Advance Payments)</p> <ul style="list-style-type: none"> • Upfront Advance Payment: <ul style="list-style-type: none"> ➤ Capped at certain % of ERPA value ➤ Disbursement linked to agreed milestones and fulfillment of Conditions of Effectiveness ➤ Security may be required • Interim Advance Payment(s): <ul style="list-style-type: none"> ➤ Overall sum of yet unrecovered Upfront Advance Payment plus any (additional) Interim Advance Payment will be capped at certain % of ERPA value ➤ Disbursement(s) linked to certain milestones related to ER Program progress as reported in Interim Progress Reports; Security may be required

Basic Elements of ERPA Term Sheet (6)

#	Issue	Basic Elements
12.	Advance Payment (<i>continued</i>)	<ul style="list-style-type: none">• If no registry system is available to record ER transfer at time of ER transfer and Buyer decides to make payment for ERs based on receipt of an ER Monitoring Report (as defined below), pending subsequent Verification and ER transfer, such early payment will be treated as another advance payment (ER Advance Payment):<ul style="list-style-type: none">➤ Payment of [X]% of value of reported ERs;➤ If final Verification Report verifies ER amount that is less than ER amount reported in the ER Monitoring Report, any amount overpaid in the ER Advance Payment will be recovered by Buyer in subsequent payment(s) (or repaid by Seller if no more subsequent payment(s) due)• Any advance payment amount will be recovered by Buyer in subsequent payment(s) for transferred ERs (or repaid by Seller if no more such subsequent payment(s) due)

Example for (Advance) Payments

E.g.: 3-year Reporting Period / Verification every 3 years



Basic Elements of ERPA Term Sheet (7)

#	Issue	Basic Elements
13.	Reporting Period	The period(s) (Reporting Period(s)) for which the Seller has to measure and report on generated ERs under the ER Program in the form of ER Monitoring Reports (as defined below)
14.	Taxes	Taxes and other charges (Taxes) levied in connection with the transfer of ERs shall be borne by the Buyer, unless such taxes or other charges are levied by the REDD Country (in which case such taxes and other charges shall be borne by the Seller)
15.	Costs (<i>negotiable & agreed in ERPA</i>)	<ul style="list-style-type: none">• Costs incurred by the Seller with respect to ERPA negotiations and the preparation and implementation of the ER Program (Costs) shall be borne by the Seller• Costs incurred by the Buyer may be shared between the Parties:<ul style="list-style-type: none">➤ Cost recovery by Buyer from future payments for transferred ERs (subject to certain agreed capped amount); or➤ Cost recovery discounts on price paid per transferred ER• Additional costs related to ER conversion borne by Buyer

Basic Elements of ERPA Term Sheet (8)

#	Issue	Basic Elements
16.	Communication re ER Program/ ERs	Buyer 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 &	<ul style="list-style-type: none"> • Seller collects/records for each Reporting Period data related to generated ERs in accordance with REDD Country's MRV system and 'Methodological Framework of the Carbon Fund of the FCPF' and reports to Buyer in the form of 'ER Monitoring Reports' (Measurement and Reporting) • Independent ex post assessment (Verification) of ER Monitoring Reports and issuance of final report (Verification Report) by independent third party auditor (Independent Reviewer)
18.	Verification (MRV)	

Basic Elements of ERPA Term Sheet (9)

#	Issue	Basic Elements
17. - 18.	Measurement, Reporting & Verification (MRV) (<i>continued</i>)	<ul style="list-style-type: none"> • In addition to the MRV process, the Seller will provide to the Buyer, as a separate Annex to each Interim Progress Report/ER Monitoring Report, information on <ul style="list-style-type: none"> ➤ implementation of the Safeguards Plan(s), ➤ implementation of Benefit-Sharing Plan, and ➤ Non-Carbon Benefits produced under the ER Program, as feasible and specified in the ER Program Document • Failure to implement Safeguard Plans and/or Benefit Sharing Plans results in Event of Default
19.	Reversals	<ul style="list-style-type: none"> • Risk that a tCO₂e sequestered in forest and transferred as ER to the Buyer is released (Reversal) through a reversal event (e.g., fire, logging, conversion to agriculture) (Reversal Event)

Basic Elements of ERPA Term Sheet (10)

#	Issue	Basic Elements
19.	Reversals (<i>continued</i>)	<ul style="list-style-type: none"> • <i>Non-intentional</i> Reversal Events during ERPA term may be addressed through various ways, e.g., <ul style="list-style-type: none"> ➤ Creation of buffer reserves (i.e., establishment of separate account(s), administered by an agreed entity, to which certain % of ERs generated and verified under ER Program will be transferred) ➤ Use of insurance ➤ Effective forest management practices • <i>Intentional</i> Reversal Events will be Events of Default
20.	Additional Covenants	<ul style="list-style-type: none"> • Seller: <ul style="list-style-type: none"> ➤ Implementation of ER Program, Benefit Sharing Plan and Safeguards Plans ➤ Not to cause, tolerate or authorize Reversal Event ➤ Cooperation with Buyer and other relevant authorities/entities regarding ER verification/certification/issuance/transfer/forwarding • Buyer: <ul style="list-style-type: none"> ➤ If assigned with such responsibility, contracting Independent Reviewer for Verification purposes

Basic Elements of ERPA Term Sheet (11)

#	Issue	Basic Elements
21.	Conversion of ERs to other Credits	Seller will cooperate in conversion process. If such conversion requires project documents and/or ERPA to be changed, Parties will cooperate in good faith to change relevant documents, provided that Seller's interest are not adversely affected
22.	Benefit-sharing	<ul style="list-style-type: none"> • Seller will share all or a significant part of monetary or other benefits achieved in connection with ER Program implementation with stakeholders • For this purpose, Seller will develop a benefit-sharing mechanism (Benefit-Sharing Plan) that is in full compliance with World Bank policies, the ER Program Document and applicable domestic laws and regulations • Benefit-Sharing Plan will include, e.g., benefit-sharing process, distribution criteria/timelines, a grievance redress mechanism, and categories of relevant stakeholders (Beneficiaries) • Beneficiaries may include, e.g., Sub-Entities, forest-dependent indigenous peoples and other forest dwellers, affected communities/groups, local civil society organizations, local governments and ER Program participating private entities

Basic Elements of ERPA Term Sheet (12)

#	Issue	Basic Elements
23.	Non-Carbon Benefits	ER Programs will produce benefits other than the generation of ERs as specified in the ER Program Document (Non-Carbon Benefits), such as 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. The Seller will be encouraged to further enhance such Non-Carbon Benefits to contribute to broader sustainable development.
24.	Sub-Arrangements	Seller may enter into sub-agreement(s) or other sub-arrangement(s) (together referred to as Sub-Arrangements) with ER Program implementing sub-entities (Sub-Entities) which will reflect certain elements specified in an ERPA Annex
25.	Word Bank's Operational Policies and Procedures	Following the Buyer's environmental and social safeguards due diligence, Seller is required to prepare and submit to the Buyer one or more plans on how to eliminate/offset/reduce related environmental/social impacts (Safeguards Plans)

Basic Elements of ERPA Term Sheet (13)

#	Issue	Basic Elements
26.	Sanctions	Seller will be subject to the World Bank's sanctions regime for coercive, corrupt, collusive, obstructive or fraudulent practices (Sanctionable Practices)
27.	Representations & Warranties	Each party shall be required to make certain standard representations and warranties that are relied upon by the other party to be true and accurate
28. - 29.	Events of Default	<ul style="list-style-type: none"> • Seller: <ul style="list-style-type: none"> ➤ E.g., Failure to transfer Minimum Reporting Period Amounts (Transfer Failure) ➤ Failure to implement/comply with Benefit-Sharing Plan/ feed-back and grievance redress mechanism/Safeguards Plans ➤ Delay in ER Program development ➤ Other material breach of ERPA • Buyer: <ul style="list-style-type: none"> ➤ Failure to make payment when due (Payment Failure) ➤ Other material breach of ERPA

Basic Elements of ERPA Term Sheet (14)

#	Issue	Basic Elements
30.	Default Notice/Cure Period/ Action Plan	Non-defaulting party has to issue default notice (Default Notice) allowing for a certain cure period (Cure Period), if Event of Default is curable or, at the Buyer's discretion, for an action plan to identify and implement measures to cure default over certain time period (Action Plan)
31.	Remedies	<ul style="list-style-type: none"> • If Event of Default has not been cured within Cure Period/ Action Plan, non-defaulting party may exercise remedies • Buyer: <ul style="list-style-type: none"> ➤ In case of <i>non-intentional</i> Transfer Failure, allow ER shortfall to be transferred in subsequent Reporting Period(s), reduce Contract ER Volume/Minimum Reporting Period Amount(s), or terminate ERPA [and recover Costs] [up to certain capped amount] ➤ In case of <i>intentional</i> Event of Default, terminate ERPA , recover any unrecovered payments/incurred Costs [and liquidated damages] ➤ In case of ER Program implementation delays, reduce Contract ER Volume/Minimum Reporting Period Amount(s) and convert shortfall into Call Option ➤ In any other case, terminate ERPA and recovered any unrecovered payments/incurred Costs

Basic Elements of ERPA Term Sheet (15)

#	Issue	Basic Elements
31.	Remedies <i>(continued)</i>	<ul style="list-style-type: none"> • Seller: <ul style="list-style-type: none"> ➤ In case of Payment Failure, payment plus default interest ➤ In case of intentional Event of Default, terminate ERPA [and][recover liquidated damages] [and, in the event of a Payment Failure, require payment plus default interest ➤ In any other case, terminate ERPA
32. - 39.	Other issues	<ul style="list-style-type: none"> • Termination Event • Seller Withdrawal from FCPF • Force Majeure • Carbon Fund Participant Payment Default • Governing Law (English law) • Dispute Resolution (UNCITRAL Conciliation & Arbitration) • Confidentiality • Term of ERPA