



# Forest Carbon Partnership Facility

## ERPA Term Sheet

FCPF Carbon Fund Meeting – Fourth meeting (CF4)

Santa Marta, Colombia

June 24-25, 2012

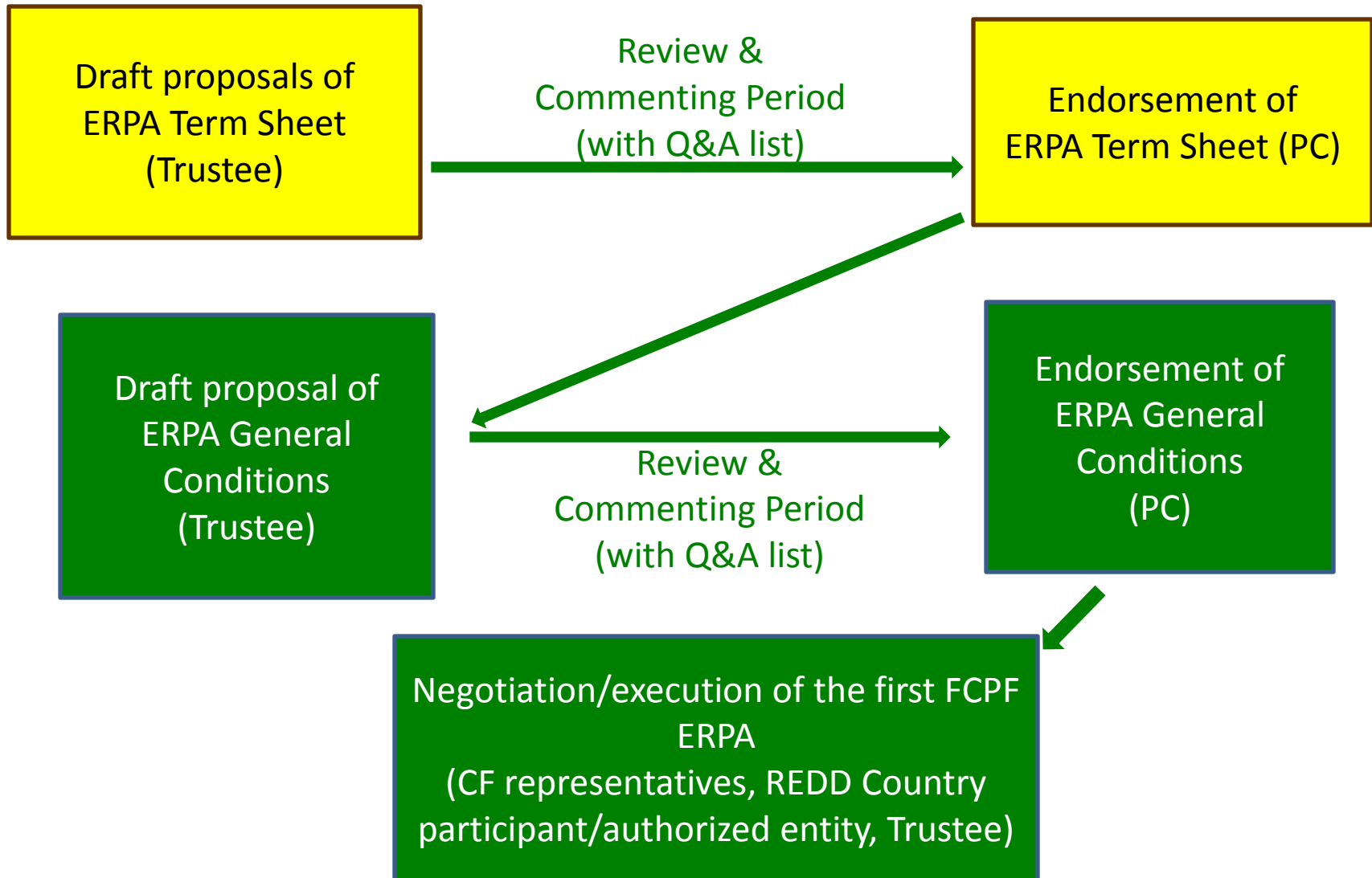
# Overview

- I. Purpose of the ERPA Term Sheet Process**
- II. Process of Endorsing the ERPA Term Sheet**
- III. Cornerstones of ERPA Term Sheet**
- IV. Workshop/Tutorials**

# Purpose of the ERPA Term Sheet Process

- To **discuss** with, seek **feed-back** from, **inform** and – finally - **agree** among members of the FCPF Participants Committee (PC) regarding certain general principles and procedures to be incorporated in more detail in 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** among PC members

# Process of Endorsing the ERPA Term Sheet (1)



## Process of Endorsing the ERPA Term Sheet (2)

- **Circulation of a first draft proposal** of ERPA Term Sheet to PC prior to PC13 (October 2012), e.g. September 2012
- **Review & Commenting Period** (w/ conference calls) following receipt of the first draft proposal; e.g. 3 weeks
- **Preparation of Q&A and of revised draft proposal** of ERPA Term Sheet following Review and Commenting Period, e.g. beginning of October 2012
- **Circulation of Q&A as well as a revised draft proposal** of ERPA Term Sheet prior to PC13 (October 2012)
- **Presentation of revised draft proposal** of ERPA Term Sheet at PC13 (October 2012)
- **Endorsement of ERPA Term Sheet by PC** (by no-objection) following PC13

# Cornerstones of the ERPA Term Sheet (1)

#	Element	General Principles and Procedures
1.	Parties to ERPA	Trustee of FCPF Carbon Fund ( <b>Buyer</b> ) and REDD Country Participant/authorized entity ( <b>Seller</b> )
2.	Type of Emission Reduction ( <b>ER</b> )	One ER equals one tonne of CO <sub>2</sub> equivalent (tCO <sub>2</sub> e) the emission of which has been prevented or sequestered by REDD+ activities; compliance value is sought, but ER does not have to be eligible under existing or future compliance carbon market
3.	Contract ER Volume	ER amount that the Seller shall generate and transfer to the Buyer as ' <b>Contract ERs</b> ' during the term of the ERPA (based on certain % of estimated ER generation)

## Cornerstones of the ERPA Term Sheet (2)

#	Element	General Principles and Procedures
4.	Additional ER Volume	<p>ER amount that the ER Program generates in excess of the Contract ER Volume (<b>Additional ERs</b>)</p> <p><u>Options:</u></p> <ol style="list-style-type: none"> <li>(1) No Additional ER Volume available</li> <li>(2) Buyer's right, but not obligation, to purchase Additional ERs from Seller (<b>Call Option</b>)</li> <li>(3) Seller's right, but not obligation, to sell Additional ERs to Buyer (<b>Put Option</b>); i.e. Seller may sell Additional ERs to 3<sup>rd</sup> parties</li> <li>(4) Buyer's right of 1<sup>st</sup> refusal; i.e. Seller may sell Additional ERs to 3<sup>rd</sup> parties but has to offer such Additional ERs first to the Buyer (<b>Right of 1<sup>st</sup> Refusal</b>)</li> </ol>
5.	Unit Price (per transferred ER)	<p>The price the Buyer shall pay the Seller per transferred ER (Contract ER and/or Additional ER); to be negotiated during ERPA negotiations in accordance with the agreed policy guidance on pricing</p>

## Cornerstones of the ERPA Term Sheet (3)

#	Element	General Principles and Procedures
6.	Conditions Precedent	<p>Certain conditions that must be fulfilled within a prescribed time period for the Parties' sale and purchase obligations to become effective, <u>such as</u></p> <ul style="list-style-type: none"><li>• <b>Letter of approval</b> by the relevant authority in the REDD Country regarding the ER Program</li><li>• <b>Letter of authorization</b> (if an entity other than the REDD Country Participant is the Seller)</li><li>• Execution of <b>sub-project agreements</b> between the Seller and other relevant stakeholders (addressing ER Program implementation, ER ownership, benefit-sharing etc.)</li></ul> <p>If conditions are not fulfilled in a timely manner, the Buyer may reduce the Contract ER Volume or terminate the ERPA</p>



## Cornerstones of the ERPA Term Sheet (4)

#	Issue	General Principles and Procedures
7.	Transfer of ERs	<p>Transfer relates to ERs only (not to land or territories) and shall be deemed completed upon receipt by the Buyer of</p> <ul style="list-style-type: none"> <li>• A final verification report verifying the amount of ERs generated and monitored under the ER Program during a given period and to be transferred to the Buyer (<b>Verification Report</b>) <u>or</u>, if Verification is not required for a given time period, a monitoring report that documents the amount of ERs generated and monitored under the ER Program during a given period and to be transferred to the Buyer (<b>Monitoring Report</b>); and</li> <li>• An invoice that documents the ER transfer and requests payment (<b>ER Transfer Form</b>)</li> </ul> <p>Any ER transfer shall include all rights/titles/interests attached to such ERs (e.g., future ER types to which such ERs may be converted)</p>
8.	Payment	<p>Payment shall be performance-based and occur periodically upon completion of each ER transfer</p>

# Cornerstones of the ERPA Term Sheet (5)

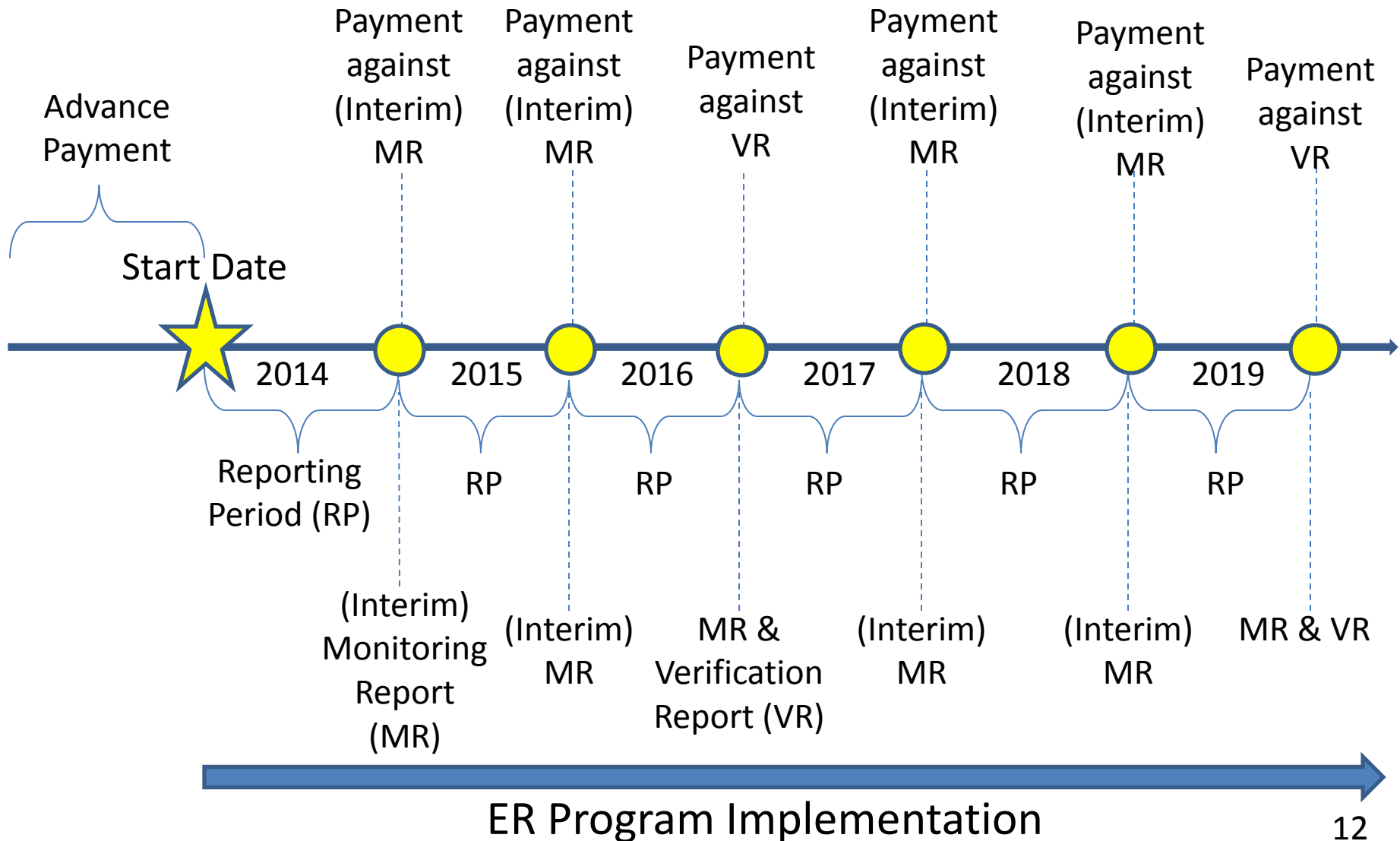
#	Element	General Principles and Procedures
9.	Advance Payment	<p>Buyer may agree to make advance payment(s) to the Seller, i.e. prior to the transfer of any ERs, subject to certain conditions, <u>such as</u></p> <ul style="list-style-type: none"><li>• Overall advance payment amount may be capped at certain % of ERPA value</li><li>• Advance payment(s) to be recovered through deductions from future payments under the ERPA for transferred ERs</li><li>• Disbursements may be linked to certain milestones</li><li>• Security may be required (e.g., letters of credit/bank or government guarantees)</li></ul>
10.	Costs	<p>Parties may share costs incurred by the Buyer in preparing and implementing the ER Program though, e.g.,</p> <ul style="list-style-type: none"><li>• Caps on the amount of costs recoverable by Buyer; or</li><li>• Cost recovery discounts on the Unit Price to be paid per transferred ER</li></ul>

## Cornerstones of the ERPA Term Sheet (6)

#	Element	General Principles and Procedures
11.	Taxes	Taxes and other charges 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)
12.	Monitoring	The Seller shall collect and record all relevant data related to the generation of ERs under the ER Program in accordance with MRV system ( <b>Monitoring</b> )
13.	Reporting	The Seller shall submit reports ( <b>Monitoring Reports</b> ) to the Buyer on the amount of monitored ERs generated under the ER Program during the preceding reporting period in accordance with MRV system ( <b>Reporting</b> )
14.	Verification	The Buyer may arrange for an independent ex post assessment of the Monitoring Reports to verify the actual amount of generated ERs in accordance with MRV system ( <b>Verification</b> )

# Example for Performance-based Payments

E.g.: Annual Reporting & Payment / Verification every 3-years



# Cornerstones of the ERPA Term Sheet (7)

#	Element	General Principles and Procedures
15.	Reversals (non-permanence)	<p>Risk that the tCO<sub>2</sub>e sequestered in the forest is released through a reversal event (e.g., fire, logging)</p> <p><u>Options:</u></p> <ol style="list-style-type: none"><li><b>(1) Temporary crediting</b> The transferred ERs have a certain validity period after which the ERs expire unless a subsequent Verification Report confirms that no reversal event has occurred in which case the transferred ERs continue to be valid for the respective next validity period</li><li><b>(2) Permanent crediting</b> The transferred ERs remain valid permanently</li><li><b>(3) Buffer reserve</b> A certain % of generated ERs (<b>Buffer ERs</b>) shall be transferred to a separate account to compensate the Buyer for potential future reversal events (<b>Buffer Reserve</b>)</li><li><b>(4) Insurance</b></li></ol>

# Cornerstones of the ERPA Term Sheet (8)

#	Element	General Principles and Procedures
16.	Benefit-sharing	<p>The Seller shall share all or part of its revenues received under the ERPA with other stakeholders affected by the ER Program. Benefit-sharing may be ensured at various levels:</p> <ol style="list-style-type: none"><li>(1) <b>ER Program level</b><ul style="list-style-type: none"><li>• The ER Program may include a benefit-sharing mechanism (including a grievance mechanism)</li></ul></li><li>(2) <b>ERPA level</b><ul style="list-style-type: none"><li>• The Parties may agree on a benefit-sharing mechanism in the ERPA (as potentially further specified in the ER Program)</li><li>• The Seller shall report to the Buyer on the proper implementation of the benefit-sharing mechanism</li><li>• Failure to properly implement the benefit-sharing mechanism results in an Event of Default</li></ul></li><li>(3) <b>Sub-project level</b><ul style="list-style-type: none"><li>• The Seller enters into sub-project agreements (templates of which could be provided by the Trustee) with such other stakeholders affected by the ER Program which include the agreed benefit-sharing mechanism</li></ul></li></ol>

## Cornerstones of the ERPA Term Sheet (9)

#	Element	General Principles and Procedures
17.	Representations and warranties	Each party shall be required to make certain representations and warranties that are relied upon by the other party to be true and accurate
18.	Covenants	<p>Each party assumes certain obligations to be implemented over the term of the ERPA, e.g.,</p> <ul style="list-style-type: none"> <li>• <b>Seller:</b> Proper implementation and operation of ER Program (including the benefit-sharing mechanism), compliance with World Bank social and environmental safeguard and anti-corruption policies, cooperation to convert transferred ERs into other compliance assets etc.</li> <li>• <b>Buyer:</b> Contracting a verifier for verification purposes etc.</li> </ul>
19.	Events of Default (Seller)	E.g. failure to transfer ERs ( <b>Transfer Failure</b> ); failure to properly implement benefit-sharing mechanism; failure to comply with World Bank social and environmental safeguard and anti-corruption policies; material delay in ER Program development; other material breach of ERPA

# Cornerstones of the ERPA Term Sheet (10)

#	Element	General Principles and Procedures
20.	Events of Default (Buyer)	E.g. failure to make payment when due; other material breach of ERPA
21.	Default Notice	Non-defaulting party has to issue a Default Notice allowing for a certain cure period
22.	Remedies	If Event of Default has not been cured within the cure period, the non-defaulting party may exercise certain remedies, e.g., <ul style="list-style-type: none"><li>• Reduction of Contract ER Volume (Buyer only)</li><li>• Default interest (Seller only)</li><li>• Cost recovery</li><li>• Termination</li><li>• Liquidated damages (only in case of an intentional breach)</li></ul>
23.	Governing law	English law
24.	Dispute resolution	UNCITRAL arbitration



## Workshops / Tutorials

- Trustee may offer workshops/tutorials to explain ERPA Term Sheet elements to PC/PA members (in particular REDD Country Participants)
- Designed to enable PC/PA members to make fully informed decision on the ERPA Term Sheet following PC13 (October 2012)
- Trustee may offer workshops/tutorials for all PC/PA members prior to PC13 (October 2012) (e.g., by video-/telephone conference or webinar)
- Do the Carbon Fund Participants have specific guidance?