

<b>Sections</b>	<b>Comments</b>	<b>Responses</b>
Overall comments	The Term Sheet, as discussed so far, is meant to be only a precursor to the ERPA General Conditions and their approval by the PC according to the FCPF Charter 11.1 (j). It will not be used as a legal document. This should be stated clearly in the introductory paragraph (Germany)	Included in cover page
	PC members may be confused about which clauses are meant to be prefixed as opposed to negotiable. In order to increase transparency, we suggest language on the later architecture of an ERPA (General Conditions plus Commercial Terms), e.g. in the introduction to the term sheet (Germany)	Included in cover page
	The Term Sheet should reflect more closely the enabling framework and FCPF requirements that need to be met before ERPA negotiation, i.e. the ER Program Document and Readiness-Package assessment. Although stated in other places already, such as the Process Guidelines for the Carbon Fund, reference should be made for the sake of consistency and contextual information for the PC. The appropriate way to do this may be an expansion of the conditions precedent. For now, it could also be mentioned in the introductory paragraph. Considering its central role, a definition of the ER Program (Design) Document should be included in the Term Sheet itself (Germany)	The Term Sheet covers the basic elements of a potential future ERPA. The Term Sheet itself does not need to address all the issues that need to be addressed/finalized prior to ERPA negotiations taking place. The FCPF can determine – outside the Term Sheet itself – which additional documents/steps need to be addressed/finalized before an ERPA can be signed.
	How will the issue of registration/tracking of ERs be addressed, to ensure no double counting? (Australia)	Included in clause 10 of the Term Sheet
	How will minimum standards - eg on MRV systems – be addressed? (Australia)	Included in clause 17 of the Term Sheet. The emerging Methodological Framework and ER Program Monitoring System can help address these issues.
	A term sheet is typically 1-2 pages. Is this more a precursor to the T&C of the ERPA? How and when is it envisioned that this document will be used? (BP)	As Germany stated above, this Term Sheet will be a first step to the subsequent process of drafting/negotiating/endorsing a set of ERPA General Conditions.
	One overarching comment is that in places the Term Sheet is overly-broad, and even too buyer-focused. We recommend keeping in mind a good balance between buyer and seller interests, and the practicality of how much detailed information can be required or specified in the final ERPA. For example, Para 19 on benefit sharing, and Paras 20 and 8(3) on sub-arrangements, could be read to require voluminous information and also to	Although taking into account that the FCPF ERPA will include unique features not yet addressed in regular carbon market documents, the Term Sheet is inspired by various elements that are perceived as best practice under existing carbon transaction

	limit implementation flexibility. (TNC)	documents. We agree however that due to the novel nature of FCPF activities, the Term Sheet has to address/allocate the underlying issues/risks in a fair and equitable manner.
	In many paragraphs there is greater flexibility than is typical in a Term Sheet, so where possible it would be good if specific options can be delineated.(TNC)	The Term Sheet aims at outlining the basic elements that the Trustee believes should be addressed in a more detailed future set of General Conditions. Due to the fact that the design of future ER Programs will likely differ from REDD Country to REDD Country the Term Sheet intends to strike a balance between addressing key ERPA components while leaving sufficient room to accommodate for tailor-made solutions on a case-by-case basis.
	The Term Sheet would benefit in clarity from a separation of clauses and definitions, and a coherent use of capitalized terms for pre-defined terms. In its present form, definitions are sometimes missing (notably the definition of “ER Program”), sometimes the meaning is changing (for instance “costs”), and often they are imprecise or vague (e.g. “reversals” or “reversal events”)(Germany)	We believe that the current version of the Term Sheet defines its terms in a sufficient way. As the cover page indicates, any capitalized terms in the Term Sheet that are not expressly defined in the Term Sheet itself will be deemed to have the same meaning as defined in the FCPF Charter (e.g., the definition of “ER Program”).
	The Term Sheet, respectively the contractual documents developed on its basis, should clarify the identity of the ER Program it relates to (in an annex, for instance, that can be filled out with each term sheet/ERPA) and also define the scope for the ER Program Design Document. (Germany)	The ER Program will be described in an annex to a future ERPA and will refer to the ER Program Document for further details. This does not have to be part of the Term Sheet itself.
	The Term Sheet remains vague on the essence of the transaction: What constitutes a transfer of ERs, and why is the concept of “delivery” avoided? The definition in (10) links the transfer to the receipt verification or performance report but also refers to “and to be transferred to the Buyer”. Transferred by means of what, remains unclear. The concept of “transfer failure” is also not clear. Consider introducing the concept of a registry for transaction purposes. (Germany)	Included in clause 10 of the Term Sheet. The term “transfer” is used in our current practice for the transfer of verified ERs whereas the term “delivery” is used for ER types that are of a compliance nature. However, the terminology does not change the procedures outlined in clause 10 of the Term Sheet.
	For the sake of legal certainty and operational clarity, the transfer (or	Included in clauses 10 and 12 of the Term

	<p>delivery) should imply successful verification. Thus, verification should not be a disposable element of the transaction process. Payments, on the other hand, may be triggered by performance reports alone. The consequence of a shortfall of ERs between performance and verification report is a separate matter. (Germany)</p>	<p>Sheet. For each payment for transferred ER, verification is required unless, due to delays in the verification process, the Buyer (in consultation with Carbon Fund Participants, decides to make payment earlier against the Performance Report only (pending subsequent verification).</p>
	<p>A word on exclusivity of ER transaction (every ER including the underlying title may be transacted only once) may be helpful (Germany)</p>	<p>Included in clause 10 of the Term Sheet (no double counting)</p>
	<p>The Term Sheet, respectively the contractual documents developed on its basis, should better frame or reflect the institutional ER Program architecture: identify the implementing agency or implementing entity, and link contractual responsibilities and obligations to it. This would also strengthen the understanding of the role and function of Sub-Entities (which are currently a rather loose appendix). (Germany)</p>	<p>This will be largely addressed in the ER Program Document as well as in a subsequent set of ERPA General Conditions. A future ERPA is likely to include as an annex a more detailed set of provisions to be included in any Sub-Arrangement between the Seller and Sub-Entities (if required from an ER Program implementation perspective).</p>
	<p>The Term Sheet, respectively the contractual documents developed on its basis, should better reflect the choice of the contractual partner: host country Government vs. authorized (privately held or subnational) implementing entity. The compliance and liability regime is very different depending on the choice, notably regarding the responsibility for certain acts of implementation and reversal (other than force majeure). In this context, clarify to what extent the contractual partner is liable for deliberate acts of Government (e.g. transformation of forest into agricultural land or drainage of peatlands) (Germany)</p>	<p>The Term Sheet does not differentiate in its current terms between public/private entity Sellers. We understand, however, that – if the Seller is a private entity - certain obligations that can only be performed by the REDD Country itself may not be performed by the Seller but have to be ensured by the Seller to be performed by the REDD Country.</p>
	<p>A separate section for non-carbon performance and delivery should be set.(Germany)</p>	<p>The notion of “Non-Carbon Benefits” is defined in clause 17 of the Term Sheet and forms part of the reporting requirements.</p>
	<p>The Term Sheet may be strengthened through a consistent use of independent audits and program checks (including the benefit sharing plans), performed by the Buyer or consultants. The Facility Management Team (FTM) may also be given a stronger role in e.g. verifying the benefit sharing plans, which would add material and procedural clarity in the context of the Conditions Precedent. (Germany)</p>	<p>Independent reviews of crucial reports (incl. Performance Reports, Interim Progress Reports), milestones, Reversal Events and proper implementation of Benefit Sharing Plans are addressed in clauses 12, 17, 18 and 21 of the Term Sheet.</p>
	<p>The Term Sheet is silent on national and international REDD+</p>	<p>This may be addressed in a more detailed</p>

<p>developments. Any such developments may have an impact on the transacting capacity of the host country under the ERPA. Some conflicts (e.g. risk of double-counting) can be anticipated and may give rise to a contractual provision. (Germany)</p>	<p>subsequent set of ERPA General Conditions.</p>
<p>To facilitate agreement on ERPA Term Sheet, and understanding of how individual ER Program circumstances can be accommodated, it may be helpful to compile the list of elements that will be subject to negotiation and/or decisions in the development of an ERPA, with references to the relevant Term Sheet specifications/requirements or guidance. This could be in an Annex to the Term Sheet or just an information note to the PC that accompanies the draft Term Sheet.(Canada)</p>	<p>Included in cover page of Term Sheet.</p>
<p>The use of voluntary market carbon accounting methodologies: Current methodologies used in the voluntary market to account for emissions reductions, leakage and buffers are now widely used amongst REDD+ project developers. The “Methodological framework” referred to in the term sheet should build on the methodologies already in use in the voluntary sector, such as the VCS methodologies (CMIA)</p>	<p>This can be addressed in the ongoing development of the Methodological Framework but does not have to be addressed in the Term Sheet itself.</p>
<p>We would like to see a definition of the term “ER Program”, which appears so many times in this and probably in the ensuing ERPA (USA)</p>	<p>Please refer to the definition provided for in the FCPF Charter (see reference to terms defined in the FCPF Charter at the end of the cover page of the Term Sheet).</p>
<p>Lack of visibility and clarity of the non-carbon benefits of ER Programs. Given that non-carbon benefits are to be included in the selection criteria, and may and should be included in the overall price of ER’s, there needs to be a separate section on what are non-carbon benefits, how they will be taken into account in pricing, monitoring and verification. In the present draft, provisions dealing with non-carbon benefits are spread through many provisions without a definition nor a description of how these benefits will be dealt with in ER Programs. (EIA-BIC)</p>	<p>Included in clause 17 of the Term Sheet. The issue of whether or not Non-Carbon Benefits will have an impact on the price per ER may be addressed in the Pricing Approach that is in the process of being further specified by Carbon Fund Participants.</p>
<p>Como sugerencia creemos que sería muy útil para los participantes del PC, que se incluyera en la línea del tiempo (“From Readiness to Performance Payments”) del proceso entre el Fondo Readiness y el Fondo de Carbono los hitos principales en términos de salvaguardas y de participación. (México)</p>	<p>This may be better addressed outside of the Term Sheet itself.</p>

	<p>En esta versión del documento (español) pareciera que NO se considera el ‘+’ de REDD+ únicamente la reducción de emisiones por degradación y deforestación. Pedimos que se realice esta aclaración. (México)</p>	
	<p>Se recomienda incluir la definición de “entidad autorizada” con el fin de precisar su rol o la forma como el País Participante REDD+ lo determina. (Colombia)</p>	<p>Included in footnote 1 on page 2 of the Term Sheet.</p>
	<p>The Term Sheet does not include any provision for compliance with emerging UNFCCC REDD developments. The current plan is for a global agreement to address climate change to be finalized by 2015, with the agreement going into force no later than 2020. The Term Sheet needs to make provision for compliance with emerging safeguards, standards and procedures on REDD emerging from the UNFCCC negotiations.</p> <p>The Term Sheet would be clearer and more easily understood if a definition section was added for all substantive terms and the terms were reordered. In the current draft the substantive clauses and definitions are intermingled, with many terms defined after they are used, and in some instances major terms are never defined (e.g. ER Program). The Term Sheet should have a definition section at the beginning of the document and then when the defined terms are used in the body of the document the term should be capitalized. The Term Sheet should be reorganized so that all operational terms come before the standard contract clauses. As now drafted, the term of the contract for the ER Program which is often one of the first terms in a contract is the last paragraph, and other important provisions such as confidentiality and dispute resolution come after the governing law clause. (EIA – BIC)</p>	<p>Depending on further discussion in the Carbon Fund and the PC, language in this respect may be included in a subsequent set of General Conditions.</p> <p>See above. We believe that the current form of the Term Sheet (plus the referenced FCPF Charter) provides for a sufficient set of definitions. Commercial/general terms have been identified on the cover page of the Term Sheet).</p>
Buyer (para 1)	<p>All substantive terms need to have clear definitions and then whenever a defined term is used it should be capitalized. We will not point this throughout the document but for example in the first two paragraphs, both “participants in tranche A and in tranche B” and REDD Country participant/authorized entity” need to be defined. In numerous instances, the Term Sheet uses a term “as defined below” making it extremely difficult to read and understand the document. Having all of these terms defined up front makes much more sense and will make the document</p>	<p>See above.</p>

	more understandable to non-lawyers. (EIA – BIC)	
Seller (para 2)	<ul style="list-style-type: none"> <li>• “authorized entity” not clear (contractual regime changes substantially, when the contracting partner is a non-state actor)</li> </ul> <p>Recommendation:</p> <ul style="list-style-type: none"> <li>• Define the concept (e.g. “any public or private entity specifically authorized by the host country to implement the ER Program and given full rights to act, in its own name as, the Seller for the purpose of this ERPA..”)</li> <li>• Reflect the dual approach (either the Government or an entity becomes contracting party) in the compliance and liability framework of the ERPA (Germany)</li> </ul>	<p>See footnote 1 on page 2 of the Term Sheet.</p> <p>Can be clarified in a more detailed future set of ERPA General Conditions.</p> <p>Ditto.</p>
	<ul style="list-style-type: none"> <li>• En el mismo contexto, se deben precisar los términos utilizados, pues no es clara la instancia que actúa por parte del País Participante REDD+. (Colombia)</li> </ul>	Can be clarified in a more detailed future set of ERPA General Conditions.
	<ul style="list-style-type: none"> <li>• The Term Sheet does not specify the differences if the ER Program is implemented by a REDD Country or an Authorized Private Entity. There would likely be substantial differences in their ability to comply with safeguards and there might also be differences in their ability to assume liability for reversals or leakage.</li> </ul> <p>(EIA –BIC)</p>	See above.
Type of ERs (para 4)	Suggest defining “REDD+ activity” (Australia)	The term “REDD” (“REDD plus”) is defined in the FCPF Charter (see reference to terms defined in the FCPF Charter at the end of the cover page of the Term Sheet).
	Recommend greater clarity on what is being asked of the seller regarding convertibility, and in what cases. (TNC)	This will have to be assessed on a case-to-case basis. Clause 20 of the Term Sheet provides for a general cooperation covenant. Clause 4 of the Term Sheet only clarifies that an ER transferred under the ERPA does not have to be eligible under any compliance regime to be used by any Tranche A Carbon Fund Participant for compliance/resale purposes.
	<ul style="list-style-type: none"> <li>• What means “type of” Emissions Reduction”?</li> </ul>	Sufficiently defined under clause 4 of the

	<ul style="list-style-type: none"> <li>• The definition does not refer to a verification or certification process. It is questionable whether an emission reduction has an existence outside a given monitoring and verification framework.</li> <li>• The convertibility requirement (Tranche A ERs) is opaque, which may lead to an unclear contractual object</li> </ul> <p>Recommendation</p> <ul style="list-style-type: none"> <li>• Define ERs in a narrow sense, excluding compliance or convertibility issues, which if deemed necessary may come into the scope of the ERPA through a right of termination or other</li> <li>• Align with Charter definition.</li> <li>• The Term Sheet should give a narrow definition of what constitutes an Emission Reduction (ER): referring to the verification process but excluding optional and unclear criteria (“convertibility sought...”). Alignment with the definition (§ 27) in the Charta would also be helpful. (Germany)</li> </ul>	<p>term Sheet. See also above.</p> <p>Payment for transferred ERs requires verification (see clauses 10 and 11 of Term Sheet).</p> <p>See above.</p> <p>Compliance/convertibility issues are excluded from the ER definition in clause 4 of the Term Sheet.</p> <p>Definition is derived from updated version of the Issues Note (dated February 9, 2011).</p> <p>See above.</p>
	<ul style="list-style-type: none"> <li>• ¿Cuándo se habla de actividades REDD+ se refiere a las 5 actividades de la definición? De ser a así sería importante aclarar que las 5 actividades son elegibles y que se desarrolla un mecanismo para garantizar que ninguna actividad será dejada fuera. (México)</li> </ul>	<p>See above. The Term “REDD” (“REDD plus”) is defined in the FCPF Charter.</p>
	<ul style="list-style-type: none"> <li>• A propósito de la definición de ER, que aparece en el documento como “...Una ER representa una tonelada de equivalente de CO<sub>2</sub> (tCO<sub>2</sub>e) reducida o extraída por sumideros de actividades REDD+ en el marco de un Programa de ER (ER)...” se tiene que analizar a la luz de la definición adoptada para las actividades REDD+, como Decisión 1/COP161 “...70. Encourages developing country Parties to contribute to mitigation actions in the forest sector by undertaking the following activities, as deemed appropriate by each Party and in accordance with their respective capabilities and national circumstances: <ul style="list-style-type: none"> <li>• (a) Reducing emissions from deforestation;</li> <li>• (b) Reducing emissions from forest degradation;</li> </ul> </li> </ul>	<p>Thank you for the proposed definition of what is an ER. It is indeed the idea that an ER may be generated by any of the five activities listed in the Cancun decision, or combination of such activities.</p>

	<ul style="list-style-type: none"> <li>• (c) Conservation of forest carbon stocks;</li> <li>• (d) Sustainable management of forests;</li> <li>• (e) Enhancement of forest carbon stocks; ...”</li> <li>•</li> <li>• Como se puede observar para las actividades REDD+ comprende la conservación de las reservas de carbono y el manejo forestal sostenible, por lo que eventualmente de acuerdo a la definición, quedaría excluida. Como propuesta se podría sugerir “...Una ER representa una tonelada equivalente de CO<sub>2</sub> (tCO<sub>2</sub>e) reducida, conservada, extraída por los sumideros o aumentada en las reservas de carbono mediante actividades REDD+ en el marco de un Programa de ER...”. (Colombia)</li> </ul>	
	<p>Section 4 is entitled “ Type of Emission Reduction” and then gives what appears to be a definition of an ER and begins to describe the characteristics of a Tranche A ER. These two concepts should be divided, ER should be clearly defined in a manner consistent with the FCPF Charter and Eligibility requirements for tranche A and tranche B ERs should be set forth in one section.</p> <p>(EIA –BIC)</p>	<p>The Term Sheet envisions a common approach to Tranche A and B ERPAs. Certain clarifying language can very well be inserted in a future ERPA for Tranche B Carbon Fund Participants.</p>
<p>Contract ER volume (para 5)</p>	<ul style="list-style-type: none"> <li>• The language needs refinement: What means “overall agreed amount”? What means “generated by the Seller”?</li> <li>• The concept of what constitutes a Contract ER may need clarification. Is it a pre-defined number of ERs or is it a number (or %) dependent on the generation of ERs?</li> </ul> <p>Recommendation</p> <ul style="list-style-type: none"> <li>• Clarify the language using precise and/or more defined terms such as “total amount” and “generated by [under] the ER Program”</li> <li>• Use standard concepts for Contract ERs to avoid confusion on guarantees and also rights of assignment (cf. clause 23 (f) which could be affected in the event that a fixed Contract ER number is set, there are other Buyers, and the output is less than expected).(Germany)</li> </ul>	<p>Included in clause 5 of Term Sheet. As a party to the ERPA, the Seller is responsible for generating or (via Sub-Arrangements) having generated the Contract ER Volume.</p> <p>It is expected that the ER Program Document will include an estimate of ERs that may be generated under an ER Program. In order to minimize Transfer Failure risk and to allow the Seller to sell ERs to third party buyers, the Buyer is likely to only purchase a certain amount of such estimated ERs as Contract ERs.</p>
<p>Minimum contract ER amount (para 6)</p>	<ul style="list-style-type: none"> <li>• As the Minimum Amount is not linked to (pre-existing) ERs, it is not clear whether this clause implies a delivery guarantee</li> <li>• The Transfer Schedule may be put into the Commercial Terms</li> </ul>	<p>The Minimum Reporting Period Amounts will serve as a benchmark to assess the ER Program’s ability to generate the Contract ER Volume over the term of the ERPA. The</p>

	<p>Recommendation</p> <ul style="list-style-type: none"> <li>Clarify that the obligation to transfer [or deliver] is linked to the generation of ERs.</li> <li>Establish a Commercial Terms section with firm sections on volume, delivery dates, price, advance and interim payments, etc.(Germany)</li> </ul>	<p>Transfer Schedule will specify for each Reporting Period – depending on the total estimated ER amount (as estimated in the ER Program Document), the number of Reporting Periods (as agreed in the ERPA) and the percentage to be purchased of such estimated ER amount as Contract ER Volume (as agreed prior and reflected in the ERPA) – the Minimum Reporting Period Amount.</p> <p>Reference to commercial/general terms included in the cover page of the Term Sheet.</p>
	<p>De otra parte, sería conveniente que se incluyera la definición de “otros compradores” por cuanto se hace referencia dentro del texto y tiene implicaciones con las posibilidades que tiene el vendedor para comercializar las ER. (Colombia)</p>	<p>Other buyers are entities other than the trustee of the Carbon Fund. We don't really see the need for a separate definition.</p>
Price per contract ER (para 7)	<p>Clarify that the price will be determined prior to the ERPA signing. As written, it could be interpreted that the price is determined at a later date. (TNC)</p>	<p>Included in clause 7 of Term Sheet.</p>
	<p>Unclear whether the Pricing Approach leads to a precise calculus or whether there is a negotiable element.</p>	<p>See above.</p>
	<p>Recommendation Clarification needed, e.g. “will be negotiated on the basis of the Pricing Approach as part of the Commercial Terms...”(Germany)</p>	<p>See above.</p>
	<p>Suggest adding “prior to signing or finalization of the ERPA” in the second line to clarify that pricing negotiations will not be part of the implementation of the ERPA (Canada)</p>	<p>See above.</p>
	<p>A strong price signal is vital: Prices negotiated under each ERPA agreement should be meaningful and consistent, sending the appropriate demand signal. Inconsistency in pricing or a weak price signal risks significantly lowering the supply of REDD+ projects. The Carbon Fund “Pricing Approach” referred to in the term sheet should account for the risks and upfront investment costs associated with the development of</p>	<p>Subject to ongoing development of the Pricing Approach for the Carbon Fund of the FCPF.</p>

	REDD+ projects and provide the suitable level of incentives for investors. (CMIA)	
	¿Cuándo se tiene pensado contar con el mecanismo de fijación de precios? (México)	Currently expected to be developed by a corresponding Working Group of the Carbon Fund by summer 2013.
Additional ER Volume and Price per Additional ER (para 8)	<ul style="list-style-type: none"> <li>• There are a great many options and constellations for what constitutes “Additional ERs”: excess ERs over the Minimum Contract ER Amount; excess ER over the Contract ER Volume; excess over a combination of both; and a sweeping clause option (footnote). Is that practical or helpful?</li> <li>• The origin of the Additional ERs are not mentioned.</li> <li>• The particular Right of First Refusal clause is not ERPA standard. Also, it is not plain how and when the price negotiations as reflected in the clause come in.</li> </ul> <p>Recommendation</p> <ul style="list-style-type: none"> <li>• Can we do with a common approach (e.g. additional ERs are those ERs generated under the ER Program which exceed the Contract ER Volume, taking into account the sum of all Minimum Contract ER Amounts)?</li> <li>• Clarify that the ERs are from the ER Program.</li> </ul> <p>If maintained, a clarification at what terms the Seller has to offer any Additional ERs to the Buyer (e.g. “at the price of Contract ERs..”) seems appropriate.(Germany)</p>	<p>The option are negotiable and Seller/Buyers can chose on a case-by-case basis.</p> <p>ERs generated in excess of Contract ERs. It may not be current carbon market practice but it is still a potential option to address a potential purchase of Additional ERs.</p> <p>Can be negotiated on a case-by-case basis.</p> <p>Included in clause 8 of Term Sheet.</p>
Conditions of effectiveness of sale and purchase (para 9)	What is the rationale behind entering into the ERPA before these conditions are met? (Australia)	Sellers may need to be ensured that an ERPA has been executed before they work on certain documents that then form Conditions of Effectiveness for the sale and purchase obligations under the ERPA to become effective.
	How will terms such as “comprehensive prior consultations” and “broad community support” be defined? (Australia)	The Trustee has reviewed the necessity of such terms and has decided to take references to these terms out of the Term Sheet. Any ERPA (including any Benefit Sharing Plan) will have to meet World Bank policy requirements (including safeguard requirements) (see clause 21 of Term Sheet).

		In the event such policies are triggered and require prior consultations/broad support, they will apply to the ERPA, including the process on how a Benefit Sharing Plan has to be developed.
	Should there be a requirement to submit a Safeguards Plan (if required), as described under paragraph 21, before the execution of the ERPA? (Australia)	Included in clause 9 of the Term Sheet.
	The three subparas refer to quite different documents/information, which might have different guidance and fulfillment dates. Especially subparas 2 and 3 need to be reconciled with Paras 19 and 20, and clarified in terms of how much detail is needed (1) in the ERPA and (2) as part of implementation. (TNC)	This can be addressed during ERPA negotiations on a case-by-case basis.
	Also, the final square brackets in the last bullet. Does this mean that incurred costs are capped (seems good idea), or recovery is capped? If the costs were reasonably incurred, then why the need for a cap on recovery? (TNC)	The cost cap refers to the maximum amount that the Buyer can recover from the Seller in terms of its incurred actual Costs.
	<ul style="list-style-type: none"> <li>• The clause contains “Conditions of Effectiveness of Sale and Purchase”. It is not entirely clear, however, which provisions in particular fall within the scope of the “sale and purchase obligations”.</li> <li>• Conditions precedent which would affect the effectiveness of the contract as a whole (or for most parts) are missing.</li> <li>• Para (2) foresees the submission of the “Benefit-Sharing Plan”. However, while the Term Sheet provides a broad definition (clause 19) it does not give a model and cannot rely on standard practice.</li> <li>• “Submissions of copies of one or more executed Sub-Arrangements” is not clear. How many? Who decides on this?</li> </ul>	<p>To be clarified in subsequent set of ERPA General Conditions.</p> <p>Up to Buyer and Seller to decide what documents/steps need to be addressed/finalized before ERPA signature.</p> <p>Benefit Sharing Mechanism is envisioned to be outlined in the ER Program Document, to be in compliance with domestic law and World bank policies, and to be specified in the Benefit Sharing Plan with certain key elements (clause 21 of Term Sheet).</p> <p>This depends on the nature/requirements of each ER program and can be determined per ERPA on a case-by-case basis.</p>

	<p>Recommendation</p> <ul style="list-style-type: none"> <li>• Clarify which provisions are among the sale and purchase obligations.</li> <li>• Consider including a set of conditions precedent. It may be opportune, in particular, to allow for the REDD Readiness process to be completed before the transaction is implemented; also, relevant standards for transaction tests such as due diligence and know-your-customer may be given a place.</li> <li>• Consider including a need for approval or a right of rejection for the Buyer to put the Benefit-Sharing Plan in place.</li> </ul> <ul style="list-style-type: none"> <li>• Consider integrating an Implementing Entity (which may be the (non-Government) Seller), and describe the functions and roles; this will then shed light on who else is needed for the proper implementation; if there are too many variations to give a pre-set picture of the number of function of Sub-Arrangements, consider introducing the model of an Implementation Plan (IP) whose adopting by both Seller and Buyer could be pre-requisite for the effectiveness of all or some provisions of the ERPA. The IP then would be meant to lay out the architecture of the ER Program.</li> <li>• We underline the importance the inclusion of conditions precedent as per indications of legal review.</li> <li>• Merge first and second bullet point in last paragraph, should read: “Extend Condition Fulfillment Date and possibly adjust / reduce the Contract ER Volume ...” (Germany)</li> </ul>	<p>See above. See above.</p> <p>Any Benefit Sharing Plan must be in “form and substance” satisfactory to the Buyer (which includes compliance with World Bank (safeguard) policies).</p> <p>The term Sheet is supposed to lay out the basic elements of an ERPA. There may be the need for additional documentation that can be addressed in the more detailed subsequent set of General Conditions or during ERPA negotiations on a case-by-case basis.</p> <p>See above.</p> <p>Included in clause 9 of the Term Sheet.</p>
	<p>We would add “if relevant” to this paragraph, as it is possible (as noted later in the document) that an ER Program may not have sub-arrangements(US)</p>	<p>Included in clause 9 of the Term Sheet.</p>
	<p>For condition fulfillment date, first bullet, suggest deleting “or” for and/or and adding “possibly” (Canada)</p>	<p>Included in clause 9 of the Term Sheet.</p>
	<p>Al respecto, en el numeral 9 (Condition of Effectiveness of Sale and Purchase), se hace referencia a lo siguiente “...(1) <i>Submission of a letter of approval by the relevant authority in the REDD Country Participant...</i>”; como se puede observar, aparece el término de “autoridad relevante”, instancia que no se precisa en el documento, y no es claro si corresponde a la misma autoridad autorizada. El mismo término aparece en el numeral 20</p>	<p>Can be clarified in a more detailed future set of ERPA General Conditions. Perhaps there will be a need for a generic template for the Letter of approval to be used in the context of Carbon Fund operations given that there is no guidance from the UNFCCC.</p>

	<p>de la siguiente manera “...<i>Without prejudice to clause 4 (Type of Emission Reduction) above, the 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</i>”. Como se observa, se utiliza indistintamente el término “entidad o autoridad relevante”.</p> <p>En el numeral 9 (Conditions Precedent of Sale and Purchase) se debe desarrollar a qué corresponde la “<i>credencial de conformidad</i>”. Si es una carta de aprobación por parte de la “entidad o autoridad relevante”, no se tiene claridad sobre su sustento jurídico en el contexto internacional, pues aun no se ha definido esta actividad para proyectos REDD+.</p> <p>(Colombia)</p>	<p>Ditto. A generic Letter of Approval may help clarify this aspect.</p>
	<p>Section 9 provides that the ERPA is “effective upon the signature of both Parties”, but then says that the obligations under the ERPA only become effective upon the satisfaction of certain conditions precedent including the submission of a benefit sharing program.</p> <p>Section 9 also imposes a condition precedent that the Seller, if relevant submit ‘one or more sub-agreements (as defined below) between the Seller and the Sub-Entities (as defined below) required to implement the ER Program.’ These terms are never clearly defined. Do the sub-agreements include agreements with stakeholders related to the benefit sharing plan, transferring forest and carbon rights to the Seller? Do they include any subcontractor that is going to perform part of the ER Program? If the IBRD is going to issue a “no-objection” regarding the final Sub-Arrangement template as described in the Annex, does that mean that a Seller is expected to enter into identical Sub-Arrangements with Sub-Entities? Would this affect the ability of different stakeholders to negotiate different deals for their respective carbon and forest rights? Who decides if and how many of such Sub-Arrangements need to be submitted?</p> <p>Section 9 additionally provides for a limited time to satisfy the conditions precedent. Such time limits can be used to force stakeholders to accept</p>	<p>Sub-Arrangements are supposed to be entered into only between the Seller and such entities that help the Seller implement the ER Program (Sub-Entities). Such arrangements can include benefit sharing arrangements, provided that such Sub-Entities are included in the benefit Sharing Plan as Beneficiaries. Other entities/groups/communities that are not Sub-Entities but Beneficiaries under the Benefit Sharing Plan will be entitled to receive benefits as stipulated in the Benefit Sharing Plan (including excess to its feed-back an grievance redress mechanism).</p> <p>The Condition Fulfillment Date will be agreed during ERPA negotiations to provide</p>

	<p>less than optimal benefit sharing agreements under the threat that the stakeholders should take what is offered or they will get nothing. A provision should be added to allow stakeholders to petition at least once for an extension of the Condition Fulfillment Date if they are in good faith negotiations with the Seller and the Seller is using the Condition Fulfillment to pay lower benefits to the stakeholders.</p> <p>(EIA-BIC)</p>	<p>the Seller with a reasonable amount of time to fulfill the Conditions of Effectiveness. Due to the fact that such conditions are intended to provide the Seller with an incentive to fulfill the documents in a timely manner, and the Buyer with a right to assess the ability of the Seller to properly implement the ER Program, current market practice is to leave any extension of such date to the discretion of the Buyer.</p>
	<p>In Clause 9 (and 21):  (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’;  Could we be more specific on the means of proof and the notion of broad community support? I am surprised not to see an explicit reference to REDD+ safeguards (plans) and National Reference Levels here. Durban Decisions provide that regardless of the source or type of financing, [REDD+ activities] should be consistent with the [safeguards], and for developing country Parties undertaking results-based actions to obtain and receive results-based finance, these actions should be MRVed, and developing country Parties should have:  (a) A national strategy or action plan;  (b) A national forest reference level<sup>6</sup> (or, if appropriate, as an interim measure, subnational FRL)  (c) A robust and transparent national forest monitoring system  (d) A system for providing information on how the safeguards are being addressed and respected  Besides the decision on guidance on systems for providing information on how safeguards are addressed further specifies that developing country Parties undertaking REDD+ activities should provide a summary of information on how all of the safeguards are being addressed and respected throughout the implementation of the activities;  (EC)</p>	<p>The Trustee has reviewed the necessity of such terms and has decided to take references to these terms out of the Term Sheet. Any ERPA (including any Benefit Sharing Plan) will have to meet World Bank policy requirements (including safeguard requirements) (see clause 21 of Term Sheet). In the event such policies are triggered and require prior consultations/broad support, they will apply to the ERPA, including the process on how a Benefit Sharing Plan has to be developed.</p> <p>Safeguard Plans are now included in clause 9 of Term Sheet (provided that they have not already been developed prior to ERPA signature (see footnote in clause 9 of Term Sheet)..</p>
	<p>9. 1) A que ese refiere con entidad distinta al país REDD+ participante?</p>	<p>See above.</p>

	<p>¿Un estado podría ser considerado como entidad?  ¿El registro de emisiones pudiera funcionar en el caso de México como entidad autorizada?  9. 2) “<i>junto con datos que demuestren que el Vendedor ha consultado exhaustivamente</i>” ¿A qué se refiere la consulta exhaustiva?  ¿Qué se considera estadísticamente representativo para lograr la consulta exhaustiva para el FCPF?  “<i>rescindir el ERPA [y recuperar los Costos contraídos ...]</i>” ¿Los países REDD+ tiene la capacidad de devolver este dinero a los compradores?. En el Caso de México no existe un mecanismo que nos permita devolver los costos contraídos.  (México)</p>	<p>See above.   See above.   This Costs recovery clause is in line with our current ERPA drafting practice.</p>
Transfer of ERs (para 10)	How will this transfer be recorded? (Australia)	Included in clause 10 of Term Sheet.
	Will the ERs be attributed to different activities? (Australia)	This is likely to be addressed in the ER Program Monitoring System (see clause 17 of Term Sheet).
	Will the ERs make the distinction between CO <sup>2</sup> and non-CO <sup>2</sup> emissions? (Australia)	Each ER will represent one tone of CO <sup>2</sup> equivalent (see clause 4 of Term Sheet).
	Will there be a Registry where ERs are issued and transfers recorded? Or just contractual transfers? (BP)	Included in clause 10 of Term Sheet.
	The concept of third-party Verification Reports is fundamental. This should not be optional and should be the trigger for payment. Third-party verification (preferably a desktop review and a site audit) underpins carbon markets around the world, and the Fund’s role as a market maker for REDD+ should insist on this level of rigor. The absence of this exposes the Carbon Fund to criticism and potential liability if REDD+ credits are used for compliance purposes if ERs turn out to be overstated. It also underpins the concept of performance-based payments, otherwise we have limited means to evaluate performance. (BP)	Included in clause 10 of Term Sheet. For each ER transfer, verification is required unless, due to delays in the verification process, the Buyer (in consultation with Carbon Fund Participants, decides to accept the Performance Report only for the ER transfer to be deemed completed (pending subsequent verification).
	Recommend removing the concept of being able to waive verification. The ERPA should have a very clear schedule of Performance Reports and Verification, so that it is known when advance payments are to occur, and when those are trued-up against verification. (Why would it ever be a good idea to waive verification?)(TNC)	Included in clause 10 of Term Sheet. See above.
	Also, what does ”final” mean in the term “ <u>final</u> Verification Report” mean? At the end of the ERPA term? Or just something that isn’t a draft?	The term ‘final’ means that the Verification Report will only trigger the completion of

	<p>We assume that there would not be just one final Verification Report at the end of the ERPA, but one or more interim Verification Reports. (TNC)</p>	<p>the ER transfer if it is the final version (i.e. not a draft version).</p>
	<ul style="list-style-type: none"> <li>• “A final Verification Report verifying... and to be transferred” is not clear. Is there anything to be transferred? To a registry?</li>   <li>• When and why would a Verification Report not be required?</li>   <li>• Note in this context: The scope of the different report types is hard to follow. Verification / Performance / Progress Reports.</li>   <li>• The Term Sheet states that the transfer of ERs includes a transfer of rights, on the one hand, and that the transfer of rights happens at a later stage than transfer (with payment). This is not consistent.</li> </ul> <p>Recommendation</p> <ul style="list-style-type: none"> <li>• Clarify whether literally a transfer is to occur or not. Otherwise, it is recommended to introduce the concept of “delivery” (which would also remove the doubt whether something material has to be transferred from somewhere to somewhere).</li> <li>• Consider introducing the concept of a registry, or reflect the option that a registry may be built in this clause (As long as the registry is not in place, the receipt of a “ER Transfer Form” may be used to indicate delivery, but it would be helpful not to integrate both invoice and transfer form.</li> <li>• It is hard to see that the ERPA can do without verification. Note that advance payments may not be linked to verifications but to performance reports alone.</li> <li>• Assure consistent use of minimum amount of report terms needed (also</li> </ul>	<p>Included in clause 10 of Term Sheet. This depends on whether or not their will be one or more registries available to formally record the ER transfer.</p> <p>Verification is always required.</p> <p>The reports cover different content and seem necessary to provide Carbon Fund Participants with sufficient comfort to make advance payments in order to ensure a regular cash flow to Seller/Sub-Entities/Beneficiaries.</p> <p>The ‘transfer of ERs’ as such is a technical process in order to determine when payment becomes due. However, ‘transfer of legal title’ relates to the transfer of legal ownership regarding the transferred ER, which usually requires payment.</p> <p>See above.</p> <p>Included in clause 10 of Term Sheet.</p> <p>Interim Advance Payments are not linked to a transfer of ERs (which only occurs following the end of each Reporting Period)</p>

	<p>in light of discussion on advance payment)</p> <ul style="list-style-type: none"> <li>• Clarify which moment is to be chosen.</li> <li>• Only advance payments may not be linked to verifications but to performance reports alone.</li> <li>• Clarify whether literally a transfer is to occur or not, or introduce the concept of “delivery”.</li> <li>• Note the proposed language on a registry: e.g. “once a registry for tracking emission reductions... is in place, delivery occurs when the ER is listed...; it is understood that all deliveries completed before the registry is operational will remain valid...”</li> <li>• The approach on double counting (eg with national accounting or other projects) needs to be addressed. (Germany)</li> </ul>	<p>but happen within multi-year Reporting Periods and are linked to the achievement of certain agreed progress milestones (potentially verified by Independent Reviewers). See clause 12 of Term Sheet.</p> <p>Included in clause 10 of Term Sheet.</p> <p>Included in clause 10 of Term Sheet.</p>
	<p>“if Verification is not required or is waived by the Buyer for a given reporting period...” As discussed by phone, we do not think it likely that verification would be fully waived for a reporting period, though it could be delayed. As long as it is clear that we are not discussing advanced payments against performance reports but rather transfer of ERs, we don’t think language on a waiver needs to be mentioned here.(US)</p>	<p>Included in clause 10 of Term Sheet.</p>
	<p>We would like to add the following language to 10, 12, or the appropriate place (separate paragraph on use of units?):  “No claims may be made on ERs until after receipt of a final Verification Report.”(US)</p>	<p>The current version of the Term Sheet foresees the possibility (as an exception only and subject to prior consultations with Carbon Fund Participants) that ER transfer is deemed completed upon receipt of a Performance Report only and that payment becomes due (and legal title to transferred ERs passes to Buyer) at a time that verification is still pending.</p>
	<p>Suggest deleting “or, if Verification (as defined below) is not required or waived...to be transferred to the Buyer under the ERPA.” Canada supports not having a non-verification option for the reasons presented on the Sept.12 call and to follow the COP17 decision, paragraph 64, “<i>to obtain and receive results-based finance, these actions should be fully measured, reported and verified</i>” (Canada)</p>	<p>Included in clause 10 of Term Sheet.</p>
	<p>A final Verification Report [...] or, as an exception and at the Buyer’s sole and absolute discretion and pending subsequent Verification, a Performance Report (as defined below), in form and substance satisfactory</p>	<p>We inserted “following consultations with Tranche A and Tranche B Carbon Fund Participants” in clause 10 of Term Sheet.</p>

	<p>to the Buyer,          Could we add here "and the participants of Tranche A and Tranche B of the Carbon Fund" here? Accepting a non-final performance report as basis for payment is not something we would necessarily entrust a buyer to do on our behalf.          (EC)</p> <p>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).          What about the duties (ensuring permanence of forest carbon stocks, preventing and addressing reversals, for how long)?</p>	<p>The ERPA can only cover the ERPA term which cannot exceed the lifetime of the FCPF itself (i.e. end of 2020). The reversal risk can only be addressed and, if necessary, remedied within that ERPA term.</p>
	<p>En el numeral 10 (Transfer of ERs) y en el encabezado que indica "...The purchase, sale and transfer relates to (not to any land o territories)...", no es conveniente que se haga referencia a "no a cualesquiera tierras o territorios", por cuanto desde el principio, en el numeral 4 se indica que "...Una ER representa una tonelada de equivalente de CO2 (tCO2e) reducida...". El incluir tal precisión puede generar controversias por parte de comunidades sobre el tema, pues el asunto relativo a la propiedad de los territorios se refiere al tema de salvaguarda.          (Colombia)</p>	<p>The clarification was introduced precisely to respond to early concerns on the part of Indigenous Peoples and local communities that the "purchase, sale and transfer" might relate to land and territories, when in fact only the ERs are involved here.</p>
<p>Payment for transferred ERs (para 11)</p>	<p>Has the Bank had experience of situations where repayments are required?          Is this proposed remedy sufficient to address this risk? (Australia)</p>	<p>Repayment risk addressed through 2-step payment process for ERs transferred based on Performance Report only. See clause 11 of Term Sheet.</p>
	<p>"upon completion" -- do we need a more specific time here, like within x days (or is that the Cure Period in Para 26)? And if the Verification shows less than Performance report, couldn't the true up be in the form of extra ER's, assuming that the FCPF was only buying a portion of total performance, there might still be an excess available. (TNC)</p>	<p>The Term Sheet reflects basic elements. Details will be included in subsequent set of ERPA General Conditions.</p>
	<p>Payments linked to Performance Reports are first deemed payment on delivery and, at a later stage (at verification), erroneous payments.</p> <p>Recommendation          It would be legally more compelling to have Performance Reports trigger Advance Payments, which are later netted against what has been delivered</p>	<p>See above. Repayment risk addressed through 2-step payment process for ERs transferred based on Performance Report only. See clause 11 of Term Sheet.</p> <p>The Term Sheet strictly distinguishes</p>

	<p>(according to the Verification Reports).  - delete paragraph “In the event that...” (Germany)</p>	<p>between regular payments (for transferred ERs; clause 11 of Term Sheet) and advance payment(s) (for achievement of milestones (other than ER transfers); clause 12 of Term Sheet).</p>
	<p>In the first sentence consider adding something like "unless the Buyer and Seller agree otherwise" or "unless the Buyer and Seller agree to advance payment" to be more accurate since the immediate following discussion is about the circumstances where payment does not occur upon completion of transfer.</p> <p>In the second paragraph, to avoid confusion it may help to specify “In the event that an ADVANCED payment is made...”</p> <p>(In general we find the distinctions between “payments” and “advanced payments” throughout to be confusing sometimes. Could we use another phrase for advances payments? Advances?)(US)</p>	<p>Please see revised clause 11 of Term Sheet.</p> <p>The Term Sheet strictly distinguishes between regular payments (for transferred ERs; clause 11 of Term Sheet) and advance payment(s) (for achievement of milestones (other than ER transfers); clause 12 of Term Sheet).</p>
	<p>Third-party verification of actual ERs generated is essential to the integrity of the Carbon Fund Program. Section 11 makes it appear that independent third-party verification will always be required with each transfer of ERs. However, while Section 17 makes it clear that the country’s developing MRV procedures (undefined) will apply to the ER Programs, the issue of whether an independent auditor is contracted and who will pay for such audits is left up to negotiation between the Seller and the Buyer. The Term Sheet should be clarified to ensure that third-party audits will be conducted on every ER transfer and to make sure that country MRV procedures for countries with Carbon Fund ER Programs will include provisions for the MRV of these Programs. (EIA BIC)</p>	<p>Clause 10 of Term Sheet (transfer of ERs) makes clear that each ER transfer (and subsequent payment) requires verification.</p>
<p>Advance payment (para 12)</p>	<p>There should be specific constraints on the various advance payments (and Para 14 Costs?) to avoid too much frontloading. This is both for the perception of meeting the goal of the Carbon Fund to pilot results-based approaches, and for fiduciary responsibility. For example (for discussion):</p>	<p>Included in clause 12 of Term Sheet.</p>

	<ul style="list-style-type: none"> <li>- Upfront Advance Payments could be limited to 10% of total anticipated payments.</li> <li>- Interim Advance Payments could be limited to 50% of the Performance Reports, to be conservative until verification.</li> <li>- Total Advance payments could be limited to 30-40% of the total anticipated payments, and/or to no more than the annual average of the total contracted ERs (i.e., advance payments in any year cannot exceed the value of total contracted ERs divided by years of the ERPA).</li> </ul> <p>We also recommend at least one verification report during the ERPA term, and not just a single verification at the end. (TNC)</p>	<p>In the event that the ERPA term includes more than 1 Reporting Period, there will be more than 1 verification report.</p>
	<p>En donde se define el contenido del reporte interino?</p> <p><i>“[y al cumplimiento de las Condiciones de Efectividad]” ¿Qué significa este corchete? De qué depende la incorporación de este texto al ERPA term Sheet</i> (México)</p>	<p>The content of each Interim Progress Report will depend on the progress milestones identified in the ERPA for each ER Program and to be achieved for each Interim Advance Payment to become due (clause 12 of Term Sheet). The Interim Progress Report will also report on the implementation of the Benefit Sharing Plan (see clause 21 of Term Sheet).</p>
	<p>Do we need a separate Interim Progress Report? Or can it be called (Interim) Performance Report? We support the verification / auditing option also for these type of reports, but this could be done by independent consultants instead of the Carbon Verifier that is to be contracted for Verification Reports. (Germany)</p>	<p>The Term Sheet strictly distinguishes between regular payments (for transferred ERs; clause 11 of Term Sheet) and advance payment(s) (for achievement of milestones (other than ER transfers); clause 12 of Term Sheet). The terminology used should clearly reflect that distinction.</p>
	<p>Suggest adding after “interim advance payment(s)” the following: “the total of all Upfront and Interim Advance Payment amounts may be capped at certain % of ERPA value.” It is important to limit overall advance payment (total of upfront and interim) to a certain % of total anticipated ER Contract Value.(Canada)</p>	<p>Included in clause 12 of Term Sheet.</p>
	<p>Disbursement(s) may be linked to certain milestone(s) evidencing certain progress in the ER Program implementation process [and fulfillment of the Conditions of Effectiveness]; The part in brackets is essential to us. Same remark with the bracketed</p>	<p>Brackets have been removed.</p>

	parts in Clause 17. (EC)	
	En relación con el numeral 12 (Advance Payment) debe ser explícito que los informes de anticipo están relacionados con las actividades ejecutadas, no con la reducción de emisiones, sino con “Beneficios no relacionados con el carbono”. (Colombia)	This is the case: “milestone(s) related to interim progress to be achieved in the ER Program implementation process”.
	Advance payments allowed under Section 12 should also be subject to full development and implementation of safeguard and benefit sharing plans. It should be made clear that advance payments are included in the basket of benefits subject to benefit sharing plans, otherwise, Sellers can reduce the amount of benefits to share by taking significant upfront payments. (EIA-BIC)	Included in clauses 21 and 23 of Term Sheet.
Reporting Period (para 13)	Can we define “Reporting Period” options? Is this envisioned to happen annually? Once during the ERPA? At the discretion of the Seller or Buyer? (BP)	May be determined during ERPA negotiations on a case-by-case basis. It seems likely that an ERPA will have one or more (multi-year) Reporting Period(s).
	<ul style="list-style-type: none"> <li>• insert “report on generated ERs and overall performance of the ER Program” (Germany)</li> </ul>	Included in clause 13 of Term Sheet.
Taxes (para 14)	<p>Recommendation</p> <ul style="list-style-type: none"> <li>• Would be good to include that prices are prices net of any taxes.</li> </ul>	Term Sheet clearly distinguishes between the price on one side and a potential tax charged on the other side.
Costs (para 15)	<p>Parties will agree on the allocation of costs incurred with respect to the preparation and implementation of the ER Program (Costs).”</p> <p>This could imply that the costs of preparing and implementing an ER Program will be covered in addition to, or by other means than, any advanced payments. We had not understood that this was being considered (other than the \$600k grant for document preparation). Are we referring to the \$600k, or additional costs? If additional, this may need further discussion.(US)</p>	Included in clause 15 of Term Sheet.
	Costs should be defined as costs incurred by the Buyer and, for the avoidance of doubt, state that the Seller’s costs will be covered in negotiated pricing terms per the Pricing Approach. (BP)	Included in clause 15 of Term Sheet.
	Regarding costs, what costs are anticipated here, and how are they	Included in clause 15 of Term Sheet.

	different from the Upfront Advance Payments? (TNC)	
	Are these really all financial posts incurred with the preparation and implementation of the ER Program? So the full costs of the measure? Consider clarifying that costs are those incurred with the negotiation of the ERPA and includes all costs for verification, auditing etc. (Germany) (Germany)	The Costs clause is negotiable.
	¿Existe algún costo estimado sobre lo que costaría para un país desarrollar ERPA y cumplir con todos los requerimientos? En caso de que el comprador no pueda pagar el ERPA ¿Qué implicaciones tendría? (México) Se habla de mercados actuales de carbono, ¿A cuales se refiere? (México)	Costs incurred in ERPA negotiations and ER Program implementation can differ significantly depending on complexity/contentiousness of ERPA negotiations/ER Program design.
Communication with respect to ERs (Para 16)	What about communications with the public? Media? (BP)	Included in clause 16 of Term Sheet.
	As it is currently not clear what kind of communications will be needed and what such communications will trigger, consider a general clause on good cooperation among the Parties. (Germany)	Included in clause 16 of Term Sheet.
MRV (para 17)	Does this mean that an independent reviewer will definitely carry out verification of the Performance Reports – it’s just a matter of who contracts the reviewer? (Australia)	Yes. Pls also see clause 10 of Term Sheet.
	<ul style="list-style-type: none"> <li>• The clause fails to give a definition of REDD Country Participant’s MRV system. Does this system provide a full methodological approach for the measurement of ERs achieved under the ER Program?</li> <li>• The clause leaves open (“may include”) whether the system includes a monitoring plan for the ER Program.</li> <li>• The clause does not lay down the start and length of monitoring periods. Are the Performance Reports and the Verification Reports to report, and verify, on ERs alone or also on co-benefits?</li> </ul>	<p>We also refer now to the Methodological Framework; clause 17 of Term Sheet.</p> <p>Methodological Framework ‘will’ include ER Program Monitoring System.</p> <p>Included in clause 17 of Term Sheet.</p>
	<p>Recommendation</p> <ul style="list-style-type: none"> <li>• Define the term and provide for a mechanism that allows the adoption of a comprehensive methodological framework (e.g. the above mentioned Program Document and the Implementation Plan could be the document to wrap up the methodological framework including monitoring plan and monitoring periods).</li> </ul>	Included in clause 17 of Term Sheet.

	<ul style="list-style-type: none"> <li>• Define the elements of the Performance Reports, including clarify the meaning of co-benefits, if these are relevant for the ERPA.</li> <li>• Given the function of the Verification Reports as transfer (or delivery) surrogates, consider separate verification of ERs and co-benefits.</li> <li>• We propose separate clause for MRV from clause on the overall ER Program Monitoring System and define Performance Reports more comprehensively, i.e. also including non-carbon benefits and the report on proper implementation of the benefit-sharing plan (according to clause 19)</li> <li>• Include a reference to the Methodological Framework, since more work needs to be done on the relation between the REDD Country Participant’s MRV system and ER Program MRV system, as well as streamlining/simplifying monitoring for non-carbon benefits, safeguards information system and WB reporting requirements (Benefit-Sharing Plan, Safeguards Plans?)</li> <li>• Consider a dual approach for verification: (i) verification on ERs achieved, and (ii) verification on non-carbon benefits/safeguards/benefit-sharing, to avoid that there is ambiguity over the ER transaction amount; mal-performance in re non-carbon benefits/safeguards/benefit-sharing, if material, should permit the buyer to terminate the ERPA, but it should not have an influence on the validity of the ERs.(Germany)</li> </ul>	<p>Included in clause 17 of Term Sheet.</p> <p>Included in clause 17 of Term Sheet. For cost-efficiency reasons, this is combined.</p> <p>Included in clause 17 of Term Sheet.</p> <p>Included in clause 17 of Term Sheet.</p> <p>See above.</p>
	<p>It would be good to note here that the ER Program Monitoring System should allow for MRV consistent with the Methodological Framework (MF). Also, will the MRV system need to be fully functional? If this decision will be included in the MF, that should be noted here. (US)</p>	<p>Included in clause 17 of Term Sheet.</p>
	<p>We would not support proposals to include reference or requirements concerning non-carbon values in this MRV section. The reporting (of non-quantified info) on non-carbon benefits should be included in the Performance Report however. (Canada)</p>	<p>Reporting on Non-Carbon Benefits in the form of a Performance Report is included in clause 17 of Term Sheet.</p>
	<p>Section 17 should better define the countries MRV system and specify that it includes a monitoring Program for the ER Program. Additionally, the Performance Reports and Verification Reports should explicitly include monitoring and verification of non-carbon benefits if they are included in the agreed upon price for the ERs. The monitoring and verification of non-carbon benefits should be described and may be a qualitative rather than quantitative assessment if described and agreed to at the time of the</p>	<p>Included in clause 17 of Term Sheet. Term Sheet only supposed to cover ‘basic elements’.</p>

	benefit sharing plan development and ERPA going into effect. (EIA-BIC)	
Reversal (Para 18)	Should a distinction be made between temporary and permanent reversals? (Australia)	Reversal risk can only be addressed under the ERPA during the ERPA term.
	Should a distinction be made between addressing CO <sup>2</sup> and non-CO <sup>2</sup> reversals? (Australia)	Currently, the Term Sheet addresses CO <sup>2</sup> reversals only.
	Should there be a formal Monitoring Report process? Asking the Seller to identify a Reversal through the MRVs system may not be sufficient. (BP)	Reversals will be identified as part of the ER Program Monitoring System which will then feed into the content of the Performance Report (see clauses 17 and 18 of Term Sheet).
	This may be an issue for the Meth Framework, but a Buffer Reserve is most effective across multiple projects/programs and discrete land areas in order to spread risk. It is also only intended to mitigate the risk of unintentional reversals, i.e. disease, fire. It should be applied and managed at a system level (across the portfolio), not at the ERPA level with individual countries. (BP)	This will be addressed in the evolving Methodological Framework.
	Unintentional reversal is a discrete issue that should be dealt with separately. What is the permanence expectation of the ER program? How long are countries obligated to maintain ERs? What are the consequences of intentional reversal? Some tools for dealing with intentional reversals are a permanence discount, a long-term contract with government, an easement or legal restriction on land use or buy-back mechanisms. An escrow/trust account making annual payments as long as forests are maintained may be an interesting approach. (BP)	Reversal risk can only be addressed under the ERPA during the ERPA term.  Intentional Reversal Events will be deemed an Event of Default which triggers certain remedies (including liquidated damages); see clauses 18 and 29(b) of Term Sheet.
	The MRV system for reversals should be the same as that for ER Program monitoring (Para 16), not the REDD Country Participant MRV system. Especially for subnational ER Programs, reversals may well not be detectable by the national MRV system. (TNC)	Reversals will be identified as part of the ER Program Monitoring System (as part of the Methodological Framework) (see clause 17 of Term Sheet).
	Given the legal restrictions of the Trustee in enforcing any conditions beyond the Term of the ERPA, we believe that the Methodological Framework should include guidance for Risk Management Plans that address risks of intentional and non-intentional reversal beyond the Term of the ERPA. The establishment of such Plan could be required as part of the ERPA. (Canada)	This could be addressed during the discussion regarding the evolving Methodological Framework but does not have to be addressed in the Term Sheet.
	• The provision does not distinguish between the situation in which the	Each party is responsible for its own

	<p>host country (its Government) is party to the ERPA, and in which it is an implementing entity. The choice may be relevant for the allocation of contractual liability.</p> <ul style="list-style-type: none"> <li>• According to the provision, relevant reversal events seem to be those “during the ERPA term”. Are long-term reversals definitely excluded then? The term “sequestered in the forests” is misleading.</li> </ul> <p>Recommendation</p> <ul style="list-style-type: none"> <li>• Clarify whether you want contractual liability linked to certain reversal events.</li> <li>• You may want to clarify when, and on what terms, you want to address long-term permanence. This seems particular relevant in the case of Tranche A (compatibility ERs) transactions.</li> <li>• Clarify what reversal refers to.</li> <li>• The current approach does not clarify how non-permanence beyond the duration of the ERPA is to be addressed. No problem for us but rather for Tranche A. (Germany)</li> </ul>	<p>actions/omissions in this respect and will be held responsible for such actions/omissions under the ERPAs remedy section.</p> <p>Reversal risk can only be addressed under the ERPA during the ERPA term.</p> <p>Distinction made between intentional (Event of Default) and non-intentional (subject to other approaches) Reversal Event.</p> <p>Reversal risk can only be addressed under the ERPA during the ERPA term.</p> <p>Defined in clause 18 of Term Sheet.</p> <p>Reversal risk can only be addressed under the ERPA during the ERPA term.</p>
	<p>The TS introduces the tricky notion of "non-intentional reversal" in REDD+, defined as "to include any Reversal Event 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." But does not define "Reversals". I see potential for very nasty legal ambiguity here. E.g. the way it's drafted, what would happen in case of large scale emissions in 2020 (dieback, fire, droughts) which could have been prevented (say in 2005) at the plantation stage (by not foresting a risky area, or not using a species vulnerable to climate change impacts for instance)? Protecting forests likely to die anyway is pointless. It would seem more logical to define</p> <ol style="list-style-type: none"> <li>1) "Reversals"</li> <li>2) Then "Intentional Reversals" as a sub category of "Reversals",</li> <li>3) And finally "Non intentional Reversals" (As "reversals",</li> </ol>	<p>Included in clause 18 of Term Sheet and in the definition of “non-intentional Reversal Event” (see footnote)</p>

	<p>which do not fall in the "Intentional Reversals" category)</p> <p>This is very much related to the notions of force majeure, disturbance and permanence and should be treated with utter care. This might not seem like a big issue in the context of a short term agreement but in the long run, REDD+ is all about preventing large emissions from forests, most of which could simply be the result of climate change itself. Factoring out these through loose language is a huge risk for environmental integrity. (EC)</p>	
	<p>Section 18 should make clear that the ER Programs will be set up to ensure that if a reversal event occurs both the Buyer and the forest will be protected. The language as now written does not make clear that buffer reserves, insurance and other mechanisms need to be available to respond to a reversal event and restore the forest as well as protecting the Buyers investment. The protections should cover both intentional and non-intentional reversal events. (EIA-BIC)</p>	<p>This could be addressed during the discussion regarding the evolving Methodological Framework.</p>
Additional Covenants (para 19)	<p>Is this the only Buyer's obligation that needs to be specified? (Australia)</p>	<p>This is usually the most relevant one.</p>
	<p>Establishes that Buyer will contract and pay for Verification, which seems reasonable. Should specify that these costs are not part of the recoverable costs discussed in Para 14 – unless they are?(BP)</p>	<p>Costs recovery provisions are negotiable.</p>
	<p>The Covenants are not yet very detailed and do not distinguish between obligations for the Government as contracting partner, and an authorized party as contracting party.</p> <p>Recommendation</p> <ul style="list-style-type: none"> <li>• Consider integrating a set of provisions for when the Government acts as contracting party (see above at Reversals), or clarify that the Government is only liable for reversal events in the limits as set by the Meth Framework..</li> <li>• Consider establishing duties for the contracting party to install (or assume the role as) an implementing entity that is to manage the program, implement the ER Program Design Document, provide surveillance, perform monitoring, anticipate risks and dangers for the program, apply all relevant regulations including REDD MRV System, cooperate with stakeholders, and secure transfer of title...(Germany)</li> </ul>	<p>These details can be considered in the subsequent drafting process for the ERPA General Conditions but may be too detailed for Term Sheet purposes.</p>

<p>Conversion of ERs to other ER credits (para 20)</p>	<p>It should read: "the Seller will cooperate with the Buyer" (CMIA) (EIA/BIC)</p> <p>En el numeral 20 (Conversion of ERs to other ER Credits ), se debe revisar y/o corregir la primera parte por cuanto aparece repetida la palabra comprador y no es claro el texto.</p> <p><i>"...Sin perjuicio de lo dispuesto supra en la cláusula 4 (Tipo de Reducciones de Emisiones), el <u>Comprador</u> colaborará con el <u>Comprador</u> y otras autoridades/entidades pertinentes para ayudar al <u>Comprador</u> a convertir las ER transferidas en otros Créditos de ER que pudieran utilizar los Participantes en el Fondo del Carbono..."</i> (Colombia)</p>	<p>Corrected.</p> <p>Good catch. This will be changed to "the Buyer will cooperate with the Seller and other relevant authorities/entities..."</p>
<p>Benefit Sharing (para 21)</p>	<ul style="list-style-type: none"> <li>• Why would the Benefit-Sharing Plan only "build" on the PDD and not be included?</li> </ul> <p>Recommendation</p> <ul style="list-style-type: none"> <li>• Clarify to what extent the Benefit-Sharing Plan can be integrated in the PDD.</li> <li>• Consider an auditing provision for the implementation of the Benefit-Sharing Plan.(Germany)</li> </ul>	<p>BSP builds on ER Program Document, applicable domestic laws and regulations and World Bank policies; see clause 21 of Term Sheet.</p> <p>Included in clause 21 of Term Sheet.</p>
	<p>The Seller will share all or part of the monetary or other benefits achieved in connection with the implementation of the ER Program with relevant stakeholders. This can mean anything in my book. What about setting a minimum fraction that should be shared? Or at least considering adding "a significant" before "part"?(EC)</p> <p>Strong safeguards are important to the private sector: Any mechanism with an objective of drawing in patient capital to support long-term REDD+ objectives will have a better chance of success where reputable investors know that strong safeguards are fundamental. The CMIA would encourage the FCPF to ensure that strong social and environmental safeguards form an integral part of the projects from which they purchase ER's and ensure that is reflected in the language of the term sheet. (CMIA)</p> <p><i>"Para este fin, el Vendedor llevará a cabo consultas exhaustivas previas con las partes interesadas"</i> A qué se refiere la consulta exhaustiva? ¿Qué se considera estadísticamente representativo para lograr la consulta exhaustiva para el FCPF?</p>	<p>Included in clause 21 of Term Sheet.</p> <p>The Term Sheet refers to the requirement of Safeguard Plans that have to be properly implemented and regularly reported upon and, if not, trigger an Event of Default.</p> <p>The Trustee has reviewed the necessity of such terms and has decided to take references to these terms out of the Term Sheet. Any ERPA (including any Benefit Sharing Plan) will have to meet World Bank policy</p>

	<p>¿Cuáles son las especificaciones para elaborar la lista de Beneficiarios?  ¿Qué tan realista sería esta lista si la implementación de las actividades REDD+ se contemplan como voluntaria?  ¿Qué pasa si al final deciden NO participar?  (México)</p>	<p>requirements (including safeguard requirements) (see clause 21 of Term Sheet). In the event such policies are triggered and require prior consultations/broad support, they will apply to the ERPA, including the process on how a Benefit Sharing Plan has to be developed.</p>
	<p>Need to ensure transparency and conditions for effectively achieving broad community support of the ER Program and the Benefit Sharing Plan. Section 21 deals with benefit sharing and starts out with “The Seller will share all or part of the monetary benefits ... [from] the ER Program with ‘relevant’ stakeholders.” As a matter of principle, all benefits should be shared, although the method and division of sharing will vary from project to project. Who constitutes a “relevant” stakeholder should be defined. The provision goes on to say that the benefit sharing program needs broad community support and lists some excellent criteria and provides a definition of “Beneficiaries” which is extremely broad, which is appropriate. However, it is not clear if these beneficiaries are the same as “relevant” Stakeholders.</p> <p>Section 21 is unclear and needs additional specification. Are Sub-Arrangements required with stakeholders that are providing access to carbon and forest rights for the ER Program to go forward or are these instruments only required if the Seller is going to have other entities assist it in the performance of the ER Program?</p> <p>(EIA BIC)</p>	<p>See above.</p> <p>Sub-Arrangements are required between Seller and ER Program implementing Sub-Entities only. Beneficiaries under a BSP will receive benefits under the BSP and have access to its feed-back and grievance redress mechanism.</p>
<p>Sub-Arrangements (para 22)</p>	<p><i>“El Comprador puede solicitar que un Interventor Independiente verifique la adecuada implementación del Plan de Participación”</i></p> <p>¿El costo de la contratación de un revisor independiente lo asume el comprador?  ¿Quién sería este revisor, de dónde vendría, cómo se elegiría, existiría una terna de revisores, pensarían en un esquema similar al TAP?  (México)</p> <ul style="list-style-type: none"> <li>• The Who, Why and What of the Sub-Arrangements are not clear. The language “will respect certain basic elements” is vague.</li> </ul>	<p>Costs allocation will be negotiable.</p> <p>Term Sheet only addresses basic elements. Subsequent set of ERPA General Conditions</p>

	<p>Recommendation</p> <ul style="list-style-type: none"> <li>• The introduction of an Implementation Plan that would describe which actors are to be included in the ER Program would help give the Sub-Arrangements a clear place.</li> <li>• The Sub-Arrangements should include a clause that makes the terms of the ERPA binding on them.</li> </ul> <p>It should be clarified that the provisions listed in the annex are to be included in any Sub-Arrangement, or that modifications are only possible within the limits of the Implementation Plan.</p> <p>(Germany)</p>	<p>will include a more detailed set of provisions.</p> <p>We understand that there may be circumstances in which a sub-arrangement will take a different form than a formal contract. Therefore, we kept the definition flexible.</p>
World Bank's Operational Policies and Procedures (Para 23)	<ul style="list-style-type: none"> <li>• ¿La debida diligencia estará a cargo del socio implementador que trabaja en el país?</li> <li>• ¿O el país comprador realizaría su debida diligencia con el país vendedor?</li> <li>• ¿La relación entre comprador y vendedor sería acompañada por un socio implementador? ¿Cómo funcionaría esta relación?</li> </ul> <p>(México)</p>	<p>Yes, the Delivery Partner, in this case the World Bank (IBRD), will be responsible for the due diligence. As such the World Bank will facilitate the relationship between the Seller and the Carbon Fund Participants.</p>
	<ul style="list-style-type: none"> <li>• Sobre el tema de salvaguardas, en el numeral 23. "World Bank's Operational Policies and Procedures", se hace referencia a que "...Como resultado de la diligencia debida derivada de las salvaguardas del Comprador, se podrá exigir al Vendedor que prepare y presente al Comprador uno o más documentos (Planes de Salvaguarda)..."; tal aspecto debe ser delimitado y basado en lo que sea acuerde en la preparación de la ENREDD+. Al mismo tiempo se debe analizar que las salvaguardas del Banco Mundial, aun no se han adecuadas a las actividades REDD+ y pueden surgir salvaguardas validadas a nivel nacional</li> </ul> <p>(Colombia)</p>	<p>The World Bank has conducted an in-depth analysis of the consistency between its safeguard policies and the Cancun decision, and found full consistency. The SESA/ESMF is also designed to fit the safeguards needs of the REDD+ Readiness phase. Clearly, the application of the World Bank safeguards, in particular through the SESA/ESMF, is always in the national context so the safeguards requirements do not duplicate the national laws and regulations. In some cases, they may complement them.</p>
Representations and Warranties of Seller at the time of signing the ERPA and at the time of each transfer	<p>Lit (f): See above, clause 5. If Contract ER Volume is pre-defined, then the Seller may breach the representation in the event that the number is not reached (in particular, where there are other buyers and the Buyer has no seniority rights above the minimum threshold)</p>	<p>Included in clause 25 (f) and (h) of Term Sheet.</p>
	<p>We could add something like "Seller shall cancel ERs once they are</p>	<p>Included in clause 10 of Term Sheet (no</p>

<p>of ERs (para 25)</p>	<p>transferred to the Trustee, so that they are not used for other purposes.” This would get at the double counting question. We will likely provide more thinking on this in the next round of discussions. (US)</p>	<p>double-counting).</p>
	<p>Pursuant to Section 25 at the time of signing the ERPA, the Seller has to make representations and warranties that it has already completed the conditions precedent. Section 25 needs to be amended so it is clear that the representations and warranties only need to be effective upon the satisfaction of the conditions precedent. Giving the warranties as now written either mean that they are false when given, the benefit sharing plan has to be negotiated before the details of the ERPA are finalized which would be unfair to the stakeholders, and the Seller would have substantial pressure to rush the creation of the benefit sharing program, contrary to the section on benefit sharing which calls for substantial consultation and broad community support.</p> <p>As stated above, the Seller cannot make the representations and warranties set forth in Section 25 at the time of the signing of the ERPA as the conditions precedent, including the creation of a benefit sharing program will not have occurred at that time. This is particularly true with respect to representations a), f) and h) as the stakeholders will at the time of the signing of the ERPA hold title to all forest and carbon rights in the ER Program area and will need to relinquish them when a satisfactory benefit sharing plan with wide community support is negotiated, which will only occur after the signing of the ERPA.</p> <p>(EIA-BIC)</p>	<p>Included in clause 25 (f) and (h) of Term Sheet.</p>

<p>Seller Events of Default (para 26)</p>	<ul style="list-style-type: none"> <li>• The definition of Transfer Failure is not clear (“on a cumulative basis”).</li> <li>• Failure to “properly implement” is not clear.</li> <li>• Here and elsewhere, the temporal word “will” is used instead of “shall”. This obscures the level of obligation.</li> <li>• Event of default notification should occur promptly or within a certain time limit, otherwise the defaulting party can obstruct remedial action.</li> </ul>	<p>“Cumulative basis” means that if, in one Reporting Period, the ER Program has generated and transferred ERs in excess of the Minimum Reporting Period Amount and, in the second Reporting Period, has generated and transferred ERs in an amount less than the Minimum Reporting Period Amount, there will be no Transfer Failure as long as the cumulative amount of both Minimum Reporting Period Amounts has been generated and transferred.</p> <p>Sufficiently clear for Term Sheet purposes.</p> <p>The term ‘shall’ was deliberately not used throughout the Term Sheet text but will be included in the subsequent set of General Conditions.</p> <p>Will be specified in subsequent set of General Conditions.</p>
	<p>Why are the Benefit-Sharing Plan and the “feed-back and grievance redress mechanism” (not defined) singled out?</p>	<p>Its considered one of the crucial documents under the ERPA. The ‘material breach’ Event of Default covers other material breaches.</p>
	<p>Clarify that the Sanction Process is without respect to other remedial provisions of the ERPA. (Germany)</p>	<p>Does not need to be specified in Term Sheet.</p>
	<p>¿Quién y en base a qué define que la implementación del plan de Beneficiarios no es apropiada? (México)</p>	<p>The expectation is that the BSP is fully implemented. If not, it is up to the discretion of the Buyer to decide whether or not to exercise the remedy.</p>
<p>Buyer Events of Default (para 27)</p>	<p>How will costs be recovered from and how? (BP)</p>	<p>By way of requesting payment from the defaulting Party.</p>

Cure period (para 28)	Will the cure period need to vary, depending on the event of default? (Australia)	Potentially yes.
Remedies (para 29)	<ul style="list-style-type: none"> <li>• In (a) it should read “shortfall in the Minimum Contract ER Amount”, not “shortfall Contract ERs”.</li> <li>• In (b) it is true that the setting of liquidated damages is difficult, when a variable pricing approach is chosen. However, the alternative then is to grant “damages in accordance with the applicable law”, not the removal of damages altogether. Also, it seems fair to impose on the Seller all costs (not just those to be paid by the Buyer).</li> <li>• Lit (c) should have a time limit after which the Buyer can legitimately claim the termination of the contract</li> <li>• For payment failure, see above, the due date needs to be set to trigger this.</li> <li>• Lit (b) seems obsolete or, worse, may give rise to speculation. Without prejudice to clause 31, a payment failure is usually intentional.</li> </ul> <p>Recommendation</p> <ul style="list-style-type: none"> <li>• For action considerations see on the left.</li> </ul> <p>Also, for the avoidance of doubt, the consequence of termination should be laid out: no further transfer/ER receipt obligations, no further payment obligations, no further costs etc., but also, importantly, the statement that all transfers that have occurred up until termination remain effective, and that the allocation of the related rights to the Buyer is final.(Germany)</p>	<p>Corrected.</p> <p>Can be considered as an alternative to ‘liquidated damages’.</p> <p>It is expected that any ongoing delay will ultimately lead to a Transfer Failure which then allows for termination as a remedy. Will be part of subsequent set of General Conditions. Usually yes, but not necessarily.</p> <p>Can form part of a more detailed subsequent set of General Conditions.</p>
Termination Event (para 30)	The relation to the other remedial rights is not entirely clear.	This is clear enough for Term Sheet purposes.
Seller withdrawal from FCPF (para 31)	Should this also cover the Carbon Fund Participant? (US)	Since the Trustee (not the Carbon Fund Participants) is the Buyer, this clarification does not seem necessary.
Force Majeure (para 32)	The relation of force majeure and reversal events should be clarified.	These two concepts are sufficiently described for Term Sheet purposes. Will be described in more detail in subsequent set of general

		Conditions.
Carbon Fund Participants Payment Default (para 33)	It may not be entirely clear whether the Buyer is liable with all assets of the Carbon Fund or whether only with assets specifically appropriated for this ERPA	Trustee (Buyer) can only pay subject to the available funding levels received from Carbon Fund Participants.
	¿Quiere decir que no tendría implicación alguna que no se cumplieran los compromisos financieros? ¿Qué pasaría si operaciones en el fondo se quedan sin financiar debido a esta reposición de fondos? (México)	Correct. The Buyer will try to ensure that payments are received from Carbon Fund Participants in a timely manner but does not bear any liability in the event of a Carbon Fund Participant Payment Default.
	Section 33 will likely be problematic to REDD country participants and stakeholders that give up carbon and forest rights to allow the ER Program to move forward. The donor countries should only enter into the number of ER Programs they can afford. It is not reasonable to have the Carbon Fund to approve more ER Programs than it has money to pay for the performance of the ER Programs. REDD Countries and stakeholder participants should be assured that if the Carbon fund approves and requires all of the effort to establish and perform the ER Program that there will be funds available to pay for performance of the ER Program. (EIA-BIC)	This is not to be addressed in the Term Sheet. The Term Sheet only clarifies/discloses this risk.
Governing Law (para 34)	The governing law clause is confusing as there is no such thing as English law. If you want to have the law of England apply the standard for a contract in the UK would be the “laws of England and Wales.” Since the World Bank is based in the US and the ER Program will be established in a particular REDD country, an explanation of why the Bank is choosing the law of another country should be given (EIA-BIC)	The usage of the term reflects current drafting practice.
Confidentiality (para 36)	So is it just the commercial terms (i.e. price/tonne) that are confidential? Can we hold government parties and others with knowledge of the ERPA to these confidentiality requirements or just the signatory to the ERPA? (BP)	Unless the Parties otherwise agree, ERPAs are considered confidential under the World Bank’s Access to Information policy.
	<ul style="list-style-type: none"> <li>• Both volume and price fall under confidentiality. Check if this is needed from the point of view of (commercial) interests.</li> <li>• Change language from “deemed public” to “deemed non-confidential”</li> </ul>	See above.
	<ul style="list-style-type: none"> <li>• As noted by phone, because of the pioneering nature of the CF and the possibility of stimulating an emerging market, we think transparency is</li> </ul>	See above.

	<p>important. We might explore something like “Buyer and Seller will agree on the disclosure of any and all portions of an ERPA in an effort to foster transparency while maintaining the confidentiality of any sensitive information contained in the ERPA.” (US)</p>	
	<ul style="list-style-type: none"> <li>• We have no suggested changes to this, however it is our interpretation that reports “will be made” public and not only upon request. (Canada)</li> </ul>	Correct.
	<p>Section 36: Confidentiality, then declares that the terms of the ERPA will be confidential unless required by a legislative or judiciary process. The disclosure of the ERPA is critical to the development of a fair benefit sharing agreement. How can a benefit sharing plan be developed without a disclosure of the ER Program, the number of credits to be generated, the price, the timing, whether monies are being advanced ... If there is any information in the ERPA that is not necessary for development of the benefit sharing plan, the Parties should petition the Carbon Fund to keep those provisions confidential, but the presumption should be that the ERPA is disclosed to all “Relevant” stakeholders. (EIA BIC)</p>	See above.
	<p>The confidentiality clause in Section 36 does not make sense as stakeholders will need access to the ERPA document to understand the numbers of ERs to be issued, the price to be paid, the timing of the payments, whether advances are going to be given, whether additional ERs may be bought/sold under the ERPA and whether non-monetary benefits are going to add to the compensation under the ERPA. If there is any commercial term in the ERPA that is not relevant to creating a fair and equitable benefit sharing plan, the Parties to the ERPA could move to redact that information with an explanation why the language is confidential and does not impact the benefit sharing plan. (EIA-BIC)</p>	See above.
Sub-arrangements (Annex)	<ul style="list-style-type: none"> <li>• The position of the Sub-Arrangements as contracts between the implementing entity and third parties should be made clear.</li> <li>• The commercial terms of the Sub-Arrangement should be outlined within an Implementation Plan (IP) whose adoption by the Buyer (IBRD) should be made a condition precedent.</li> <li>• Just as with the terms of the ERPA (see above), the Sub-Arrangement model should clarify which terms are generic and non-negotiable and</li> </ul>	The provisions included in Annex 1 give a sufficiently clear idea for Term Sheet purposes of what basic elements will need to be reflected in any such arrangement.

	<p>which are negotiable in each case (commercial terms). Most covenants, including a firm commitment to the content of the ERPA and the IP, assignment of legal title, most representations, and secondary rights (default, termination, damages etc.) are generic and should be used in each and every Sub-Arrangement (Germany)</p>	
	<p>The Sub-Arrangement in the Annex has many of the same general issues as the Term Sheet , substantive terms should be defined up front, the language should be tightened to make the purpose clearer, it is still not clear if this is a document for stakeholders that give up carbon and forest rights to make the ER Program possible or a document for entities actually participating in the performance of the ER Program, and finally, it should be made clear which elements are going to be negotiable and which are not.</p> <p>The concept of “Works” is unclear. If the program is payment for performance, the concept of Works would seem to conflict with the notion that the CF is paying for performance, i.e. emission reductions, not the implementation of the ER Program.</p> <p>The Sub-entity should be bound by the protective terms of the primary ERPA such as abiding by World Bank Safeguards, not engaging in any of the sanctionable activities listed in Section 24 and agreeing to the dispute resolution mechanisms in Section 35.</p> <p>(EIA-BIC)</p>	See above.
Others	<p>For clarity, it may be helpful throughout the document to specify “at the time of ERPA negotiation” or “In the commercial conditions” or similar when using language like “Parties will agree...” e.g paras 9, 12</p> <p>We agree with the discussion this morning that we should add language on monitoring and reporting on additional benefits (co-benefits), consistent with the MF</p> <p>As noted on the call, we need to deal with the question of tracking units through registries or similar. We’d be happy to discuss with the FMT if/how this should be captured in the term sheet.</p>	<p>Included in cover page of Term Sheet.</p> <p>Included in clause 17 of Term Sheet.</p> <p>Included in clause 10 of Term Sheet.</p>

	<p>Aunque no se menciona en el pliego de condiciones, un aspecto importante que debe ser objeto de mayor discusión y análisis es la pertinencia de definir la propiedad del carbono en relación con REDD+, en la medida que se podría considerar que este acuerdo es equivalente a otros que se establecen para esquemas de pago por servicios ambientales, en los cuales una de las condiciones de efectividad es la propiedad de la tierra o la posesión regular de la tierra.</p> <ol style="list-style-type: none"><li>1. Por último, felicitar por disponer de las versiones en español, no obstante recomendar en la necesidad de que la traducción que se haga de los documentos del inglés al español sean lo más próximos por cuanto se presentan frases en las que el mensaje no se entiende o cambia; así por ejemplo, en la página 1 del documento, se tiene lo siguiente:</li></ol> <p><i>“... 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”)...”</i></p> <p><i>“... el BIRF, en calidad de Depositario del Fondo del Carbono del FCPF, podrá iniciar la negociación de un ERPA con un País Participante en la reducción de las emisiones debidas a la deforestación y la degradación forestal (REDD)/entidad autorizada para la venta y adquisición de Reducciones de Emisiones generadas y verificadas en el marco de un Programa de Reducción de Emisiones (“Programa de ER”)...”</i></p> <p>(Colombia)</p>	<p>We agree. In fact the rights to the carbon will already be an important topic addressed in the Readiness preparation phase (it is part of the Strategy implementation framework and also cover in the R-PP). More work will then likely need to be done to establish these rights in the context of the specific ER Program.</p>
--	---	---