



WORLD BANK CARBON FINANCE UNIT  
CARBON PARTNERSHIP FACILITY  
2011 ANNUAL MEETING

**ERPA GENERAL CONDITIONS AND OTHER LEGAL  
MATTERS**

## ◆ Three different legal documents:

- ERPA – commercial terms
  - Needs to be tailored for each Program
- ERPA – General Conditions
  - Should be the same for all Programs
- Sub-Project Agreement
  - Template to be negotiated and agreed with Sub-Project Entities (or CPAs Implementers)

## ◆ Background

- Based on the Term Sheet approved by participants on October 28, 2010
- Based on the Pricing Approach

## □ Some drafting notes:

- Square brackets mean that it is not final drafting
  - Either because there are several options (*which will be indicated in italics*) or
  - Because information is missing

## ◆ Assets

- CERs/EU ETS compliant CERs/ CERs successor

## ◆ Pricing

- Fixed
- Fixed – different for different Sub-Projects
- Fixed – Variable after 5 years
  - Floor and cap
  - 50% fixed – 50% floating
  - Floating shall be calculated to be the average of daily closing prices for CERs for 10 trading preceding Issuance and 10 days after Issuance

## ◆ Maximum Value

# COMMERCIAL TERMS

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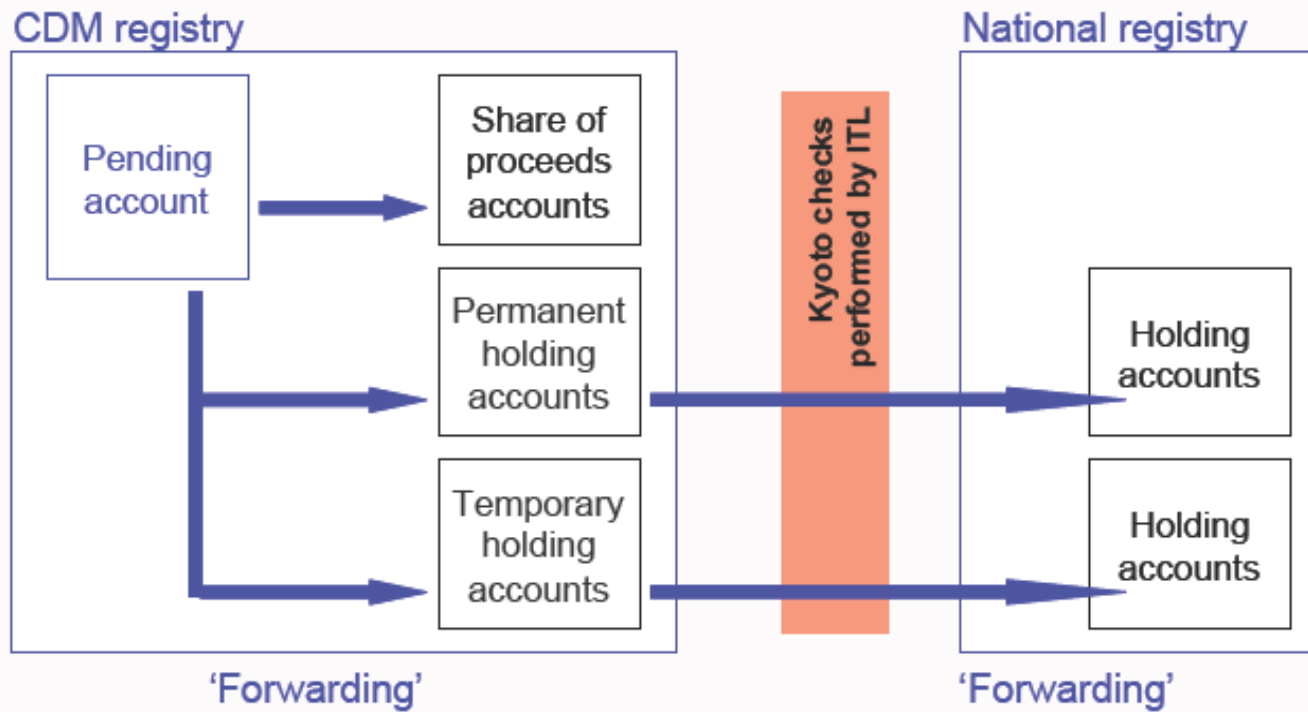
- ◆ Adjustment of Maximum Value for variable pricing
- ◆ Adjustment of Maximum Volume for variations in the volume
  - 2 years after signing of the first Sub-Project Agreement
- ◆ Conditions for Sale and Purchase
  - Written Approval
  - Registration before December 31, 2012
  - Execution of a Minimum Delivery Percentage of the Contract CERs Volume
  - Termination or Adjustment if delay in Registration and conversion into Call Options Adjustment

# DELIVERY AND PAYMENT

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- ◆ Sweeping
- ◆ Seniority
- ◆ Retaining Additional CERs
- ◆ Payment 30 days after Issuance
- ◆ Advance Payment
  - SoP and Registration Fees – Deducted from annual payments
  - Contract Value – Guaranteed by a Letter of Credit

## Forwarding to national registries



UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

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# ADDITIONAL VOLUME

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- ◆ Call option
- ◆ Put option
- ◆ Right of first refusal

## PROJECT DEVELOPMENT & IMPLEMENTATION

### ◆ Project Development


- Project/program design documents (PoADD+CPADD)
  - Includes program boundaries, policy/measure or stated goal, additionality, environmental analysis, eligibility criteria for CPAs, PoA term, starting date of each CPA, record keeping/ monitoring arrangements, monitoring plan, stakeholder comments etc.)
  
- Validation
  
- Registration of PoA
  - At PoA level only, registered w/ at least one CPA



## PROJECT DEVELOPMENT & IMPLEMENTATION (II)

### ◆ Project Implementation

- Construction/operation/monitoring/reporting
- PoA (including all CPAs) coordinated and managed by one (private/public) entity (C/ME)
- CPAs implemented by one or more (private/public) entities (CPA Implementers)
- Letters of approval/authorization by host country to C/ME only (not to CPA Implementers)



same as  
Written  
Approval

# VERIFICATION, CERTIFICATION & ISSUANCE

- ◆ **Verification & Certification of CERs**
  - By (independent) Designated Operational Entity
  - Verification and Certification Report
  
- ◆ **Issuance of CERs**
  - EB reviews Verification and Certification Report
  - Issuance of CERs by EB
  
- ◆ **Forwarding of CERs**
  - Request by Focal Point(s) to EB to have issued CERs forwarded to Buyer Participants' registry account(s)

## GENERAL CONDITIONS

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### FOCAL POINT

#### ◆ **Role & types of Focal Point**

C/ME & Trustee = Joint Focal Point

#### ◆ **Areas of communication with EB**

- Forwarding of issued CERs
- Adding/withdrawing project participant(s) from project/program
- Other project/program-related communication with EB

## FORCE MAJEURE

### ◆ Force Majeure Event

- Extraordinary and unavoidable event which (i) renders a Party's performance of certain obligations under ERPA impossible and (ii) is beyond that Party's control

### ◆ Consequence:

- Suspension of obligations of both Parties
- No liability for loss/damages suffered by other Party
- Contract ERs 'lost' due to Force Majeure Event may be converted into Call Option ERs
- If Force Majeure Event continues for a certain fixed time period, either Party may terminate the ERPA

## REPS, WARRANTIES & COVENANTS

### ◆ **Trustee reps, warranties & covenants**

- Authorization
- Valid, binding and enforceable
- Consents, permits, licenses etc.
- Payment when due subject to sufficient funding by Buyer Participants (i.e. Trustee does not bear Buyer Participant credit/payment risk)

### ◆ **Seller reps, warranties & covenants**

- Legal title to ERs free of third party rights/interests
- Authorization
- Valid, binding and enforceable
- Consents, permits, licenses etc.
- Anti-corruption/environmental and social policies
- *In PoA context:*
  - Entry into CPA Agreements with CPA Implementers in accordance with prescribed minimum requirements
  - Coordination/management of PoA and CPAs

## EVENTS OF DEFAULT & REMEDIES (I)

- ◆ **Major Events of Default by Seller:**
  - Transfer/Delivery failure
  - Dissolution/liquidation/bankruptcy
  - Material delay in project/program development
  - Material breach of terms of ERPA
  
- ◆ **Cure Period (if Event of Default curable)**
  
- ◆ **Remedies of Trustee (e.g.):**
  - ER shortfall to be delivered in future year(s) / increase of Option ER Volume
  - Reduction of Contract ER Volume/Value
  - Termination of ERPA
  - Reimbursement of costs/expenses & repayment of (not yet recovered) Advance Payment(s)
  - *Only in the event of an Intentional Breach:*
    - Liquidated damages (a reasonable estimate of damages suffered due to premature termination of ERPA and 'lost' Contract ER Volume)

## EVENTS OF DEFAULT & REMEDIES (II)

### ◆ Major Events of Default by Buyer:

- Failure to make payment, unless failure to make (full) payment under ERPA is because of one or more Buyer Participants' failing to fund the Trustee when due
- Other material breach of terms of ERPA

### ◆ Cure Period (if Event of Default is curable)

### ◆ Remedies of Seller (e.g.):

- Request payment (plus default interest)
- Termination of ERPA
- Reimbursement of costs/expenses
- *Only in the event of an Intentional Breach:*
  - Liquidated damages (a reasonable estimate of damages suffered due to premature termination of ERPA and 'lost' Contract ER Value)

## GENERAL CONDITIONS

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### GOVERNING LAW & DISPUTE RESOLUTION

- ◆ **Governing Law**
  - English law
- ◆ **Dispute Resolution**
  - Conciliation pursuant to UNCITRAL rules
  - Arbitration pursuant to UNCITRAL

ONLY  
DEVIATION  
FROM  
TERM  
SHEET



# CPA AGREEMENT or SUB-PROJECT AGREEMENT

- **Implementing/operating CPA...**
  - in accordance with Int'l Rules, Monitoring Plan, Environmental Management Plan, licenses/ permits/ authorizations, etc.
  - while maintaining/repairing machinery/equipment
- **Assignment of full title to ERs generated under CPAs**
- **Monitoring/reporting in accordance with ERPA**
- **Compliance with World Bank safeguard policies**
- **Cooperation with C/ME, DOE, Trustee**
- **C/ME shall provide training/forward info required for implementation/operation of CPA**
- **Sharing arrangement of CER sale revenues**



To be  
approved  
by the  
Trustee

# MAIN ROLE & RESPONSIBILITIES OF C/ME

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- **Develops CDM PoA Design Document (CDM-POA-DD) and CDM CPA Design Documents (CDM-CPA-DDs)**
- **Provides organizational, financial and methodological framework for CERs to be generated under CPAs**
- **Coordinates/manages the PoA (incl. CPAs)**
- **Obtains letters of approval/authorization from host country**
- **Contracts**
  - **ERPA(s) w/ buyer(s) for CERs generated under CPAs**
  - **CPA Agreements w/ CPA Implementers**
- **Cooperates regarding...**
  - **Validation & registration of PoA and subsequent CPAs**
  - **Verification, issuance & transfer of CERs**



## OTHER MATTERS

- **5 Buyers and therefore 5 Sellers may be members of the PC**
- **Members will rotate in two years and then every Annual Meeting**
- **One chair for the Buyers and one chair for the Sellers need to be elected**
- **One member one vote**
- **Decisions shall be decided by consensus, whenever possible, or by a 2/3 majority**

- **Section 10.10 on including Programs to the pipeline**
  - **Instead of 2/3 majority of Buyers, 3/5 majority of Buyers**

Section 10.10 (a)(ii) shall read as follows:

“If a **three-fifths** majority of the Buyer Participants **in the Tranche** objects to the inclusion of a Program and these objections cannot be resolved within thirty (30) days, the Program shall not be included in the Tranche’s portfolio.”

- **Section 18.2 on financial statements to provide for single audit as will be explained by Elena**



## NEXT STEPS

- Amendments to the Instrument shall be accepted by all Participants, if possible today
- the Partnership Committee shall endorse the General Conditions **by June 30, 2011**