Payments for Ecosystem Services (PES) Contract Clauses

Online Resource Center
Presentation Outline

• Why create this resource?
  – Lack of information about payments for ecosystem service (PES) contracts

• What is it?
  – Resource center overview and sources

• What’s inside?
  – Background information about PES contracting
  – Contract clause explanations and examples
Why Create this Resource?

• Little information on Payments for Ecosystem Service (PES) Contracts
• Few contractual precedents
• Disadvantage for small-scale and community-based sellers with little commercial experience
What is the Resource Center?

- Clickable outline of PES contract clauses
- Organized by clause type, explaining function, and issues for PES
- Illustrative examples from different contexts
- In reality, contract structure, clauses, language will differ
Initial Sources

Contracting for Forest Carbon: Elements of a Model Forest Carbon Purchase Agreement

Lessons Learned for REDD+ from PES and Conservation Incentive Programs
Examples from Costa Rica, Mexico, and Ecuador
What’s Inside?

• Background information
  – Basic agreement structure
  – Participation agreements in public PES programs
  – Key elements of PES agreements
  – Special considerations for PES contracting
  – Glossary of PES and contracting terms

• Contract clause explanations and examples
Background – Agreement
Structured as Credit Purchase

- Purchase and sale of credits representing actual ecosystem service provision
  - VER (carbon)
  - Biodiversity offsets
- Payment depends upon proven ecosystem outputs/results
- Used to offset buyer’s environmental impacts in a concrete, quantifiable way
Background – Agreement
Structured as Service Contract

• Transaction in conservation or restoration **services**
  – Tree planting
  – Habitat protection
  – Streamside restoration

• Payment depends upon provision of labor, raw materials (inputs)

• Suitable where agreed services **very likely** to result in environmental benefits
Background – Program Participation Agreements

• Participation agreements in public program of conservation-based payments

• Key differences from private PES contracts
  – Standardized, non-negotiable form contracts
  – Short and simple
  – Refer to program guidelines extensively
  – Used alongside application and enrollment forms
Background – Key Elements of PES Contracts

• Clearly-defined rights and obligations
  – What is the ecosystem service?
  – What each party must do, may do, may not do

• Payment amounts and timing, based on:
  – Cost of providing services or creating offsets
  – Market prices
  – Allocation of risks and costs between parties

• Definition of and consequences for failure to perform
### Background – Special Considerations for PES Contracting

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<th>Context</th>
<th>Challenges</th>
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<td>Multiple sellers, community sellers</td>
<td>Coordination, benefit distribution, project governance</td>
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<td>Balancing costs and accuracy</td>
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<td>Verification</td>
<td>Selecting standards body, time, cost</td>
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<td>Long-term obligation</td>
<td>Ecosystem disruptions, sellers’ successors</td>
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<td>Consequences of default</td>
<td>Small-scale seller inability to pay damages, buy replacement credits, etc.</td>
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<td>Role of local, national government</td>
<td>Extensive state ownership/regulation of natural resources raises challenges for PES</td>
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Features – Navigation

Legal Initiative Menu Bar: law and policy resources from Forest Trends and partners

PES Contract Toolkit: highlights contract-specific resources

Contract Clauses Resource Center:
- One of the tools in the toolkit
- Clickable outline appears on resource center homepage and sidebar of internal pages
Features – Contract Clause
Explanations and Examples

Cross-linked pages with explanations of different contract clauses and example contractual language

**Example 1**

**Example 2**

**Example 3**

**Explanation**

**PES Contract Clauses > Default and Remedies Example 1**

3. Event of Default:
   a. Definition. Each of the following is an "Event of Default" on the part of the Buyer or the Seller Representative:
      i. Dissolution, liquidation, insolvency, or bankruptcy;
      ii. Material breach of a representation or any material term of this agreement;
      iii. Knowingly or negligently providing information that is materially false or misleading to the other party;
      iv. A failure to deliver payment when due.

**PES Contract Clauses > Default and Remedies Example 2**

10. Remedies.
    a. In the case of an Event of Default by the Seller Representative:
       i. The Buyer is limited to the remedies expressly provided in this agreement,
       ii. The Buyer may terminate this agreement, and, if the Event of Default is intentional or due to gross negligence on the part of the Seller Representative, the Seller Representative shall return advance payments, if any were made, and shall pay U.S. $_________ in liquidated damages not later than 10 Banking Days after the Seller Representative receives the Default Notice.

**PES Contract Clauses > Default and Remedies Example 3**

15. DEFAULT AND REMEDIES

An "Event of Default," as that term is defined in the Program Guidelines, is a serious breach of a party's obligations under this agreement.

Therefore, if an Event of Default occurs, the non-defaulting party may immediately terminate this agreement and the defaulting party shall pay monetary penalties as provided in the Program Guidelines. If the agreement is terminated due to an Event of Default on the part of the Participant, the Participant will be ineligible to participate in the Program in the future.

**Default and Remedies Examples**

- Example 1: Default (private carbon emissions reduction purchase agreement)
- Example 2: Remedies (private climate change reduction purchase agreement)
- Example 3: Default and Remedies (participation agreement for government REDD+ program)

**These Clauses are:**

- Moderately customizable
- Very controversial
Features – Clause Explanations

- Describes clause subject matter and function
- Highlights issues for PES
- Provides examples from different contexts – more to be added
- Identifies degree to which clause tends to be:
  - Customizable
  - Controversial
Features – Customizable, Controversial Indicators

**Highly customizable**
Structure and content is flexible, can vary greatly

**Not very controversial**
Generally not highly negotiated or costly

**Moderately customizable**

**Not very controversial**
Often highly negotiated; likely difficult or costly to shape structure and content

**Not very customizable**
Structure and content is relatively inflexible, does not vary between contracts

**Moderately controversial**
Features – Contractual Examples

- Formatted example language
- Defined terms are highlighted
- Explains context
- Links back to relevant explanatory information

**PES Contract Clauses > Delivery Example 1**

2. **Delivery of Verified Emission Reductions.**
   a. **Delivery and Acceptance.** On June 1, 2012 and each June 1 thereafter (the "Delivery Date") through June 1, 2026 (the "Agreement Term"), the Seller Representative shall deliver, and the Buyer shall accept, all of the VERs issued to the Project during the preceding year from June 1 to May 31, inclusive (each such delivery and acceptance, a "Transaction").
   b. **Registry.** The Seller Representative shall deliver VERs on the Market VERs Registry or such other registry as is agreed in writing between the parties (the "Registry").
   c. **Costs.** Each party shall pay its own costs of opening and maintaining a registry account. The Buyer shall pay all transfer and other fees assessed by the Registry.
   d. **No Encumbrance.** The Seller Representative shall not create or permit to exist any claim or encumbrance over the Emission Reductions or the VERs that are the subject of this agreement.

**Context of this Clause:**
- Forward purchase agreement
- Ecosystem service: forest carbon emission reductions
- Numerous sellers (Participating Landholders) are represented by an individual (the Seller Representative)
Features – Contractual Examples

• Notes may be provided to explain unique aspects or challenges

• Example language may have gaps where context-specific information is needed
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