

# Payments for Ecosystem Services (PES) Contract Clauses Online Resource Center



the  
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group

The screenshot shows a web browser window with the address bar displaying [www.katoombagroup.org/regions/international/clauses/](http://www.katoombagroup.org/regions/international/clauses/). The page features a header with the Katoomba Group logo and a 'care' logo, along with a navigation menu including 'ABOUT US', 'PROGRAM ACTIVITIES', 'MEETINGS AND MEDIA', and 'PES LEARN'. The main content area is titled 'PES Contract Toolkit' and includes a list of links: 'Contract Clauses Examples', 'Template PES Contracts', and 'CDM Contract Guidance'. A 'CONTENTS' sidebar lists various sections, with 'Introduction | Ex. 1' highlighted by a mouse cursor. The main text area, under the 'OVERVIEW' tab, discusses the 'PES Contract Clauses > Forum and C' and mentions three basic aspects of an agreement: (1) dispute resolution, (2) forum selection, and (3) efficient procedures. The page footer shows the URL [www.katoombagroup.org/regions/international/clauses/Introduction Example 1](http://www.katoombagroup.org/regions/international/clauses/Introduction Example 1).

# 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

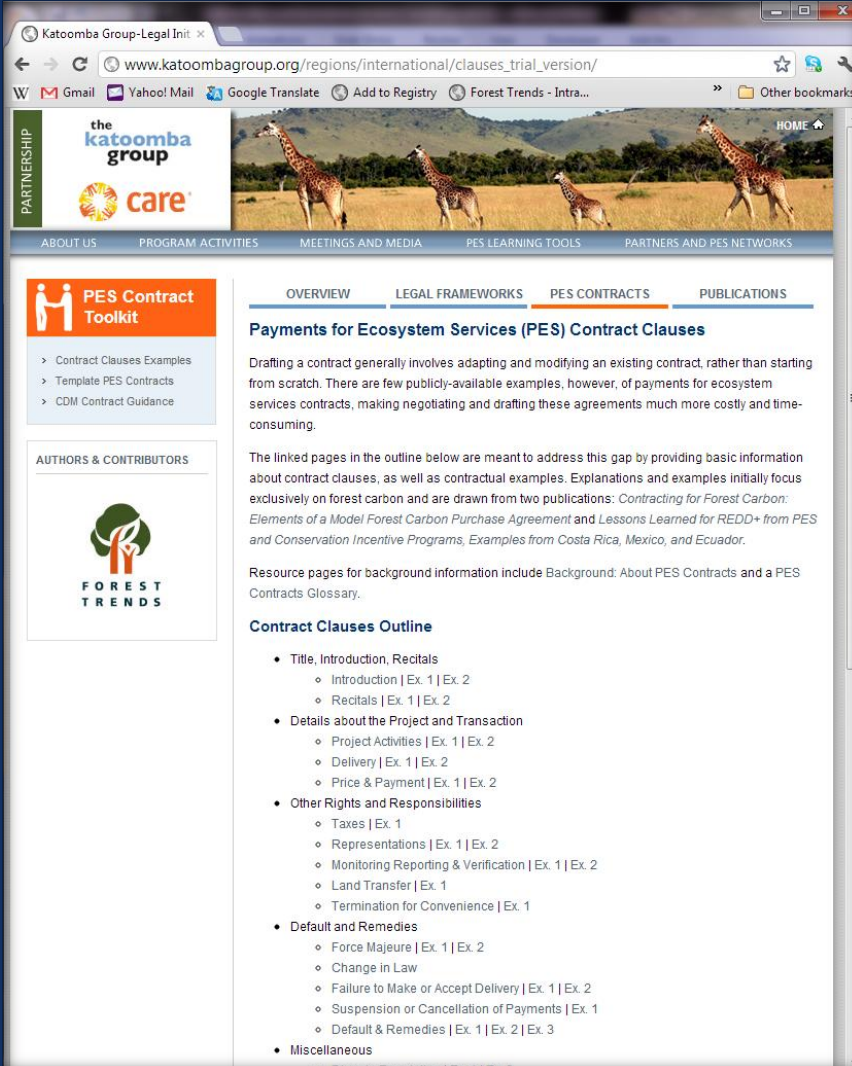
# Why Create this Resource?

- 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



The screenshot displays a web browser window with the URL [www.katoombagroup.org/regions/international/clauses\\_trial\\_version/](http://www.katoombagroup.org/regions/international/clauses_trial_version/). The page features a header with the Katoomba Group and Care logos, a navigation bar with links like 'ABOUT US', 'PROGRAM ACTIVITIES', and 'PES LEARNING TOOLS', and a main content area. On the left, a sidebar titled 'PES Contract Toolkit' lists links for 'Contract Clauses Examples', 'Template PES Contracts', and 'CDM Contract Guidance'. Below this is the 'AUTHORS & CONTRIBUTORS' section, which includes the Forest Trends logo. The main content area is titled 'Payments for Ecosystem Services (PES) Contract Clauses' and contains an introduction, a paragraph about the linked pages, and a detailed 'Contract Clauses Outline' with a bulleted list of topics and examples.

**PES Contract Toolkit**

- > Contract Clauses Examples
- > Template PES Contracts
- > CDM Contract Guidance

**AUTHORS & CONTRIBUTORS**

FOREST TRENDS

**Payments for Ecosystem Services (PES) Contract Clauses**

Drafting a contract generally involves adapting and modifying an existing contract, rather than starting from scratch. There are few publicly-available examples, however, of payments for ecosystem services contracts, making negotiating and drafting these agreements much more costly and time-consuming.

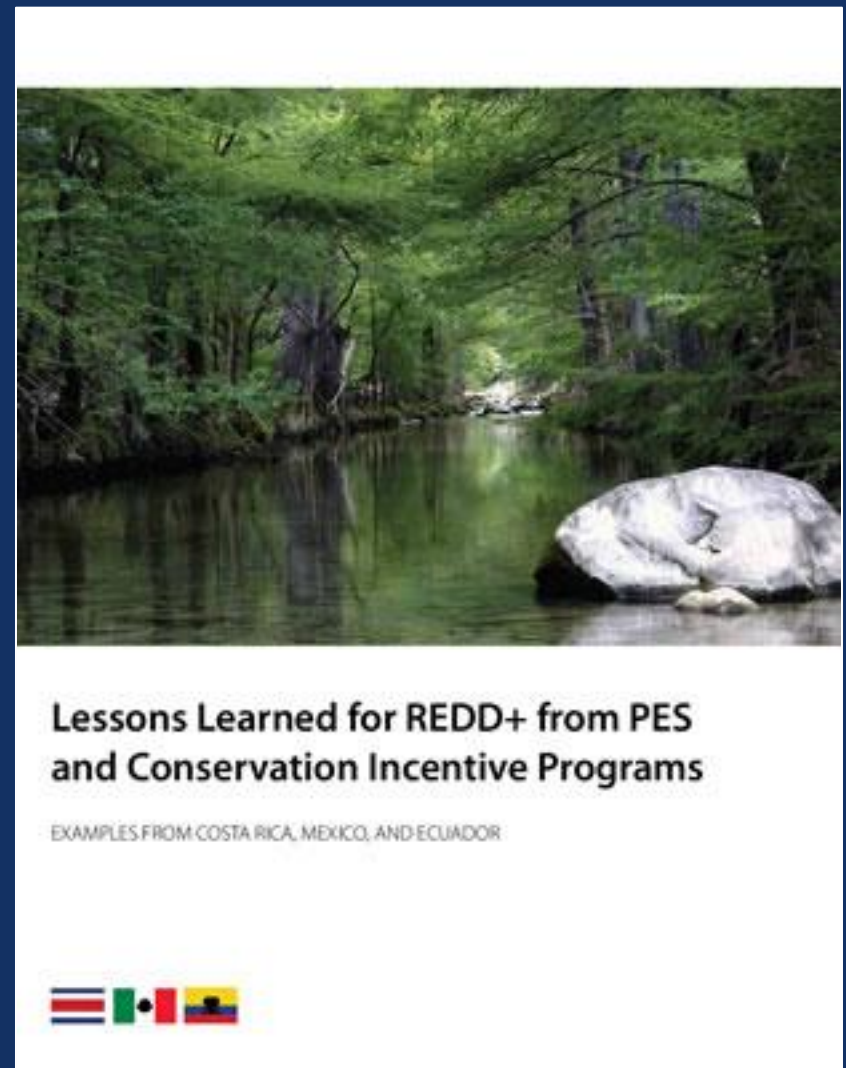
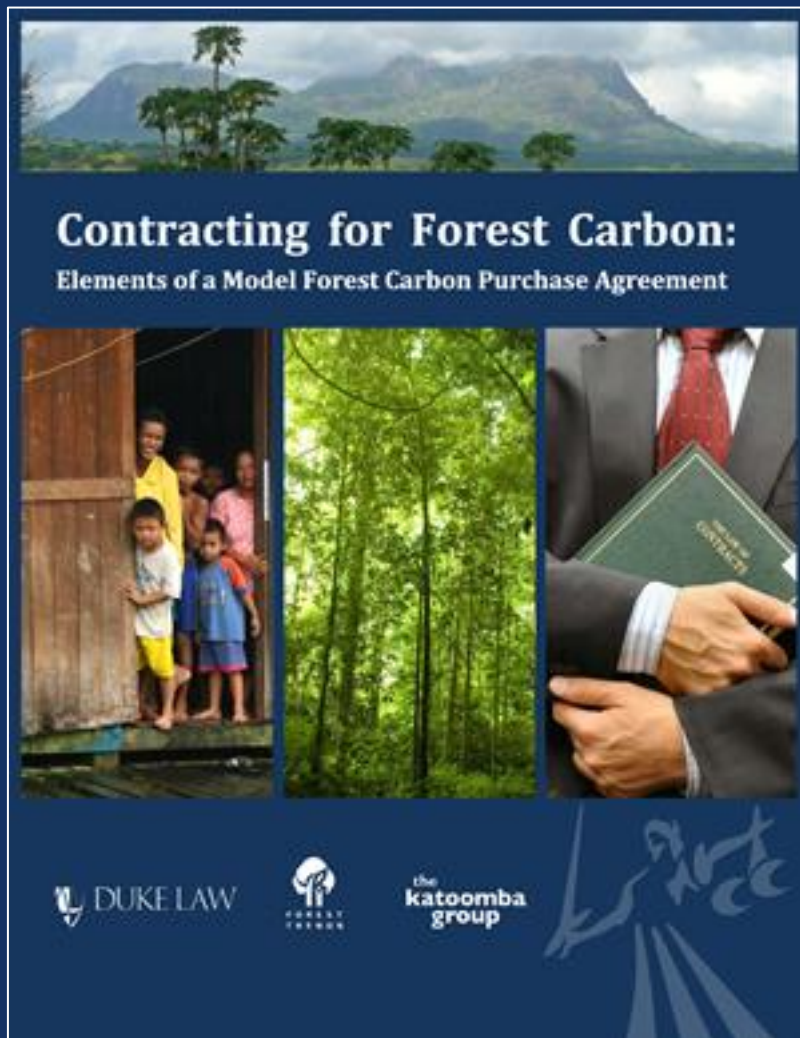
The linked pages in the outline below are meant to address this gap by providing basic information about contract clauses, as well as contractual examples. Explanations and examples initially focus exclusively on forest carbon and are drawn from two publications: *Contracting for Forest Carbon: Elements of a Model Forest Carbon Purchase Agreement and Lessons Learned for REDD+ from PES and Conservation Incentive Programs, Examples from Costa Rica, Mexico, and Ecuador*.

Resource pages for background information include Background: About PES Contracts and a PES Contracts Glossary.

**Contract Clauses Outline**

- Title, Introduction, Recitals
  - Introduction | Ex. 1 | Ex. 2
  - Recitals | Ex. 1 | Ex. 2
- Details about the Project and Transaction
  - Project Activities | Ex. 1 | Ex. 2
  - Delivery | Ex. 1 | Ex. 2
  - Price & Payment | Ex. 1 | Ex. 2
- Other Rights and Responsibilities
  - Taxes | Ex. 1
  - Representations | Ex. 1 | Ex. 2
  - Monitoring Reporting & Verification | Ex. 1 | Ex. 2
  - Land Transfer | Ex. 1
  - Termination for Convenience | Ex. 1
- Default and Remedies
  - Force Majeure | Ex. 1 | Ex. 2
  - Change in Law
  - Failure to Make or Accept Delivery | Ex. 1 | Ex. 2
  - Suspension or Cancellation of Payments | Ex. 1
  - Default & Remedies | Ex. 1 | Ex. 2 | Ex. 3
- Miscellaneous
  - Dispute Resolution | Ex. 1 | Ex. 2

# Initial Sources



# 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

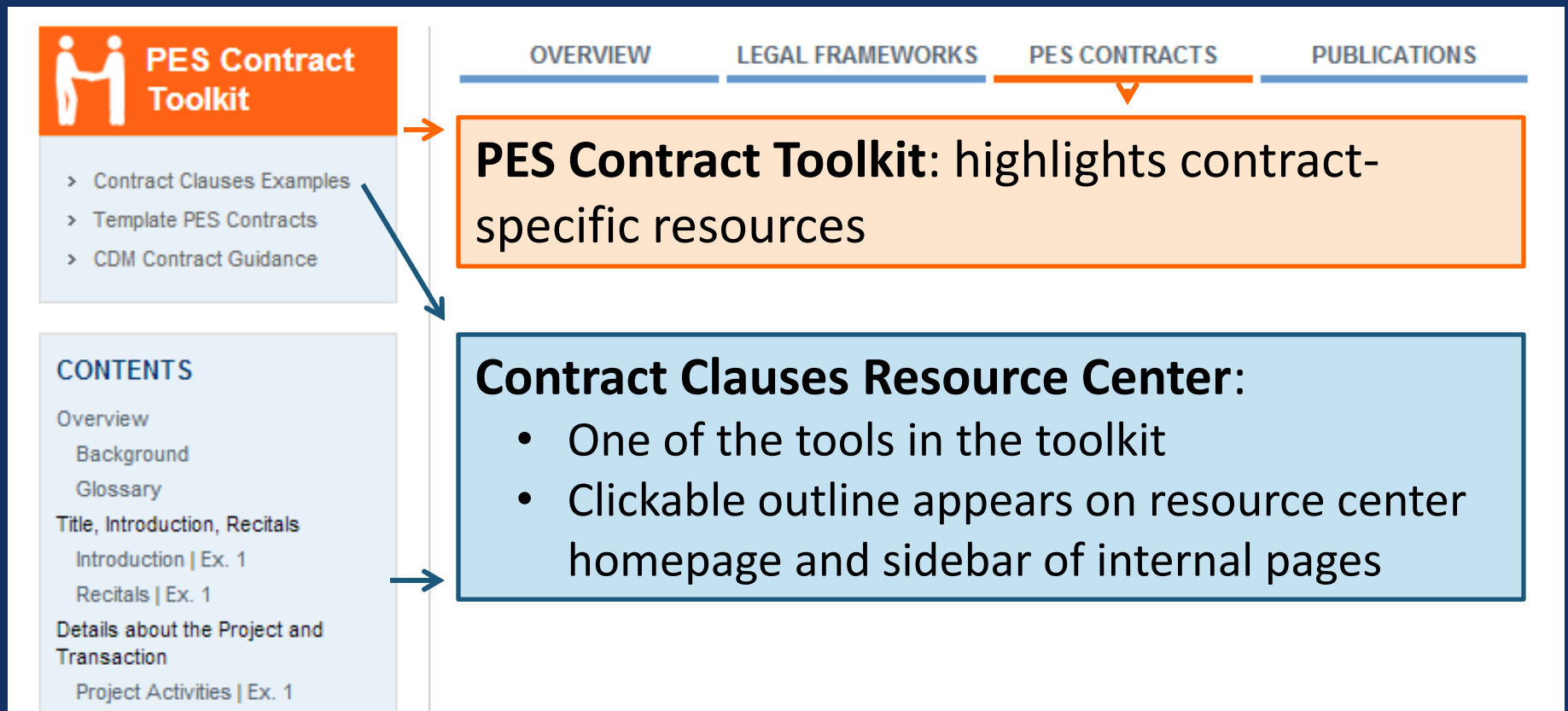
- Clearly-defined rights and obligations
  - What is the ecosystem service?
  - What each party must do, may do, may not do
- Payment amounts and timing, based on:
  - Cost of providing services or creating offsets
  - Market prices
  - Allocation of risks and costs between parties
- Definition of and consequences for failure to perform

# Background – Special Considerations for PES Contracting

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

# Features – Navigation

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



The screenshot shows the website's navigation structure. On the left is a sidebar with an orange header for the 'PES Contract Toolkit' and a 'CONTENTS' section. The top of the page features a menu bar with four items: 'OVERVIEW', 'LEGAL FRAMEWORKS', 'PES CONTRACTS' (which is highlighted with an orange underline and a dropdown arrow), and 'PUBLICATIONS'. Two callout boxes are present: an orange one pointing to the 'PES Contract Toolkit' header and a blue one pointing to the 'Contract Clauses Examples' link in the sidebar. The blue callout box lists two features: it is one of the tools in the toolkit, and its clickable outline appears on the resource center homepage and sidebar of internal pages.

**PES Contract Toolkit**

- > Contract Clauses Examples
- > Template PES Contracts
- > CDM Contract Guidance

**CONTENTS**

- Overview
  - Background
  - Glossary
- Title, Introduction, Recitals
  - Introduction | Ex. 1
  - Recitals | Ex. 1
- Details about the Project and Transaction
  - Project Activities | Ex. 1

**OVERVIEW**   **LEGAL FRAMEWORKS**   **PES CONTRACTS**   **PUBLICATIONS**

**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

## Explanation

OVERVIEW LEGAL FRAMEWORKS PES CONTRACTS PUBLICATIONS

### PES Contract Clauses > Default and Remedies

For clarity, the agreement will generally clearly define an "event of default," that is, a breach of (as opposed to a minor or de minimis deviation from) contractual obligations. It is important to define an event of default precisely, because if an event of default occurs, contractual remedies become available to the non-defaulting party. However, a "cure period" may be provided for the defaulting party to fix the problem without triggering the remedies provision.

Contractual remedies may be the only recourse available, or the non-breaching party may also be able to seek recovery in a court of law. The agreement may also provide for different remedies, depending on the severity or willfulness of the breach, or other circumstances.

If in-kind payments are used in the form of equipment, then the parties might consider repossession as a remedy for default by the sellers' representative. However, care should be taken before imposing monetary damages or repossession on small-scale and community-based sellers, for whom they could be devastating.

#### Default and Remedies Examples

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

#### These Clauses are:

- Moderately customizable
- Very controversial

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

#### 9. 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.

## Example 1

### 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.

## Example 2

### 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.

## Example 3

# 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

OVERVIEW	LEGAL FRAMEWORKS	PES CONTRACTS	PUBLICATIONS
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### PES Contract Clauses > Project Activities

The project objective, area, and activities are at the center of any PES agreement. Whether the contract is for PES credits or for conservation or restoration services, the seller promises to diligently perform activities in order to maximize the chance that the project will ultimately be successful.

Naturally, clauses having to do with the project area and activities are likely to vary greatly, both in terms of structure and content, depending upon the agreement and the circumstances. A description of the project area may be grouped with some other clause - such as one discussing payment - or might be mentioned only, with details provided in an annex or other supporting documentation. Details about project activities and time lines are also commonly included in annexes because they are complex and technical, and can disrupt the flow of the agreement. Where this is the case, the clause in the body of the agreement simply outlines the basic understanding between the parties, defines key terms, and refers to the relevant annex(es) for more information.

#### Project Activities Examples

- Example 1 - stand-alone project activities clause drawn from a private emissions reduction purchase agreement
- Example 2 - clauses on objective, project area, and obligations of the parties drawn from a national REDD+ participation agreement

#### These Clauses are:

- Highly customizable
- Moderately controversial

# Features – Customizable, Controversial Indicators

## Highly customizable

Structure and content is flexible, can vary greatly

## Moderately customizable

## Not very customizable

Structure and content is relatively inflexible, does not vary between contracts

## Not very controversial

Generally not highly negotiated or costly

## Moderately controversial

## Highly controversial

Often highly negotiated; likely difficult or costly to shape structure and content

# Features – Contractual Examples

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

OVERVIEW

LEGAL FRAMEWORKS

PES CONTRACTS

PUBLICATIONS

## PES Contract Clauses > Delivery Example 1

2. *Delivery of Verified Emission Reductions.*

- 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**").
- Registry.* The Seller Representative shall deliver VERs on the Markit VCS Registry or such other registry as is agreed in writing between the parties (the "**Registry**").
- 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.
- 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.

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### 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)*

About: Delivery Clauses

# Features – Contractual Examples

- Notes may be provided to explain unique aspects or challenges
- Example language may have gaps where context-specific information is needed

OVERVIEW	LEGAL FRAMEWORKS	PES CONTRACTS	PUBLICATIONS
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## PES Contract Clauses > Forum and Choice of Law Example 2

### 18. APPLICABLE LAW

This agreement is subject to the Constitution of [country], [the applicable forest, environmental, and other applicable laws], current Ministerial Accords, and other valid regulations issued for the benefit of the Program in force in [country] as of the signing of this agreement.

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#### Notes

This applicable law clause is slightly different from a typical choice of law clause. Because of the context (a participation agreement in a government REDD+ program), it is self-evident that the law of the host country will apply. But this clause clarifies that laws issued for the benefit of the program (such as the programs rules and regulations) that are applicable to the agreement are those that were in force as of the signing of the agreement. This is meant to reassure participants and stakeholders that the ministry cannot unilaterally change the contract terms after the agreement is signed.

#### Context of this Clause

- Participation agreement for a national REDD+ program
- Ecosystem service: forest carbon emissions reduction credits or conservation/restoration services expected to yield forest carbon emissions reduction or removal
- Single seller signing a government-provided form contract (which is backed up by detailed program guidelines) with a representative of the government ministry that administers the REDD+ program
- Source: Lessons Learned for REDD+ from PES and Conservation Incentive Programs, Examples from Costa Rica, Mexico, and Ecuador

About: Forum and Choice of Law

# Sponsors, Authors, Contributors



This resource is made possible by the generous support of the American people through the United States Agency for International Development (USAID), under the terms of the TransLinks Cooperative Agreement No.EPP-A-00-06-00014-00 to The Wildlife Conservation Society (WCS). TransLinks is a partnership of WCS, The Earth Institute, Enterprise Works/VITA, Forest Trends and The Land Tenure Center. The contents are the responsibility of the authors and do not necessarily reflect the views of USAID or the United States Government.

# Thank you!

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