



GUIDANCE DOCUMENT

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Introduction

This guidance document is intended to be used alongside the IETA Non-Contingent Secondary Emissions Reduction or Removal Purchase Agreement (the “**SERPA**”), the IETA Contingent Secondary Reduction or Removal Purchase Agreement (the “**Contingent SERPA**”) and the IETA Primary Emissions Reduction or Removal Purchase Agreement (the “**Primary ERPA**”).

The SERPA, the Contingent SERPA and the Primary ERPA have been designed for use as templates, to be populated and adapted by the parties to a transaction on a case by case basis.

The documents have been drafted as English law governed contracts and on the assumption that verified carbon credits (“**VCCs**”) are capable of being recognised and treated as intangible property under English law. However, the legal nature of VCCs has not yet been tested in the English courts and may differ across jurisdictions. Parties should seek legal, regulatory, tax, jurisdiction-specific and any other advice they deem appropriate prior to using the SERPA, the Contingent SERPA and/or the Primary ERPA.

Section 1 of this guidance document sets out certain key risks and issues to be considered by parties prior to transacting in the VCC market. The SERPA, the Contingent SERPA and/or the Primary ERPA may need to be adapted on a transaction-specific basis to reflect these factors and any agreements reached between parties on appropriate risk allocation.

Section 2 of this guidance document sets out a brief overview of the SERPA, together with drafting guidance on its key clauses and provisions. This guidance document also highlights certain risk allocations that will need to be considered when negotiating and entering into the SERPA.

Section 3 of this guidance document provides an overview of the Primary ERPA, together with drafting guidance on its key clauses and provisions. This guidance document also highlights certain risk allocations that will need to be considered when negotiating and entering into the Primary ERPA.

Section 4 of this guidance document provides an overview of the Contingent SERPA, together with a comparison against the Primary ERPA.

Should any IETA member have any queries on the SERPA, the Contingent SERPA, the Primary ERPA or this guidance document, please contact [●].

Unless otherwise defined herein, capitalised terms in this guidance document have the same meaning as in the SERPA, the Contingent SERPA and Primary ERPA (as applicable).

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Section 1: Key risks and issues in the VCC market

As the VCC market continues to evolve and develop, the SERPA, Contingent SERPA and Primary ERPA may need to be updated and adapted to reflect ongoing market developments. On each transaction, parties will need to consider and reach agreement on appropriate risk allocation. Some of the key risks and issues to be considered in the context of the VCC market, and prior to entering into the SERPA, Contingent SERPA and/or Primary ERPA, are as follows:

- (i) **Legislative, regulatory and policy changes:** The legislative, regulatory and policy landscape in respect of the VCC market is not settled and changes may occur which result in changes to the financial, accounting and tax treatment of VCCs. Regulators may seek to manage the supply and demand dynamics of VCCs either through existing or new regulatory powers or intervene via other more direct measures, such as price caps and price floors, additional taxes or fees or obligations in respect of benefit sharing arrangements. Any legal, regulatory or policy changes may need to be reflected in the SERPA, the Contingent SERPA and/or Primary ERPA and the parties will need to reach agreement on appropriate risk allocation in respect any related risks.
- (ii) **Interface between VCC market and international frameworks:** International legislative and broader policy frameworks in respect of nationally determined contributions and internationally transferred mitigation outcomes under Article 4 and Article 6 of the Paris Agreement are continuing to be developed and there is currently no settled market view on the status or suitability of corresponding adjustments for the purposes of the Paris Agreement's accounting framework. Further, market participants are continuing to develop cooperative approaches in respect of the sharing of proceeds and implementation of overall mitigation in global emissions. Parties will need to agree an approach to such frameworks and reflect this in their transaction documents as the market continues to develop.
- (iii) **Legal nature of carbon credits:** There is currently a lack of clarity around the legal nature of VCCs. This would impact, for example, what type of security may be taken and enforced against VCCs - which may be relevant to certain transaction structures. It would also impact how VCCs would be treated following an insolvency. The classification of VCCs is a jurisdiction specific question and, in the absence of a global standard, will be answered by reference to national laws. The SERPA, Contingent SERPA and/or Primary ERPA have been drafted on the basis that VCCs may be treated as a form of intangible property under English law. Parties should take jurisdiction-specific advice prior to entering the SERPA, Contingent SERPA and/or Primary ERPA to ensure the provisions work in their relevant jurisdictions.
- (iv) **Diligence:** VCCs are not fungible in the same way as compliance emission certificates such as EU Emission Allowances: the quality of any particular VCC will depend on the underlying project. The value of a VCC is therefore closely linked to the type, jurisdiction and quality of the underlying project and parties to a Primary ERPA and/or Contingent SERPA should conduct appropriate diligence on the project underlying the VCCs to be sold and purchased.
- (v) **Tax:** The tax treatment of VCCs remains uncertain and, in any event, will need to be analysed on a jurisdiction and transaction specific basis. Parties should undertake their own tax analysis with respect to the sale and purchase of VCCs, including any withholding tax liabilities that may arise and any sales tax that may be payable, as well as in respect of any additional tax liabilities that may arise in the context of the particular transaction.
- (vi) **IP:** The SERPA, Contingent SERPA and Primary ERPA include intellectual property provisions, which we would typically expect to see in standard transaction structures.

However, the intellectual property rights which a seller is able to pass on, or licence to, a buyer will be dependent on the individual circumstances of the project and may need to be amended on a case by case basis.

The SERPA, the Contingent SERPA and the Primary ERPA have been drafted as general templates for use in standard bilateral market transactions. The templates will need to be updated for bespoke structures and arrangements, including for the following tailored transactions:

- (i) **Carbon standards:** The Primary ERPA and Contingent SERPA have been drafted to accommodate projects registered under the Verified Carbon Standard administered by Verra and the Gold Standard, given that at the time of drafting, these two standards cover the majority of transactions in the market. If the parties to a transaction wish to sell and purchase VCCs registered under alternative carbon standards, appropriate revisions should be made to the Primary ERPA and/or Contingent SERPA (as applicable) to accommodate the specific requirements and terminology of such alternative carbon standards.
- (ii) **Multiple buyers:** The Primary ERPA and Contingent SERPA has been drafted to accommodate a bilateral sale and purchase of VCCs. If there are multiple buyers in respect of VCCs generated by a project, appropriate revisions will need to be made throughout the document.
- (iii) **Transaction and payment structures:** The SERPA, the Contingent SERPA and the Primary ERPA include standard payment-on-delivery mechanics between principals. If a transaction involves any prepayment mechanics or alternative transfer and payment pathways, the documents will need to be updated to reflect such alternative structures.
- (iv) **Credit support:** The SERPA includes an event of default relating to failure to comply with any relevant credit support documents, or the expiration or termination of any such credit support documents prior to the satisfaction of all relevant obligations. In comparison, the Primary ERPA does not cover credit support arrangements, given these arrangements are less typical in the primary market. Parties wishing to include a more fulsome set of provisions relating to credit support should take appropriate legal advice and amend the documentation accordingly.

Section 2: SERPA

1 Overview of the SERPA

- 1.1** The SERPA is a framework agreement for the on-sale of VCCs from one buyer (the “**Transferring Party**”) to another (the “**Receiving Party**”) on a spot or forward basis in the secondary market. Secondary buyers may be entities that intend to tender the VCCs under certain voluntary or compliance emission programmes or schemes, make claims in relation to the compensation of emissions associated with their own business activities or trade on the credits to other market participants.
- 1.2** The template SERPA will need to be populated and adapted on a case by case basis for each transaction.
- 1.3** The SERPA sets out the terms and conditions for the sale of VCCs that meet the specifications set out in the SERPA (such specifications to be elected by the parties on a case by case basis). As the VCC market is continuing to evolve, risk allocation between the parties will need to be considered on each transaction in light of developing market trends and regulatory requirements.
- 1.4** The SERPA is governed by English law and an English law style of drafting has been adopted, however, the intention is for the SERPA to be able to operate equally under New York law and adaptations have been made to reflect this in the document. As noted in Section 1 above, parties will need to take jurisdiction-specific advice prior to entering into the document.
- 1.5** The original IETA single trade agreement template was used as a starting point for drafting the SERPA and the document has been aligned with other trading documentation in the market, including the standard ISDA Form 8 Confirmation document.

2 Drafting guidance

Clause Reference	Commentary
<p>General Obligations, Representations and Warranties (Clause 2)</p>	<p>As the SERPA is intended to be used in a liquid secondary trading context, the representation and warranties package in respect of the VCCs transferred is relatively light.</p> <p>The SERPA includes standard capacity, authority and compliance representations and warranties that are typical of a trading contract. It also includes representations that are specific to the trading of VCCs, including whether the Contract VCCs meet the required specifications, confirmation that such VCCs have not been retired, cancelled or revoked and assurances as to the Transferring Party’s title to such VCCs. These representations hold the Transferring Party to account for the Contract VCCs which it purports to transfer to ensure that the Receiving Party receives good title to the Contract VCCs.</p> <p>The Transferring Party does not warrant or guarantee the suitability of any Contract VCC for any net zero, carbon neutral or other claims made by the Receiving Party or any subsequent transferee or the eligibility of any Contract VCC for any emissions trading, emissions reduction or off-setting scheme. This approach has been taken because the Transferring</p>

Clause Reference	Commentary
	<p>Party will not have visibility as to the intended use of the VCC transferred. If the Receiving Party requires the Contract VCC to satisfy any particular requirements in order for the Contract VCC to be eligible for its preferred use, these should be included as specifications in Schedule 2.</p> <p>Clause 2.5 has been included to clarify that a breach of certain representations and obligations which give rise to a failure to accept or a failure to transfer Contract VCCs will not constitute an Event of Default. Instead, such breaches will be governed by the regime set out in Clause 6. This is to ensure that minor breaches do not trip the Event of Default regime.</p>
<p>Sale, Purchase and Transfer of Contract VCCs (Clause 3)</p>	<p>This clause sets out the economic and operational aspects of the sale and transfer of Contract VCCs. Transfer of a Contract VCC is deemed completed when such Contract VCC is credited to the Receiving Party's account, at which point, the title to, and risk of loss in respect of, the Contract VCCs is transferred. As an alternative to transfer, the Receiving Party may elect for the Contract VCCs to be retired. See "Retirement" below for further details on the retirement process.</p> <p>The SERPA provides for the option of multiple transfers by way of a Transfer Schedule which sets out scheduled transfer dates and corresponding transfer quantities.</p> <p>In order to better reflect market practice in the US market, the parties can elect to include Clause 3.2, which sets out that the Contract VCCs are required to be transferred with any environmental attributes associated with or attaching to such Contract VCCs as at the date of the transfer that are capable of being transferred.</p> <p>Amendments will be required to this clause where the parties agree payment before delivery or any alternative transfer mechanics.</p>
<p>Price, taxes and payment (Clause 4)</p>	<p>The payment provisions have been drafted on a payment-on-delivery basis. The price payable by the Receiving Party in respect of any transfer is equal to the amount of Contract VCCs transferred multiplied by the VCC Price (exclusive of tax). If the parties wish to include alternative payment pathways (including prepayment mechanics), the payment provisions will need to be adapted accordingly.</p>
<p>Illegality and Force Majeure (Clause 5)</p>	<p>Force Majeure and Illegality provisions have been included to cover the scenario where one or more parties are unable to perform their obligations under the SERPA due to certain specific events or circumstances. The initial consequence of either a Force Majeure or an Illegality is suspension of obligations. Where the Force Majeure or Illegality continues for at least 30 days, the non-affected Party may elect to terminate the SERPA. In this scenario, the parties must then calculate their Termination Loss (which may be calculated by reference to market quotations) and an amount will be payable equal to one half of the difference between the Termination Loss of the Party with the higher Termination Loss and the Termination Loss of the Party with the lower</p>

Clause Reference	Commentary
	Termination Loss. This is line with similar trading documents, and also aligns with that in the ISDA Form 8 Confirmation for VCC trading.
<p>Transfer Failure / Failure to accept (Clause 6)</p>	<p>The remedy available to a party in respect of a failure to transfer or accept Contract VCCs (as applicable) is compensation through monetary payment, rather than a right to terminate the SERPA. This clause is consistent with the position in previous IETA and ISDA emissions trading documentation.</p> <p>If the Transferring Party fails to transfer the relevant Contract VCCs on or before a transfer date, it is given a short period of 2 business days to remedy the failure (together with an obligation to pay default interest). If the failure to transfer is not remedied in that time period, the Transferring Party must pay to the Receiving Party its replacement costs. There are equivalent provisions for a failure to accept Contract VCCs.</p> <p>This provision is intended to protect the party which has not breached its transfer or acceptance obligations against the risk that it must source alternative VCCs or sell the Contract VCCs (as applicable) in the market due to the other party's failure to perform its obligations.</p>
<p>Events of Default (Clause 7)</p>	<p>The SERPA provides for Events of Default which are commonly seen in the market and have been aligned with the position in the ISDA Form 8 Confirmation for VCC trading, including in relation to a failure to comply with or perform any agreement or obligation in accordance with any Credit Support Document.</p> <p>A termination amount is payable following an Event of Default. The calculation for the amount payable has been drafted to align with the position in the ISDA Form 8 Confirmation for VCC trading.</p>
<p>Governing law and dispute resolution (Clause 10)</p>	<p>The SERPA is English law governed. In respect of dispute resolution, the SERPA provides for the option to include arbitration provisions, with drafting options for ICC or LCIA. The SERPA also provides for the option to include a standard clause in relation to the appointment of a process agent.</p>
<p>Sanctions (Clause 11) & ABC/AML (Clause 12)</p>	<p>Standard sanctions and anti-bribery and corruption provisions have been included. If parties have their own house-style sanction provisions, these may be incorporated as required.</p>
<p>Commercial Terms (Schedule 1, Part A)</p>	<p>Part A of Schedule 1 sets out the commercial terms of the particular transaction, to be populated on a case by case basis by the parties to the transaction. This schedule includes, among other things, bank account and registry account details, the total quantity of Contract VCCs to be transferred and a transfer schedule for the Contracts VCCs. The parties can also elect whether retirement is applicable to the transaction.</p>
<p>VCC Specification and VCC Price (Schedule 1, Part B)</p>	<p>Part B of Schedule 1 sets out the specifications which the Contract VCCs are required to meet in order to be transferred under the SERPA. The specifications can be adapted on a case by case basis, including in respect of the VCC type, details of any applicable Co-Benefit Program,</p>

Clause Reference	Commentary
	<p>vintage and the price for the Contract VCCs. There is also a placeholder in relation to Carbon Standard Labels / Market Eligibility Labels, which has been included with CORSIA and Article 6 labels in mind.</p>
<p>Retirement (Schedule 2, Part A)</p>	<p>Schedule 2 (<i>Retirement</i>) sets out the process for the retirement of Contract VCCs. A Receiving Party may elect retirement of Contract VCCs by completing and delivering a retirement instruction to the Transferring Party in the form set out under Part B of Schedule 2. Provided that such retirement instruction has been delivered in accordance with the terms of the SERPA, the Transferring Party must then notify and instruct the Registry to retire the relevant Contract VCCs and record such Contract VCCs as retired or otherwise cancelled in the name of the Receiving Party. The Transferring Party bears no liability in respect of any actions, omissions, negligence or errors of the relevant Registry in respect of the retirement of the Contract VCCs. All legal and beneficial title to the relevant Contract VCC is extinguished upon retirement and the Contract VCC becomes non-transferable.</p> <p>However, certain additional representations apply in the context of retirement. These representations cover confirmations from the Transferring Party that no claims have been made in connection with the project, as it will be especially important to the Receiving Party that it is able to claim the benefit of any offsets associated with a retired Contract VCC. These have been included to reflect that retirement of VCC implies additional obligations on a Seller as compared to a sale and transfer of the same VCC.</p> <p>The parties should conduct their own analysis in respect of any regulatory, legal or tax consequences of the retirement of VCCs in the jurisdictions relevant to their transaction.</p>
<p>Form of Retirement Instruction (Schedule 2, Part B)</p>	<p>Part B of Schedule 2 sets out the form of retirement instruction to be delivered to the Transferring Party if retirement is elected.</p>

Section 3: Primary ERPA¹

1 Overview of the Primary ERPA

- 1.1** The Primary ERPA is a framework agreement for the direct sale of VCCs from a project owner or project developer to an initial buyer in the primary market, typically on a forward basis.
- 1.2** The template Primary ERPA will need to be populated and adapted on a case by case basis for each transaction.
- 1.3** As the VCC market is continuing to evolve, risk allocation between the parties will need to be considered on each transaction in light of developing market trends and regulatory requirements.
- 1.4** The Primary ERPA has been drafted to accommodate the specific requirements of Verra and the Gold Standard. Parties will need to adapt the Primary ERPA to ensure it is suitable for use in respect of other Carbon Standards where required.
- 1.5** The Primary ERPA is governed by English law and an English law style of drafting has been adopted, however, the intention is for the Primary ERPA to be able to operate equally under New York law and adaptations have been made to reflect this in the document. As noted in Section 1 above, parties will need to take jurisdiction-specific advice prior to entering into the document.

2 Drafting guidance

Clause Reference	Commentary
Definitions (Clause 1)	<p>Certain definitions that have been included (such as “Communications Agreement”, “Project Owner” and “Project Participant”) are specific to Verra or the Gold Standard (as applicable) and should only be included where the Contract VCCs under the Primary ERPA have been verified and/or validated under these Carbon Standards.</p> <p>Where the Contract VCCs have been verified and/or validated under an alternative Carbon Standard, these definitions and any instances in which they are used should be amended or removed from the agreement as appropriate.</p>
Conditions Precedent (Clause 2)	<p>As the Contract VCCs to be transferred may not yet have been issued, the Primary ERPA involves the assumption of certain project risks by the Buyer. Certain standard conditions precedent have therefore been included, such as evidence that the Seller is appropriately authorised and capable of entering into the agreement and the option for legal opinions to be delivered in connection with the agreement.</p> <p>Additional CPs may be negotiated between the parties as required. For example, if the Buyer agrees to prepay for the Contract VCCs (a structure which is outside of the template Primary ERPA) which are registered under the VCS, the parties may enter into a Communications</p>

¹ **Drafting note:** To be finalised when the Primary ERPA is in final form.

Clause Reference	Commentary
	<p>Agreement (or equivalent document) authorising the Carbon Standard Body to issue the VCCs directly to the Buyer.</p> <p>As drafted, the CPs are for the benefit of the Buyer. If the parties include CPs which are to the benefit of both parties, the CP satisfaction provisions will need to be updated.</p>
<p>Contract Quantity (Clause 3)</p>	<p>This clause sets out the transfer and purchase obligations of the parties. The Seller agrees to sell and transfer the Contract VCCs free from any encumbrances and the Buyer agrees to purchase and accept the transfer of such Contract VCCs.</p> <p>We have included optional drafting which clarifies that the number of Contract VCCs transferred will be net of any buffer VCCs that may be required to be deposited with the relevant Carbon Standard in the event of loss, and/or net of any other deductions as may be required under applicable law.</p> <p>The amount of Contract VCCs transferred will vary per transaction and will be specified in the Transfer Schedule.</p>
<p>Price and Payment (Clause 4)</p>	<p>The payment provisions have been drafted on a payment-on-delivery basis. The price payable by the Buyer in respect of any transfer is equal to the amount of Contract VCCs transferred multiplied by the unit price for each Contract VCC (exclusive of tax). We have not included any reference to index based pricing and, should the parties agree to use an index reference for the unit price, appropriate drafting will need to be included. If the parties wish to include alternative payment pathways (including prepayment mechanics), the payment provisions will need to be adapted accordingly.</p> <p>The Seller must provide the Buyer with an invoice within 5 Business Days of each transfer and the Buyer shall have 10 Business Days to settle the invoice. Parties should amend such periods as required on a transaction-specific basis.</p>
<p>Issuance and Transfer (Clause 5)</p>	<p>This clause sets out the operational aspects of the sale and transfer of Contract VCCs. Transfer of a Contract VCC is deemed completed when such Contract VCC is credited to the Buyer's Registry Account, at which point, the title to, and risk of loss in respect of, the Contract VCCs is transferred.</p> <p>The Seller is required to do all things required to ensure the VCCs are issued at the end of a verification period and, in any event, by no later than nine months following the end of the relevant verification period (though parties may agree a longer or shorter period). Upon issuance of a VCC, the Seller has two business days to transfer such Contract VCC into the Buyer's Registry Account.</p> <p>If the parties have entered into a Communications Agreement (or equivalent document) prior to entering into the Primary ERPA, there is optional drafting that may be included which would allow the Buyer to instruct the Registry to issue and transfer the Contract VCCs directly into</p>

Clause Reference	Commentary
	<p>its account. The inclusion of this option will depend on the rules of the relevant Carbon Standard and the arrangements between the transacting parties, and will need to be considered on a case by case basis.</p> <p>Amendments will be required to this clause where the parties agree payment before delivery or any alternative transfer mechanics. The parties should also ensure that the transfer mechanics work in accordance with the rules of the relevant Carbon Standard where an alternative Carbon Standard is used.</p>
<p>VCC Shortfall (Clause 6)</p>	<p>This provision deals with project risk which may arise; for example, where the project is not performing in the way the parties had anticipated. This clause sets out the process and remedies where there is a shortfall in the amount of Contract VCCs transferred to the Buyer in various scenarios.</p> <p>Where, following issuance and transfer, a Contract VCC is cancelled, revoked or retracted, the Seller is obligated to transfer comparable VCCs in an equal number to the shortfall.</p> <p>Where the Seller becomes aware that it is or will be unable to transfer a Transfer Amount within nine months of the end of the relevant verification period, the Seller must inform the Buyer of the shortfall and take reasonable steps to remedy or minimise the shortfall. If the Seller is able to remedy the shortfall, the parties may agree an alternative date for transfer of the shortfall quantity. However, the Buyer is not obligated to accept a transfer of any shortfall quantity beyond nine months following the end of the relevant verification period. This avoids there being a perpetual obligation on the Buyer to take the VCCs whenever they are issued.</p> <p>Where a shortfall arises due to fraud, gross-negligence, wilful misconduct or non-performance on the part of the Seller, the Buyer may elect to receive either its replacement costs or comparable VCCs. This is to address the scenario where the shortfall arises as a result of breach by the Seller.</p>
<p>Commissioning and Project Documentation (Clause 7)</p>	<p>The Seller is responsible for developing and putting in place all project documents and authorisations required in connection with the project. If the project has not yet been commissioned, the Seller must take all reasonable steps to commission the project. To ensure the Buyer has visibility over the development of the project, the Buyer is entitled to receive copies of the project documents and any material communications with governmental bodies or the Carbon Standard Body.</p>
<p>Validation and other pre-Registration requirements (Clause 8), Registration</p>	<p>The Primary ERPA includes provisions relating to the registration and management of the project, the monitoring of GHG reductions or removals and the process for verification of such GHG removals or reductions. As Carbon Standards have differing requirements as to</p>

Clause Reference	Commentary
<p>(Clause 9), Project Implementation, Operation and Management</p> <p>(Clause 10), Monitoring of GHG Reductions and Removals</p> <p>(Clause 11), Verification of GHG Reductions or Removals</p> <p>(Clause 12)</p>	<p>registration, monitoring and verification, these provisions are drafted broadly so as to accommodate such differences.</p> <p>The Seller is obliged to comply with the requirements set out in the Primary ERPA as a Reasonably Prudent Operator.</p> <p>In respect of registration, in order to deal with the mix of projects in the market which are either already registered at the date of the contract, or are part registered or yet to be registered, Clause 9 places an obligation on the Seller to register the project as soon as reasonably possible. If the registration fails or is not completed by a long-stop date, the Buyer is entitled to terminate the contract.</p>
<p>Project Costs (Clause 13)</p>	<p>Project costs and any costs relating to the registration of the project and verification of VCCs are to be borne by the Seller. The parties may agree whether any issuance fees are to be borne by the Buyer, the Seller or the parties jointly.</p>
<p>Communications Materials and Access to the Project (Clause 14)</p>	<p>The Primary ERPA has been drafted on the basis of a standard purchase scenario involving a bilateral sale between a Seller and a Buyer. If the transaction involves multiple buyers, the intellectual property provisions will need to be updated accordingly. The provisions have been drafted to ensure a balance between access to the project and associated materials for the Buyer and confidentiality for the Seller, but should be updated according to the factual scenario.</p> <p>The Seller, upon reasonable request by the Buyer, must make available certain information and materials in connection with the project and allow the Buyer reasonable access to the project (including for the purposes of taking pictures or videos). However, there is a mechanism for protecting any unpatented inventions or confidential information or materials which may be disclosed to the Buyer as part of a visit. It is recognised that the Buyer may need to obtain relevant consents (e.g. from individuals who are displayed on photographs) in order to use the relevant materials for marketing purposes and the Seller is required to provide reasonable assistance to obtain such consents.</p>
<p>Representation and Warranties</p> <p>(Clause 15)</p>	<p>Given that the value of the Contract VCCs is closely linked to the quality of the underlying project, the representation and warranty regime under the Primary ERPA is detailed.</p> <p>The representations and warranties are split between those given by: (i) both parties on the execution date, (ii) both parties on each transfer date, (iii) the Seller on the execution date and each transfer date and (iv) the Buyer on each transfer date.</p> <p>Standard warranties in respect of authority, capacity and anti-bribery and corruption have been included. There are also Seller-specific representations relating to the operation of the project, material social or environmental risks associated with the project and the status of the Contract VCCs on transfer.</p>

Clause Reference	Commentary
	<p>The parties should consider whether there are any particular concerns or risks with respect to the particular project and amend the representation package accordingly.</p>
Events of Default (Clause 17)	<p>The Primary ERPA provides for Events of Default which are commonly seen in the market, such as failure to pay, misrepresentation, insolvency and breach of material obligations. There are also Seller-specific Events of Default relating to VCC shortfalls, change of control and acts which impair the Buyer's title to the Contract VCCs.</p>
Termination (Clause 18)	<p>The termination provisions in the Primary ERPA are split into two sections: (i) termination following an Event of Default and (ii) termination following a No-Fault Termination Event. The difference relates to the nature of the event resulting in termination and the sums (if any) payable on termination.</p> <p>No-Fault Termination Events include a failure to satisfy the conditions precedent within a certain period, a Force Majeure Event or Change in Law resulting in an inability to perform obligations continuing for at least 12 months and certain other optional No-Fault Termination Events.</p> <p>Upon the occurrence of an Event of Default, the non-defaulting party may terminate the agreement by not more than 20 business days' notice. The non-defaulting party is entitled to calculate its damages and such damages are payable by the defaulting party within 10 business days' of notification to the defaulting party in writing.</p> <p>Upon the occurrence of a No-Fault Termination Event, the non-affected Party may terminate the agreement by not more than 20 business days' notice. Upon such termination, the obligations of both parties under the Primary ERPA cease, except for any rights, obligations and liabilities accruing prior to the date of such termination.</p>
Force Majeure and Change in Law (Clause 19)	<p>Force Majeure and Change in Law provisions have been included to cover the scenario where one or more parties are unable to perform their obligations under the Primary SERPA due to certain specific events or a change in any applicable rules or any rules of the Carbon Standard after the date of execution of the agreement.</p> <p>The affected party must use reasonable endeavours to continue to perform its obligations and to minimise the adverse effects of the event. The non-affected party can choose to terminate the agreement after 12 months of a continuous Force Majeure Event or Change in Law.</p>
Additional Seller Liabilities (Clause 20)	<p>As the VCC market continues to develop and the regulatory, legislative and policy landscape across jurisdictions change, it may be possible that the Seller is subject to an increase in liabilities following execution of the agreement; for example, through the imposition of new royalties, taxes or fees or requirements to enter into benefit sharing arrangements. There is no settled market practice on how to deal with any such increase in liabilities, and so the Primary ERPA provides for various</p>

Clause Reference	Commentary
	<p>options which the parties may elect to include to address the economic risk arising from such scenario. The parties may elect that any such liabilities are to be borne by the Seller alone or by the parties jointly. Alternatively, the parties may enter into a period of negotiation on any amendments required to the Primary ERPA.</p>
<p>Corresponding Adjustments (Clause 22)</p>	<p>The Primary ERPA recognises that corresponding adjustments or other labels or certifications may add value to the project or the VCCs issued. However, international frameworks relating to Article 6 of the Paris Agreement are continuing to evolve across jurisdictions and the approach of market participants continues to develop. Market participants may have differing views on how to approach any corresponding adjustments and any risk allocation in respect of such adjustments.</p> <p>The Primary ERPA includes some suggested drafting in respect of corresponding adjustments, which may be included and adapted by the parties on a case by case basis and which should continue to be reviewed in light of evolving market practice. If parties wish to include alternative or additional provisions on the sharing of proceeds or any other contributions towards the overall mitigation of global emissions, the Primary ERPA should be updated accordingly.</p> <p>The drafting proposed includes a mechanism for the parties to either agree an increase in the unit price applicable to all Contract VCCs transferred or to appoint an independent third party expert to determine such increase. If the former option is elected, the parties will have a limited time period to agree the price increase, failing which, an independent expert must be appointed to make the determination.</p> <p>Note that the inability of the Seller to procure a letter of approval from a host country will not constitute a failure of its obligations or otherwise be an Event of Default under the agreement.</p>
<p>Sanctions (Clause 24) & ABC/AML (Clause 25)</p>	<p>Standard sanctions and anti-bribery and corruption provisions have been included. If parties have their own house-style sanction provisions, these may be incorporated as required on a case by case basis.</p>
<p>Governing law and dispute resolution (Clause 27.14 and 27.15)</p>	<p>The Primary ERPA is English law governed. In respect of dispute resolution, the Primary ERPA provides for arbitration pursuant to the LCIA. The Primary ERPA also provides for the option to include a standard clause in relation to the appointment of a process agent.</p>
<p>Commercial Terms (Schedule 1)</p>	<p>Schedule 1 sets out the commercial terms of the particular transaction, to be populated on a case by case basis by the parties to the transaction. The Commercial Terms schedule includes, among other things, bank account and registry account details, the total quantity of Contract VCCs to be transferred, the unit price for each Contract VCC and any specifications which the Contract VCCs must meet.</p>
<p>Transfer Schedule</p>	<p>Schedule 2 sets out an indicative timetable for the transfer of the Contract VCCs. The schedule includes details of the indicative</p>

Clause Reference	Commentary
(Schedule 2)	scheduled transfer dates and the corresponding transfer amounts, together with the applicable verification period. As the Contact VCCs will not have been issued at the time of signing, it will not be possible for the parties to agree definitive dates and amounts for transfer in advance.

Section 4: Contingent SERPA²

1 Overview of the Contingent SERPA

- 1.1** The Contingent SERPA is a framework agreement for the sale of VCCs from a seller to an initial buyer in the secondary market, typically on a forward basis. The Contingent SERPA is designed for use where the seller is not the project developer or project owner, but where the seller typically has some connection to the underlying project.
- 1.2** The Contingent SERPA is based on the Primary ERPA and caters primarily for the sale of VCCs that have not yet been issued. The scope of the Contingent SERPA is narrower than the Primary ERPA as the seller will not be in a position to give the same level of comfort on the project and its related risks. As a result, the Contingent SERPA and Primary ERPA diverge in the following places:
- 1.2.1** the conditions precedent are simplified in the Contingent SERPA to remove any conditions precedent relating to project owners and developers;
 - 1.2.2** the undertakings on the seller in the Contingent SERPA in respect of the registration and commissioning of the project have been amended such that the seller is only obliged to report to the buyer on any relevant progress. All other undertakings set out in the Primary ERPA relating to the operation and monitoring of the project and the validation and verification of VCCs have not been replicated in, and are not applicable to, the Contingent SERPA;
 - 1.2.3** the intellectual property provisions in the Contingent SERPA have been revised to reflect that the seller will not be the owner of the relevant intellectual property relating to the project, though the seller must still provide the buyer with copies of any relevant communication materials in its possession;
 - 1.2.4** the representation and warranty package in the Contingent SERPA is less fulsome than the Primary ERPA and appropriate knowledge qualifiers have been added as the seller may not be in a position to warrant or represent on certain aspects of project governance and related risks (including in respect of environmental and social risks);
 - 1.2.5** the event of default and termination regimes in the Primary ERPA and Contingent SERPA are broadly similar, though certain events of default and termination events which are not applicable to the Contingent SERPA have been removed;
 - 1.2.6** unlike the Primary ERPA, the Contingent SERPA does not contain any provisions on “Additional Seller Liabilities”, as the seller will not be the project owner or developer and therefore will not be responsible for any additional liabilities in respect of the project or the VCCs issued in respect of the project, such as benefit sharing arrangements, taxes or fees; and
 - 1.2.7** while the Contingent SERPA does include provisions on corresponding adjustments, there is no obligation on the seller to procure a letter approval from a host country in respect of any corresponding adjustments.

² To be updated once Contingent SERPA in final form.

- 1.3** The template Contingent SERPA will need to be populated and adapted on a case by case basis for each transaction.
- 1.4** As the VCC market is continuing to evolve, risk allocation between the parties will need to be considered on each transaction in light of developing market trends and regulatory requirements.
- 1.5** The Contingent SERPA has been drafted to accommodate the specific requirements of Verra and the Gold Standard. Parties will need to adapt the Contingent SERPA to ensure it is suitable for use in respect of other Carbon Standards where required.
- 1.6** The Contingent SERPA is governed by English law and an English law style of drafting has been adopted, however, the intention is for the Contingent SERPA to be able to operate equally. As noted in Section 1 above, parties will need to take jurisdiction-specific advice prior to entering into the document.