



ACCU Documentation Consultation



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1. Consultation

The Australian Financial Markets Association (**AFMA**) has partnered with the Carbon Market Institute (**CMI**) to seek industry feedback on draft template documentation for transactions in Australian Carbon Credit Units (**ACCUs**).

AFMA and CMI will conduct an online information session for CMI members as part CMI's Australian Policy Working Group meeting at 2:00pm on 13/03/2024.

Please send any questions about the consultation to consultations@afma.com.au.

Responses to the consultation are due by 12/04/2024 to consultations@afma.com.au.

2. AFMA's role

AFMA is the leading industry association promoting efficiency, integrity, and professionalism in Australia's financial markets, including the carbon market. Our role is to provide a forum for industry leadership and to advance the interests of the markets and their respective participants. Our membership is comprised of over 125 of Australia's leading financial market participants, including many active in the ACCU market.

AFMA promotes best practice in financial markets in a number of ways including by encouraging high standards of professional conduct through our professional development, accreditation programs, and maintaining industry standard templates for transacting in Australian over-the-counter (**OTC**) financial markets. AFMA's market technical committees are made up of industry experts and have a long history of developing and maintaining high quality legal documentation to support OTC markets in a range of Australian financial products including interest rate products, equity derivatives, energy and environmental products.¹

Following the recent expansion of the ACCU market, AFMA has identified a need for the development of standard OTC documentation to support the activities of its members in the ACCU market.

3. Existing AFMA ACCU documents

AFMA currently maintains two documents that can be used for transactions involving Australian environmental products, including ACCUs:

- AFMA Environmental Products Addendum
- AFMA Environmental Products Spot Contract

The AFMA Environmental Products Addendum supplements ISDA Master Agreement published by the International Swaps and Derivatives Association Inc® (**ISDA**), to allow it to be used for Spot, Forward and Option for specified Australian environmental product and ACCU transactions. The AFMA Environmental Products Spot Contract is a simple contract for spot trading of specified Environmental Products and ACCUs for parties who do not enter into ISDA Master Agreements. Both documents were most recently updated in August 2023.

The AFMA Australian Environmental Products Addendum and AFMA Environmental Products Spot Contract have been developed by AFMA's Environmental Products Committee to support transactions in; NSW Energy Saving Certificates, NSW Peak Reduction Certificates, Large-Scale Generation

¹ Current AFMA documentation is available on the subscription [AFMA Guide to Australian OTC Transactions](#)



Certificates, Small-Scale Technology Certificates, Victorian Energy Efficiency Certificates and GRECs as well as ACCUs.

Both documents are widely used by participants in the power, renewables and carbon markets, and are suitable for governing derivative transactions over the full range of Australian environmental products. The drawback of this flexibility is that the documents have a degree of complexity that may not be necessary for parties who wish to deal solely in ACCUs. AFMA therefore considers there may be value in developing ACCU specific documentation to reduce this complexity. In addition, given that not all members of AFMA utilise ISDA documentation, the development of a stand-alone master agreement that can be entered into independently of the ISDA Master Agreement could be valuable for AFMA members.

4. Documentation in the carbon market

AFMA's Carbon Committee has identified the lack of agreed industry standard documentation as a barrier to the development of the ACCU market. In particular, there is limited standardisation with a number of competing documents in use in the market, many developed by larger market participants. The Carbon Committee has also noted that many of the participants in the ACCU market are not traditional financial market participants and have limited familiarity with ISDA documentation.

AFMA is therefore proposing to support the development of the ACCU market by creating the following template documentation suitable for the secondary trading of ACCUs (spot and forward) as well as the entry into options over ACCUs:

1. AFMA Spot ACCU Contract – for one-off spot transactions
2. AFMA Forward ACCU Contract – for one-off forward transactions
3. AFMA Master ACCU Agreement – for multiple spot, forward and option transactions where there is an ongoing trading relationship

To facilitate their adoption by the market we are proposing that, for an initial period, they will be available to AFMA and CMI members at no cost.

We have not developed a document for the primary issue of ACCUs from projects on the basis that these documents are likely to be more bespoke to reflect the requirements of the project and the buyer. Additionally, we have not developed documentation for international Verified Carbon Credits (VCC) on the basis that ISDA's VCC Definitions are appropriate for VCC transactions.

General Consultation Questions

1. What do you consider to be the gaps in the standard ACCU market documentation available in the Australian market?
2. Are there distinct features of the market for ACCUs in Australia that you think need to be considered for any standard market documentation or for an ACCU Master Agreement in particular?
3. What role do you see for each of these documents in the Australian market?
4. Are the proposed documents appropriate for the ACCU market and are they likely to be used? Which of the three documents is likely to be used the most by market participants?

5. What supporting information (such as legal opinions) would your organisation need before using any of these documents?
6. Are there any other barriers to using these documents?
7. Would a template contract for the primary issue of ACCUs be useful to the market?
8. Should Safeguard Mechanism Credits be included in the documents?
9. Should a standalone AFMA Option Contract for ACCUs be prepared?

5. Summary of draft contracts

The following draft documents have been developed by AFMA's Environmental Products Documentation Working Group and approved for public release by our Carbon Committee. The Working Group is made up of experienced financial services and environmental product lawyers including in house lawyers from AFMA's member firms and private lawyers from AFMA partner members. The Carbon Committee is made up of front office staff from AFMA member firms, it has primary carriage for AFMA's engagement with the carbon market including approving the final versions of AFMA template agreements.

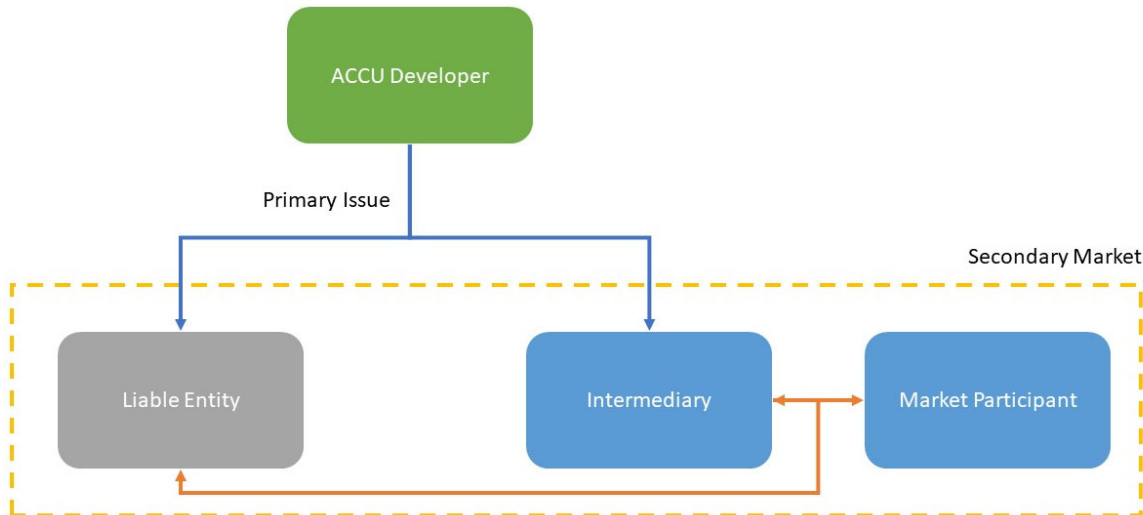
AFMA appreciates that the carbon market is much broader than AFMA's membership we are therefore keen to seek input from a broader group of market participants to ensure AFMA template documents are relevant to the market as a whole. We welcome comments on both the detail of the drafting of our proposed documents and broader feedback on the appropriateness of the documents for the market. We have included consultation questions in this document to encourage responses in some areas but respondents should feel free to respond on any issues they like.

5.1. Role of AFMA contracts

AFMA has traditionally supported secondary financial markets rather than primary markets for financial products. As a result, the draft documents have been designed to facilitate ACCU transactions between buyers and sellers of ACCUs after the primary issue and registration of an ACCU in the Australian National Registry of Emissions Units (**ANREU**).

The below diagram provides a simplified illustration of the primary and secondary markets:

- **Primary Market** – ACCU project developers sell newly created ACCUs to either liable entities for their own use or to intermediaries for resale.
- **Secondary Market** – Intermediaries and other market participants transact previously issued ACCUs, liable entities may also choose to purchase ACCUs from the secondary market.



5.2. AFMA Spot ACCU Contract

The AFMA Spot ACCU Contract is designed to be a simple document to be used for one off spot buy and sell ACCU transactions. At a high level the contract requires the seller to deliver ACCUs to the buyer in exchange for payment. The contract anticipates delivery and payment will occur within a short period of time, typically within three business days of entering into the contract, so does not contain provisions dealing with counterparty credit and default events, amongst others, making it unsuitable for longer term forward transactions.

The contract is based on the existing AFMA Environmental Products Spot Contract but has been simplified by removing provisions that are not relevant to ACCUs, including definitions for other environmental products and provisions relevant to their respective registries.

Summary of Provisions

Contract Details

This section allows the parties to specify the details necessary for a spot ACCU transaction on the terms and conditions of the AFMA Spot ACCU Contract.

This includes the:

- parties' details, including details of registry accounts
- price and quantity of ACCUs bought or sold
- delivery and payment dates

Importantly the contract details also allow parties to specify "Agreed Carbon Credit Characteristics" for the ACCUs bought or sold. This allows parties to specify if the ACCUs need to come from a particular project, use a required methodology or deliver agreed co-benefits.

The contract also has a concept of "Comparable Carbon Credit Characteristics" which allows parties to agree alternative ACCU characteristics to be used to determine compensation amounts in the event



that the contracted ACCUs are not delivered. AFMA anticipates this functionality could be useful when parties have agreed a very tight set of characteristics for the contracted ACCUs which may result in it being difficult or impossible to source an exact replacement unit. The failure to deliver arrangements are discussed in more detail below.

Clause 1 – Definitions

This clause contains the definitions used in the AFMA Spot ACCU Contract. They are intended to be similar to the definitions used in AFMA's existing Environmental Product Spot Contract and where possible are consistent across all three of the proposed ACCU template documents.

Key defined terms include:

Agreed Environmental Product Characteristics – parties may specify particular requirements for an Environmental Product in the Confirmation;

ACCU – defined as a Kyoto ACCU, we understand that non-Kyoto ACCUs are rarely traded and have therefore not included them. If this changes in the future this can be modified;

ANREU – means the Australian National Registry of Emissions Units;

Business Day - the definition of a Business Day is the day commercial banks are open for general business in the place:

- a) specified in the Contract Details; or
- b) if no place is specified, the capital cities in which the parties head offices are located;

Buyer's Replacement Cost – provides a methodology for determining the amount to be paid to a Buyer when a Seller fails to Deliver Environmental Products;

Comparable Carbon Credits – provides a mechanism for determining what alternative ACCUs can be used to determine the Buyers Replacement Cost or Seller's Replacement Cost when a party fails to deliver ACCUs;

Seller's Replacement Cost – provides a methodology for determining the amount to be paid to a Seller when a Buyer fails to accept delivery of ACCUs.

Clause 2 – Sale and Purchase

The contract provides for physical settlement of transactions meaning the seller is required to deliver ACCUs to the buyer. This is consistent with the approach taken in the AFMA Environmental Products Addendum and Spot Contract.

Spot Contract Consultation Questions

10. The spot contract is physically delivered. Other than failure to deliver, are there any other circumstances when cash settlement should apply?

Clause 3 – Settlement Disruption Event

This clause deals with events beyond the control of a party that disrupts settlement of a Transaction. It obliges parties to continue to attempt to settle on following Business Days. In the event that the disruption is ongoing, it provides a mechanism for terminating the contract if settlement cannot occur by the Settlement Disruption Longstop Date agreed between the parties in the Contract Details. If no Settlement Disruption Longstop Date is specified in the Contract Details, the default Settlement



Disruption Longstop Date is the earlier of 4 Business Days before a Surrender Date (if any) and 4 Business Days after the Delivery Date.

Note this provision is not intended to cover force majeure events affecting a project such as the loss of a project due to fire.

Clause 4 – Transfer Fees

Under this clause the Buyer is responsible for any transfer fees incurred as a result of the transaction as per market convention.

Clause 5 – Payment

Sets out how payments are to be made under the contract.

Clause 6 – Interest

Provides that interest will be paid at the Default Interest Rate in the event of late payment. The Default Interest Rate is to be agreed but the market position is 4% above the RBA cash rate.

Clause 7 – Failure to Deliver

This clause deals with the consequences of Failure to Deliver ACCUs.

Clause 7(a) and (b) deal with circumstances where the Failure to Deliver is the result of fault by the Seller or Buyer, respectively. In both circumstances the innocent party may serve a notice on the other party to terminate the contract. The innocent party is entitled to receive the relevant Buyer's Replacement Cost or Seller's Replacement Cost.

Clause 7(c) Clarifies that in the event that if the Seller only delivers part of the contracted ACCUs, the Buyer must pay for the ACCUs that are Delivered.

Clause 7(d) limits parties' liability to the payment of Buyer's Replacement Cost or Seller's Replacement Cost, as applicable.

Clause 8 – Title

Title to ACCUs transfers when the units are received into the Buyers registry account.

Clause 9 – Warranties

Contains standard warranties that the Buyer and Seller provide to each other.

Clause 10 – GST

This clause deals with the issuing of invoices and payment of GST.

Clause 11 – Withholding Tax

This clause deals with the treatment of withholding tax.

Clause 12 – Governing Law and Jurisdiction

Clause 12 provides that the contract will be governed by the law of the Jurisdiction specified in the Contract Details and that the parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

Note: the contract does not provide a fallback jurisdiction if parties fail to nominate one.



5.3. AFMA Forward ACCU Contract

This contract is intended to be a simple document that is suitable for one off forward transactions. It is also based on the AFMA Environmental Products Spot Contract but includes additional provisions dealing with counterparty credit, events of default and abandonment of scheme to make it suitable for longer term forward transactions where delivery and payment is expected to occur in a longer timeframe than for transactions under the spot contract. AFMA has developed this document as we understand a number of participants in the market have been amending the AFMA Environmental Products Spot Contract to use it for one-off forward transactions and we considered there would be value in publishing a template version for market consistency.

The forward contract is generally aligned with the provisions of the Environmental Products Addendum but does not contain some of the provisions found in the Addendum or the ACCU Master Agreement that are necessary for master agreements, such as delivery and close out netting. Additionally, the forward contract does not provide for options transactions.

Summary of Provisions

The AFMA Forward ACCU Contract shares many provisions with the AFMA Spot ACCU Contract, key differences and additions are summarised below:

Contract Details

The forward contract contains the following additional contract details:

- Delivery Terms – allowing parties to nominate that the Seller can make delivery by surrendering ACCUs
- Additional details concerning default events and credit support to manage the greater credit risks associated with forward transactions.

Clause 1 – Definitions

The forward contract contains a number of additional definitions principally dealing with managing the increased risk of a party defaulting or otherwise requiring the contract to be terminated during longer term forward transactions which may run for weeks, months, a year or more, compared to spot transactions which will typically settle within days.

The key additional definitions are:

Event of Default – defines events where a party is at fault and the innocent party has the right to terminate.

Termination Event – defines events where neither party is at fault and both parties have a right to terminate.

Forward Contract Consultation Questions

11. Should the contract deal with material changes to ACCU methodologies?

Clause 2 – Sale and Purchase

This provision is similar to clause 2 of the AFMA Spot ACCU Contract but allows for a single forward transaction to have more than one Delivery Date, in which case it will be deemed to consist of a number of transactions corresponding to the relevant Delivery Dates.



Clause 3 – Settlement Disruption Event

This provision is similar to clause 3 of the AFMA Spot ACCU Contract. The default Settlement Disruption Longstop Date, if none is specified in the Contract Details, is the earlier of 9 Business Days before a Surrender Date (if any) and 9 Business Days after the Delivery Date. The risk of an abandonment of the scheme is also addressed in clause 8. Scheme abandonment is considered more likely during the term of a forward transaction than a spot transaction and accordingly there is no equivalent provision in the AFMA Spot ACCU Contract.

Note this provision is not intended to cover force majeure events affecting a project such as the loss of a project due to fire.

Clause 4 – Transfer and Retirement Fees

Like clause 4 of the AFMA Spot ACCU Contract, this clause makes the Buyer responsible for any transfer fees incurred as a result of the transaction, but additionally makes them responsible for any fees incurred as a result of retirement of ACCUs.

Clause 5 – Payment

Clause 5 sets out how payments are to be made under the contract, in a similar way to clause 5 of the AFMA Spot ACCU Contract.

Clause 6 – Interest

Provides that interest will be paid at the Default Interest Rate in the event of late payment, in a similar way to clause 6 of the AFMA Spot ACCU Contract.

Clause 7 – Failure to Deliver

This clause is similar to clause 7 of the AFMA Spot ACCU Contract but contains additional provisions to allow a party to remedy a failure to deliver. This clause is designed to achieve a similar effect to paragraph 7 of the AFMA Environmental Products Addendum.

Clause 8 – Abandonment of Scheme

This clause deals with the consequences of a government decision to abandon the ACCU scheme by ending parties' obligations under the contract with if an abandonment of the scheme affects settlement of the transaction. This provision has been added to the forward contract as it is considered more likely that a government decision to abandon the ACCU scheme would have an effect on longer term forward transactions than short term spot transactions.

Forward Contract Consultation Questions

12. Similar provisions are in the Environmental Products Addendum to manage the risk of the withdrawal or abandonment of any Scheme. It is also a concept that exists in similar emissions documentation used globally. The intention is such an event is treated differently to a Settlement Disruption Event. Do you agree with the approach?

Clause 9 – Title

Title to ACCUs transfers when the units are received into the Buyers registry account, the same as clause 8 of the AFMA Spot ACCU Contract, and also by retirement.

Forward Contract Consultation Questions

13. The consultation draft allows for both physical delivery and retirement and the consequences, do you have any comments on the proposed mechanism?

Clause 10 – Representations and Warranties

Contains more extensive representations and warranties than clause 9 of the AFMA Spot ACCU Contract to reflect the different risks in forward contracts.

Clause 11 – Early Termination

This is a new provision for the forward contract to address the greater risks associated with termination of a longer-term forward contract. This provision adopts a similar approach to what applies under the Environmental products Addendum and the ISDA Master Agreement by allowing transactions to be terminated for a range of at fault (default events) or non-fault events (termination events).

The agreement provides a mechanism for calculating termination payments based on the cost of replacing the transactions at current market prices and unpaid amounts for deliveries made.

Terminated transaction may have a positive or negative mark-to-market exposure for a party as well unpaid amounts for ACCUs delivered. Clause 11 provides a mechanism for offsetting these amounts so one amount is payable by one party to the other. Clause 11 also includes a provision to enable a party to “set -off” amounts payable under this Forward Contract against other amounts due and payable between them. A single termination payment is made based on the cost of replacing a single net sum, to reduce counterparty credit risk. AFMA is intending to commission legal opinions to confirm this close out netting mechanism would be enforceable against a party on its insolvency.

Clause 12 – GST

This clause deals with the issuing of invoices and payment of GST in a similar way clause 10 of the AFMA Spot ACCU Contract.

Clause 13 – Withholding tax

This clause deals with the treatment of withholding tax in a similar way to clause 11 of the AFMA Spot ACCU Contract.

Clause 14 – Miscellaneous

This clause is only included in the forward contract and contains a number of miscellaneous provisions including provisions dealing with notices and excluding liability for consequential loss.

Clause 15 – Governing Law and Jurisdiction

This clause contains similar provisions regarding choice of law and forum as clause 12 of the AFMA Spot ACCU Contract.

Note: the contract does not provide a fallback Jurisdiction if parties fail to nominate one.

5.4. AFMA Master ACCU Agreement

The AFMA Master ACCU Agreement is an entirely new document that is designed for parties with ongoing trading relationships that they would like to be able to document multiple spot, forward and

option transactions in respect of ACCUs under a single master agreement that does not incorporate or cross reference to documents published by ISDA.

Once the AFMA Master ACCU Agreement has been entered into, it allows two parties to enter into a spot, forward or option transaction in respect of ACCUs, which is then documented in a confirmation that sets out the details of the transaction and incorporates, by reference, the terms of the signed AFMA Master ACCU Agreement between them, without the need to renegotiate the terms.

Master Agreement Consultation Questions

14. Is there value in developing a ACCU master agreement that operates independently from the ISDA Master Agreement?
15. What types of products is your organisation likely to transact under a stand-alone ACCU Master Agreement if you were to use it?
16. The consultation draft of the ACCU Master Agreement covers spots, forwards and options, with further variations such as multiple delivery dates and different option types. Do you agree these products should all be covered in the ACCU Master Agreement? Are there any other products or product variations that should be covered?
17. With what types of counterparties are you likely to enter into a stand-alone ACCU Master Agreement (e.g. project developers, brokers, liable entities and banks) if you were to use it?
18. Currently only the master agreement accommodates options transactions, would there be value in a separate options contract?

Summary of Provisions

Clause 1 – Definitions and Interpretation

This clause provides for a Definitions Schedule (Schedule 1) which deals with definitions and interpretation.

It also provides that in the event of inconsistency between the master agreement and a confirmation the provisions of the confirmation will prevail. This mirrors the approach taken in ISDA documentation.

Clause 2 – ANREU Accounts

This provision provides for ANREU accounts to be held either by the party or their nominated representative. The accounts must be nominated in either the elections schedule to the master agreement or in a confirmation. A party may change their ANREU account by providing notice in writing.

Clause 3 – Term

Provides that the master agreement comes into effect on the date it is executed by both parties and continues in effect until terminated in writing, provided no transactions governed by the master agreement are outstanding at that time.

Clause 4 – Transactions



Provides that all transactions entered into under the master agreement form a single agreement with the master agreement. The impact of the single agreement in the event of a termination is discussed below.

Clause 5 – Confirmations

This provision provides for the exchange of confirmations promptly after parties enter into a transaction under the master agreement. It is important to note that, as under ISDA documentation, the transaction is valid from the point that parties reach agreement (potentially via phone or messaging) and that failure to exchange confirmations does not invalidate the transaction. Template confirmations are provided in Schedules 3 and 4.

Parties also consent to the recording of telephone calls to allow them to be used as evidence of a transaction.

Clause 6 – Deliveries

The clause provides for delivery of and payment for ACCUs. Delivery may be made either by delivering the ACCUs into the buyer's registry account or by retirement, the contract does not provide for cash settlement of a transaction.

Note clause 8.8 allows for netting of deliveries.

Clause 7 – Delivery and Acceptance Failures

This clause deals with circumstances where delivery does not occur as a result of the delivering party's failure to perform its obligations under the master agreement, other than for reasons outside its control (e.g., as a result of an illegality, a force majeure event, a settlement disruption event or the revocation or cancellation of Australian laws supporting the statutory scheme for ACCUs).

In the event that delivery is not made in those circumstances, this will not constitute an event of default or similar. Instead, the master agreement provides a mechanism for the receiving party to terminate the relevant transaction and receive a termination payment based on the cost of replacing the relevant transaction at current market prices.

Clause 8 – Payments and Invoicing

This clause deals with how payments are to be made and the issue of invoices. It also allows for netting of payments and deliveries across multiple transactions.

Clause 9 – Options Transactions

This clause sets out the terms that will govern options entered into by the parties over ACCUs. It allows the parties to elect automatic or multiple exercise, and exercise options on a full or partial basis (subject to minimum or maximum restrictions on the number exercised).

Clause 10 – Representations and Warranties and Undertakings

This clause contains customary representations and warranties with the ability for the parties to incorporate specific undertakings via completion of an elections schedule.

Clause 11 – Retirement

This clause provides the mechanics to allow a party to make delivery by retiring ACCUs.

Clause 12 – Taxes and Duties



This clause deals with the treatment of any taxes or fees applicable to a transaction.

Clause 13 – Early Termination Events

Clause 13 set out the applicable events of default and settlement disruption events (these are events outside the parties' control that prevent settlement occurring).

Clause 14 – Early Termination

Clause 14 sets out the consequences of the above events (and other termination events) occurring. In general, the non-defaulting (or in some circumstances either) party will be entitled to terminate all transactions governed by the master agreement in accordance with clause 14. This provision also provides a mechanism for calculating termination payments based on the cost of replacing the transactions at current market prices and unpaid amounts for deliveries made.

Because the master agreement may govern many transactions, some with positive and some with negative mark-to-market exposures, the clause 14 mechanism (commonly referred to as a close-out netting mechanism) gives the parties the ability to “net” all their exposures to each other and calculate termination payment based on the cost of replacing a single net sum, to reduce counterparty credit risk. AFMA is intending to commission legal opinions to confirm this close out netting mechanism would be enforceable against a party on its insolvency.

Master Agreement Consultation Questions

19. Is close out netting an appropriate mechanism for the ACCU market?

Clause 15 – Set-Off

This clause allows parties to set-off any payments they owe to the other party against the amount owing to them, in certain circumstances. This avoids parties having to make payments to counterparties who are in default.

Clause 16 – Hierarchy

This clause manages potential conflicts where the same event may could be treated as a settlement disruption event, termination event, event of default or other type of specified event.

Clause 17 – Abandonment of Scheme

This clause deals with the consequences of a government decision to abandon the ACCU scheme.

Clause 18 – Notices

Provides the mechanics for issuing notices.

Clause 19 – Governing Law and Jurisdiction

Unlike in the other documents NSW law applies unless the parties elect otherwise in the elections schedule.

Master Agreement Consultation Questions

20. Is it helpful to allow users to elect the governing law or would it be more desirable to have all agreements governed by the law of the same jurisdiction?



Clause 20 – General

The clause provides a number of administrative provisions.

Schedule 1 – Definitions Schedule

This schedule defines terms that are used in the master agreement.

Schedule 2 – Elections Schedule

This schedule performs a similar function to the contract details sections in the AFMA Spot ACCU Contract and AFMA Forward ACCU Contract in that it is where parties enter their relevant details.

Additionally, this schedule allows parties to make a number of elections to make the document suitable for a wide range of users. Elections include:

- Additional conditions precedent
- Additional representations and warranties
- Additional termination events and events of default
- Netting elections

Master Agreement Consultation Questions

21. Schedule 2 of the consultation draft contains elections parties will need to negotiate when entering into the agreement. Are the elections appropriate?

Schedule 3 – Form of Confirmation

This schedule provides a template confirmation for spot and forward transactions.

Schedule 4 – Form of Option Confirmation

This schedule provides a template confirmation for option transactions.

Master Agreement Consultation Questions

22. Are the template confirmations in schedules 3 and 4 appropriate for ACCU transactions?

General Consultation Questions

23. Do you consider that any changes should be made to the allocation of risks in the draft documents?
24. Are there any other risks that you consider need to be addressed in the drafts, and what do you think the approach should be?
25. Are you aware of ISDA's VCC definitions? Do you value consistency between AFMA's ACCU documentation and the approach taken in those definitions with amendments to address the different regimes?



26. Please provide any other comments on the consultation drafts that you consider will improve the documents?



6. Comparison table

This table compares the three documents to highlight areas where their provisions are aligned and where they deviate.

AFMA Spot ACCU Contract	AFMA Forward ACCU Contract	AFMA Master ACCU Agreement
Contract Details/ Confirmations		
<p>1. <i>Contract Details</i></p> <p>This section allows the parties to specify the details necessary for a spot ACCU transaction on the terms and conditions of the AFMA Spot ACCU Contract.</p> <p>This includes the:</p> <ul style="list-style-type: none"> • parties’ details, including details of registry accounts • price and quantity of ACCUs bought or sold • delivery and payment dates <p>Importantly, the contract details also allow parties to specify “Agreed Carbon Credit Characteristics” for the ACCUs bought or sold. This allows parties to specify if the ACCUs need to come from a particular project, use a required methodology or deliver agreed co-benefits.</p> <p>The contract also has a concept of “Comparable Carbon Credit Characteristics” which allows parties to agree alternative ACCU characteristics to be used to determine compensation amounts in the event that the contracted ACCUs are not delivered. AFMA anticipates this functionality could be useful when parties have agreed a very tight set of characteristics for the contracted ACCUs which may result in it being</p>	<p><i>Contract Details</i></p> <p>The forward contract contains the following additional contract details to the Spot Contract:</p> <ul style="list-style-type: none"> • Delivery Terms – allowing parties to nominate that the Seller can make delivery by surrendering ACCUs • Additional details concerning default events and credit support to manage the greater credit risks associated with forward transactions. 	<p><i>Schedule 2 – Elections Schedule</i></p> <p>This schedule performs a similar function to the contract details sections in the AFMA Spot ACCU Contract and AFMA Forward ACCU Contract in that it is where parties enter their relevant details.</p> <p>Additionally, this schedule allows parties to make a number of elections to make the document suitable for a wide range of users. Elections include:</p> <ul style="list-style-type: none"> • Additional conditions precedent • Additional representations and warranties • Additional termination events and events of default • Netting elections <p><i>Schedule 3 – Form of Confirmation</i></p> <p>This schedule provides a template confirmation for spot and forward transactions.</p> <p><i>Schedule 4 – Form of Option Confirmation</i></p> <p>This schedule provides a template confirmation for option transactions.</p>



	difficult or impossible to source an exact replacement unit. The failure to deliver arrangements are discussed in more detail below.		
Definitions			
2.	<p>This clause contains the definitions used in the AFMA Spot ACCU Contract. They are intended to be similar to the definitions used in AFMA’s existing Environmental Product Spot Contract and where possible are consistent across all three of the proposed ACCU template documents.</p> <p>Key defined terms include:</p> <p>Agreed Environmental Product Characteristics – parties may specify particular requirements for an Environmental Product in the Confirmation;</p> <p>ACCU – defined as a Kyoto ACCU, we understand that non-Kyoto ACCUs are rarely traded and have therefore not included them. If this changes in the future this can be modified;</p> <p>ANREU – means the Australian National Registry of Emissions Units;</p> <p>Business Day - the definition of a Business Day is the day commercial banks are open for general business in the place:</p> <ul style="list-style-type: none"> c) specified in the Contract Details; or d) if no place is specified, the capital cities in which the parties head offices are located; 	<p><i>Clause 1 – Definitions</i></p> <p>The forward contract contains a number of additional definitions principally dealing with managing the increased risk of a party defaulting or otherwise requiring the contract to be terminated during longer term forward transactions which may run for weeks, months, a year or more, compared to spot transactions which will typically settle within days.</p> <p>The key additional definitions are:</p> <p>Event of Default – defines events where a party is at fault and the innocent party has the right to terminate</p> <p>Termination Event – defines events where neither party is at fault and both parties have a right to terminate.</p>	<p><i>Schedule 1 – Definitions Schedule</i></p> <p>This schedule contains defined terms which are intended to be broadly consistent with the terminology used in the AFMA Spot ACCU Contract and AFMA Forward ACCU Contract.</p>



	<p>Buyer's Replacement Cost – provides a methodology for determining the amount to be paid to a Buyer when a Seller fails to Deliver Environmental Products;</p> <p>Comparable Carbon Credits – provides a mechanism for determining what alternative ACCUs can be used to determine the Buyers Replacement Cost or Seller's Replacement Cost when a party fails to deliver ACCUs;</p> <p>Seller's Replacement Cost – provides a methodology for determining the amount to be paid to a Seller when a Buyer fails to accept delivery of ACCUs.</p>		
Sale, purchase and delivery			
3.	<p><i>Clause 2 – Sale and Purchase</i></p> <p>The AFMA Spot ACCU Contract provides for physical settlement of transactions meaning the seller is required to deliver ACCUs to the buyer. This is consistent with the approach taken in the AFMA Environmental Products Addendum and Environmental Products Spot Contract.</p>	<p><i>Clause 2 – Sale and Purchase</i></p> <p>This provision is similar to clause 2 of the AFMA Spot ACCU Contract but allows for a single agreement to cover multiple transactions.</p>	<p><i>Clause 6 – Deliveries</i></p> <p>The clause provides for delivery of and payment for ACCUs. Delivery may be made either by delivering the ACCUs into the buyer's registry account or by retirement. The AFMA Master ACCU Agreement does not provide for cash settlement of a transaction.</p> <p>Note clause 8.8 allows for netting of deliveries.</p> <p><i>Clause 11 – Retirement</i></p> <p>This clause provides the mechanics to allow a party to make delivery by retiring ACCUs.</p>
Settlement disruption and early termination			
4.	<p><i>Clause 3 – Settlement Disruption Event</i></p>	<p><i>Clause 3 – Settlement Disruption Event</i></p>	<p><i>Clause 13.2 – Settlement Disruption Events</i></p>



	<p>This clause deals with events beyond the control of a party that disrupts settlement of a Transaction. It obliges parties to continue to attempt to settle on each of the following Business Days. In the event that the disruption is ongoing, it provides a mechanism for terminating the contract if settlement cannot occur by the Settlement Disruption Longstop Date agreed between the parties in the Contract Details. If no Settlement Disruption Longstop Date is specified in the Contract Details, the default Settlement Disruption Longstop Date is the earlier of 4 Business Days before a Surrender Date (if any) and 4 Business Days after the Delivery Date.</p> <p>Note this provision is not intended to cover force majeure events affecting a project such as the loss of a project due to fire.</p>	<p>This provision is similar to clause 3 of the AFMA Spot ACCU Contract. The default Settlement Disruption Longstop Date if none is specified in the Contract Details is the earlier of 9 Business Days before a Surrender Date (if any) and 9 Business Days after the Delivery Date. The risk of an abandonment of the scheme is also addressed in clause 8. Scheme abandonment is considered more likely during the term of a forward transaction than a spot transaction and accordingly there is no equivalent provision in the AFMA Spot ACCU Contract.</p> <p>Note this provision is not intended to cover force majeure events affecting a project such as the loss of a project due to fire.</p>	<p>Clause 13.2 deals with Settlement Disruption Events, and other events outside the parties' control that prevent settlement occurring, in a similar way to clause 3 of the AFMA Forward ACCU Contract.</p> <p>It obliges parties to continue to attempt to settle as soon as the Settlement Disruption Event ceases. In the event the disruption is ongoing, it provides a mechanism for terminating the contract in accordance with clause 14 (see details below) if settlement cannot occur by the Settlement Disruption Longstop Date. If no Settlement Disruption Longstop Date is specified in the Elections Schedule, the default Settlement Disruption Longstop Date is [30] days after the occurrence of the relevant Settlement Disruption Event.</p> <p>Note this provision is not intended to cover physical force majeure events such as the loss of a project due to fire.</p>
<p>5.</p>	<p>The AFMA Spot ACCU Contract provides for the early termination of a Transaction following a Delivery Failure (see further details below). It does not incorporate any other early termination events, as given the short-term nature of spot transactions, additional early termination events are regarded as unnecessary.</p>	<p><i>Clause 11 – Early Termination</i></p> <p>This is a new provision for the AFMA Forward ACCU Contract to address the greater risks associated with termination of a longer-term forward contract. This provision adopts a similar approach to what applies under the Environmental products Addendum and the ISDA Master Agreement by allowing transactions to be terminated for a range of at fault (default events) or non-fault events (termination events).</p> <p>Clause 11 set out the consequences of the above events occurring. In general, the non-defaulting (or in some circumstances either) party will be entitled to terminate all transactions governed by AFMA Forward ACCU Contract in accordance with clause 11. This provision also provides a mechanism for calculating termination</p>	<p><i>Clause 13 – Early Termination Events</i></p> <p>Clause 13.1 defines as series of Events of Default. Events of Default are events where one party is at fault resulting in a breach of obligations under the agreement, the innocent party is then entitled to terminate the master agreement (and all transactions governed by it) in accordance with clause 14. The Events of Default are intended to be consistent with those under the AFMA Forward ACCU Contract and the ISDA Master Agreement.</p> <p><i>Clause 14 – Early Termination</i></p> <p>Clause 14 sets out the consequences of the above events (as well as Settlement Disruption Events and other termination events) occurring. In general, the non-defaulting (or in some circumstances either)</p>



		<p>payments based on the cost of replacing the transactions at current market prices.</p> <p>Terminated transactions may have a positive or negative mark-to-market exposure for a party as well as unpaid amounts for ACCUs delivered. Clause 11 provides a mechanism for offsetting these amounts, so one amount is payable by one party to the other. Clause 11 also includes a provision to enable a party to “set -off” amounts payable under this Forward Contract against other amounts due and payable between them, to reduce counterparty credit risk. AFMA is intending to commission legal opinions to confirm this close out netting mechanism would be enforceable against a party on its insolvency.</p>	<p>party will be entitled to terminate all transactions governed by the master agreement in accordance with clause 14. This provision also provides a mechanism for calculating termination payments based on the cost of replacing the transactions at current market prices.</p> <p>Because the AFMA Master ACCU Agreement may govern many transactions, some with positive and some with negative mark-to-market exposures, the clause 14 mechanism (commonly referred to as a close-out netting mechanism) gives the parties the ability to “net” all their exposures to each other and calculate termination payment based on the cost of replacing a single net sum, to reduce counterparty credit risk. AFMA is intending to commission legal opinions to confirm this close out netting mechanism would be enforceable against a party on its insolvency.</p> <p><i>Clause 15 – Set-Off</i></p> <p>This clause allows parties to set-off any payments they owe to the other party against the amount owing to them, in certain circumstances. This avoids parties having to make payments to counterparties who are in default.</p> <p><i>Clause 16 – Hierarchy</i></p> <p>This clause manages potential conflicts where the same event may could be treated as a Settlement Disruption Event, Termination Event, Event of Default or other type of specified event.</p>
	Failure to Deliver		
6.	<i>Clause 7 – Failure to Deliver</i>	<i>Clause 7 – Failure to Deliver</i>	<i>Clause 7 – Delivery and Acceptance Failures</i>



	<p>This clause deals with the consequences of Failure to Deliver ACCUs.</p> <p>Clause 7(a) and (b) deal with circumstances where the Failure to Deliver is the result of fault by the Seller or Buyer, respectively. In both circumstances the innocent party may serve a notice on the other party to terminate the contract. The innocent party is entitled to receive the relevant Buyer’s Replacement Cost or Seller’s Replacement Cost, as applicable.</p> <p>Clause 7(c) clarifies that in the event that the Seller only delivers part of the contracted ACCUs the Buyer must pay for the ACCUs that are Delivered.</p> <p>Clause 7(d) limits parties’ liability to the payment of Buyer’s Replacement Cost or Seller’s Replacement Cost, as applicable.</p>	<p>This clause is similar to clause 7 of the AFMA Spot ACCU Contract but contains additional provisions to allow a party to remedy a failure to deliver by delivering the contracted (or comparable) ACCUs on a subsequent date, subject to the payment of interest compensation. This clause is designed to achieve a similar effect to paragraph 7 of the AFMA Environmental Products Addendum.</p>	<p>This clause deals with circumstances where delivery does not occur as a result of the delivering or receiving party’s failure to perform its obligations under the AFMA Master ACCU Agreement, other than for reasons outside its control (including as a result of an illegality, a force majeure event, a settlement disruption event or the revocation or cancellation of Australian laws supporting the statutory scheme for ACCUs) or as a result of its insolvency.</p> <p>In the event that delivery is not made in those circumstances, this will not constitute an event of default or similar. Instead, the AFMA Master ACCU Agreement provides a mechanism for the innocent party to terminate the relevant transaction and receive a termination payment based on the cost of replacing the relevant transaction at current market prices.</p> <p>Clause 7 also contains additional provisions to allow a party to remedy a failure to deliver by delivering the contracted ACCUs on a subsequent date, subject to the payment of interest compensation.</p>
<p>Abandonment of Scheme</p>			
<p>7.</p>	<p>The AFMA Spot ACCU Contract does deal with abandonment of the ACCU scheme as it is considered to be unnecessary for short term spot transactions.</p>	<p><i>Clause 8 – Abandonment of Scheme</i></p> <p>This clause deals with the consequences of a government decision to abandon the ACCU scheme by ending parties’ obligations under the contract where an abandonment of the scheme affects settlement of the transaction. This provision has been added to the AFMA Forward ACCU Contract as it is considered more likely that a government decision to abandon the ACCU scheme would have an effect on longer term forward transactions than short term spot transactions.</p>	<p><i>Clause 17 – Abandonment of Scheme</i></p> <p>This clause deals with the consequences of a government decision to abandon the ACCU the scheme in a similar way to clause 8 of the AFMA Forward ACCU Contract.</p>



Additional AFMA Master ACCU Agreement Terms		
8.	<p>The AFMA Master ACCU Agreement contains a number of additional provisions to cover multiple transactions that are not required in the spot and forward contract.</p> <p>Additionally, the AFMA Master ACCU Agreement allows for options transactions which are not accommodated under the other agreements.</p>	<p><i>Clause 2 – ANREU Accounts</i></p> <p>This provision provides for ANREU accounts to be held either by the party or their nominated representative. The accounts must be nominated in either the Elections Schedule to the AFMA Master ACCU Agreement or in a confirmation. A party may change their ANREU account by providing notice in writing.</p>
9.		<p><i>Clause 3 – Term</i></p> <p>Provides that the AFMA Master ACCU Agreement comes into effect on the date it is executed by both parties and continues in effect until terminated in writing, provided no transactions governed by the master agreement are outstanding at that time.</p>
10.		<p><i>Clause 4 – Transactions</i></p> <p>Provides that all transactions entered into under the master agreement form a single agreement with the master agreement. The impact of the single agreement in the event of a termination is discussed above.</p>
11.		<p><i>Clause 5 – Confirmations</i></p> <p>This provision provides for the exchange of confirmations promptly after parties enter into a transaction under the master agreement. It is important to note that, as under ISDA documentation, the transaction is valid from the point that parties reach agreement (potential via phone or messaging) and that failure to exchange confirmations does not</p>



			<p>invalidate the transaction. Template confirmations are provided in Schedules 3 and 4.</p> <p>Parties also consent to the recording of telephone calls to allow them to be used as evidence of a transaction.</p>
12.			<p><i>Clause 9 – Options Transactions</i></p> <p>This clause sets out the terms that will govern options entered into by the parties over ACCUs. It allows the parties to elect automatic or multiple exercise, and exercise options on a full or partial basis (subject to minimum or maximum restrictions on the number exercised).</p>
13.			<p><i>Clause 18 – Notices</i></p> <p>Provides the mechanics for issuing notices.</p> <p>Note: The AFMA Forward ACCU Contract deals with the issue of notices in clause 14(c) of its miscellaneous provisions.</p>
Miscellaneous Provisions			
14.	<p><i>Clause 4 – Transfer Fees</i></p> <p>Under this clause the Buyer is responsible for any transfer fees incurred as a result of the transaction as per market convention.</p>	<p><i>Clause 4 – Transfer and Retirement Fees</i></p> <p>Like clause 4 of the AFMA Spot ACCU Contract this clause makes the Buyer responsible for any transfer fees incurred as a result of the transaction, but additionally makes them responsible for any fees incurred as a result of retirement of ACCUs.</p>	<p><i>See clause 12 – Taxes and Duties</i></p>
15.	<p><i>Clause 5 – Payment</i></p> <p>Sets out how payments are to be made under the contract.</p>	<p><i>Clause 5 – Payment</i></p>	<p><i>Clause 8 – Payments and Invoicing</i></p>



		Clause 5 sets out how payments are to be made under the contract, in a similar way to clause 5 of the AFMA Spot ACCU Contract.	This clause deals with how payments are to be made and the issue of invoices. It also allows for netting of payments and deliveries across multiple transactions.
16.	<i>Clause 6 – Interest</i> Provides that interest will be paid at the Default Interest Rate in the event of late payment. The Default Interest Rate is to be agreed but the market position is 4% above the RBA cash rate.	<i>Clause 6 – Interest</i> Provides that interest will be paid at the Default Interest Rate in the event of late payment, in a similar way to clause 6 of the AFMA Spot ACCU Contract.	<i>Clauses 7 and 8 – Delivery and Acceptance failures and Payments and invoicing</i> Provides that interest will be paid at the Default Rate in the event of late payment.
17.	<i>Clause 8 – Title</i> Title to ACCUs transfers when the units are received into the Buyers registry account.	<i>Clause 9 – Title</i> Title to an ACCU transfer when the units are received into the Buyers registry account (the same as clause 8 of the AFMA Spot ACCU Contract), and is extinguished on the retirement of the ACCU.	<i>See clauses 6 and 11 – Deliveries and Retirement</i> Title to an ACCU transfers when the units are received into the receiving party’s registry account, and is extinguished on the retirement of the ACCU.
18.	<i>Clause 9 – Warranties</i> Contains standard warranties that the Buyer and Seller provide to each other.	<i>Clause 10 – Representations and Warranties</i> Contains more extensive representations and warranties than clause 9 of the AFMA Spot ACCU Contract to reflect the different risks in forward contracts.	<i>Clause 10 – Representations and Warranties and Undertakings</i> This clause contains customary representations and warranties with the ability for the parties to incorporate specific undertakings via completion of the Elections Schedule.
19.	<i>Clause 10 – GST</i> This clause deals with the issuing of invoices and payment of GST.	<i>Clause 12 – GST</i> This clause deals with the issuing of invoices and payment of GST in a similar way clause 10 of the AFMA Spot ACCU Contract.	<i>Clause 12 – Taxes and Duties</i> This clause deals with the treatment of any taxes or fees applicable to a transaction.
20.	<i>Clause 11 – Withholding Tax</i> This clause deals with the treatment of withholding tax.	<i>Clause 13 – Withholding tax</i> This clause deals with the treatment of withholding tax in a similar way to clause 11 of the AFMA Spot ACCU Contract.	<i>See clause 12 – Taxes and Duties</i>



21.		<p><i>Clause 14 – Miscellaneous</i></p> <p>This clause is only included in the forward contract and contains a number of miscellaneous provisions including provisions dealing with notices and excluding liability for consequential loss.</p>	<p><i>Clause 20 – General</i></p> <p>The clause provides a number of boilerplate provisions.</p>
22.	<p><i>Clause 12 – Governing Law and Jurisdiction</i></p> <p>Clause 12 provides that the contract will be governed by the law of the Jurisdiction specified in the Contract Details and that the parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction.</p> <p>Note: the contract does not provide a fallback Jurisdiction if parties fail to nominate one.</p>	<p><i>Clause 15 – Governing Law and Jurisdiction</i></p> <p>This clause contains similar provisions regarding choice of law and forum as clause 12 of the AFMA Spot ACCU Contract.</p> <p>Note: the contract does not provide a fallback Jurisdiction if parties fail to nominate one.</p>	<p><i>Clause 19 – Governing Law and Jurisdiction</i></p> <p>Clause 19 provides that the contract will be governed by courts having jurisdiction in New South Wales unless specified otherwise in the Elections Schedule and that the parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction.</p> <p>Note: the contract does provide a fallback Jurisdiction if parties fail to nominate one NSW law applies.</p>