

Events of Default Operational Procedure

Version : 1.0

Status : FINAL

Date : 02 February 2015

Document Reference : GDAA OP 03

Change History

Version Number	Status	Date of Issue	Reason for Change
0.1	DRAFT	27/09/2013	Initial Draft, issued for PTSC review
1.0	FINAL	02/02/2015	Final Draft

Quality Assurance

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Table of Contents

- 1. INTRODUCTION 4
 - 1.1 Glossary..... 4
 - 1.2 Background..... 4
 - 1.3 Purpose 4
 - 1.4 Scope..... 4
 - 1.5 Associated References..... 5
- 2. What constitutes an Event of Default 6
- 3. Process to determine Events of Default 6
 - 3.1 Overview of the Procedure 6
 - 3.2 Reporting of the Event of Default 6
 - 3.3 Response by the Suspected Party 7
 - 3.4 GDAA Panel consideration of the Event of Default 7
 - 3.5 Notice in case of event that may lead to an Event of Default..... 8
 - 3.6 Consequences of Events of Default 8
 - 3.7 Confidentiality 9
 - 3.8 Event of Default Forms..... 9
- Annex 1: Events of Default Process Map 10
- Annex 2: Event of Default Report Form 11
- Annex 3: Suspected Party Event of Default Notification and Response Form 11
- Annex 4: Event of Default - Panel Report 12
- Annex 5: Events of Default Forms – Detailed Requirements 12

1. INTRODUCTION

1.1 Glossary

Definition	Acronym	Description
Action Plan		Means the rectifications plan submitted to the GDAA Panel via the Panel Secretary as per clause 19.1.1(b)(ii)(aa)
Defaulting Party		As defined in the GDAA.
Event of Default		As defined in the GDAA.
Green Deal Arrangements Agreement (Agreement)	GDAA	Means the agreement of that name required to be maintained pursuant to Standard Condition 38 of the Electricity Supply Licence.
Party		Any party to the GDAA.
Reporting Party		As defined in the GDAA.
Suspected Party		As defined in the GDAA.
Working Day	WD	As defined in the GDAA.

Table 1 – Glossary

1.2 Background

At meeting Panel_14_0926, and in accordance with Clauses 7.6.2 and 7.8 of the GDAA, the GDAA Panel (Panel) initiated the development of an Events of Default Operational Procedure.

1.3 Purpose

Pursuant to Clauses 19 and 20 of the GDAA, this procedure sets out the processes around reporting Event of Default and the related Panel processes in determining the consequences by Panel of such events.

The procedure aims to ensure that the GDAA parties have sufficient detail to meet their obligations under the GDAA. As such, it provides the processes relating to:

- Notifying the GDAA Panel of any alleged Events of Default breaches under clause 19.1.1(a), 19.1.1(b), 19.1.1(c), 19.1.1(d)(i), 19.1.1(d)(ii), 19.1.1(d)(iii), 19.1.1(e), 19.1.1(f), 19.1.1(g), 19.1.1(h)(i) and 19.1.1(h)(ii);
- Providing evidence to GDAA Panel of any Event of Default under clauses 9.1.1(d)(iv), 19.1.1(d)(v), 19.1.1(d)(vi), and 19.1.1(d)(vii);
- Determination of an Event of Default; and
- The consequences of Events of Default;

Each in accordance with the objectives of the Agreement.

Please note that this document is intended to be read in conjunction to the GDAA Clauses 19 and 20.

1.4 Scope

This Operational Procedure sets out the operational processes that shall support the reporting of, determination, possible resolution and consequences of Events of Default pursuant the Agreement.

Version: 1.0
Status: Final

Date: 02 February 2015
Document Reference: GDAA OP 03

Any additional documentation provided to assist parties in the operation of this Operational Procedure is provided for guidance purposes only. If any discrepancy exists, this Operational Procedure shall take precedence.

1.5 Associated References

Guidance notes and forms relating to the operation of this Operational Procedure, and as amended from time to time, are published on the GD ORB website: <http://gdorb.decc.gov.uk>.

2. What constitutes an Event of Default

What constitutes an Event of Default is outlined under clause 19 of the GDAA.

An event of default (Event of Default) shall occur in respect of a party (the Defaulting Party) if any of the conditions listed under clause 19 are met.

Any alleged Event of Default listed under Clause 19 including: clause 19.1.1(a), 19.1.1(b), 19.1.1(c), 19.1.1(d)(i), 19.1.1(d)(ii), 19.1.1(d)(iii), 19.1.1(e), 19.1.1(f), 19.1.1(g), 19.1.1(h)(i) and 19.1.1(h)(ii) will require determination by the GDAA Panel that an Event of Default has occurred following the submission of a notification under Clause 20.1.1 by the Reporting Party. During this period the accused party is referred to as the Suspected Party.

Any event under Clause 19.1.1(d)(iv), 19.1.1(d)(v), 19.1.1(d)(vi), and 19.1.1(d)(vii) constitutes an Event of Default which do not require Panel determination. In essence one of these events has occurred Panel may choose to suspend rights of a Defaulting Party as outlined under the Consequences of Events of Default.

3. Process to determine Events of Default

3.1 Overview of the Procedure

The process to determine if an Event of Default Procedure has occurred is laid out under clause 20.1 of the GDAA. Annex 1 of this document outlines the process map once an Event of Default allegation is reported to the GDAA Panel.

3.2 Reporting of the Event of Default

Event of Defaults are first reported to the Panel Secretary.

3.2.1 Reporting an alleged Event of Default

Any person listed under Clause 20.1.3 may complete an Event of Default Report Form (Annex 2) to report an allegation of an Event of Default and submit evidence to support that allegation.

Persons who may submit an Event of Default allegation include:

- a) Any party to the GDAA (Contract Manager);
- b) Any Panel Member or person who serves on any sub-committee of the Panel (Nominated contact as per Panel Secretary records);
- c) The MRA Executive Committee;
- d) The Service Controller;
- e) The Authority; or
- f) The Secretary of State.

The report shall be submitted to the GDAA Panel Secretary at GDAA@gemserv.com.

3.2.2 Reporting of Event of Default under Clauses 19.1.1(d)(iv), 19.1.1(d)(v), 19.1.1(d)(vi), 19.1.1(d)(vii) and 19.1.1(h)(ii)

If the notification received by the GDAA Panel is in relation to 19.1.1(d)(iv), 19.1.1(d)(v), 19.1.1(d)(vi), and 19.1.1(d)(vii), it can be received from any source by making the Panel Secretary aware of the event. Breaches under Clauses 19.1.1(d)(iv), 19.1.1(d)(v), 19.1.1(d)(vi), 19.1.1(d)(vii) and 19.1.1(h)(ii) do not require the GDAA Panel to determine if an Event of Default has taken place.

3.3 Response by the Suspected Party

If a notification is raised to the GDAA Panel as per Clause 20.1.1, where the Reporting Party reports a breach under Clause 19.1.1 excluding: 19.1.1(d)(iv), 19.1.1(d)(v), 19.1.1(d)(vi), and 19.1.1(d)(vii), the Panel Secretary shall, within two (2) Working Days, send the Suspected Party a notification as per Clause 20.1.2 using the “Suspected Party alleged Event of Default Notification and Response Form” (Annex 3).

The Suspected Party is then allowed a ten (10) Working Day response window where they are encouraged to provide evidence to the contrary of any allegations of Events of Default made against them and provide any other documentation they wish the GDAA Panel to consider when determining if an Event of Default has occurred.

If the party fails to provide the response to the allegations, the GDAA Panel will be considering the alleged Event of Default based on the report provided by the Reporting Party.

3.4 GDAA Panel consideration of the Event of Default

The Panel Secretary will convene an Event of Default meeting (alongside a scheduled meeting or separately) for the GDAA Panel to consider the Event of Default and any consequences of Default, as appropriate. Where an alleged breach has been reported to the Panel Secretary, the Event of default meeting will be convened within twenty (20) Working Days of receiving the notification of an alleged Event of Default. If the required timescales permit, the Event of Default considerations can take place during a scheduled Panel meeting.

The Panel Secretary will provide the allegations by the Reporting Party in a form of an event of Default Report. The GDAA Panel shall make a determination based on the evidence submitted by both the Reporting Party and the Suspected Party (if any submitted).

The Panel determination may include one the following options:

- An Event of Default has occurred;
- An Event of Default has not occurred; or
- An event has occurred that may lead to an Event of Default.

Breaches under Clauses 19.1.1(d)(iv), 19.1.1(d)(v), 19.1.1(d)(vi), 19.1.1(d)(vii) and 19.1.1(h)(ii) do not require the GDAA Panel to determine if an Event of Default has taken place. Upon the GDAA Panel being informed of a breach under 19.1.1(d)(iv), 19.1.1(d)(v), 19.1.1(d)(vi), 19.1.1(d)(vii) and 19.1.1(h)(ii) GDAA Panel may resolve to suspend the Defaulting Party's rights as per Clause 20.2.

3.5 Notice in case of event that may lead to an Event of Default

Where the GDAA Panel determines that an event has occurred that may lead to an Event of Default, the GDAA Panel may decide to serve a Notice to the Suspected Party with regards to the alleged breach in question. The Notice is issued by the Panel Secretary based on the GDAA Panel determination to the Contract Manager of the Suspected Party.

The Suspected Party has 30 Working Days from the date the Notice is issued to put the remedies in place to rectify the breach. Within 30 Working Days, the Suspected Party must confirm in writing to the Panel Secretary that the breach has been rectified and provide evidence as requested in the Notice.

Where breach cannot be rectified within 30 Working Days, within 15 Working days of the Notice being issued, the Suspected Party must submit an Action Plan to the Panel Secretary for the Panel approval. Panel shall approve such plan within five (5) Working Days.

The evidence submitted as part of the allegation of an Event of Default shall be evidence or supporting documentation to clearly demonstrate an Event of Default using the form in annex 2 via email to the Panel Secretary at GDAA@gemserv.com.

3.6 Consequences of Events of Default

Upon determination that an Event of Default (19.1.1(a), 19.1.1(b), 19.1.1(c), 19.1.1(d)(i), 19.1.1(d)(ii), 19.1.1(d)(iii), 19.1.1(e), 19.1.1(f), 19.1.1(g), 19.1.1(h)(i) and 19.1.1(h)(ii)) has occurred or where there has been an Even of Default (19.1.1(d)(iv), 19.1.1(d)(v), 19.1.1(d)(vi), and 19.1.1(d)(vii)) GDAA Panel can suspend the rights of one or more of the following cases (for the duration of the defaulting period):

- to exercise any nomination, voting or appeal rights under Clauses 5;
- to submit Change Proposals under Clause 7.2;
- to raise Operational Issues under Clause 7.6.1; and
- (where the Defaulting Party is a Finance Party):
 - to vote for or against any amendment of or variation to or derogation from a Finance Party Priority Provision (in which case, such Defaulting Party's vote shall not be counted when determining whether the relevant threshold has been obtained for the purposes of Clause 7.1.3); and
 - to request an audit under Clause 14.4.

Where the GDAA Panel has determined that an Event of Default has occurred and where the GDAA Panel has been made aware of an Event of Default, the GDAA Panel shall notify all Interested Persons (GDAA Contract Managers, Secretary of State, Authority and the MRA Executive Committee) of that determination and also of any rights the GDAA Panel may have chosen to suspend as per clause 20.2.1 of that Defaulting Party.

Where the GDAA Panel have resolved to suspend rights of a Defaulting Party, the GDAA Panel may resolve to lift such suspension at any time. The GDAA Panel shall resolve to lift such suspensions when Panel determines that the Event of Default is no longer continuing in respect to that Defaulting Party. Where Panel resolves to lift the suspension then it shall also notify all Interested Persons (GDAA Contract Managers, Secretary of State, Authority and the MRA Executive Committee).

If one of the following events outlined under Clauses: 19.1.1(d)(iv), 19.1.1(d)(v), 19.1.1(d)(vi), 19.1.1(d)(vii) and 19.1.1(h)(ii), then there is no requirement for the GDAA Panel to determine if an Event of Default has occurred. The GDAA Panel can upon being notified of such as event chose to suspend the rights of the Defaulting Party as listed above as this will be an Event of Default (i.e. not alleged).

3.7 Confidentiality

The Notice of an Event of Default Meeting shall only be given to (as per Clause 20.4.4):

- a) each Panel Member
- b) the relevant Suspected Party or Defaulting Party (as applicable);
- c) where applicable, the Reporting Party;
- d) the Secretary of State; and
- e) the Authority

As per Clause 20.4.5 – Notwithstanding Clause 20.4.4, the GDAA Panel may notify any party of any or all of the following matters in respect of an Event of Default Meeting:

- a) a summary of the alleged Event of Default in question;
- b) the identity of the Suspect Party or Defaulting Party (as applicable); and
- c) the identity of the Reporting Party.

Under Clause 20.4.7 if GDAA Panel determines that it is appropriate to do so can circulate copies of the Event of Default Meeting minutes to all parties provided it does not include how Panel members voted.

3.8 Event of Default Forms

Event of Default Report Form

A Reporting Party may submit a completed “Event of Default Report Form” in relation to Clause 19.1.1 excluding 19.1.1(d)(iv), 19.1.1(d)(v), 19.1.1(d)(vi), and 19.1.1(d)(vii). This form requires all fields to be completed prior to it being sent to the GDAA Panel, via the Panel Secretary at GDAA@gemserv.com. Within this Document the Reporting Party shall also provide evidence to support the alleged Event of Default and/ or list any attachments to support their allegation.

The Event of Default Report Form Can be found in Annex 2 of this document.

Suspected Party Event of Default Notification and Response Form

The GDAA Panel is then required to send the allegations to the Suspected Party within two (2) Working Days of receiving the Event of Default Report Form using the “Suspected Party Event of Default Notification and Response Form”. The form includes the evidence submitted to support the alleged Event of Default by the Reporting Party.

The Suspected Party has the opportunity to submit a response, within ten (10) Working Days to the Event of Default evidence using the same form. This form will need to have all fields completed prior to it being sent to it being sent to the GDAA Panel, via GDAA Panel Secretary at GDAA@gemserv.com.

The Suspected Party Event of Default Notification and Response form can be found under Annex 3.

Event of Default Report for the GDAA Panel

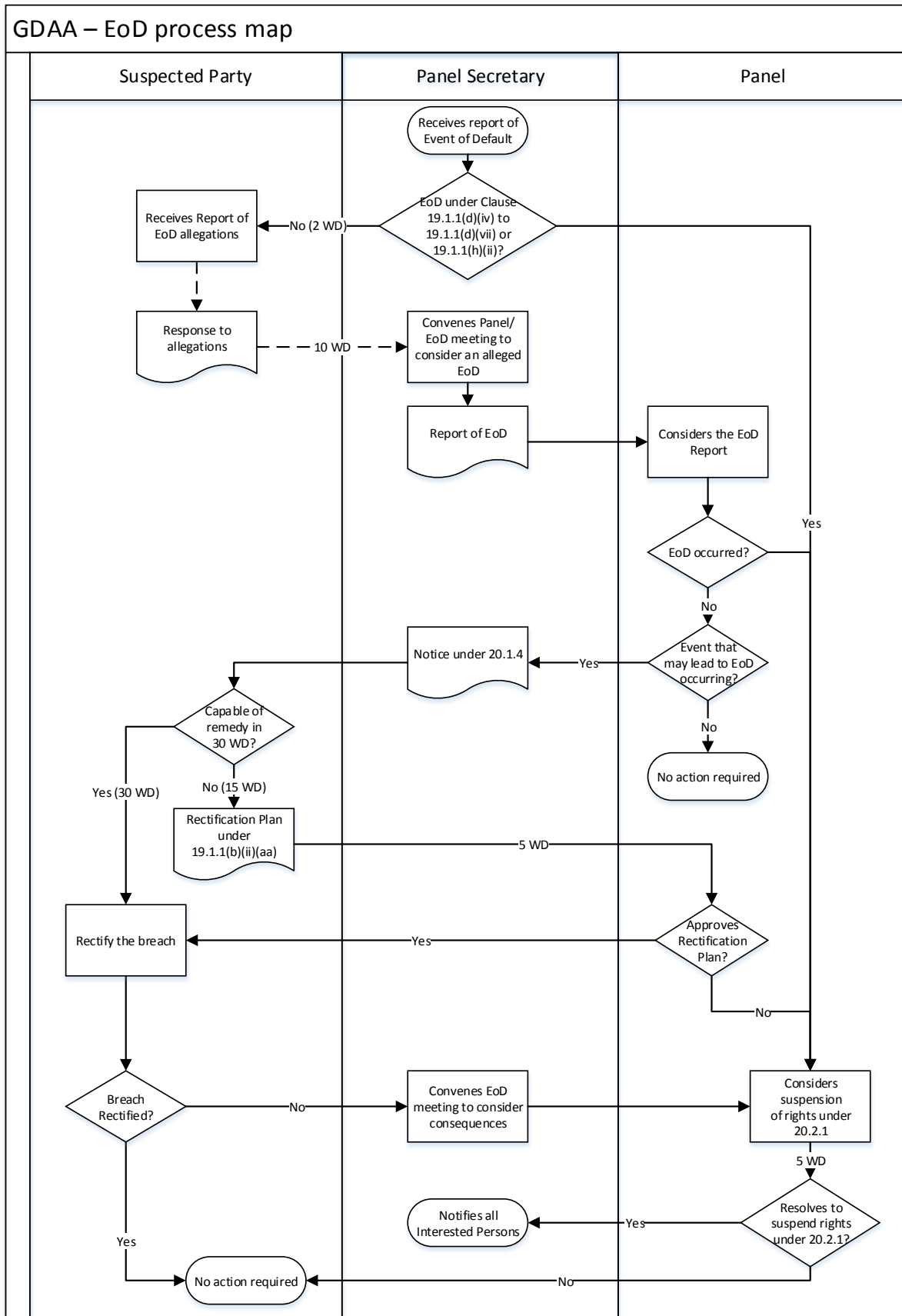
The Panel Secretary shall produce the “Event of Default - Panel Report” to Panel. This will include both the alleged evidence of an Event of Default provided by the Reporting Party and (if submitted within ten (10) Working Days of the notification of the allegation from Panel) the Suspected Party’s response to the allegations.

The Event of Default – Panel Report document template can be found under Annex 4.

Annex 6 of this document provided GDAA parties with details on what information is required to complete each field in the relevant forms in Annexes 2 – 4.

Version:	1.0	Date:	02 February 2015
Status:	Final	Document Reference:	GDAA OP 03

Annex 1: Events of Default Process Map



Annex 2: Event of Default Report Form

Event of Default Report Form			
EoD Reference:		Contract Manager Name:	
Date Raised:		Telephone Number:	
Reporting Party Name:		Email:	
Suspected Event of Default Party Name:		Suspected Event of Default Party Type:	
Evidence to support alleged Event of Default:			
Attachment 1:			
Please return completed form to the Panel Secretary at: GDAA@gemserv.com			

Annex 3: Suspected Party Event of Default Notification and Response Form

Suspected Party Event of Default Notification and Response Form			
EoD Reference:		Date of Notification	
Suspected Event of Default Party Name:		Suspected Event of Default Party Type:	
Evidence to support alleged Event of Default:			
Attachments 1:			
Suspected Party Response to Allegation:			
Attachments 2:			
Please return completed form to the Panel Secretary at: GDAA@gemserv.com			

Annex 4: Event of Default - Panel Report

Event of Default - Panel Report			
EoD Reference:		Contract Manager Name:	
Date Raised:		Telephone Number:	
Reporting Party Name:		Email:	
Suspected Event of Default Party Name:		Suspected Event of Default Party Type:	
Evidence to support alleged Event of Default:			
Attachments 1:			
Suspected Party Response to Allegation:			
Attachments 2:			
Date Reported to Suspected Party:			
GDAAs Panel determination of and EoD decision:			
Date of Notification of Panel Decision:			
Evidence of Remedy:			
Subsequent Panel Decisions:			
Event of Default issue closed date:			

Annex 5: Events of Default Forms – Detailed Requirements.

Field Name	Notes
EoD Reference	This will be assigned by the Panel Secretary and will uniquely identify the alleged Event of Default reported.
Contract Manger Name	All Events of Default reports to Panel shall be sponsored by the Contract Manager of a GDAAs party.
Date Raised	This will be completed by the Panel Secretary (on behalf of Panel) and will be the date on which the Event of Default Report Form was received and accepted by the Panel Secretary as correctly completed.
Telephone Number	This shall be the contact telephone number for the Contract Manager sponsoring the Event of Default Report Form

Version: 1.0
Status: Final

Date: 02 February 2015
Document Reference: GDAAs OP 03

Field Name	Notes
Reporting Party Name	This shall be the company name of the Reporting Party as in the GDAA. Or the name of the Organisation listed under Clause 20.1.3
Email	This shall be the contact email address for the Contract Manager sponsoring the Event of Default Report Form
Suspected Event of Default Party Name	This shall be the company name of the GDAA party suspected of an Event of Default – the Suspected Party
Suspected Event of Default Party Type	This shall be the type of GDAA party suspected of an Event of Default. This can be either a Green Deal Provider, Supplier or Finance Party.
Evidence to support alleged Event of Default	This section shall be used by the Reporting Party for submitting evidence to Support their Event of Default allegation. This evidence will be used as the basis during Panel's determination if an Event of Default has occurred as per Clause 20.1.4
Attachments 1	This section may be used by the Reporting Party to note any attachments that they have submitted as part of their evidence to support the alleged Event of Default. This evidence will be used as the basis during Panel's determination if an Event of Default has occurred as per Clause 20.1.4
Suspected Party Response to Allegation	This section shall be used by the Suspected Party for submitting evidence to disprove any allegations outlined in the "Evidence to support alleged Event of Default" section and any material that the Suspected Party may support their case during Panel's determination of an Event of Default under Clause 20.1.4
Attachments 2	This section may be used by the Suspected Party to note any attachments that they have submitted as part of their evidence to counter the allegations of an Event of Default or any other material that may help Panel's determination if an Event of Default has occurred as pre Clause 20.1.4
Date Reported to Suspected Party	This section shall be completed by the Pane Secretary on behalf of Panel and will note the start of the ten (10) Working Day response to allegations window
GDAA Panel determination of and EoD decision	The determination of the GDAA Panel as per clause 12.1.4 shall be noted here once the decision has taken place.
Date of Notification of Panel Decision	This shall be the date the Suspected Party is informed of Panel's determination of whether an Event of default has taken place.
Evidence of Remedy	This section may contain any additional information submitted to Panel that
Subsequent Panel Decisions	This section shall contain any subsequent decision made by Panel following the determination of the Event of Default
Event of Default issue closed date	This date shall be determined by the GDAA Panel and added upon the closing of this issue.