Template Default Notice

**Introduction**

This Template Default Notice has been published by the International Capital Market Association (“**ICMA**”) to assist a Non-Defaulting Party that wishes to serve written notice on a Defaulting Party in accordance with the Events of Default provisions in the TBMA/ISMA Global Master Repurchase Agreement (2000 Version) (the “**GMRA**”).

Capitalised terms used in these introductory paragraphs and not otherwise defined herein shall have the meaning given to them in the GMRA.

**Responsibility of the Non-Defaulting Party and disclaimer regarding legal advice**

ICMA does not assume any responsibility for any use of this Template Default Notice. The Non-Defaulting Party should ensure that it is satisfied that an Event of Default has occurred and that any default notice based on this Template Default Notice is effective and appropriate, in respect of the relevant Event of Default and the related GMRA. In particular, the Non-Defaulting Party should have regard to the GMRA as negotiated with the Defaulting Party, which may include amendments to the standard Events of Default and Notices provisions. The Non-Defaulting Party should also consider any regulatory or legal constraints which may impact the exercise of its rights with respect to the relevant Event of Default.

The introductory paragraphs to this Template Default Notice, the Template Default Notice itself and the related explanatory footnotes do not constitute legal advice. A Non-Defaulting Party should seek legal advice in any relevant jurisdiction and consult with any other advisor it deems appropriate prior to sending a default notice.

**Circumstances in which this Template Default Notice can be used**

If an event specified in paragraph 10 of the GMRA occurs, then in order for such an event to constitute an Event of Default, the Non-Defaulting Party must serve written notice on the Defaulting Party, and once the written notice is effective this results in immediate acceleration of the Repurchase Date and the close-out of the underlying Repurchase Transaction(s).[[1]](#footnote-1) The only exception to this is where an Act of Insolvency occurs which is the presentation of a petition for winding-up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party. In such circumstances, subject to the provisions which apply if the Event of Default occurs in respect of an Agent as further described below, an Event of Default will occur automatically and therefore the Non-Defaulting Party is not required to serve a default notice on the Defaulting Party.[[2]](#footnote-2)

This Template Default Notice can be used by a Non-Defaulting Party as a basis for drafting any default notice pursuant to paragraph 10 of the GMRA. The ‘catch all’ Event of Default in paragraph 10(a)(x) of the GMRA includes a grace period after written notice has been given before the event can be treated as an Event of Default.[[3]](#footnote-3) In such circumstances, the Non-Defaulting Party will be required to send two notices (i.e. one which starts the grace period, and a Default Notice following the expiry of the grace period declaring the Event of Default). This Template Default Notice is only intended to be a template for a Default Notice and is not intended to be used as a template for any earlier notice which may be required.

This Template Default Notice does not cater for the scenario contemplated in paragraph 14(c) of the GMRA where a party wishes to issue a Special Default Notice, although it could be used as an initial basis for drafting such a Special Default Notice.

This Template Default Notice can also be used in circumstances where Party A or Party B has entered into one or more Transactions as Agent under the GMRA and an Event of Default or an event which would constitute an Event of Default if the other party served written notice under any sub-paragraph of paragraph 10 of the GMRA occurs in relation to the Agent. In such circumstances, the other party will be entitled to declare that by reason of that event, an Event of Default is to be treated as occurring in relation to the Agent’s Principal. In order to do this, the other Party will need to give written notice to the Principal pursuant to paragraph 4(b)(i) of the Agency Annex to declare the Event of Default. This Template Default Notice can be used as a basis for drafting any such notice.

This Template Default Notice does not cover the communication from the Non-Defaulting Party to the Defaulting Party of the amounts due and payable as a result of the Event of Default.

This Template Default Notice is also not intended for use in circumstances where the Seller wishes to terminate and cash settle a Transaction (often referred to as a ‘mini close-out’) as a result of the Buyer’s failure to deliver Equivalent Securities on the applicable Repurchase Date in respect of that specific Transaction, pursuant to paragraph 10(h)(iii) of the GMRA. In these circumstances, please see ICMA’s Template Mini Close-Out Notice.

**Delivery of a default notice**

Parties are reminded that any notice under the GMRA, including any default notice based on this Template Default Notice, should be delivered in accordance with the Notices provision in paragraph 14 of the GMRA and the address for notices provisions in Annex I to the GMRA.

[*Insert address of the Non-Defaulting Party*]

[*Insert addressee details for the Defaulting Party*][[4]](#footnote-4)

Dear Sir/Madam,

**Re: Default Notice under the TBMA/ISMA Global Master Repurchase Agreement (2000 Version) dated [*insert date of GMRA*] between [*insert Defaulting Party’s name*][[5]](#footnote-5) (“Counterparty”) and [*insert Non-Defaulting Party’s name*] (“[Non-Defaulting Party][[6]](#footnote-6)”)**

We refer to the TBMA/ISMA Global Master Repurchase Agreement (2000 Version) dated as of [*insert date of GMRA*] (including the supplemental terms and conditions contained in the Annex I thereto, any Addenda or Annexes attached thereto and any confirmations thereunder), between Counterparty and [Non-Defaulting Party] (the “**GMRA**”). Capitalised terms used in this default notice and not otherwise defined herein shall have the meaning given to them in the GMRA.

As a result of [*describe event that has occurred*] and service of this default notice, an Event of Default [has occurred [and is continuing][[7]](#footnote-7) under paragraph [10][*insert reference to sub-paragraph in the GMRA which contains relevant Event of Default*] of the GMRA in respect of which Counterparty is the Defaulting Party][[8]](#footnote-8)[is to be treated as occurring in relation to the Principal pursuant to paragraph [10][*insert reference to sub-paragraph in the GMRA which contains relevant Event of Default*] of the GMRA in respect of which Counterpartyis the Defaulting Party][[9]](#footnote-9). This default notice constitutes the Default Notice in the GMRA.[[10]](#footnote-10)

Pursuant to paragraph 10 of the GMRA, [Counterparty[ and [Non-Defaulting Party]’s] delivery and payment obligations (and any other obligations we each have under the GMRA) are accelerated so as to require performance thereof at the time the Event of Default referred to above occurs, which is the date on which this default notice is effective in accordance with paragraph 14 of the GMRA[[11]](#footnote-11), such date being the Repurchase Date.

This default notice is without prejudice to (and shall not be deemed to constitute a waiver of) the rights, privileges and remedies of [Non-Defaulting Party] under (a) the GMRA including, without limitation, with respect to any other Event of Default relating to Counterparty which now or in the future may exist under the GMRA or (b) any other agreement between [Non-Defaulting Party] and Counterparty. [Non-Defaulting Party] reserves all of its rights, privileges and remedies (at law or otherwise) against Counterparty.

[In accordance with paragraph 14 of the GMRA, this default notice is being served and delivered by [*insert reference to applicable delivery method by reference to delivery methods specified in paragraph 14 of the GMRA, e.g. courier/in person*] [during normal business hours] and shall be effective [at the time it is served by delivery to Counterparty].][[12]](#footnote-12)

This default notice and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

Yours faithfully,

[*Insert name of entity which is the Non-Defaulting Party*]

By:

Name:

Title:

***[Note: All footnotes (and this drafting note [and the drafting note below]) should be deleted before any default notice based on this Template Default Notice is sent to the Counterparty.]***

1. Except in the case of certain acts of insolvency where default is automatic, the Non-Defaulting Party has the discretion to decide whether the occurrence of an event specified in paragraph 10.1 will be treated as an event of default giving rise to the termination of the GMRA. [↑](#footnote-ref-1)
2. Although no default notice is required in such circumstances, the Non-Defaulting Party may well wish to communicate to the Defaulting Party that it considers such Event of Default to have occurred. This Template Default Notice does not contemplate such a scenario or any such communication and should not be used as the basis for any such communication. [↑](#footnote-ref-2)
3. Paragraph 10(a)(x) of the GMRA which provides that, if the Seller or the Buyer fail to perform any other of its obligations under the GMRA and does not remedy such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure, an Event of Default is capable of occurring if the Non-Defaulting Party then serves written notice (i.e. in the form of a default notice) on the Defaulting Party. [↑](#footnote-ref-3)
4. Refer to the Notices provision in paragraph 14 of the GMRA and paragraph 1(m) of Annex I to the GMRA for the recipient’s notice details.

   If the Defaulting Party has entered into any Transaction(s) as Agent under the GMRA and this notice is being sent by the Non-Defaulting Party as a result of the occurrence of, in relation to the Agent, an Event of Default or an event which would constitute an Event of Default if the Non-Defaulting Party served written notice under paragraph 10 of the GMRA, this notice should be sent to the Principal (though as the Non-Defaulting Party may not have address details for the Principal and the notice will be valid if given in accordance with the Notices provisions in the GMRA, paragraph 4(b)(i) provides that such notice shall be validly given if given to the Agent in accordance with paragraph 14 of the GMRA. The Non-Defaulting Party may wish to send a copy of this notice to the Agent in its capacity as such as well. Refer to the Notices provision in paragraph 14 of the GMRA and paragraph 1(m) of Annex I to the GMRA for the relevant notice details. [↑](#footnote-ref-4)
5. If the Defaulting Party has entered into any Transaction(s) as Agent under the GMRA and this notice is being sent by the Non-Defaulting Party as a result of the occurrence of, in relation to the Agent, an Event of Default or an event which would constitute an Event of Default if the Non-Defaulting Party served written notice under paragraph 10 of the GMRA, reference should be made here to the Principal as opposed to the Agent, such that the Principal is defined as the Counterparty. [↑](#footnote-ref-5)
6. You may wish to include a reference to your institution’s name here instead of “Non-Defaulting Party”. If you do this, every reference to “Non-Defaulting Party” below should be replaced with a reference to your institution’s name as defined here. [↑](#footnote-ref-6)
7. The inclusion of these words is not required under the GMRA but the Non-Defaulting Party may nevertheless wish to include these words. [↑](#footnote-ref-7)
8. Include this wording if the Event of Default (or an event which would constitute an Event of Default once this notice is given) occurs in relation to the Principal or in circumstances where there is no Agent in respect of the relevant GMRA. Delete this wording if the relevant default is in relation to the Agent under the GMRA; in such circumstances the wording which immediately follows this wording should be used instead, as explained in the footnote immediately below. [↑](#footnote-ref-8)
9. Include this wording if the relevant default is in relation to the Agent. If this wording is used, the wording immediately preceding this wording should be deleted, as explained in the immediately preceding footnote. [↑](#footnote-ref-9)
10. If an Act of Insolvency occurs which is the presentation of a petition for winding-up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party, subject to the provisions which apply if the Event of Default occurs in respect of an Agent, an Event of Default will occur automatically and therefore the Non-Defaulting Party is not required to serve a default notice on the Defaulting Party. Although no default notice is required in such circumstances, the Non-Defaulting Party may well wish to communicate to the Defaulting Party that it considers such Event of Default to have occurred. This Template Default Notice does not contemplate such a scenario or any such communication and should not be used as the basis for any such communication. [↑](#footnote-ref-10)
11. If the party sending this notice is certain of the date on which the notice will be effective pursuant to paragraph 14 of the GMRA (this will likely depend on the delivery method chosen), it could include a reference to the specific date in brackets here (although this is not required under the GMRA). [↑](#footnote-ref-11)
12. If Non-Defaulting Party wants to include such a paragraph, it should be adapted to align with the relevant delivery method used. If courier or in person delivery is used and delivery takes place during normal business hours, the wording suggested can be used. However, if delivery is by fax, certified or registered mail or electronic messaging system, for example, or if delivery takes place outside normal business hours (including where delivery does not take place on a Business Day), the wording should be adjusted by reference to paragraph 14 of the GMRA and with particular regard to when such a notice would be effective pursuant to paragraph 14 of the GMRA. [↑](#footnote-ref-12)