

Dynamic Moderation Auction Rules

Author: Market Operation
National Grid Electricity System Operator Limited
Faraday House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

Version: 1.0

Effective From: []

Date Published: []

Website <https://www.nationalgrideso.com>

Contents

1.	Introduction	3
2.	Changes to these DM Auction Rules	3
3.	Defined Terms	3
4.	DM Procurement Documents	3
5.	Registration	3
6.	DM Buy Orders	4
7.	DM Sell Orders	5
8.	Market Clearing Rules	6
9.	Warranties and Undertakings	7
10.	Daily Auction Reports	8
11.	Formation of DM Response Contracts	8
12.	Confidentiality	9
13.	Exceptional Circumstances	9
14.	Use of Designated Auction Platform	9
15.	Accuracy of Information	9
16.	Intellectual Property	10
17.	Viruses	10
18.	Costs	11
19.	Site Export and Import Limits	11
20.	Notices	11
21.	Dispute Resolution	11
22.	Governing Law and Jurisdiction	11

1. Introduction

- 1.1 These **DM Auction Rules** describe the daily auction process by which **NGESO** will procure **Dynamic Moderation** from prospective **Service Providers** during one or more **EFA Blocks** in a **DM Service Day**. Only if a **DM Sell Order** for an **EFA Block** submitted pursuant to this process is accepted (or part accepted) by **NGESO** (or where the context otherwise requires) will the **DM Service Terms** apply with respect to the provision of and payment for **Dynamic Moderation** in relation to that **EFA Block** and the **Response Unit** in question.
- 1.2 These **DM Auction Rules** supplement, and should be read alongside, the **DM Participation Guidance Document**.

2. Changes to these DM Auction Rules

- 2.1 Subject always to paragraph 2.2, **NGESO** may update these **DM Auction Rules** from time to time by publication of an updated version on its website, and each such updated version shall be effective from the date shown on its front cover.
- 2.2 To the extent required by the **Electricity Balancing Guidelines** (and by reference to those provisions of the **DM Procurement Documents** constituting terms and conditions approved by the **Authority** as the terms and conditions related to balancing pursuant to Article 18 of the **Electricity Balancing Guidelines**), any variation to these **DM Auction Rules** will be proposed and implemented in accordance with the applicable requirements in the **Electricity Balancing Guidelines**.

3. Defined Terms

- 3.1 Unless the context otherwise requires, any capitalised terms used in these **DM Auction Rules** shall have the meaning given to it (if any) in the prevailing **DM Service Glossary**.
- 3.2 Unless defined in the **DM Service Glossary** or the context otherwise requires, any capitalised terms used in these **DM Auction Rules** shall have the meaning given to it (if any) in the prevailing **Balancing Services Glossary of General Terms and Rules of Interpretation**, and the rules of interpretation set out in that document shall also apply.
- 3.3 For the purposes of paragraphs 3.1 and 3.2, with respect to any **DM Sell Order**, “prevailing” shall mean the latest version of the applicable document which is in effect at the time of submission of that **DM Sell Order**.

4. DM Procurement Documents

- 4.1 Together with these **DM Auction Rules**, the following documents (each as amended or updated from time to time) shall comprise the **DM Procurement Documents**:-
- (a) the **DM Testing Documents**;
 - (b) the **DM Service Terms**;
 - (c) the **DM Service Glossary**;
 - (d) the **Balancing Services Glossary of General Terms and Rules of Interpretation**;
 - (e) the **Common Flexibility Service Terms and Conditions** to the extent that any of its provisions are incorporated by any of the other **DM Procurement Documents** into such documents; and
 - (f) such other document(s) as **NGESO** may designate from time to time as comprising a part of the **DM Procurement Documents**.

5. Registration

- 5.1 No entity may submit a **DM Sell Order** unless and until **NGESO** has confirmed in accordance with the **DM Participation Guidance Document** that it is a **Registered DM Participant**, and for such purpose (and

unless otherwise specified by **NGESO** in the **DM Participation Guidance Document**) the required information must be submitted by the date and in the manner specified in the **DM Participation Guidance Document**.

- 5.2** Where **NGESO** determines (acting reasonably) that any details provided, including confirmations and declarations given, by a **Registered DM Participant** pursuant to the **DM Participation Guidance** are no longer true and/or accurate, then **NGESO** may (but shall not be obliged to) de-register the relevant entity as **Registered DM Participant** and/or **Registered Service Provider** (as the case may be). Such de-registration shall be notified by **NGESO** to the **Registered DM Participant** by email, whereupon no further **DM Sell Orders** may be submitted by that entity unless and until it is re-registered in accordance with the **DM Participation Guidance Document**.
- 5.3** Subject always to paragraph 5.6, a **DM Sell Order** may only be submitted by a **Registered DM Participant** in respect of **Plant** and **Apparatus** where:-
- 5.3.1** such **Plant** and **Apparatus** has been pre-qualified by **NGESO** as an **Eligible Asset** pursuant to the **Testing Documents**; and
- 5.3.2** such **Eligible Asset** has been allocated to a **Response Unit** with a **Registered Quantity**,
in each case, in accordance with the **DM Participation Guidance Document**.
- 5.4** For the purposes of paragraph 5.3:-
- 5.4.1** **Plant** and **Apparatus** must be notified by the **Registered DM Participant** to **NGESO** for pre-qualification as an **Eligible Asset**; and
- 5.4.2** an **Eligible Asset** must be allocated by the **Registered DM Participant** to a **Response Unit**,
in each case by the respective date and time specified in the **DM Participation Guidance Document**.
- 5.5** Where **NGESO** determines (acting reasonably), having regard to declarations of unavailability notified by the **Registered DM Participant** pursuant to the **DM Service Terms** or otherwise, that any **Eligible Asset** is no longer capable of providing its **Registered Quantity**, then **NGESO** shall so notify the **Registered DM Participant** whereupon the **Eligible Asset** shall be ineligible for allocation to any **Response Unit** until such time as it is pre-qualified by **NGESO** once more in accordance with the **Testing Documents**.
- 5.6** **NGESO** may determine (at its sole discretion) that a **Registered DM Participant** may not submit a **DM Sell Order** with respect to any **Response Unit** if that **Response Unit** is comprised of one or more **Eligible Assets** whose location would mean delivery of **Dynamic Moderation** would compromise operational security.
- 5.7** It is a further pre-condition to participation in the **DM** procurement process that, in respect of each **Response Unit** and for the duration of each relevant **EFA Block** the subject of a **DM Sell Order**, the **Service Provider** shall have procured that for the purposes of the **ABSVD Methodology Statement** and by exercise (or not) of any opt-out conferred on it (or on the **Lead Party** of all relevant **BM Units**), all and any energy volumes associated with the delivery of **Response** pursuant to any **DM Response Contract** will be included within the **Applicable Balancing Services Volume Data** if the **Response Unit** is **BM Participating**, otherwise will not be so included.
- 6. DM Buy Orders**
- 6.1** **DM Buy Orders** for any **EFA Block** may be submitted (and updated) by **NGESO** at any time prior to the **Auction Closing Time** (or later as provided in clause 6.4).
- 6.2** Each **DM Buy Order** shall be for a single **DM Product** and **EFA Block**, and for that **EFA Block** shall indicate **NGESO's** requirement (in MW) for that **DM Product** (which for the avoidance of doubt may be zero (0) MW) and a **Buy Order Price Limit**.
- 6.3** **DM Buy Orders** shall not be visible to **Registered DM Participants** on the **Designated Auction Platform** until publication in the **Daily Auction Report** pursuant to paragraph 11.

- 6.4 A **DM Buy Order** shall not be capable of being changed by **NGESO** after the **Auction Closing Time**, save in exceptional circumstances where, in **NGESO**'s reasonable opinion and having regard to market activity, there is a need to protect the integrity of the **Auctions**.
7. **DM Sell Orders**
- 7.1 **DM Sell Orders** for any **EFA Block** may be submitted by **Registered DM Participants** at any time after the **Auction Opening Time** and before the **Auction Closing Time**.
- 7.2 **DM Sell Orders** received after the **Auction Closing Time** shall be considered null and void regardless of cause unless otherwise decided by **NGESO** at its sole discretion.
- 7.3 Each **DM Sell Order** shall relate to a single **Response Unit**, **DM Product** and **EFA Block**, and in relation to any **Response Unit**:-
- 7.3.1 a **Registered DM Participant** may not submit multiple **DM Sell Orders** for the same **EFA Block** and **DM Product**; and
- 7.3.2 subject always to paragraph 7.3.1, a **Registered DM Participant** may submit **DM Sell Orders** for different **DM Products** (ie DM-L and DM-H) in respect of the same **EFA Block**.
- 7.4 To be valid, each **DM Sell Order** will need to be fully completed and correct as at the relevant **Auction Closing Time**, and must include (in the correct format as specified from time to time by the **Auction Administrator**):-
- 7.4.1 the name of the **Registered DM Participant** and its unique "order ID" allocated to it by the **Auction Administrator**;
- 7.4.2 the **Response Unit** (by reference to its "portfolio name" allocated to it as either BMU ID or Non-BM Unit ID);
- 7.4.3 the applicable **DM Product**;
- 7.4.4 the applicable **EFA Block**;
- 7.4.5 a "block code" indicating whether the **DM Sell Order** is a **Parent Block** (C01) or a **Child Block** (C02);
- 7.4.6 a price (in £/MW/h, where the applicable pound and pence figures shall each be an integer); and
- 7.4.7 the offered **Contracted Quantity** (in MW), which shall be an integer not less than one (1) MW and shall not exceed any maximum limit which may be specified from time to time by **NGESO**, and which shall not in any event exceed the aggregate **Registered Quantity** of each component **Eligible Asset**.
- 7.5 Accordingly, and for the avoidance of doubt, it is possible for a **Registered DM Participant** to submit, for any **EFA Day** and **DM Product**, between one (1) and six (6) separate **DM Sell Orders** for each **Response Unit**.
- 7.6 All **DM Sell Orders** which are **Parent Blocks** or **Child Blocks** shall comply with the following requirements:-
- 7.6.1 a **Parent Block** may have more than one (1) **Child Block** across multiple **EFA Blocks** but only one (1) **Child Block** per **EFA Block**;
- 7.6.2 a **Parent Block** shall not be **Curtable**;
- 7.6.3 all **Child Blocks** shall be **Curtable**;
- 7.6.4 all **Child Blocks** must comprise:-
- (g) the same **EFA Block** as its **Parent Block**; and/or
 - (h) the immediately preceding **EFA Block** (if within the same **EFA Day**); and/or

- (i) the immediately succeeding **EFA Block** (if within the same **EFA Day**);

7.6.5 a **Child Block** and its **Parent Block** must relate to the same **DM Product** and **Response Unit**.

7.7 Where, in relation to any **Response Unit**, any **DM Sell Order** is submitted for an **EFA Block** and **DM Product** which are the subject of a valid **DM Sell Order** previously submitted for that **Response Unit**, then the earlier **DM Sell Order** shall be treated as cancelled.

7.8 Validation of **DM Sell Orders** will be undertaken automatically at the time of submission (before operation of the **Auction** algorithm), and without prejudice to paragraph 7.13 all submitted **DM Sell Orders** so validated remain valid unless and until:-

7.8.1 the **DM Sell Order** is cancelled by the **Registered DM Participant** that submitted it (including in the manner described in paragraph 7.7);

7.8.2 the **Registered DM Participant** modifies it (and, in such case, paragraph 7.7 shall apply); or

7.8.3 the **DM Sell Order** is either accepted (including part accepted) or rejected in accordance with the **Market Clearing Rules** (whereupon it expires).

7.9 Each **Registered DM Participant** is responsible for ensuring that the **DM Sell Orders** it submits are correct and valid.

7.10 Subject always to paragraph 7.11, upon becoming aware of any error in a **DM Sell Order**, the **Registered DM Participant** shall modify the **DM Sell Order** where possible otherwise shall notify **NGESO** immediately, provided that in such event there shall be no obligation on **NGESO** to take any steps to avoid or mitigate any potential losses to the **Registered DM Participant**.

7.11 After the **Auction Closing Time**, **DM Sell Orders** may not be modified or cancelled by the **Registered DM Participant** and are binding and irrevocable subject always to paragraph 6.8.

7.12 **DM Sell Orders** submitted by **Registered DM Participants** for each **EFA Block** and **DM Product** shall not be visible to other **Registered DM Participants** on the **Designated Auction Platform** until publication in the **Daily Auction Report** in the manner described in paragraph 10.

7.13 If, in the sole judgment of **NGESO** or the **Auction Administrator**, a **Registered DM Participant** has failed to submit a correct and valid **DM Sell Order**, **NGESO** or the **Auction Administrator** reserves the right to:-

7.13.1 deem that accept that **DM Sell Order** to be valid and correct; or

7.13.2 cancel that **DM Sell Order**; and/or

7.13.3 take any other action as it deems appropriate in the circumstances including requesting the **Registered DM Participant** to resubmit and/or amend the **DM Sell Order** so that it is correct and valid.

7.14 The decision of **NGESO** or the **Auction Administrator** as to whether or not a **DM Sell Order** is correct and valid shall be final, and the **Registered DM Participant** may be notified of such decision without prior consultation or explanation.

8. Market Clearing Rules

8.1 After the **Auction Closing Time**, and for each **EFA Block** and **DM Product**, the **Auction** algorithm will optimise the matching of all valid **DM Sell Orders** to the **DM Buy Order** through the acceptance (or partial acceptance) of **DM Sell Orders**, to determine a **Market Clearing Price** for that **EFA Block** and **DM Product**, all as more particularly described or referred to in this paragraph 8 and in the **DM Participation Guidance Document**.

8.2 For a given **EFA Block** and **DM Product**, the **Auction** algorithm will accept (or partially accept) **DM Sell Orders** in accordance with the following rules:-

- 8.2.1** **DM Sell Orders** for a single **EFA Block** and **DM Product** will be accepted in ascending price order wherever possible;
- 8.2.2** where a **DM Sell Order** is not **Curtable**:-
- (a) if **in the money**, it can be either fully rejected (**paradoxically rejected**) or fully accepted;
 - (b) if **at the money**, it can be either fully rejected, fully accepted or
 - (c) if **out of the money**, it can only be fully rejected;
- 8.2.3** where a **DM Sell Order** is a **Parent** or **Child Block**:-
- (a) a **Child Block at the money** can be partly accepted;
 - (b) a **Child Block** cannot be accepted if its **Parent Block** is rejected; and
 - (c) a **Parent Block out of the money** can be accepted if its **Child Block(s)** once accepted provides sufficient **surplus** to compensate;
- 8.2.4** for any single **Response Unit** and **EFA Day**, the **Auction** algorithm may allow linking of a **DM Sell Order** to that for another **Balancing Services** product on the **Designated Auction Platform** provided they relate to different **EFA Blocks** in that **EFA Day**, and in any such case that **DM Sell Order** may accordingly be rejected notwithstanding it is **in the money** or accepted notwithstanding it is **out of the money**; and
- 8.2.5** for the purposes of this paragraph 8.2, in relation to any **DM Sell Order**:-
- (a) **in the money** means the average of the rounded **Market Clearing Prices** over the relevant hours and weighted by the corresponding accepted volume is higher than the price limit of that **DM Sell Order**;
 - (b) **at the money** means the average of the rounded **Market Clearing Prices** over the relevant hours and weighted by the corresponding accepted volume is equal to the price limit of that **DM Sell Order**;
 - (c) **out of the money** means the average of the rounded **Market Clearing Prices** over the relevant hours and weighted by the corresponding accepted volume is less than the price limit of that **DM Sell Order**;
 - (d) **paradoxically rejected** means, due to **DM Sell Order** acceptance constraints (where not **Curtable**), that **DM Sell Order** can be rejected even if its price limit is less than the **Market Clearing Price**; and;
 - (e) **surplus** in relation to a **DM Sell Order (Child or Parent)** means the sum over the relevant **EFA Block** over which the **DM Sell Order** is defined, of the difference between the **Market Clearing Price** less the price limit of that **DM Sell Order**, multiplied by the accepted volume of that **DM Sell Order**, and a requirement for a sufficient compensatory surplus to allow acceptance of a **Parent Block out the money** shall mean that the surplus of the relevant **Child Block(s)** exceeds the difference between price limit of the **Parent Block** less the **Market Clearing Price**, multiplied by the accepted volume of that **Parent Block**.
- 8.3** Each **DM Sell Order** for an **EFA Block** accepted (or part accepted) in accordance with the market clearing process described in this paragraph 8 in relation to a **DM Product** shall form a **DM Response Contract** for that **Response Unit**, **EFA Block** and **DM Product** as more particularly provided in paragraph 11.
- 9. Warranties and Undertakings**
- 9.1** Without prejudice to its other obligations under and/or pursuant to the **DM Procurement Documents** and any **DM Response Contract**:-

- 9.1.1** NGESO and each **Registered DM Participant** warrants and undertakes to the other in the manner set out in paragraph 6.1 of the prevailing **Common Flexibility Service Terms and Conditions** as if set out in full herein; and
- 9.1.2** on each occasion it submits a **DM Sell Order**, the **Registered DM Participant** warrants and undertakes to **NGESO** in the manner set out in paragraph 6.2 of the prevailing **Common Flexibility Service Terms and Conditions** as if set out in full herein.
- 9.2** Without prejudice to any other right or remedy, **NGESO** and the **Registered Reserve Participant** shall each be entitled to claim damages from the other for any breach of the warranties and undertakings or any of them set out or referred to in this paragraph 9.
- 9.3** Each **Registered DM Participant** indemnifies **NGESO** from and against any losses, liabilities, claims, expenses and demands which **NGESO** might suffer as a result of the **Registered DM Participant** being in breach of the warranties and undertakings or any of them set out or referred to in paragraph 9.1.
- 10. Daily Auction Reports**
- 10.1** By such time following the **Auction Results Time** as may be specified in the **DM Participation Guidance Document**, **NGESO** shall publish (and may subsequently revise) the **Daily Auction Report**.
- 10.2** Each **Daily Auction Report** may (at **NGESO**'s sole discretion) include in relation to each **DM Product** and **EFA Block**:
- 10.2.1** for each **DM Sell Order**, the information contained in paragraph 7.4, together with the location of each relevant **Eligible Asset** (whether or not the subject of an accepted **DM Sell Order**);
- 10.2.2** the **DM Buy Order** requirement;
- 10.2.3** the **Market Clearing Price**;
- 10.2.4** the **Auction Clearing Quantity**; and
- 10.2.5** in relation to each accepted **DM Sell Order**, the quantity of the **DM Product** the subject of a **DM Response Contract**.
- 11. Formation of DM Response Contracts**
- 11.1** The **Auction Administrator** shall publish the outcome of each **Auction** by no later than the **Auction Results Time** and such information shall also be published by **NGESO** in the timeline and manner set out in the **DM Participation Guidance Document**. Insofar as **NGESO**'s publication confirms the acceptance (or partial acceptance where applicable) of a **DM Sell Order**, a **DM Response Contract** will be formed automatically and simultaneously with such publication and for the purposes of paragraph 11.2 shall be treated as awarded to the relevant **Registered DM Participant**.
- 11.2** Each **Registered DM Participant** awarded a **DM Response Contract** pursuant to paragraph 11.1 shall provide the relevant **DM Product** from the applicable **Response Unit** during the applicable **EFA Block** pursuant to and in accordance with the **DM Service Terms**.
- 11.3** For the avoidance of doubt, for any **Registered DM Participant** with a **Response Unit** the subject of one or more accepted (or part accepted) **DM Sell Orders** in a **DM Service Day**, there shall be a separate **DM Response Contract** formed in respect of that **Response Unit** for each **EFA Block** and **DM Product**.
- 11.4** Each **DM Response Contract** shall be personal to **NGESO** and the **Registered DM Participant** and neither **Party** shall assign, transfer, mortgage, charge, sub-contract or deal in any other manner with any or all of its rights and obligations under a **DM Response Contract** except as permitted by the **DM Service Terms** or in accordance with paragraph 21 of the prevailing **Common Flexibility Service Terms and Conditions** as if such provision was set out in full herein.

12. Confidentiality

- 12.1 Subject always to paragraphs 12.2 and 12.3, the provisions of paragraph 13 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply to all and any information provided by **NGESO** or any **Registered DM Participant** to the other (whether orally or in writing) pursuant to or in connection with these **DM Auction Rules** as if set out in full herein.
- 12.2 Each **Registered DM Participant** agrees to the publication by **NGESO** of the information contained in the **Daily Auction Reports**, including in a non-anonymised form, insofar as relating directly or indirectly to the **Registered DM Participant** and the relevant **Response Unit**.
- 12.3 Without limiting paragraph 12.2, each **Registered DM Participant** also agrees to the disclosure by **NGESO** to the relevant **Public Distribution System Operator** of information related to any **DM Sell Order** (whether or not accepted) insofar as relevant to the management and operation of its **Distribution System**, including without limitation location of each **Eligible Asset** allocated to the relevant **Response Unit** and its MPAN and technology type, **DM Product Type** and the **Contracted Quantity**.

13. Exceptional Circumstances

- 13.1 If an exceptional situation arises, in particular if a system or the information needed to operate an **Auction** is unavailable or if an incident prevents an **Auction** from being held in normal circumstances, then **NGESO** may take any or all of the following measures (at its sole discretion):
- 12.1.1. modify any or all of the **Auction Opening Time**, **Auction Closing Time** or **Auction Results Time**;
 - 12.1.2. authorise **Registered DM Participants** to submit new **DM Sell Orders** or modify existing **DM Sell Orders**;
 - 12.1.3. authorise **Registered DM Participants** to submit **DM Sell Orders** otherwise than in accordance with paragraph **Error! Reference source not found.**;
 - 12.1.4. cancel the **Auction** for any one or more **DM Service Days**; and/or
 - 12.1.5. take such other actions or steps as it reasonably considers to be necessary.

14. Use of Designated Auction Platform

- 14.1 Insofar as made available as part of the **Auctions**, each **Registered DM Participant** agrees to use the **Designated Auction Platform** (including all and any associated hardware and software IT and telecommunications equipment and transmission media):-
- 14.1.1 in compliance with all applicable **Law**;
 - 14.1.2 in compliance with all and any technical specifications provided from time to time by or on behalf of **NGESO** or the **Auction Administrator**; and
 - 14.1.3 solely for the purpose of formation of **DM Response Contracts** (and any other contracts for **Balancing Services** from time to time procured by **NGESO** on the **Designated Auction Platform**,
- and any other use is strictly prohibited.

15. Accuracy of Information

- 15.1 All and any information provided by **NGESO** to **Registered DM Participants** for the purposes of these **DM Auction Rules** including in each **Daily Auction Report** is provided in good faith, but no representation or warranty is given by **NGESO** (or any of its employees, officers agents or advisers) as to the accuracy or completeness of such information.

16. Intellectual Property

- 16.1 **NGESO** and each **Registered DM Participant** retain ownership of the documents, data and information of any kind (including all intellectual property rights in them) that are provided to the other pursuant to these **DM Auction Rules**.
- 16.2 Each **Registered DM Participant** undertakes to **NGESO** that it will at all times when participating in an **Auction**, hold all and any authorisations and/or property rights and/or licences for all of the configurations, interfaces, firmware and software needed by it for it to participate in the applicable **Auction** through the **Designated Auction Platform**.
- 16.3 Each **Registered DM Participant** shall comply (and use reasonable endeavours to ensure that its staff and other representatives comply) with all applicable user licences and terms of use of which the **Registered DM Participant** is aware governing use by the **Registered DM Participant** of the systems or software applications comprised in the **Designated Auction Platform**.
- 16.4 Each **Registered DM Participant** indemnifies and keeps indemnified **NGESO** from and against any claims from a third party relating to an infringement of that third party's intellectual property rights or other property rights arising out of use by the **Registered DM Participant** of the **Designated Auction Platform** in breach of any user licence or terms of use referred to in paragraph 16.3 of which it is aware.
- 16.5 **NGESO** shall procure such third-party intellectual property authorisations as may be necessary to enable the **Registered DM Participant** to use the **Designated Auction Platform** for the purposes of each **Auction**.
- 16.6 **NGESO** shall indemnify and keep indemnified the **Registered DM Participant** from and against any claims from a third party if and to the extent that the use of the **Designated Auction Platform** by such **Registered DM Participant** for the purposes of a **DM Sell Order** infringes a third party's intellectual property rights or other property rights.
- 16.7 In respect of the indemnities given in paragraphs 16.4 and 16.6 the indemnified party shall:
- 16.7.1 notify the indemnifying party as soon as possible of any claim the subject of the indemnity (in this paragraph 16, "**IPR Claim**");
- 16.7.2 give the indemnifying party control of the **IPR Claim**;
- 16.7.3 make no admissions in respect of an **IPR Claim** without prior written consent of the indemnifying party; and
- 16.7.4 provide such support in respect of the **IPR Claim** as the indemnifying party may reasonably require at the cost of the indemnifying party.

17. Viruses

- 17.1 Each **Registered DM Participant** shall, prior to uploading any information to the **Designated Auction Platform** or otherwise interfacing with it, use up to date versions of anti-virus software available from an industry accepted anti-virus software vendor to check for and delete from its systems viruses, trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programmes or similar computer code designed adversely to affect the operation of any computer software or hardware (in this paragraph 17, "**Malicious Software**").
- 17.2 If, notwithstanding the provisions of paragraph 17.1, **Malicious Software** is found on the **Designated Auction Platform**, the **Registered DM Participant** shall co-operate with **NGESO** to reduce the effect of the **Malicious Software** and, particularly if **Malicious Software** causes loss of operational efficiency to the **Designated Auction Platform**, assist **NGESO** to mitigate any losses and restore the **Designated Auction Platform** to its original operating efficiency.

18. Costs

- 18.1 For the avoidance of doubt, each **Registered DM Participant** shall remain responsible for all costs and expenses incurred by it in connection with these **DM Auction Rules** and participation in **Auctions** including all costs of preparing and submitting **DM Sell Orders**.

19. Site Export and Import Limits

- 19.1 Each **Registered DM Participant** shall, prior to submitting a **DM Sell Order**, ensure sufficient export and/or import capacity at the premises at which each relevant **Eligible Asset** is situated (including where applicable **Transmission Entry Capacity** (and, if relevant, the **STTEC**)) so as to enable it to provide **Dynamic Moderation** during each and every applicable **EFA Block** in accordance with its obligations under the **DM Response Contract** which may be formed in relation thereto and in conformance with its obligations owed to the owner of the relevant part of the **National Electricity Transmission System** or the relevant **Distribution System** or such other network (as applicable).

20. Notices

- 20.1 Save to the extent the manner of communication between **NGESO** and **Registered DM Participants** is stipulated in the **DM Participation Guidance Document**, paragraph 17 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein to any notice required to be submitted under these **DM Auction Rules** by either **NGESO** or the **Registered DM Participant** to the other.
- 20.2 For the purposes of paragraph 20.1, the relevant contact details and addresses of each **Party** shall be those notified from time to time by that **Party** to the other pursuant to the **Registration Procedure**.

21. Dispute Resolution

- 21.1 The provisions of paragraph 18 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply in relation to any dispute or difference of whatever nature however arising under, out of, or in connection with these **DM Auction Rules** as if set out in full herein, save that:-
- 21.1.1 no **Party** shall have any right to refer any dispute to an **Expert** for determination except where the dispute is stated in these **DM Auction Rules** to be referable to an **Expert** for determination or otherwise agreed in writing by the **Parties** to be so referable; and
- 21.1.2 where any dispute is referred to arbitration, the Electricity Arbitration Association arbitration rules shall apply unless otherwise agreed in writing by the **Parties** (and paragraph 18 of the prevailing **Common Flexibility Service Terms and Conditions** shall be read and construed accordingly).

22. Governing Law and Jurisdiction

- 22.1 Any claim, dispute or matter (whether contractual or non-contractual) arising under or in connection with these **DM Auction Rules** or their enforceability shall be governed by and construed in accordance with the laws of England and Wales.
- 22.2 **NGESO** and each **Registered DM Participant** submits to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or matter arising under or in connection with these **DM Auction Rules** or their enforceability and waives any objection to proceedings being brought in such courts or on the grounds that proceedings have been brought in an inconvenient forum.