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Appendix A - Terms of Service

DEFINITIONS

- 1.1 "The Additional Charges" means any charges for services requested by the Client or arising under the terms of this Agreement other than the Charges.
- 1.2 "The Agreement" means an Agreement subject to this document, signed on behalf of both the Supplier and the Client, including these general terms of service and any document brought within the terms of this document.
- 1.3 "The Charges" means the charges for the Services, as specified in a Services and Payment Schedule, as amended from time to time under Clause 3 below.
- 1.4 "Collocated Equipment" means equipment, owned by the Client and hosted in one of the Supplier's data centres on behalf of the Client and subject to Clause 6.
- 1.5 "The Contract" means the contract formed by persons on behalf of the Client and the Supplier signing an Agreement subject to this document as amended from time to time by the inclusion of additional Services and Payment Schedules.
- 1.6 "The Client's Data" means all and any information, data, computer files or other material supplied by the Client from time to time to the Supplier.
- 1.7 "Client Property" means all equipment (including any data and programs stored on the equipment) and other chattels kept on the Supplier's premises by the Client or persons using the Services under a hosting or reseller agreement with the Client.
- 1.8 "Contracted Amps" means the Quantity of Electronic Amperes (measured at the Supply Line Voltage) for which the Supplier has agreed with the Customer the Footprint can supply and for which the Client will be liable for paying on a basis as defined in the Billing Period; regardless if used.
- 1.9 "Colocation Services" means those services as defined in the SPS and pursuant to clause 2 of this document; limited to the Suppliers facilitation of the Clients hardware.
- 1.10 "Data Controller" means as defined by Data Protection law.
- 1.11 "Confidential Information" means all and any business and technical information whether it is received, accessed or viewed which can reasonably be considered to cause an effect to the other if realised or made available outside of the context to which it was originally disclosed.
- 1.12 "Consumed Amps" means the Electronic Amperes (measured and calculated at the Supply Line Voltage) which have been used during one Billing Period. Calculated using a 99th percentile of 5 minute polling during the billing period.
- 1.13 "The Deliverables" means any software, documentation or other materials provided to the Client by the Supplier under an Agreement subject to this document in connection with or to enable the provision of the Services.
- 1.14 "Due Date" means the date that is specified for payment of invoices for Charges or Additional Charges in a Services and Payment Schedule.
- 1.15 "Data Processor" means as defined by Data Protection law.
- 1.16 "Data Subject" means as defined by Data Protection law.
- 1.17 "Data Protection Laws" means Data Protection legislation, which is applicable or relevant during the initial period and any renewal period of an Agreement that is subject to this document. This includes but is not limited to; Data Protection Act 1998, the General Data Protection Regulations (EU 2016/679 ("GDPR") as of 25th May 2018 and any subsequent law that supersedes or replaces GDPR in the UK or which applies to the operation of the GDPR; which may include the Data Protection Act 2017.

- 1.18 "Group" means those companies that are subsidiaries (either directly or otherwise) of the same ultimate holding company and the ultimate holding company itself. "Company", "subsidiary" and "holding company" have the same meaning in this document and any bound Agreement as in Section 1159, Companies Act 2006.
- 1.19 "The Initial Period" is the period starting from the date of the Request For Services ("RFS") specified in the Services and Payment Schedule to an Agreement bound by this document and ending on the anniversary, as specified in the relevant Services and Payment Schedule, of the last day of the month of the date of the RFS.
- 1.20 "Intellectual Property Rights" means any patent, trademark, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database rights, know-how, confidential information or process, any application for any of the above, and any other intellectual property right recognised in any part of the world whether or not presently existing or applied for.
- 1.21 "Normal Working Hours" means 8.00 am to 6.00 pm Monday to Friday excluding statutory public holidays.
- 1.22 "Overage Amps" means the Electronic Amperes (measured and calculated at the Supply Line Voltage) that the Client uses in excess of the combined Contracted and Reserved Amps as defined in this Agreement (Standard, Non-Standard or Oversized only); to be billed at 135% of the Standard Amp Rate.
- 1.22 "Personal Data" means as defined by Data Protection law.
- 1.23 "Processing" means as defined by data protection law.
- 1.24 "Renewal Period" means a period of 12 months beginning on the expiry of the Initial Period or the expiry of any successive 12 month period in accordance with an Agreement bound by this document.
- 1.25 "Reserved Amps" means the Electronic Amperes (measured and calculated at the Supply Line Voltage) used in excess of the Contracted Amps but reserved for the Clients per Billing Period; to be billed at 50% of the Standard Amp Rate.
- 1.26 "RFS" means Request for Service date as defined on an SPS of an Agreement subject to this document.
- 1.27 "The Services" means the services described in one or more Services and Payment Schedules as amended from time to time in accordance with Clause 3 below.
- 1.28 "Standard Amp Rate" means the £ rate at which 1 Amp of electricity will be charged per month.
- 1.29 "SPS" means Schedule of Agreed Payments and Services as defined in an Agreement subject to this document and subject to Clause 2.
- 1.30 "Termination Charge" means a single payment to be made in the circumstances set out in Clause 4.16 equal to the value of the Charges due from the date of termination to the end of the Initial or Renewal Period next following the date of termination.
- 1.31 "Third Party" means a party associated directly with the Client or a party that provides services, facilities, hardware or software via the Supplier for the provision of agreed services as ordered by the Client.

SERVICES

- 2.1 The Supplier will provide the Services to the Client in accordance with the Services and Payment Schedule and on the terms of this document and any Agreement subject to this document. The Services and Payment Schedule ("SPS") to an Agreement subject to this document may be supplemented by additional SPSs agreed in writing by the parties. The terms of this document shall apply to all additional SPSs.
- 2.2 The Services and associated service levels are as specified in an SPS (subject to Clause 2.1) and the Service Level Agreement Schedule respectively or those that arise at the written request of the Client.
- 2.3 This Agreement does not oblige the Supplier to provide any Internet connection, access or other Internet related services other than any bandwidth and related connectivity provided under an SPS. If the

client subsequently wishes to obtain these services from the Supplier, any Agreement for these services made between the Supplier and the Client will be the subject of a separate SPS. Where a dedicated connection is provided via a specified carrier at the request of the Client and is identified as such in the relevant SPS, the provision of that connection shall be subject to the terms and conditions applicable to the contract for the connection entered into between the carrier and the Supplier, a copy of which terms and conditions will be provided to the Client by the Supplier at the Client's request. The Client acknowledges that the connection and go live dates provided by the carrier are not contractually binding on the carrier and that the Supplier shall not be liable for any loss to the Client arising from any delays or failure in completion of the connection or go live dates.

- 2.4 At any time, either the Supplier or the Client may propose a change to the Services. The Supplier will be entitled to charge the Client at the Supplier's standard rates from time to time for investigating or implementing (or both) any suggestion for change made by the Client. The Supplier will waive its charge for investigating a change proposed by the Client where the work involved is less than 15 minutes. In all other cases, an estimate in writing of the time likely to be spent in investigation and implementation shall be given to the Client for its prior approval.
- 2.5 The Customer agrees to and accepts;
 - 2.5.1 not to exceed the use of the combined Contracted and Reserved Amps per U-Space / Footprint / Footprint (Non-Standard) / oversized at any time as specified in the relevant SPS subject to Clause 2.1;
 - 2.5.2 that should the combined Contracted and Reserved Amps per U Space / Footprint / Footprint (Non-Standard) / oversized be exceeded at any time, the Supplier reserves the right to automatically disconnect the equipment from its supply;
 - 2.5.3 that the supply and availability of power above the combined Reserved and Contracted Amps is not assured and that any requirement which will, or is likely to, exceed this amount must be notified to the Supplier prior to drawing the additional power. Written confirmation from the Supplier must then be received prior to drawing the additional power;
 - 2.5.4 that the supplier, at their sole discretion, will charge a penalty rate of 135% of the Standard Amp Rate for every 1 Consumed Amp above the combined total of the Contracted and Reserved Amps. This will be rounded up to the nearest 1 whole Amp.

CHARGES AND PAYMENT

- 3.1 Except as expressly provided in an Agreement subject to this document, each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of the relevant Agreement and any documents referred to in it.
- 3.2 The Charges for the Services are set out in the SPS to an Agreement subject by this document and as may be set-out in any additional SPSs mutually agreed by the Client and the Supplier. Where the Services involve the provision of power and/or bandwidth, the amount of power or bandwidth stated in the SPS is the maximum power and/or bandwidth covered by the Charges and any usage in excess of the stated amount shall result in Additional Charges at the rates in force at the time of over usage, details of which are available from the Supplier on request. Upon request by the Client the Supplier may agree to increase the Clients contracted allocation, at a preferred rate, to be added to the clients invoice for the remainder of the contract.
- 3.3
 - 3.3.1 The Client will pay the Charges on or before the Due Date in accordance with the SPS and any additional SPSs. The first Charges shall be paid by BACS transfer to the Supplier's nominated account and these shall cover the Installation Charges, a proportionate amount of the Charges per Billing Period from and including the RFS Date specified in the RFS to the end of the month of the RFS Date and the Charges per Billing Period for the Billing Period following the end of the month of the RFS Date. The daily rate of the Charges will be calculated by dividing the Charges by the number of months in the Billing Period, multiplying the quotient by 12 and dividing the product by 365. Subsequent Charges shall be paid by BACS transfer in accordance with the terms stated upon the invoice.

3.3.2 The Suppliers confirms their bank details are as follows:

Account Name: CustodianDC LTD
Bank: Bank of Scotland
Sort Code: 12-12-68
Account Number: 10004260
Reference: your company name as per this Agreement

The Supplier undertakes to make no changes to their bank details throughout the initial contract period and any renewal period

3.3.3 The Client will pay any and all monies due to the Suppliers bank details as confirmed in Clause 3.3.2 above. Any and all monies paid in any alternative manner by the Client to the Supplier shall be deemed to have been unpaid.

3.4 The Client will pay any Additional Charges on or before the Due Date specified in SPSSs.

3.5 Subject to Clause 3.6 below, Charges paid by the Client may be varied on the first day of the month next following the expiry of the Initial Period or a Renewal Period with the prior agreement of the parties hereto. The Supplier shall give written notice to the Client of variation of the Charges at least 90 days before the end of the Initial Period or a Renewal Period and in the event of non-agreement, either party may terminate this Agreement by giving at least 60 days written notice to the other party to expire at the end of the Initial Period or the then current Renewal Period.

3.6 Where an SPS includes the provision of power that is purchased on a contract pricing basis by the Supplier ("Power Prices"), the Supplier may increase Power Prices once in any twelve month period by the change in the cost to the Supplier of power during that period. The cost of power shall be deemed to include the costs of any Carbon Reduction Commitment allowances or any similar levy incurred by the Supplier in the operation of the data centre from which the Services are provided. Increases of Power Prices may take place during the Initial Period and during Renewal Periods. The dates of the variation of Power ("the Variation Dates") for the Initial Period shall be those specified in the SPS and for Renewal Periods, the twelve month anniversary of the Variation Dates. The Supplier warrants that any change in Power Prices shall be the same as the increase of costs that it pays to its suppliers for power. Variations in Power shall be notified by the Supplier to the Client in writing in advance of the variations taking effect.

3.7

3.7.1 If the Initial Period or the Renewal Period or both are longer than twelve months and in any particular year the Charges have not been varied in accordance with Clause 3.4 above, the Charges, less any increases in Power and Bandwidth Prices in that year, shall be varied by either (a) the rate of change in the Retail Price Index in the preceding 12 months plus 2 percent or (b) 5 percent, whichever is the higher, on the anniversary of the first day of the month next following the date of the RFS;

3.7.2 The varied change in accordance with Clause 3.7.1 shall not exceed 12% in any one 12 month period.

3.8 The Client may request that the Supplier's technical staff carry out technical support work ("Remote Services"). The terms and conditions applicable to Remote Services, in addition to those contained elsewhere in this Agreement, are set-out on the Suppliers website <https://www.custodiandc.com/>.

3.9 The Supplier may charge the Client at the Supplier's standard rates from time to time for any work carried out by the Supplier which has been requested by the Client and is not included in the Services and for any additional work and for any additional expenses caused by any delay on the part of, or the act or omission of, the Client or any third party acting on behalf of the Client where the delay, act or omission would otherwise prevent or put at risk the provision of the Services in whole or part.

3.10 The Client will reimburse the Supplier on demand and at least within 14 days of written notice for all expenses which the Supplier has undertaken to incur in connection with the provision of the Services or Remote Services to the Client with the prior written agreement of the Client.

3.11 If the Client or any third party acting for the Client does not perform any task essential for the provision of the Services where the Client is unable to do so within a reasonable timescale or requests the Supplier to undertake the task or in an emergency and the Supplier performs that task, the Client will pay the Supplier for doing so at the Supplier's standard rates in force from time to time.

- 3.12 The Supplier will be entitled from time to time to increase any Additional Charges by giving to the Client not less than thirty (30) days advance written notice
- 3.13 The Supplier will be entitled at any time to amend the Charges to take into account any increase in the payments or payments additional to those specified in an SPS which the Supplier makes to any third party at the request of the Client.
- 3.14 The Charges and all other amounts payable to the Supplier are exclusive of Value Added Tax (or any similar tax) which will be paid by the Client at the rate and in the manner from time to time prescribed by law, and without deduction or set-off, by the Due Date.
- 3.15 If any amount payable to the Supplier by the Client is not paid by the Due Date then (without prejudice to the Supplier's other rights and remedies), the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply.
- 3.16 If any amounts are outstanding for more than 14 days after the Due Date: (i) the Supplier reserves the right to suspend the provision of all Services provided under this Agreement until the outstanding amount is paid; charges will continue to accrue during any time when the Services are suspended and this Agreement shall continue in force unless terminated by the Supplier in accordance with this Agreement, and (ii) the Supplier may at its absolute discretion require the provision of a guarantee in respect of future payment of Charges and/or payment by Direct Debit if this is not already in place.
- 3.17
- 3.17.1 Upon notice to the termination or expiry of an Agreement subject to this document, the Client shall pay the Supplier all unpaid Charges accrued up to the date of termination or expiry of this Agreement, and for all work done and expenses the Supplier has properly incurred or agreed to incur in connection with the Services, including but not limited to work and expenses relating to the transfer of equipment and/or data and/or intellectual property rights as a result of the termination or expiry of an Agreement subject to this document. A Termination Charge will be due, within 14 days of notice to terminate being served, if an Agreement subject to this document is terminated other than by due notice at the end of the Initial Period or at the end of a Renewal Period. No Termination Charge will be payable if termination is by the Client in accordance with the terms of Clause 6.1.2.
- 3.17.2 The Supplier shall invoice the Client for any termination charge due, once a notice to terminate this Agreement has been served. The Supplier may, at the Supplier's sole discretion, restrict the Client's services and/or access to the Data Centre and/or Colocation Equipment until the termination charge has been paid in full.
- 3.18 No refund of any Charges or expenses paid in advance will be made on the termination or expiry of an Agreement subject to this document except where termination is a result of a breach by the Supplier of this Agreement or where the payment by the Client is the result of an accounting error by the Supplier or Client.

THE PARTIES' OBLIGATIONS

- 4.1
- 4.1.1 Each party undertakes that it shall not [at any time OR at any time during this Agreement, and for a period of 3 years] years after termination of this Agreement,] disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party [or of any member of the group of companies to which the other party belongs], except as permitted by Clause 4.1.2
- 4.1.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with an Agreement subject to this document. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 4.1 and Clause 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority
- 4.1.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with an Agreement subject to this document.

- 4.2 No party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of an Agreement subject to this document, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 4.3 The Client will provide the Supplier, free of charge, with all information, materials, documentation, reasonably requested by the Supplier to allow the Supplier to provide the Services and the Deliverables. The Client will ensure that its staff, contractors and other suppliers co-operate fully with the Supplier and meet pre-agreed timetables for deliveries, on-site activities and all services falling within the Client's remit and thereby cause no delay in the provision of Services and Deliverables by the Supplier. Where the Supplier needs the Client to provide information or to take a decision, the Client will do so promptly and so as not to delay the provision of Services and Deliverables by the Supplier. Any delay falling within the terms of this Clause 4 shall be notified to the Client by the Supplier in writing immediately the Supplier becomes aware of it along with a reasonable forecast of the effects of the delay on the scheduled provision of Services and the Deliverables. Where the forecast delay is longer than the elapsed time of the original delay, the reasons for this shall be given in the notification by the Supplier. The Supplier's obligations in respect of Services or the Deliverables shall be deemed to be modified in accordance with the notified forecast effects but only to that extent.
- 4.4 Subject to Clauses 6.4 and 6.5 below, equipment located within the Supplier's premises belonging to the Client or of which the Client has lawful possession granted by a third party (a Third Party Owner) shall remain the sole property of the Client or Third Party Owner and the Supplier shall do nothing to prejudice any of their rights of ownership. Except in the case of negligence on the part of the Supplier, its employees or its sub-contractors, the Supplier shall have no liability for the loss, theft or damage of such equipment and it shall be the responsibility of the Client to ensure that the equipment is insured against loss, theft or damage by whatever cause. The limit of liability of the Supplier for negligence is set-out in Clause 10.5.
- 4.5 The Client will take all reasonable steps to ensure that the facilities provided by the Supplier and the Client's equipment installed on the Supplier's premises shall not be used for any illegal activity, and indemnifies the Supplier from any liability that may arise due to such usage. Such activity will be deemed to include the knowingly publishing of any material that is obscene, threatening, promotes or condones acts of terrorism, defamatory or which in any way infringes the Intellectual Property Rights of another party.
- 4.6 The Client shall comply with the Supplier's Acceptable Use Policy (AUP) as displayed at the entrance to the Supplier's data rooms. The Supplier's current AUP is set-out in AUP Schedule to this an Agreement subject to this document and if the Client wishes to have a copy of any subsequent version, this shall be provided on demand free of charge by the Supplier. If the Client fails to comply with any of the terms of the AUP, the Supplier shall serve notice on the Client requiring it to remedy the breach and/or ensure future compliance. If breach results in actual loss to the Supplier, the Client shall make good that loss.
- 4.7 In the event that a third party makes direct representation to the Client with regard to a possible breach of this Clause 4, the Client will without delay notify the Supplier of the nature and background of such representations so that the Supplier may promptly carry out any actions required to mitigate any exposure or damages for which the Supplier might otherwise be liable to third parties.
- 4.8 The Client accepts responsibility for ensuring that its data is suitably backed up. The provision of firewalls and other security arrangements for the protection of the Client's Data and programs is the responsibility of the Client. Appropriate security arrangements relating to the Client's Data and programs on Colocated Equipment and the transmission of data to and from Colocated Equipment are available as an additional service for which Additional Charges are payable. The Client shall take reasonable precautions in the set-up and configuration of its equipment to ensure that in the event of a Denial of Service attack targeted at the Client, the effects of the attack do not compromise network performance or availability for other users of equipment located within the Supplier's premises.
- 4.9 The Client will indemnify the Supplier and keep the Supplier indemnified against all costs, claims, expenses, and liabilities incurred or suffered by the Supplier in the course of acting in good faith on behalf of or as agent for the Client having been authorised in writing to do so by the Client or its duly-authorised representative.

- 4.10 The Supplier will not access data stored on Client Property except when directed to do so by a Court order or an order from a UK regulatory authority enforceable under English law. The Supplier will not permit persons under its direction or control or third parties lawfully on its premises to have access to data stored on Client Property.
- 4.11 The Client shall maintain or ensure that its clients maintain insurance for the damage or loss of tangible goods forming Client Property.

INTELLECTUAL PROPERTY RIGHTS

- 5.1 The contents of all reports, documents, specifications, presentations, software and documentation prepared, made or written by the Supplier for or to the Client, all advice given by the Supplier to the Client, all the methodologies used by the Supplier in working for the Client and the results of the work done by the Supplier for the Client, are for the use of the Client only and the Client will not divulge them to any third party, except where the third party receives or proposes to receive services under contract with the Client that are or will be delivered from the Supplier's premises, or use them for any purpose other than for using the Services in accordance with this Agreement.
- 5.2 The Intellectual Property Rights in all computer software, documentation, specifications and other materials which the Supplier produces or supplies, and in all ideas, methodologies, inventions, discoveries, designs, concepts and work arising from any services the Supplier provides to the Client will, as between the Client and the Supplier, belong to the Supplier. If requested by the Supplier, the Client will do what is necessary (including executing any documents) to enable the Supplier to enjoy, defend and enforce those rights.
- 5.3 The Client acknowledges that it will not have any rights in respect of any products, materials or methodologies used by the Supplier and owned by the Supplier or any third party provider to the Supplier, and the Client agrees to keep the same strictly confidential.
- 5.4 The terms of the preceding three sub-clauses of this Clause 5 shall apply mutatis mutandis to the intellectual property of the Client.

TERMINATION

- 6.1 An Agreement subject to this document may be terminated:
- 6.1.1 by the Supplier if the Client fails to pay any sum due to the Supplier under the terms of this document and that sum remains unpaid for 14 days after written notice from the Supplier that the Contract will be terminated if the amount due is not paid; or
- 6.1.2 by either party immediately on giving notice in writing to the other if the other has a receiver or administrative receiver appointed to it or over any part of its undertaking or assets, or passes a resolution for winding-up (other than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if the other party becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun, or if the other party ceases or threatens to cease to carry on its business.
- 6.1.3 by the supplier if the Client commits a material breach of any [other] term of this document where the breach is irremediable or, if such breach is remediable, fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 6.1.4 by the Supplier if the Client breaches any of the terms of this document in such a manner as to reasonably justify the opinion that the Clients conduct is inconsistent with it having the intention or ability to give effect to the terms of an Agreement subject to this document;
- 6.2 Any termination or expiry of an Agreement subject to this document (however it happens) will not affect any accrued rights or liabilities of either party.
- 6.3 The termination or expiry of Services covered by one SPS will not affect the continuing in force of any other Services covered by any other SPS within an Agreement subject to this document.

- 6.4
- 6.4.1 On the termination of an Agreement subject to this document or the Services covered by one or more SPSs falling within an Agreement subject to this document, the Supplier shall have a contractual lien over Client Property at the date of termination until all amounts due from the Client to the Supplier have been paid. If a contractual lien arises, where Client Property includes servers, these may be removed from racks by the Supplier and stored securely on the Supplier's premises.
- 6.4.2 A storage fee of £5 per physical device per day shall be payable by the Client from and including the termination date until payment of the amounts due and the storage fees. A reasonable daily storage fee may be charged for the storage of other equipment and chattels.
- 6.4.3 If all amounts due have not been paid to the Supplier within 14 days after the termination date, the Supplier may, without notice, sell the Client Property and use the proceeds to satisfy in whole or part all debts due from the Client to the Supplier. If the sale proceeds after the costs of sale exceed the amounts due to the Supplier, the Supplier shall account to the Client for the balance. If the sale proceeds are less than the amounts due to the Supplier, the Client shall remain liable for the balance.
- 6.4.4 The Supplier shall not be obliged to exercise its right of sale under the contractual lien arising from this Clause.
- 6.4.5 If the Client Property or any part thereof has no market value or no buyer can be found within 28 days of the right to sale being exercisable, the Supplier shall advise the Client accordingly and may dispose of or retain what is not saleable as it sees fit and without having to account to the Client.
- 6.4.6 In the event of the Supplier electing to retain what is not saleable, property shall pass to the Supplier on notification to the Client of this election.
- 6.5 Except where a contractual lien arises in accordance with the preceding Clause and Clause 3.17, all Client Property shall be removed from the Supplier's premises on or before the termination date. Servers that form part of Client Property not removed by the Client on or before the termination date may be removed from racks by the Supplier and stored securely on the Supplier's premises. A daily storage fee of £5 per server shall be payable until the server is removed from the Supplier's premises. A reasonable daily storage fee may be charged for the storage of other equipment and chattels. If Client Property is not removed from the Supplier's premises within 28 days of the termination date the Supplier may dispose of or retain the Client Property as it sees fit and without having to account to the Client.. In the event of the Supplier electing to retain Client Property, property shall pass to the Supplier on notification to the Client of this election.
- 6.6 Before Client Property is disposed of by sale or otherwise or where property in Client Property passes to the Supplier, the Supplier shall so far as practicable ensure that any software or data stored on the Client Property is permanently deleted from all data storage devices forming part of the Client Property.
- 6.7 If the Client has notified the Supplier in writing that in the normal course of the Client's business the Client may from time to time have within the Supplier's Premises equipment belonging to third parties ("Third Party Equipment"), any Third Party Equipment identified as such before or when a contractual lien might otherwise arise will not be subject to any contractual lien imposed on the Client's equipment but shall be subject to any storage fees accruing in Clause 6.5. Upon request by the Client, whether or not in dispute with the Supplier, Third Party Equipment will be made available for collection by the named third party on production of reasonable evidence of ownership. The supplier may charge a reasonable fee for supervision of third party technical staff while on the Supplier's premises. If equipment is removed from the Supplier's premises under the terms of this Clause, the Client shall not make any subsequent claim against the Supplier in respect of the equipment in question.
- 6.8 Where in the circumstances of Clause 6.6 data is liable to be deleted but the data has been notified in writing to the Supplier as being the property of a third party, the Supplier, where practicable and subject to the payment of reasonable charges for the work and media involved, shall provide a copy of the data to the third party on reasonable proof of ownership.
- 6.9 This Clause and any other provision of an Agreement subject to this document that creates a continuing obligation or liability will survive the termination of an Agreement subject to this document.

ASSIGNMENT

- 7.1 Neither the Supplier nor the Client may assign or transfer an Agreement subject to this document either in whole or in part or sub-license any of its rights under an Agreement subject to this document otherwise than to a company that is part of the same Group as the assignor. Any assignment shall be with the consent of the party to an Agreement subject to this document who is not the assignor. Consent shall not be unreasonably withheld.

DELAYS

- 8.1 Notwithstanding anything else contained in this document, neither party will be liable for any delay or failure in performing its obligations under an Agreement subject to this document (except an obligation to make payment) if that delay or failure is caused by circumstances beyond its control (including, without limitation, any delay caused by any act or omission of the other party or any third party), and the party so delaying will be entitled to a reasonable extension of time for the performance of its obligations. In the case of the Supplier, the provision of network connectivity within its premises and to the point where the network connects to a third party's fibre, power, cooling and a safe operating environment shall be deemed to be within its control except where the cause of failure falls within events specified in Condition 10.10 below.
- 8.2 In the installation and commissioning of the Client's equipment for the purposes of providing the Services, the date for the equipment to go into productive use by the Client ("the go-live date") shall be agreed by the parties and time shall be of the essence. In the event of the equipment not being capable of being put to productive use on the go-live date as a result of some feature of the equipment or its software or network configuration that could not have been reasonably foreseen by the parties in advance, the Supplier, if the resolution is within its control, shall be given a reasonable period in which to rectify the problem, including time, if required, for the procurement of equipment and software. Where the reason for the delay is the result of requirements or specifications being not communicated or inaccurately communicated to the Supplier by the Client or its agents, the reasonable costs of the Supplier taking the necessary reasonable remedial action shall be borne by the Client subject to the Client's prior written agreement.

CLIENT'S WARRANTIES AND LIABILITY

- 9.1 The Client warrants to the Supplier that none of the Client's Data or its provision to the Supplier will infringe the Intellectual Property Rights of any third party, or contain anything which is obscene or defamatory, or which is a malicious falsehood.
- 9.2 Except to the extent that the Supplier is notified in writing to the contrary when an item forming part of the Client Property is first brought into the Supplier's premises or where Clause 6.7 applies, the Client warrants that all Client Property other than programs is its own unencumbered property or the property of a company in the same Group of which the Client is a member. The notification in writing shall include details of the items, the nature of a third parties interests and the name and address and contact details of the third party.
- 9.3 In the event that the Client requests the Supplier to access the Client's data, the Client warrants to the Supplier that the Client has the right to disclose the Client's Data to the Supplier. Without prejudice to the above, the Client also warrants that it has obtained the consent of any Data Subject whose personal data is disclosed to the Supplier under an Agreement subject to this document.
- 9.4 The Client will indemnify the Supplier and keep the Supplier indemnified against all claims, costs, damages, losses, expenses and liabilities incurred by the Supplier in connection with any breach of any of the Client's warranties in conditions 9.2, 9.3 and 9.4 above and in connection with any breach by the Client of any provision contained in the Acceptable Use Policy applicable to the provision of the Services.
- 9.5 Subject to Clause 10.9 below, but otherwise despite anything else contained in this document, the Client will not

be liable to the Supplier for any indirect or consequential loss, whether arising from negligence, breach of contract or in any other way, and whether or not of a kind foreseeable by the Supplier, provided that the foregoing exclusion shall not apply in relation to the Client's deliberate breach or willful abandonment of an Agreement subject to this document or where the Client breaches Clause 9.2 above.

THE SUPPLIER'S WARRANTIES AND LIABILITY

- 10.1 The Supplier will perform the Services with reasonable skill and care. If the Services are not provided in accordance with this warranty and the Client notifies the Supplier in writing of the non-compliance with this warranty within 3 months after performance, the Supplier will re-perform the Services so far as this is practicable.
- 10.2 In the circumstances of any of the events specified in Condition 10.10 below, no representation or warranty is given that the Services will be uninterrupted or error free.
- 10.3 All information supplied by the Supplier will be supplied in good faith but the accuracy and completeness of any information obtained from, or based on information obtained from any third party is not guaranteed by the Supplier. It is not within the scope of the Supplier's obligations to enquire as to or to verify the accuracy or completeness of any such information.
- 10.4 In the circumstances of any of the events specified in Condition 10.10 below, the Supplier will not be liable for its inability to supply the Services.
- 10.5 The Supplier limits its liability for any loss of or damage to Client Property to that which has been caused directly by the negligence of the Supplier or its employees acting in the course of their employment. In no event will the Supplier be liable for any loss or damage to any tangible property which exceeds the lesser of the Charges made by the Supplier to the Client in the preceding twelve months or £50,000.
- 10.6 Subject to condition 10.9 below, but otherwise despite anything else contained in this document, the Supplier will not be liable to the Client for loss of profits, loss of business, loss of expected savings, loss of opportunity, loss of contracts, loss or spoiling of data or any indirect or consequential loss, whether arising from negligence, breach of contract or in any other way, and whether or not of a kind foreseeable by the Supplier.
- 10.7 The Supplier will not be liable to the Client for: any loss arising out of any failure by the Client to keep at premises other than those where the Services are provided full and up-to-date security copies of the computer programs and data that the Client uses; the Client's failure to comply with any technical requirements specified from time to time by the licensor of any software or the manufacturer of any equipment under the control of the Client; any error or incompleteness in the Client's Data; any fault in any media; any delay or failure on the part of the Client in providing any of the Client's Data to the Supplier; any delay or failure on the part of the Client to notify the Supplier of any error in any output or of any actual or suspected failure of, or error or defect in, any equipment, software, network or telecommunications system; any failure of the Client to comply with the terms and conditions of an Agreement subject to this document; or any delay or failure on the part of any hardware or software supplier or any third party provider of maintenance to correct any fault or defect or to provide any other service.
- 10.8 All terms, conditions, representations and warranties, express or implied, not set out in this document or an Agreement subject to this document are, to the fullest extent permitted by law, excluded from applying to the Contract including (without limitation) any implied warranties, terms and conditions as to performance, fitness for purpose, merchantability and satisfactory quality.
- 10.9 The limitations and exclusions on the Supplier's liability in an Agreement subject to this document do not apply in respect of death or personal injury caused by the negligence of the Supplier or its employees acting in the course of their employment, or in respect of any fraudulent misrepresentation.
- 10.10 The Supplier shall not be liable to the Client for any breach of an Agreement subject to this document for failing to perform any obligation where such breach or failure was a result of any Act of God, insurrection or civil disorder, war or military operations, severely adverse weather that stops normal business activity in the area where the Services are provided, flood, drought, lightning or fire where alarm and protection systems have performed as specified, national or local emergency, acts or omissions of government,

highway authority or other government authority, restrictions of access to the premises or movement arising from pandemic, compliance with any statutory obligation, industrial disputes of any kind other than those to which the Supplier is a party, the acts or omissions of telecommunications operators or any cause beyond the Supplier's reasonable control.

- 10.11 The Client acknowledges that the exclusions and limitations on the Supplier's liability in an Agreement subject to this document have been drawn to the Client's attention and that the Supplier is willing to undertake greater liability than that mentioned above provided the Supplier is able to obtain insurance to cover fully its potential liabilities to the Client and the Client pays for that insurance.
- 10.12 Subject to condition 10.9 of this document or the terms of any Service Level Agreement forming part of an Agreement subject to this document, the liability of the Supplier whether in contract or in tort or in any other way in connection with an Agreement subject to this document or the Services, will be limited to damages which will not exceed, in aggregate, 100% of the fees paid by the Client to the Supplier in the previous 3 months under an Agreement subject except in the case of physical damage or loss of the Client's equipment covered by the exception in Clause 4.2 of this document.
- 10.13 Any specific liability for crediting charges assumed by the Supplier in a Service Level Agreement forming part of an Agreement subject to this document shall apply notwithstanding anything in this Clause 10 with the exception of Clause 10.10.

WAIVER OF REMEDIES

- 11.1 No forbearance or delay by either the Supplier or the Client in enforcing any of its rights will prejudice or restrict those rights. No waiver of any right will operate as a waiver of any subsequent breach. No right, power or remedy conferred on or reserved to either the Supplier or the Client is exclusive of any other right, power or remedy available to it and each of those rights, powers and remedies is cumulative.
- 11.2 The rights and remedies provided for under this document are in addition to, and not exclusive of, any rights or remedies provided by law.

NOTICES AND PRIME POINTS OF CONTACT

- 12.1 A notice given to either party under or in connection with an Agreement subject to this document shall be in writing.
- 12.2 All notices to be given under an Agreement subject to this document will be deemed to have been served only if delivered by hand or sent by pre-paid first class post or e-mail, to the intended recipient at its last known postal or e-mail address. The notice will be effective: if delivered by hand, on delivery; if sent e-mail, when the sender receives confirmation of error free transmission or of receipt; and if sent by post, on the fourth day after posting.
- 12.3.3 Each party shall notify the other with the names and contact details of the individuals within their respective organisations who will be the prime points for day to day contact on technical and operational matters and shall keep these details up to date.

Data Protection

- 13.1 Both the Supplier and the Client will, and will cause each subsidiary, employee, agent and/or end-users to, comply with all requirements of Data Protection Law applicable to it, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect on the other.

- 13.2 The Client, acting as the Data Controller, must serve notice to the Supplier should they wish the Supplier to be a Data Processor. The notice served by the Client in respect to this Clause must confirm the nature, scope, context and purposes of processing. Prior to the parties entering into a Data Controller and Data Processor relationship, as defined under data protection law, the Client and Supplier must confirm the terms of the relationship in a separate addendum to an agreement subject to this agreement.
- 13.6 The Client will notify the Supplier, without undue delay, when it has, or has reason to suspect it has, suffered a personal data breach.
- 13.7 The Client shall ensure that all end-users, either directly or indirectly, utilising, having access, or processing on Colocation Equipment shall meet the requirements of clause 13.

Schedule 1 - Acceptable Use Policy Schedule

This policy sets out what is acceptable use of the facilities provided within the Supplier's data centres. In the context of this AUP, "Client" includes its staff, agents, representatives and Third Party Owners.

1. The permitted use of the Supplier's premises ("the Premises") by the Client shall be the installation and operation of computer equipment and any ancillary use.
2. The Client shall not make use of the Premises for anything other than the permitted use.
3. The use of the Services for the following is expressly prohibited:
 - a. Bulk, unsolicited email or spamming, including but not limited to open or anonymous relay.
 - b. Knowingly hosting a site for the purpose of fraudulent activity, including, but not limited to, phishing
 - c. Storing or hosting software, including DNS services, for the purposes of fraud or deception
 - d. Infringing third party rights, including but not limited to, Intellectual Property Rights and Data Protection Rights
 - e. The use of pirated software
 - f. Knowingly transmitting or storing viruses, Trojans, worms and any other form of malware.
4. The Client shall not do anything on the Premises which in the reasonable opinion of the Supplier, may be a nuisance or disturbance to the Supplier, its other Clients or occupiers of adjacent properties or bring onto the Premises any hazardous or dangerous substance.
5. The Client shall comply with such reasonable regulations and conditions ("Site Rules") as the Supplier may stipulate from time to time to facilitate the orderly running and management of the Premises. Site Rules shall be made available on request to visitors to the Premises. The principal Site Rules will be notified by signs posted within the Premises.
6. Access to the Premises is permitted at any time but must be in accordance with the security procedures in force from time to time and notified in writing to the Client. Clients using shared colocation facilities may only access the racks containing their servers if accompanied by a member of Custodian's technical staff. If access is required in these circumstances outside Normal Working Hours, prior notification will be required and additional charges may be payable.
7. "Remote Hands" shall mean work carried out at the request and under the direction of the Client and shall relate to checking of alarm lights on the equipment, power cycling by means of a button or a full power disconnect / reconnect. It will also include patch/un-patch cables & install/remove hot swap HDDs, in all cases only in accordance with the Client's instructions. Any matter requiring intervention by the Supplier's technical staff in relation to the Client's hardware, programs or systems or the configuration thereof, shall fall outside the definition of Remote Hands and will be chargeable at the relevant rate for Remote Services notified to Clients from time to time. Tape and data rotation work falls outside the scope of Remote Services but will be carried out if requested by the Client under terms to be agreed between the Client and the Supplier.
8. The Client shall not at any time access, touch or interfere with any equipment belonging to the Supplier other than racks belonging to the Suppliers in which the Client's own equipment is located without the Supplier's express separate consent on each and every occasion and under no circumstances may the Client access, touch or interfere with any equipment belonging to any other Client of the Supplier
9. The Client shall install and maintain its equipment in accordance with manufacturers' instructions, keep it in safe and working order and free from defects that might be a hazard to persons or property.
10. The Client's equipment installed on the Premises shall not cause any additional fire risk nor be likely to damage or impair the operation of other computer equipment on the Premises. Client's equipment installed in racks located in cold aisles must be installed with air intakes facing into the enclosed cold aisle. The Client agrees to correctly install the blanking plates to their equipment to ensure separation of the hot and cold aisles. The blanking plates to be provided free of charge by the Supplier. In the event of equipment being installed other than in accordance with this requirement and the Client fails to reinstall the equipment facing in the required direction within 7 days of a written notice to do so from the Supplier, the Supplier reserves the right on 24 hours notice in writing to power down the equipment in question. Rack doors may be removed temporarily but must be replaced with the earth strap connected.
11. Equipment cartons/cardboard may not be brought into the data room, equipment must be unpacked in the allocated area. The storage of cartons/cardboard, whether or not containing equipment within racks is expressly prohibited because of the potential fire hazard and potential impairment of air conditioning functionality.
12. Subject to availability, the Client may store equipment in the purpose built storage room within the Premises at the direction of the Supplier for up to 30 days prior to installation within the data room. The Supplier may require all packaging to be removed before storage. Storage of equipment of any kind in excess of 30 days or where the equipment is being stored for purposes other than pending installation will result in Additional Charges to the Client at the rates applicable at that time.
13. The Client may not at any time alter or damage the Premises nor make any additions to it or erect any signage except with the prior written consent of the Supplier.
14. Under no circumstances shall the Client access the sub-floor (plenum) or overhead power and data cable areas of the Premises. All sub-floor cabling must be undertaken by the Supplier and will be charged at standard rates notified to the Client in advance.
15. The Client must observe all reasonable health and safety requirements of the Supplier whilst on the Premises.
16. Any restrictions on what may not be done whilst on the Premises or within the data room notified to the Client by signs within the Premises must be observed.
17. The client may make use of the site restaurant. Meeting rooms are available for the Client's use at a standard hourly charge.
18. A stock of commonly used spare parts, leads and cables will be available on the data floor on the understanding that if any item is used, it will be replaced as soon as practicable by the Client or charged for as per the current parts price-list.
19. In the event of a state of pandemic, access to the Premises or particular parts of the Premises may be denied or be subject to those restrictions or conditions as may be reasonably necessary to attempt to limit the spread of infection. If access to the data room is denied in these circumstances, Remote Hands support will be provided free of charge.
20. Clients and their contractors must comply with Custodian's Information Security Policy as displayed in the Data Centre
21. All rack mounted equipment should be attached to the rack safely, using the correct U-Space mounting holes made available.
22. Any equipment which is not specifically rack-mountable must be on appropriate and adequately load-bearing shelves, so as not to endanger users through falling or collapse.
23. The Supplier, its staff, agents, representatives and Third Parties reserve the right to refuse to complete any work on the Clients racks in the event it does not meet the Health and Safety standards the Supplier may reasonably expect.

Schedule 2a - Service Level Agreement Schedule

1. Network Service Levels

1.1 Network Availability

The Supplier guarantees 99.995% uptime of the network within its data centres during any calendar month, measured at its backbone routers and switches and 99.995% connectivity to upstream carriers where bandwidth is provided as part of the Services. For the purposes of measuring performance against this SLA, standard BGP re-negotiation periods are excluded. The Supplier cannot guarantee routing, latency or packet loss once data traffic has left its own network however the Supplier, so far as is practicable, will configure its routers and switches to ensure outbound data traffic is routed via the available carriers with the best routes to the destination addresses.

1.2 Packet Loss

The Supplier guarantees less than 0.2% packet loss at any of its outgoing backbone routers during any calendar month.

2. Data Centre Service Levels

2.1 Power Availability

The Supplier guarantees 100% availability of power to a rack's power distribution unit (PDU) and socket. This will be measured as "Power to the PDU" and "Power to the Socket". "Power to the PDU" downtime will be measured as a complete lack of power to both the A and B PDU, while 'Power to the Socket' downtime will be measured as a complete lack of power to a rack from both the main and hot-standby socket from the time of notification by the Client.

2.2 Environment Availability

The Supplier guarantees 99.999% availability of 17 to 28 °c air temperature within the cold aisle in which the Client's equipment is installed measured by the average reading of the sensors located at the supply vents within each cold aisle.

3. Service Outages

3.1 Planned Outages and Major Works.

The Supplier may undertake planned outages or major works that may result in outages. Clients will be notified of planned outages or major works by email. During periods of planned outage or major works, the Supplier does not guarantee service availability and the terms of Clause 4 below will not apply. The Supplier will give advance notice no less than 7 days before the commencement of planned outages or major works. Outages will only be invoked when there is no practical workaround available and each notice will specify timing and expected downtime or the duration of the major works. The Supplier will endeavour to time planned outages and major works so as to minimise the impact on Clients' business activities".

3.2 Emergency Works.

The Supplier may undertake Emergency works that may result in outages. Clients will be given as much notice of outages resulting from Emergency works as is possible, by email. During periods of Emergency works, the Supplier does not guarantee service availability and the terms of Clause 4 below will not apply. Emergency works will only be undertaken when there is a serious risk of service disruption occurring if the works are not promptly performed. Each notice will specify timing and expected downtime or the duration of the emergency works. The Supplier will endeavour to time Emergency works so as to minimise the impact on Clients' business activities.

4. Compensation

4.1 Guaranteed Network Availability

If the Supplier fails to meet the service levels for network availability the Client will be credited with 1% of the monthly rackspace invoice for every 1% of downtime below the guaranteed availability up to a maximum of 30% of the monthly rackspace invoice in any given month the guarantee is not met.

4.2 Packet Loss

If the Supplier fails to meet the service levels for packet loss the Client will be credited with 2.5% of the monthly rackspace invoice in any given month the guarantee is not met.

4.3 Power

If the Supplier fails to meet the service levels for data centre power the Client will be credited with 1 day of the monthly rackspace invoice for every 1 hour of downtime up to a maximum of 30% of the monthly rackspace invoice in any given month when the guarantee is not met.

4.4 Environment

If the Supplier fails to meet the service levels for data centre environment the Client will be credited with 1 day of the monthly rackspace invoice for every 1 hour of downtime up to a maximum of 30% of the monthly rackspace invoice in any given month when the guarantee is not met.

5. Limitations of Liability

- 5.1 The terms of the Agreement of which Schedule is part ("the Principal Agreement") that relate to the Supplier's warranties and liability shall apply to this Service Level Agreement.
- 5.2 Compensation arising from this Service Level Agreement is limited to the maximum value of 6 months' regular charge per billing period as set out in the Schedule of Services and Payment (as amended from time to time in accordance with Clause 3.3 of the relevant Agreement) per 12 month period measured from date of contract. In the event that the terms of this Service Level Agreement might otherwise be modified to the detriment of the Client by the terms of the Principal Agreement, the terms of this Service Level Agreement shall prevail.
- 5.3 In the event the Client experiences any downtime in excess of the Service Level Agreement and The Supplier determines in its reasonable judgment that such inability was caused by the Supplier Data Centre's failure to provide Service for reasons within the Supplier Data Centres' reasonable control and not as a result of any action or inaction of Client or any third parties (including Client equipment and/or third party equipment), The Supplier will, upon Client's request, credit the Client's account as described above.
- 5.4 In the event of a power outage where compensation may otherwise be due in respect of other services, compensation shall only be made under Clause 3.3.
- 5.5 In the event of any form of denial of service ("DoS") attack directed at or originating from any one client where the attack disrupts or threatens to disrupt the network connectivity or availability for other clients, the Supplier may disconnect the client that is the target or source of the attack from the Supplier's networks until the issues arising from the attack or compromised machines are resolved. In these circumstances, the Supplier shall not be liable to the client in respect of the disconnection arising from the DoS attack.

6. Nature of Compensation

Any compensation arising under this Service Level Agreement (including any applicable Supplement) credited to the Client's account shall be solely in respect of future charges arising under the Principal Agreement and shall not be set-off against charges arising under another agreement between the parties and shall not result in a cash refund if the Principal Agreement is terminated before all the credit is utilised.

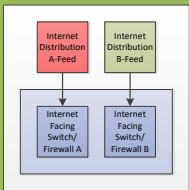
Schedule 2b - SLA exclusions, connectivity & power

Network Connectivity

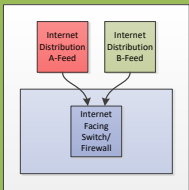
We provide two Internet Feeds to your rack. Both of these are on the same network but are from different sources to ensure connectivity continues if one of your feeds were to go offline. The examples below demonstrate the best method to deliver connectivity to your equipment, only those on the left in the green box are covered by our SLA

Guaranteed by SLA

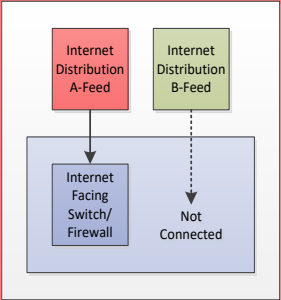
Connecting each cable to a different switch or Firewall. This allows the best connectivity solution as if one device is off-line the other will continue to run.



Using both cables connected to one switch or Firewall. A great solution, but if this device has an issue, you could lose all connectivity.



Not Protected

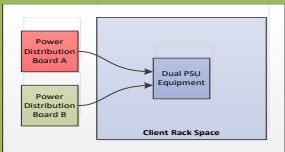


Power

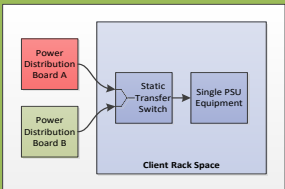
As part of our SLA we provide two power feeds to your rack space. Each of these comes from totally diverse infrastructure with separate distribution & UPS systems. The examples below demonstrate the best method to deliver power to your equipment, only those on the left in the green box are covered by our SLA.

100% Availability Guaranteed by SLA

Devices linked to dual feeds or through a Static Transfer Switch (STS). If a feed were to go off-line, devices will continue to function from the second feed.



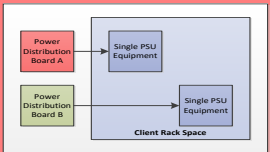
Dual supply to each device.



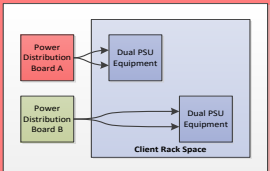
Dual supply connected to Single PSU via a Transfer Switch (either ATS or STS).

Not Protected

Devices connected to single feeds. This leaves equipment vulnerable to power loss in the event that one of the feeds goes off-line. **These methods are not covered by our SLA.**



Single supply to each device.



Devices fed from the same PDU.