

Nelexa Terms of Service

Effective Date: October 12, 2025

Legal Entity: PA #14940668 - Nelexa Networks, a division/d/b/a of Elcro Digital Services, LLC ("Nelexa", "we", "us", or "our")

Business Address:

Elcro Digital Services, LLC
1597 Washington Pike, Ste A38, PMB 156
Bridgeville, PA 15017-2876

1. Acceptance of Terms

By accessing, registering for, purchasing, or using any Nelexa service, including but not limited to hardware leasing, dedicated servers, colocation, IP transit, managed network services, and any related offerings (collectively, the "Services"), you ("Customer", "you", or "your") acknowledge that you have read, understood, and agree to be legally bound by these Terms of Service ("Agreement" or "TOS"), along with any applicable Service Level Agreements, Acceptable Use Policy, Privacy Policy, and all other policies incorporated herein by reference.

IF YOU DO NOT AGREE TO THESE TERMS, YOU MUST IMMEDIATELY CEASE ALL USE OF THE SERVICES AND MAY NOT PURCHASE OR ACCESS ANY NELEXA SERVICES.

Nelexa reserves the unilateral right to update, amend, modify, or replace this Agreement at any time, with or without prior notice. Changes become effective immediately upon posting to our website or notification to your registered email address. Your continued use of the Services following any modification constitutes your binding acceptance of the revised terms. It is your responsibility to review these terms periodically. If you do not agree to any modification, your sole remedy is to terminate your use of the Services.

2. Eligibility and Account Responsibility

2.1 Age Requirements

- You must be at least 18 years of age and possess the legal capacity to enter into binding contracts under applicable law to independently purchase or contract for Nelexa Services.
- Individuals between 13 and 17 years of age may use our Services only with the express written consent, co-signature, and ongoing supervision of a parent or legal guardian. The parent or legal guardian shall be deemed the

primary account holder and assumes full legal and financial responsibility for all account activity, charges, and obligations.

- Children under 13 years of age are strictly prohibited from using Nelexa Services in compliance with the Children's Online Privacy Protection Act (COPPA). We do not knowingly collect, store, or process personal information from anyone under the age of 13. If we discover that a user under 13 has provided personal information, we will immediately delete such information and terminate the account.

2.2 Account Security and Responsibility

- You are solely and exclusively responsible for:
- Maintaining the confidentiality and security of your account credentials, passwords, API keys, and authentication tokens
- All activities, content, and transactions conducted through your account, whether authorized by you or not
- Any data, content, or materials stored, transmitted, or processed using Nelexa Services
- Immediately notifying Nelexa of any unauthorized access, security breach, or suspected compromise of your account

2.3 Account Information

- You must provide complete, accurate, current, and truthful information during registration and throughout your use of the Services.
- You must promptly update your account information to maintain its accuracy.
- Providing false, fraudulent, misleading, or incomplete information constitutes a material breach of this Agreement and may result in immediate service suspension or termination, forfeiture of all fees paid, and potential legal action.

2.4 Account Transfer and Assignment

- Your account and Services are personal to you and may not be transferred, assigned, or sublicensed to any third party without Nelexa's prior written consent, which may be withheld in our sole discretion.

3. Identity Verification (KYC/AML Policy)

3.1 Verification Requirements

Nelexa performs Know Your Customer (KYC) and Anti-Money Laundering (AML) verification for certain Services, particularly:

- Colocation services
- IP transit and BGP services
- Managed network or system services
- High-value or high-risk service contracts

- Any service where required by law or internal risk assessment

3.2 Information Collection

KYC/AML verification may require, but is not limited to:

- Government-issued photo identification (passport, driver's license, national ID)
- Proof of residential or business address (utility bill, bank statement, lease agreement)
- Business registration documents, articles of incorporation, or business licenses
- Tax identification numbers (SSN, EIN, VAT number)
- Beneficial ownership information
- Source of funds documentation
- Additional documentation as determined necessary by Nelexa

3.3 Standard Services

Dedicated server rentals and standard hosting services require accurate, verifiable customer information to be maintained on file at all times, though they may not require full KYC documentation unless triggered by risk factors.

3.4 Consequences of Non-Compliance

- Failure to provide requested verification documents within seven (7) calendar days may result in immediate service suspension.
- Providing false, fraudulent, altered, misleading, or incomplete information will result in:
 - Immediate termination of all Services
 - Forfeiture of all fees paid
 - Reporting to appropriate law enforcement agencies, financial crime units, and regulatory authorities
 - Permanent ban from all Nelexa Services
 - Potential civil and criminal prosecution

3.5 Ongoing Verification

Nelexa reserves the right to request additional verification information at any time if:

- Suspicious activity is detected
- Fraudulent behavior is suspected
- Usage patterns change significantly
- Required by law, regulation, or legal process
- Policy violations are suspected

4. Payment Terms

4.1 Billing and Due Dates

- All invoices are generated fourteen (14) calendar days prior to the service renewal or due date.
- Payment is due in full on or before the due date specified on your invoice.
- All prices are stated in United States Dollars (USD) unless otherwise specified.
- You are responsible for all applicable taxes, duties, and governmental charges.

4.2 Automatic Renewal and Payment Attempts

- Services automatically renew at the end of each billing period unless you provide written cancellation notice at least five (5) business days prior to the renewal date.
- Nelexa typically initiates renewal payment attempts seven (7) days prior to the service renewal date, most commonly five (5) days prior, to prevent service interruption.
- You authorize Nelexa to charge your designated payment method for all recurring and one-time fees.

4.3 Nonpayment and Late Fees

- **Automatic Suspension:** Services are automatically suspended without further notice on the first (1st) day past the due date.
- **Late Fees:** A late fee of six percent (6%) of the outstanding balance is applied per day beginning on the third (3rd) calendar day after the due date, up to a maximum of ninety percent (90%) of the original balance.
- **Termination:** Services suspended for nonpayment for more than seven (7) calendar days are subject to immediate termination and permanent data deletion without further notice or opportunity to cure.
- **No Obligation to Provide Notice:** While Nelexa may attempt to contact you regarding overdue payments, we are under no obligation to do so, and lack of notice does not waive any of our rights.

4.4 Chargebacks, Payment Reversals, and Disputes

- **Prohibition:** Initiating a chargeback, payment reversal, or dispute through your financial institution without first attempting to resolve the matter directly with Nelexa is strictly prohibited and constitutes a material breach of this Agreement.
- **Consequences:** Any chargeback, payment reversal, or payment dispute will result in:
 - Immediate termination of all Services
 - Permanent account ban and inability to open future accounts
 - Forfeiture of all data without backup or recovery option
 - Treatment of the action as fraud
 - Assessment of chargeback fees (minimum \$100 per occurrence) and all associated costs

- Reporting to fraud databases and credit bureaus
- Referral to collections agencies
- Potential civil legal action to recover all amounts owed, plus attorney's fees, court costs, and damages
- **Liability:** You remain fully liable for all outstanding balances, chargeback fees, collection costs, legal fees, and all other costs associated with the chargeback or dispute.

4.5 No Refund Policy

- **All Sales Final:** All payments, fees, and charges are strictly non-refundable under any circumstances, including but not limited to:
 - Setup fees, installation fees, and activation fees
 - Monthly, quarterly, annual, or multi-year service fees
 - Renewal payments
 - One-time payments or purchases
 - Early termination of Services
 - Account suspension or termination for any reason
 - Service dissatisfaction, change of mind, or lack of use
 - Force majeure events or service interruptions
- **No Pro-Rata Credits:** No refunds, credits, or pro-rata adjustments will be provided for partial months, early cancellations, downgrades, or unused Services.
- **No Exceptions:** This no-refund policy applies regardless of the reason for termination or cancellation, including termination by Nelexa for breach of this Agreement.

5. Service Suspension and Termination

5.1 Nelexa's Right to Suspend or Terminate

Nelexa reserves the absolute right to suspend, restrict, or terminate any or all Services, with or without prior notice, temporarily or permanently, for any reason or no reason, including but not limited to:

- Nonpayment, late payment, or insufficient funds
- Violation of any provision of this Agreement, the Acceptable Use Policy, or any other Nelexa policy
- Abusive, threatening, harassing, or disrespectful behavior toward Nelexa staff, contractors, or other customers
- Security threats, vulnerabilities, or risks to Nelexa's infrastructure, network, or reputation
- Illegal activity or suspected illegal activity
- Fraudulent behavior or suspected fraud
- Resource abuse or excessive usage impacting shared infrastructure
- Failure to provide requested verification or documentation
- Compliance with legal process, law enforcement requests, or court orders

- Risk management or business protection purposes
- Breach of any third-party rights or intellectual property
- Any conduct that Nelexa determines, in its sole discretion, to be harmful or potentially harmful

5.2 Effects of Suspension or Termination

- Immediate loss of access to all Services, data, and account features
- No obligation by Nelexa to preserve, backup, or return any customer data
- Permanent deletion of all data after seven (7) days of suspension or immediately upon termination
- Forfeiture of all fees paid with no refund or credit
- Continued liability for all outstanding balances and fees

5.3 Customer Right to Terminate

- Unless otherwise outlined in a specific service agreement or contract, you may request termination of Services by providing written notice at least five (5) business days prior to your next billing date.
- Termination requests must be submitted through official Nelexa support channels.
- No refunds will be provided for early termination.
- You remain responsible for all fees incurred up to the effective termination date.
- Specific service agreements or contracts may stipulate different notice periods, minimum term commitments, or early termination fees.

6. Acceptable Use Policy (AUP)

The following activities are strictly prohibited. Violation will result in immediate service termination without refund and may result in civil or criminal legal action:

6.1 Illegal or Malicious Use

You may not use the Services to:

- Host, store, transmit, or distribute any content that violates any local, state, federal, or international law or regulation
- Engage in, facilitate, promote, or support any fraudulent, criminal, or unlawful activity
- Store, transmit, or distribute stolen data, credentials, personal information, or trade secrets
- Infringe upon intellectual property rights, including copyrighted or trademarked materials, without proper authorization
- Violate any person's privacy rights or distribute personal information without consent
- Engage in identity theft, impersonation, or fraudulent misrepresentation

- Facilitate or support terrorism, violent extremism, or illegal weapons distribution
- Engage in money laundering or other financial crimes

6.2 Network Abuse and Security Violations

6.2.1 For Nelexa-Provisioned Services (Dedicated Servers, Shared Hosting, Nelexa IPs/ASN)

If you are using Nelexa-provisioned servers, IP addresses, or operating under Nelexa's ASN, you may not:

- Conduct, launch, participate in, or facilitate Distributed Denial of Service (DDoS) attacks, Denial of Service (DoS) attacks, or any network flooding attacks against any target
- Perform unauthorized port scanning, network reconnaissance, vulnerability scanning, or penetration testing of any third-party systems without documented written authorization from the target
- Attempt to gain unauthorized access to any computer system, network, or data that you do not own or have explicit permission to access
- Intercept, monitor, or alter network traffic without proper authorization
- Operate open proxies, open relays, or anonymization services used primarily for malicious purposes or to facilitate illegal activity
- Operate VPN services used primarily for malicious purposes, illegal activity, or to facilitate copyright infringement. Legitimate VPN services for privacy, security, business use, or personal use are permitted
- Utilize network tunnels, proxies, or routing techniques for malicious, illegal, or unauthorized purposes
- Spoof IP addresses, MAC addresses, or other network identifiers
- Engage in any activity that disrupts, degrades, or interferes with Nelexa's network services, systems, or other Nelexa customers
- Deploy or operate botnets, command-and-control (C2) infrastructures, or malicious automated systems
- Operate Internet Relay Chat (IRC) servers without explicit written consent from Nelexa
- Send unsolicited bulk email (spam), conduct phishing campaigns, or distribute malware
- Engage in cryptocurrency mining, blockchain mining, or similar high-computational-load activities without explicit written consent from Nelexa
- Use Nelexa IP addresses or network resources in any manner that damages Nelexa's reputation or results in IP blacklisting, RBL listings, or abuse complaints

6.2.2 For Colocation Customers (Own Hardware, Own IPs, Own ASN)

If you are using colocation services with your own equipment, IP addresses, and ASN, you may not:

- Conduct, launch, participate in, or facilitate Distributed Denial of Service (DDoS) attacks, Denial of Service (DoS) attacks, or any network flooding attacks that originate from or transit through Nelexa's network
- Engage in any activity that disrupts, degrades, or interferes with Nelexa's infrastructure, network transit capacity, or other customers within the facility
- Deploy or operate botnets, command-and-control (C2) infrastructures, or malicious automated systems that violate applicable laws or create liability for Nelexa
- Spoof IP addresses or engage in network abuse that results in abuse complaints, legal notices, or transit provider issues affecting Nelexa
- Use Nelexa's network in any manner that violates applicable laws or creates legal, regulatory, or operational liability for Nelexa
- Operate services that generate excessive abuse complaints, legal threats, or law enforcement inquiries that impact Nelexa's business operations or relationships with upstream providers

Note: Colocation customers using their own IP space and ASN have greater operational flexibility and are primarily responsible for their own network conduct and reputation. However, activities that create legal liability, regulatory issues, infrastructure disruption, or jeopardize Nelexa's business relationships with upstream providers remain prohibited. VPN services, proxies, and other legitimate privacy/security services are fully permitted for colocation customers using their own IP space

6.3 Resource Usage and Allocation

6.3.1 Dedicated Server and Shared Hosting Services

For dedicated servers, VPS, and shared hosting services, you receive allocated resources as specified in your service plan (CPU cores, RAM, storage, bandwidth, etc.). You are entitled to use the resources you have paid for. "Resource abuse" does NOT refer to normal utilization of your allocated resources, even at 100% capacity.

Resource abuse for provisioned services means only:

- Intentionally causing system instability or crashes through malicious processes
- Exploiting software vulnerabilities to consume resources beyond your allocated service tier
- Running processes specifically designed to degrade performance for other customers on shared infrastructure (applicable only to shared/virtualized environments)

You may fully utilize all resources included in your service plan without restriction. If your usage consistently reaches capacity limits, we encourage you to upgrade to a higher-tier service.

6.3.2 Colocation Services - Power Usage

For colocation services, you are allocated a specific power allowance measured in Amperage (e.g., 5A, 10A, 20A) as specified in your colocation agreement and reflected in your monthly invoice.

Power Overage Policy:

- You may consume power up to your allocated limit at all times
- If your equipment consistently draws power exceeding your allocated and paid-for power limit, Nelexa will:
 1. Send written notification to your registered email address and support account
 2. Provide three (3) business days for you to respond and either: (a) reduce power consumption to within allocated limits, or (b) upgrade to a higher power allocation tier
 3. If no response is received and excessive overage continues after three (3) business days, Nelexa reserves the right to remotely disable power to the affected circuit to prevent infrastructure damage, fire hazards, or impact to other customers
 4. Power restoration requires payment for upgraded power allocation and may incur reconnection fees

Power overages are measured using facility power monitoring systems. Minor temporary spikes during normal operation are expected and permitted. This policy applies only to sustained or excessive overage (typically >5-20% above allocated limits for extended periods).

6.3.3 Colocation Services - Space and Cooling

- Your equipment must fit within the allocated rack units (U), cabinet space, or cage space specified in your agreement
- Equipment must comply with standard datacenter dimensions and mounting specifications
- Equipment generating excessive heat that impacts facility cooling capacity or neighboring customers may require upgraded cooling allocation or service tier
- Nelexa reserves the right to require cooling upgrades for equipment that exceeds typical thermal design specifications (e.g., high-density GPU clusters, mining equipment if permitted)

6.4 Content Restrictions

You may not host, store, transmit, distribute, or link to:

- Malware, viruses, trojans, worms, ransomware, spyware, keyloggers, or any malicious code
- Phishing sites, scam websites, or deceptive materials designed to defraud or mislead
- Content that promotes, incites, or glorifies violence, terrorism, or harm to others

- Content that promotes hate, discrimination, harassment, or violence based on race, ethnicity, national origin, religion, gender, sexual orientation, disability, or other protected characteristics
- Sexually explicit, pornographic, obscene, or indecent materials
- Child sexual abuse material (CSAM) or any sexually explicit, exploitative, or suggestive content involving minors
- Content that exploits, endangers, or sexualizes children or minors in any way
- Non-consensual intimate imagery or "revenge porn"
- Pirated software, media, or content that infringes intellectual property rights
- Gambling or betting services in jurisdictions where such services are illegal
- Controlled substances or illegal drug marketplaces

6.5 Prohibited Business Activities

You may not use the Services to:

- Operate illegal gambling operations or unlicensed financial services
- Facilitate securities fraud, investment scams, or Ponzi schemes
- Operate illegal marketplaces or facilitate the sale of illegal goods or services
- Engage in unlicensed money transmission or payment processing

6.6 Reporting Violations

- Customers are encouraged to report suspected AUP violations to abuse@nelexa.net
- Nelexa will investigate all reports but is under no obligation to take action or inform the reporter of the outcome

7. Data Retention, Backups, and Data Loss

7.1 No Data Retention Guarantee

- Nelexa does not guarantee the retention, preservation, availability, or recoverability of any customer data under any circumstances, including but not limited to:
- Account suspension or termination
- Hardware failure, disk failure, or system crashes
- Natural disasters or force majeure events
- Security incidents, data breaches, or cyber attacks
- Accidental deletion or data corruption
- Scheduled or emergency maintenance

7.2 Customer Responsibility for Backups

- **You are solely and exclusively responsible for creating, maintaining, and testing independent backups of all data, configurations, and content.**

- Nelexa strongly recommends that you maintain off-site backups stored separately from Nelexa infrastructure.
- Failure to maintain adequate backups is your sole responsibility and risk.

7.3 Data Deletion

- Upon service suspension, Nelexa reserves the right to delete all customer data after seven (7) calendar days without further notice.
- Upon service termination, all customer data may be immediately and permanently deleted.
- Once deleted, data cannot be recovered by Nelexa or any third party.

7.4 No Liability for Data Loss

- **Nelexa shall not be liable under any circumstances for any data loss, data corruption, data unavailability, or inability to access data, regardless of the cause.**
 - This limitation applies even if Nelexa was advised of the possibility of such loss.
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8. Service Level Agreements, Availability, and Maintenance

8.1 Standard Service Level Agreement (SLA)

Unless explicitly stated otherwise in a separate written Service Level Agreement or contract, Nelexa provides the following baseline SLA targets:

8.1.1 Network Uptime SLA

- **Target:** 99.99% network uptime per calendar month
- **Scope:** Applies to Nelexa's core network infrastructure, routing equipment, and internet transit connectivity
- **Exclusions:** Does not cover customer equipment failures, customer-caused outages, upstream provider issues beyond Nelexa's control, scheduled maintenance windows, or force majeure events

8.1.2 Power and Cooling SLA

- **Target:** 99.999% power and cooling uptime per calendar month
- **Scope:** Applies to facility power distribution, backup power systems (UPS/generators), and environmental cooling systems
- **Exclusions:** Does not cover customer equipment power supply failures, power issues caused by customer equipment exceeding allocated capacity, scheduled maintenance windows, utility provider failures beyond Nelexa's backup capacity, or force majeure events

8.1.3 SLA Exclusions and Limitations

The SLA targets do not apply to and Nelexa is not liable for downtime caused by:

- Scheduled maintenance performed during designated maintenance windows (with reasonable advance notice when possible)
- Emergency maintenance required to prevent imminent system failure or security threats
- Customer-caused issues, including configuration errors, software problems, or equipment failures
- DDoS attacks or other malicious activities targeting customer services
- Upstream provider failures or internet backbone issues beyond Nelexa's direct control
- Force majeure events as defined in Section 15
- Customer-requested maintenance, changes, or service interruptions
- Failures of customer-owned equipment in colocation environments

8.1.4 No SLA Credits or Compensation

- **Nelexa does not provide service credits, refunds, or compensation for SLA target shortfalls.**
- SLA targets represent performance goals but do not create contractual guarantees or remedies.
- All services remain subject to the "as is" and "as available" provisions in Section 12.1.
- Customers requiring guaranteed uptime with financial remedies must negotiate a custom Enterprise Service Level Agreement.

8.1.5 Custom Enterprise SLAs

- Enterprise customers with specific uptime requirements may negotiate custom Service Level Agreements with defined uptime guarantees, response times, and service credit structures.
- Custom SLAs must be executed in writing as separate agreements and typically require higher service tier commitments.
- Contact Nelexa sales to discuss Enterprise SLA options.

8.2 Maintenance Windows

- Nelexa may perform scheduled maintenance, emergency maintenance, upgrades, repairs, or modifications at any time.
- **Scheduled Maintenance:** Nelexa will provide reasonable advance notice (typically 48-72 hours) for scheduled maintenance when operationally feasible. Scheduled maintenance is typically performed during low-traffic periods.
- **Emergency Maintenance:** May occur at any time without advance notice when necessary to prevent system failures, address security vulnerabilities, or restore service functionality.
- Maintenance may result in temporary service interruptions, performance degradation, or reduced functionality.

8.3 Third-Party Dependencies

- Nelexa relies on third-party providers for upstream connectivity, power utilities, hardware vendors, and other infrastructure components.
- Nelexa is not responsible for failures, outages, or performance issues caused by third-party providers, utilities, or other external factors beyond our reasonable control.
- Nelexa maintains redundant systems and diverse provider relationships to minimize impact of third-party failures, but cannot guarantee immunity from external disruptions.

8.4 Monitoring and Notification

- Nelexa monitors core infrastructure and network systems 24/7.
- Customers may be notified of significant outages or maintenance via email, status page updates, or support ticket system.
- Nelexa is not obligated to provide notification for brief interruptions or issues affecting individual customers.

9. Colocation and IP Transit Customers

9.1 Additional Agreements Required

Customers utilizing colocation services, IP transit, BGP routing, or other specialized services must execute additional Service Level Agreements, addenda, or service-specific contracts that outline:

- Specific operational procedures and protocols
- Technical specifications and standards
- Physical access policies and security requirements
- Liability allocations and insurance requirements
- Service-specific fees and billing terms
- Equipment ownership and responsibility
- Decommissioning and removal procedures

9.2 Compliance Requirement

- Failure to execute required additional agreements will result in service suspension until such agreements are completed.
- Failure to adhere to the terms of any additional agreement constitutes a material breach of this TOS and may result in immediate service termination.

9.3 Equipment and Physical Access

- Colocation customers retain full ownership and responsibility for their equipment, including purchase, installation, maintenance, insurance, repairs, upgrades, and eventual removal

- Physical access to colocation facilities is subject to:
- Facility security protocols and procedures
- Advance notice requirements (typically 4-24 hours depending on facility and access type)
- Valid government-issued photo identification matching authorized personnel list
- Escort requirements for certain access types or first-time visits
- Facility hours and staffing availability
- Security screening and sign-in/sign-out procedures
- Remote hands services are available for an additional fee when physical access is not practical
- Nelexa is not responsible for customer-owned equipment failure, damage, theft, loss, or depreciation

9.4 Hardware Repossession and Recovery Rights

9.4.1 Nelexa's Repossession Rights

In the event of service termination for any reason, including nonpayment, breach of contract, or voluntary cancellation, Nelexa reserves the following rights regarding customer equipment located in Nelexa facilities:

For Nonpayment or Breach:

- If services are suspended for nonpayment for more than thirty (30) calendar days, or terminated for material breach of this Agreement, Nelexa may:
- Deny all physical and remote access to the equipment
- Power down and disconnect the equipment from all network and power sources
- Relocate the equipment to secure storage within the facility or off-site storage
- Exercise a possessory lien on the equipment as security for all unpaid amounts owed

9.4.2 Equipment Retrieval Process

- Upon service termination or suspension, you have thirty (30) calendar days to:
- Pay all outstanding balances in full, including late fees, storage fees, and any applicable retrieval fees, AND
- Coordinate equipment removal during normal business hours with at least seventy-two (72) hours advance notice
- Equipment retrieval appointments must be scheduled through official Nelexa support channels
- **For shared space colocation services:** You are responsible for bringing appropriate tools, packaging materials, transportation, and labor to remove your equipment. Alternatively, Nelexa can provide equipment removal, packaging, and preparation for shipment for a service fee. This removal and preparation fee must be paid in full before equipment will be released or shipped to you.
- **For dedicated cabinet/cage colocation:** You are responsible for your own equipment removal, packaging, and transportation. Nelexa is not responsible

for assisting with equipment removal, packaging, or loading unless separately contracted.

- All removal fees, outstanding balances, and associated costs must be paid before equipment release.

9.4.3 Abandoned Equipment

Equipment shall be deemed "abandoned" if:

- Outstanding balances remain unpaid for more than sixty (60) calendar days after termination, OR
- You fail to retrieve equipment within sixty (60) calendar days after termination, OR
- You explicitly abandon the equipment in writing, OR
- You cannot be contacted using any information on file after reasonable attempts

Consequences of Abandonment:

- Nelexa may dispose of, sell, recycle, or destroy abandoned equipment without further notice or liability
- You forfeit all ownership rights and claims to abandoned equipment
- Any proceeds from sale of abandoned equipment shall be applied first to outstanding balances, storage fees, disposal costs, and administrative fees, with no obligation to remit any surplus
- You remain liable for any remaining outstanding balance after equipment disposal

9.4.4 Storage Fees

- Equipment that remains in the facility beyond seven (7) days after termination is subject to daily storage fees of \$25 per rack unit (U) per day, or \$500 per cabinet/cage per day
- Storage fees accrue automatically and are added to your outstanding balance
- Storage fees continue until equipment is retrieved or deemed abandoned

9.4.5 Data Security

- Nelexa is not responsible for data security, data wiping, or data destruction on customer-owned equipment
- You are solely responsible for securely wiping, destroying, or removing all data storage devices before abandoning or disposing of equipment
- Nelexa has no obligation to preserve, wipe, or secure any data on equipment left in the facility after termination

9.4.6 Facility Access Denial

- Nelexa reserves the right to deny facility access to any individual or organization with outstanding balances, unresolved disputes, or history of policy violations

- Access denial applies to all Nelexa facilities regardless of which facility owes outstanding balances
 - Facility access is a privilege that may be revoked at Nelexa's sole discretion
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10. Support and Communication

10.1 Official Support Channels

- All support requests, inquiries, and communications must be submitted through official Nelexa support channels, including:
 - Support ticket system
 - Official email addresses
 - Customer portal
- Communications through unofficial channels (personal social media, personal email, etc.) are not considered valid support requests and will not receive guaranteed responses.

10.2 Prohibited Conduct

The following behaviors toward Nelexa staff, contractors, agents, or other customers are strictly prohibited and constitute grounds for immediate account termination without refund:

- Abusive, threatening, harassing, or intimidating language or behavior
- Profanity-laden tirades or personal attacks
- Stalking, doxxing, or publishing private information about staff or others
- Discriminatory or hateful speech
- Repeated frivolous or vexatious complaints
- Demanding or unreasonable behavior
- Attempts to manipulate, coerce, or extort staff

10.3 Response Times

- Nelexa will make commercially reasonable efforts to respond to support requests in a timely manner.
 - Response times are not guaranteed and may vary based on request volume, complexity, and priority.
 - Emergency support may be available for certain service tiers as outlined in applicable Service Level Agreements.
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11. Intellectual Property

11.1 Nelexa Intellectual Property

- All content, trademarks, service marks, logos, trade names, software, technology, and intellectual property associated with the Services are and remain the exclusive property of Nelexa and its licensors.
- You are granted a limited, non-exclusive, non-transferable, revocable license to access and use the Services solely for their intended purpose in compliance with this Agreement.
- You may not reproduce, distribute, modify, create derivative works from, publicly display, or otherwise exploit any Nelexa intellectual property without express written permission.

11.2 Customer Content

- You retain all ownership rights to content, data, and materials you upload, store, or transmit through the Services ("Customer Content").
- By using the Services, you grant Nelexa a limited, non-exclusive, worldwide license to use, store, transmit, and process Customer Content solely to the extent necessary to provide the Services.
- You represent and warrant that you own or have all necessary rights to all Customer Content and that Customer Content does not infringe or violate any third-party rights.

11.3 DMCA and Copyright Compliance

- Nelexa respects intellectual property rights and complies with the Digital Millennium Copyright Act (DMCA).
- If you believe your copyright has been infringed, submit a DMCA notice to our designated agent.
- Repeat copyright infringers will have their accounts terminated.

12. Limitation of Liability

12.1 Disclaimer of Warranties

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS." NELEXA, ITS PARENT COMPANY (ELCRO DIGITAL SERVICES, LLC), AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, AND LICENSORS (COLLECTIVELY, "NELEXA PARTIES") EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO:

- **Implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement**
- **Warranties regarding availability, reliability, accuracy, or completeness**
- **Warranties that the Services will be uninterrupted, error-free, secure, or free from viruses or other harmful components**

- Any warranties arising from course of dealing, course of performance, or usage of trade

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH JURISDICTIONS, NELEXA'S LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

12.2 Limitation of Damages

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE NELEXA PARTIES BE LIABLE FOR ANY:

- Indirect, incidental, consequential, special, exemplary, or punitive damages
- Loss of profits, revenue, business opportunities, goodwill, or reputation
- Loss of data or inability to access data
- Business interruption or downtime
- Cost of substitute services or procurement of replacement services
- Any other damages or losses arising out of or relating to this Agreement or the use or inability to use the Services, regardless of the legal theory (contract, tort, negligence, strict liability, or otherwise) and whether or not the Nelexa Parties were advised of the possibility of such damages

12.3 Cap on Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF THE NELEXA PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY YOU TO NELEXA IN THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY.

12.4 Essential Basis of Bargain

YOU ACKNOWLEDGE AND AGREE THAT THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND NELEXA, AND THAT NELEXA WOULD NOT PROVIDE THE SERVICES WITHOUT THESE LIMITATIONS.

13. Indemnification

13.1 Your Indemnification Obligations

You agree to indemnify, defend (at Nelexa's option), and hold harmless the Nelexa Parties from and against any and all claims, demands, actions, losses, liabilities,

damages, costs, and expenses (including reasonable attorney's fees, expert fees, and court costs) arising out of or relating to:

- Your use or misuse of the Services
- Your violation of this Agreement, any applicable law, regulation, or third-party right
- Your Customer Content or any content transmitted through your account
- Any activity conducted through your account, whether or not authorized by you
- Your breach of any representation, warranty, or covenant in this Agreement
- Any negligent, willful, or unlawful act or omission by you or your agents, employees, or contractors
- Any claim that your Customer Content infringes, misappropriates, or violates any third-party intellectual property or other rights

13.2 Indemnification Process

- Nelexa will provide you with prompt written notice of any claim subject to indemnification.
- You will cooperate fully with Nelexa in the defense of any claim.
- Nelexa reserves the right to assume exclusive control of the defense and settlement of any claim, at your expense.
- You may not settle any claim without Nelexa's prior written consent.

14. Dispute Resolution and Governing Law

14.1 Governing Law

This Agreement and any disputes arising out of or relating to this Agreement or the Services shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict of law principles.

14.2 Jurisdiction and Venue

Any legal action, suit, or proceeding arising out of or relating to this Agreement or the Services must be instituted exclusively in the state or federal courts located in Allegheny County, Pennsylvania. You irrevocably consent and submit to the exclusive personal jurisdiction and venue of such courts and waive any objection to such jurisdiction or venue, including any claim that such forum is inconvenient.

14.3 Waiver of Jury Trial

YOU AND NELEXA EACH WAIVE ANY RIGHT TO A JURY TRIAL IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES.

14.4 Class Action Waiver

YOU AND NELEXA AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION. YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

14.5 Limitation on Time to File Claims

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

14.6 Attorney's Fees

In any legal action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, expert fees, and costs from the non-prevailing party.

14.7 European Economic Area (EEA) Specific Provisions

14.7.1 Applicability

This Section 14.7 applies exclusively to customers who are: (a) natural persons habitually resident in the European Economic Area (EEA), which comprises the 27 European Union member states plus Iceland, Liechtenstein, and Norway; or (b) legal entities established under the laws of an EEA member state with their principal place of business in the EEA. For the purposes of this section, "EEA Customers" refers to such persons and entities.

14.7.2 Nature of Services and Service Classification

Nelexa provides infrastructure-as-a-service (IaaS), colocation facilities, IP transit, bare-metal dedicated server hosting, and hardware leasing/sales. These services are expressly categorized as:

- **Physical Infrastructure Services:** Colocation, rack space, power allocation, cooling, physical security, and facility access
- **Network Transit Services:** IP transit, BGP routing, bandwidth provisioning, and network connectivity
- **Hardware Services:** Dedicated server provisioning, bare-metal hardware leasing, hardware sales, and equipment installation
- **Business-to-Business Services:** All services are provided on a commercial basis and are intended for business, professional, or technical use

Critical Classification: These services do NOT constitute "digital content" or "digital services" as defined under Article 2(11) of Directive 2011/83/EU (Consumer Rights Directive). Nelexa services are physical infrastructure services, telecommunications services, and hardware provisioning that require substantial physical deployment, configuration, installation, and ongoing maintenance of tangible infrastructure and equipment. The services involve:

- Physical allocation of rack space, power circuits, and cooling capacity
- Physical installation and connection of hardware equipment
- Provisioning of network transit through physical fiber optic infrastructure and routing equipment
- Configuration of physical bare-metal servers and network equipment
- Ongoing physical maintenance, monitoring, and facility management

14.7.3 Immediate Service Deployment and Waiver of Withdrawal Rights

Automatic Service Commencement

BY ACCEPTING THIS AGREEMENT, CLICKING "I AGREE," SUBMITTING PAYMENT, OR SIGNING THE SERVICE CONTRACT, YOU EXPRESSLY REQUEST AND AUTHORIZE NELEXA TO IMMEDIATELY BEGIN PERFORMANCE OF SERVICES, INCLUDING BUT NOT LIMITED TO:

- Physical allocation and reservation of colocation space, rack units, power circuits, and network ports
- Configuration and provisioning of dedicated server hardware
- Network configuration, IP address assignment, and BGP routing setup
- Installation and connection of customer-provided or Nelexa-provided hardware
- Activation of IP transit services and bandwidth allocation
- Commencement of facility access provisioning and security clearance processing
- Any other preparatory or deployment activities necessary to deliver the contracted services

Express Waiver Under Article 16(a) of Directive 2011/83/EU

You expressly acknowledge and agree that:

1. **Immediate Performance Request:** You are explicitly requesting that Nelexa begin full performance of the services immediately upon contract acceptance, without waiting for expiration of any withdrawal period
2. **Waiver of Withdrawal Right:** You expressly waive your right of withdrawal under Article 9 of Directive 2011/83/EU once performance has fully begun, pursuant to the exception in Article 16(a)
3. **Understanding of Consequences:** You acknowledge that by requesting immediate performance, you lose your right to withdraw from the contract once service deployment has commenced

4. **Informed Consent:** You confirm that you have been clearly informed of this waiver and its legal consequences prior to accepting this Agreement

Service deployment commences immediately and automatically upon:

- Contract signature or electronic acceptance
- Payment processing and clearance
- Account activation
- Submission of service order

There is no grace period, cooling-off period, or delayed deployment. Services are deployed immediately to ensure availability and to allocate finite physical resources (rack space, power capacity, IP addresses, hardware inventory).

Partial Performance and Withdrawal Rights

Even if full service deployment has not yet been completed (for example, hardware is ordered but not yet installed, or facility access is being processed), you acknowledge that Nelexa has begun performance by:

- Reserving and allocating physical resources that cannot be simultaneously provided to other customers
- Ordering, configuring, or preparing hardware specific to your service requirements
- Processing facility access and security clearances
- Assigning IP address allocations from finite address space
- Configuring network routing and transit connections
- Performing any preparatory work or resource allocation

Any commencement of performance, including resource allocation and preparatory activities, constitutes the beginning of service deployment and triggers the waiver of withdrawal rights under Article 16(a).

14.7.4 Consumer Rights and Refund Restrictions for Physical Services

No Withdrawal Right for Infrastructure Services

For EEA Customers who may qualify as "consumers" under Directive 2011/83/EU, the right of withdrawal under Article 9 does NOT apply to Nelexa services because:

1. **Immediate Performance Exception** (Article 16(a)): As outlined in Section 14.7.3, you have expressly requested immediate performance and acknowledged the waiver of withdrawal rights
2. **Services Fully Performed Exception** (Article 16(a)): Once services have been fully performed with your prior express consent and acknowledgment that you will lose your right of withdrawal once performance has begun in full
3. **Nature of Physical Services:** The services involve allocation of finite physical resources, installation of equipment, and configuration of

infrastructure that cannot be easily reversed or reallocated without significant cost and disruption

Hardware Sales and Equipment

For contracts involving hardware sales (servers, network equipment, or other physical goods):

Sealed Equipment Exception (Article 16(e)):

- Hardware equipment is typically delivered sealed and configured specifically for your deployment
- Once unsealed, installed, powered on, or deployed in a production environment, the right of withdrawal does NOT apply pursuant to Article 16(e) of Directive 2011/83/EU (goods sealed for health/hygiene reasons or which become inseparably mixed with other items after delivery)
- Additionally, hardware is often custom-configured to your specifications, which constitutes goods "made to the consumer's specifications or clearly personalized" under Article 16(c), further excluding the right of withdrawal

Custom Configuration Exception (Article 16(c)):

- Dedicated servers and hardware are typically configured with custom operating systems, network configurations, security settings, and software installations per your specifications
- Such custom-configured hardware constitutes goods "made to the consumer's specifications or clearly personalized" and is excluded from the right of withdrawal under Article 16(c)

Unused, Sealed Hardware:

- If hardware is delivered but remains completely unused, unopened, in original sealed packaging, and has not been powered on, installed, or configured, you may return it within seven (7) calendar days of delivery for a refund minus a 25% restocking fee, provided:
- All original packaging, accessories, documentation, and materials are included and undamaged
- The hardware is in completely new, unused, resalable condition
- Return shipping costs are borne by you
- Return authorization is obtained from Nelexa prior to shipment
- This limited return option is a voluntary commercial gesture and does not constitute a statutory withdrawal right, as the withdrawal right is already excluded under Article 16(a), (c), or (e)

Strict No-Refund Policy Enforcement

All service fees, setup fees, installation fees, monthly recurring charges, and other payments are strictly non-refundable because:

1. **Physical Resource Allocation:** Services involve allocation of finite, non-fungible physical resources (rack space, power circuits, IP addresses, hardware) that cannot be simultaneously provided to other customers once allocated to you
2. **Immediate Deployment:** Services are deployed immediately upon contract acceptance, triggering the exceptions to withdrawal rights under Article 16(a)
3. **Sunk Costs:** Service provisioning incurs immediate, non-recoverable costs including labor, configuration, installation, facility access processing, and infrastructure allocation
4. **Business Nature of Services:** Services are provided on a business-to-business basis and are intended for commercial, professional, or technical use by customers with expertise in infrastructure management
5. **Custom Configuration:** Services are typically customized and configured to your specific technical requirements

No refunds, credits, or pro-rata adjustments are provided under any circumstances, including:

- Early termination or cancellation
- Service dissatisfaction or change in business needs
- Underutilization or non-use of services
- Force majeure events or service interruptions (subject to Section 14.7.7)
- Account suspension or termination for breach
- Change of mind or buyer's remorse

14.7.5 Data Retention and Legal Compliance

Pennsylvania Law Data Retention Requirements

Pursuant to Pennsylvania state law requirements for commercial service providers, financial record-keeping obligations, and legal liability protection:

Mandatory Data Retention Period: All customer data, account information, transaction records, usage logs, communications, support tickets, billing records, payment information, identity verification documents, and any other customer-related data or records shall be retained by Nelexa for a minimum period of **two (2) years following account closure or service termination**, regardless of the reason for termination.

Legal Basis for Retention:

- Compliance with Pennsylvania business record retention statutes
- Financial audit and tax compliance requirements under federal and state law
- Fraud prevention and investigation
- Defense of legal claims, disputes, or litigation (statute of limitations protection)
- Compliance with anti-money laundering (AML) and know-your-customer (KYC) regulatory requirements
- Law enforcement cooperation and legal process response
- Debt collection and payment dispute resolution
- Regulatory examination and oversight requirements

Retention Applies Regardless of GDPR Requests: Even if you submit a GDPR Article 17 "Right to Erasure" request, Nelexa is legally obligated to retain the data outlined above for the mandatory two-year retention period. This retention is necessary for compliance with legal obligations to which Nelexa is subject (Article 17(3)(b) GDPR) and for the establishment, exercise, or defense of legal claims (Article 17(3)(e) GDPR). Your erasure request will be honored only for data not subject to these mandatory retention requirements.

Post-Retention Deletion: Following the expiration of the two-year mandatory retention period, data not subject to ongoing legal holds, active litigation, or regulatory examination shall be securely deleted or anonymized within ninety (90) days.

Extended Retention for Legal Matters: Data may be retained beyond the two-year period if:

- An active legal dispute, litigation, arbitration, or investigation is ongoing
- A regulatory examination or audit is in progress
- A legal hold or preservation obligation is in effect
- Outstanding debt or payment disputes remain unresolved
- Law enforcement or court orders require continued retention

14.7.6 Unfair Contract Terms Protection and Legal Validity

Directive 93/13/EEC Compliance

Pursuant to Council Directive 93/13/EEC on unfair terms in consumer contracts, Nelexa affirms that:

1. **Negotiated Terms:** While this Agreement is presented as a standard terms agreement, key commercial terms including service specifications, pricing, service levels, and infrastructure requirements are individually discussed and negotiated with each customer during the sales and onboarding process. Customers have the opportunity to request modifications, clarifications, or custom service agreements prior to contract execution.
2. **Plain Language:** This Agreement is drafted in plain, intelligible language to ensure transparency and understanding. Technical terms are defined, and key obligations are clearly stated.
3. **Balance of Rights:** The terms of this Agreement reflect a balanced allocation of rights and obligations appropriate for commercial infrastructure services where:
 - Nelexa bears significant upfront deployment costs and ongoing operational obligations
 - Customers receive immediate access to finite, expensive physical infrastructure
 - Both parties require certainty regarding payment obligations, service deployment, and resource allocation
 - The services are complex technical services requiring specialized knowledge and professional use

1. **Essential Basis:** The no-refund policy, immediate deployment provisions, and data retention requirements form the essential basis of the commercial bargain and are necessary to:
 - Prevent speculative or abusive resource reservations
 - Enable efficient allocation of finite infrastructure capacity
 - Protect against fraud and payment disputes
 - Ensure legal compliance and liability protection
 - Maintain economically viable service pricing

Consumer vs. Business Customer Classification

Strong Presumption of Business Use: Given the nature of Nelexa services (infrastructure hosting, IP transit, colocation, bare-metal servers), there is a strong presumption that customers are acting in a business, professional, or commercial capacity rather than as consumers. Evidence of business use includes:

- Use of business email addresses or company domains
- Registration with business entities, VAT numbers, or tax identification numbers
- Technical expertise required to utilize the services (network configuration, server administration, BGP routing)
- Commercial use cases (hosting production applications, operating network infrastructure, reselling services)
- Service specifications inconsistent with personal or household use

Consumer Protection Limited Scope: For the limited circumstances where an EEA customer may qualify as a "consumer" acting for purposes wholly or mainly outside their trade, business, craft, or profession, the enhanced consumer protections in this Section apply. However, even for such consumers:

- The immediate deployment and waiver provisions in Section 14.7.3 remain valid and enforceable under Article 16(a) of Directive 2011/83/EU
- The no-refund policy remains valid due to the exceptions to withdrawal rights
- Mandatory liability provisions remain applicable (Section 14.7.9)
- Dispute resolution rights remain available (Section 14.7.8)

14.7.7 Limited Service Level Agreement for EEA Consumers

Notwithstanding Section 8 of this Agreement, for EEA customers who qualify as consumers under applicable law:

Modified SLA with Proportionate Remedy:

- In the event of significant service disruption lasting more than seventy-two (72) continuous hours caused solely by Nelexa's breach of its core service obligations (not force majeure, third-party failures, customer-caused issues, or scheduled maintenance), EEA consumers may request a service credit equal to a pro-rata refund for the specific period of unavailability exceeding 72 hours.

- Service credits are capped at the monthly service fee for the affected service and must be requested in writing within thirty (30) days of the service disruption.
- Service credits are provided as account credits for future services and are not refundable as cash payments.
- This remedy is your sole and exclusive remedy for service disruptions and does not entitle you to full refunds, contract cancellation with refund, or damages beyond the service credit.
- This limited remedy reflects a proportionate response consistent with EEA consumer protection principles while accounting for the nature of infrastructure services and force majeure risks.

No SLA for Business Customers: EEA business customers remain subject to Section 8's standard SLA terms with no service credits or compensation.

14.7.8 Governing Law and Jurisdiction for EEA Customers

Consumer Contracts

For EEA Customers who qualify as consumers under applicable EEA law:

Choice of Law:

- This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, United States, **including Pennsylvania's statute of limitations, commercial law principles, and contract formation rules.**
- However, you retain the benefit of **mandatory** consumer protection provisions under the law of the EEA member state in which you are habitually resident **only to the extent such provisions cannot be derogated from by agreement and only with respect to provisions that provide greater protection than Pennsylvania law**, in accordance with Article 6(2) of Regulation (EC) 593/2008 (Rome I Regulation).
- Where Pennsylvania law and EEA law conflict, **the resolution shall favor the law that most closely aligns with the commercial nature of infrastructure services, physical resource allocation, and business-to-business transaction models**, giving effect to the parties' intent to establish a single, predictable legal framework.

Jurisdiction:

- **Primary Jurisdiction:** All disputes shall be subject to the **exclusive jurisdiction** of the state and federal courts located in Allegheny County, Pennsylvania, United States.
- **Limited EEA Forum Option:** Alternatively, you may bring proceedings in the courts of your habitual residence in the EEA, **but only for claims directly related to mandatory consumer protection provisions that cannot be waived and only where such claims cannot be effectively litigated in Pennsylvania courts due to forum non conveniens or denial of justice.**

- **Nelexa's Jurisdiction Rights:** Nelexa may bring legal proceedings against you in either: (a) Pennsylvania courts; or (b) the courts of your habitual residence, at Nelexa's sole election.
- **Forum Selection as Essential Term:** You acknowledge that the forum selection clause designating Pennsylvania courts as primary jurisdiction is a material inducement for Nelexa to enter into this Agreement and reflects the significant connection between the services (U.S.-based infrastructure) and Pennsylvania law.

Consent to Pennsylvania Jurisdiction: You expressly and irrevocably:

- Consent to the personal jurisdiction of Pennsylvania courts
- Waive any objection to venue, jurisdiction, or forum non conveniens in Pennsylvania courts
- Agree that Pennsylvania courts are a convenient and appropriate forum
- Acknowledge that most evidence, witnesses, and infrastructure relevant to any dispute are located in Pennsylvania or elsewhere in the United States

Business Contracts

For EEA Customers who are businesses, legal entities, or do not qualify as consumers:

- **Exclusive Pennsylvania Governance:** The governing law and jurisdiction provisions in Sections 14.1 and 14.2 apply without modification or exception.
- **No EEA Forum Option:** You consent to the **exclusive** jurisdiction of Pennsylvania courts and waive any right to bring proceedings in EEA courts.
- **No Mandatory Law Protection:** You waive the benefit of any mandatory EEA commercial law provisions to the fullest extent permitted by applicable law.

14.7.9 Limitation of Liability for EEA Customers

Mandatory Liability - Limited Scope

Notwithstanding Section 12, Nelexa does NOT exclude or limit liability **only** for:

- Death or personal injury directly and proximately caused by Nelexa's gross negligence or willful misconduct (not ordinary negligence)
- Fraud or intentional fraudulent misrepresentation by Nelexa (not negligent misrepresentation or omission)
- Liabilities that cannot be excluded or limited under Pennsylvania law or mandatory EEA law that applies despite the parties' choice of Pennsylvania governing law

All other limitations and exclusions in Section 12 remain in full force and effect.

Strict Liability Caps for All EEA Customers

For both consumer and business EEA customers, the following liability limitations apply:

Maximum Aggregate Liability Cap: Nelexa's total aggregate liability for all claims arising out of or relating to this Agreement, the services, or any course of dealing between the parties **shall not exceed the total amount paid by you to Nelexa in the three (3) months immediately preceding the event giving rise to liability**, except for the mandatory liability categories listed above.

Excluded Damages: Nelexa shall have **no liability whatsoever** for:

- Indirect, incidental, consequential, special, exemplary, or punitive damages
- Loss of profits, revenue, business opportunities, goodwill, reputation, or anticipated savings
- Loss of data, data corruption, or inability to access data (see Section 14.7.5 - you have no right to data access after termination)
- Business interruption, downtime, or unavailability of services
- Cost of substitute services or procurement of replacement infrastructure
- Claims by third parties
- Any damages arising from events beyond Nelexa's reasonable control (force majeure, third-party provider failures, cyber attacks, customer-caused issues)

Proportionate Liability Principle: Any liability shall be reduced proportionately to reflect:

- Contributory negligence or fault by you
- Your failure to maintain backups or mitigate damages
- Failures or acts of third parties, upstream providers, or other external factors
- Force majeure events or circumstances beyond Nelexa's control
- The inherent risks of operating technical infrastructure (hardware failures, network issues, security threats)

Consumer-Specific Modifications (Narrow Scope)

For EEA consumers **only**, the following narrow modifications apply:

Negligence Liability: In cases of Nelexa's **ordinary negligence** (not gross negligence or willful misconduct), liability is limited to foreseeable, typical damages for infrastructure services of this type, capped at the three-month liability limit stated above. "Foreseeable damages" means direct damages that were reasonably contemplated by both parties at the time of contract formation given the nature of infrastructure services.

Service Credit Remedy (Section 14.7.7): The proportionate service credit remedy for prolonged service disruptions (Section 14.7.7) is your primary remedy for service quality issues and shall be credited against and reduce any other damages claims.

No Expansion of Liability: These consumer-specific modifications do **not** expand the categories of recoverable damages, do **not** create any new causes of action, and

do **not** waive the exclusions for indirect/consequential damages or the aggregate liability cap.

14.7.10 Mandatory Arbitration and Class Action Waiver for EEA Business Customers

For EEA customers who are **businesses, legal entities, or otherwise do not qualify as consumers**:

Binding Arbitration Requirement: Any dispute, claim, or controversy arising out of or relating to this Agreement or the Services shall be resolved **exclusively through binding arbitration** administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules, with the following terms:

- Arbitration shall be conducted in English in Allegheny County, Pennsylvania, or via videoconference
- The arbitrator shall apply Pennsylvania substantive law
- The arbitrator's decision shall be final and binding with extremely limited grounds for appeal
- Each party bears its own attorney's fees unless the arbitrator awards fees to the prevailing party
- Discovery shall be limited to that which is necessary and proportionate
- Arbitration proceedings and awards are confidential

Class Action Waiver: You **irrevocably waive** any right to:

- Participate in or bring class actions, class arbitrations, or representative actions
- Consolidate your claims with claims of other parties
- Serve as a class representative or member All disputes must be brought on an **individual basis only**.

No Arbitration for Collection Actions: Nelexa retains the right to pursue collection actions, payment disputes, and enforcement of payment obligations in Pennsylvania courts or courts of competent jurisdiction without submitting to arbitration.

Consumer Exemption: This arbitration requirement does **not** apply to EEA consumers, who retain their litigation rights as specified in Section 14.7.8.

14.7.11 Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR)

Information Disclosure Only

Pursuant to Regulation (EU) 524/2013 and Directive 2013/11/EU, Nelexa provides the following information:

ODR Platform: The European Commission provides an Online Dispute Resolution (ODR) platform at: <https://ec.europa.eu/consumers/odr>

ADR Entities: Information about certified Alternative Dispute Resolution (ADR) entities may be found through your national consumer protection authority.

Nelexa's Position on ADR:

- Nelexa is **not obligated** to participate in ADR proceedings before consumer dispute resolution entities
- Nelexa **does not commit** to using ADR and will evaluate participation on a case-by-case basis at its sole discretion
- Nelexa reserves the right to decline ADR and require judicial resolution in accordance with Section 14.7.8
- You are encouraged to contact Nelexa support directly to attempt informal resolution, but Nelexa is under no obligation to resolve disputes outside of formal legal proceedings

This information is provided solely to comply with EU disclosure requirements and does not constitute a commitment to participate in ADR.

14.7.12 Data Protection and GDPR Compliance

Nelexa processes personal data of EEA Customers in accordance with Regulation (EU) 2016/679 (General Data Protection Regulation, "GDPR") and applicable EEA member state data protection laws, subject to the specific requirements and limitations outlined in this Agreement.

Legal Basis for Processing

- **Contract Performance** (Article 6(1)(b)): Processing necessary for performance of this Agreement
- **Legal Obligations** (Article 6(1)(c)): Compliance with KYC/AML requirements, tax obligations, Pennsylvania data retention laws, and law enforcement requests - **this legal basis supersedes any erasure requests**
- **Legitimate Interests** (Article 6(1)(f)): Fraud prevention, network security, abuse prevention, legal defense, and business operations
- **Vital Interests** (Article 6(1)(d)): Protection of network infrastructure and prevention of harm to others (security threats, abuse, illegal activity)

GDPR Rights - Subject to Legal Limitations

EEA Customers have the following rights under the GDPR, **subject to the limitations and exceptions specified in this Agreement:**

Right of Access (Article 15):

- You may request confirmation of whether we process your personal data and obtain a copy
- **Limitation:** Requests are limited to two (2) requests per twelve-month period to prevent abuse and excessive burden
- **Redaction:** We may redact information that implicates trade secrets, proprietary systems, or third-party confidential information

Right to Rectification (Article 16):

- You may request correction of inaccurate or incomplete personal data
- **Verification Required:** Corrections require adequate documentation to verify accuracy

Right to Erasure (Article 17) - **SIGNIFICANTLY LIMITED:**

- **CANNOT be exercised** for data subject to Pennsylvania's mandatory two-year retention requirement (Section 14.7.5)
- **CANNOT be exercised** for data necessary for establishment, exercise, or defense of legal claims (Article 17(3)(e))
- **CANNOT be exercised** for data required for compliance with legal obligations (Article 17(3)(b)) including KYC/AML, tax, and financial record-keeping
- **CANNOT be exercised** for data required for fraud prevention, debt collection, or abuse prevention purposes
- Erasure requests will be honored **only** for data not subject to these exceptions, which constitutes a very limited subset of data

Right to Restriction of Processing (Article 18):

- Extremely limited applicability due to legal retention obligations and legitimate interests
- May be honored for data not subject to mandatory retention or legitimate interest processing

Right to Data Portability (Article 20):

- Available for data you provided based on consent or contract performance
- **Format:** Provided in JSON or CSV format
- **Limitation:** Limited to structured data; does not include system logs, metadata, or derivative data

Right to Object (Article 21):

- You may object to processing based on legitimate interests
- **Nelexa's Override:** We may continue processing if we demonstrate compelling legitimate grounds that override your interests (fraud prevention, legal defense, network security, abuse prevention)
- **No Effect on Legal Obligation Processing:** Cannot object to processing required by Pennsylvania law or other legal obligations

Right to Withdraw Consent (Article 7(3)):

- Applicable only where processing is based on consent
- Most processing is based on contract performance, legal obligations, or legitimate interests, **not consent**

No Automated Decision-Making Rights: Nelexa does not engage in automated decision-making with legal or similarly significant effects as defined in Article 22 GDPR.

Exercising GDPR Rights

- Contact: gdpr@nelexa.net or legal@nelexa.net
- **Response Time:** 30 days (may be extended by two months for complex requests)
- **Verification Required:** Government-issued ID or equivalent verification to prevent fraudulent requests
- **Fees:** Manifestly unfounded or excessive requests (particularly repetitive requests) may be subject to administrative fees

Data Retention (Reiteration)

As specified in Section 14.7.5:

- **Mandatory Retention:** Two (2) years post-termination for all customer data pursuant to Pennsylvania law
- This retention **overrides** GDPR erasure requests under Article 17(3)(b) and 17(3)(e)
- No exceptions will be made to the mandatory retention period

International Data Transfers

- Nelexa's infrastructure is primarily located in the United States (Pennsylvania and other states)
- Data transfers from the EEA to the United States are conducted pursuant to:
- Standard Contractual Clauses (SCCs) approved by the European Commission (Decision 2021/914), or
- Other valid transfer mechanisms under GDPR Chapter V
- **Transfer is Essential:** Data must be transferred to the United States to provide the services (servers, network infrastructure, and facilities are physically located in the U.S.)
- SCCs available upon request: gdpr@nelexa.net

Supervisory Authority

- EEA Customers may lodge a complaint with their local data protection supervisory authority if they believe their data protection rights have been violated
- **However:** Disputes regarding data retention, service terms, payments, and contract enforcement remain subject to Pennsylvania jurisdiction (Section 14.7.8) and are not within the supervisory authority's jurisdiction

14.7.13 Payment Services Compliance

Payment Services Directive 2 (PSD2):

- Nelexa complies with PSD2 (Directive (EU) 2015/2366) to the extent applicable as a service merchant
- Strong Customer Authentication (SCA) may be required for certain transactions
- You authorize recurring payment charges as specified in Section 4

No Consumer Credit: Nelexa services do not constitute consumer credit arrangements under Directive 2008/48/EC. All charges are for immediate service provisioning, not deferred payment consumer credit.

14.7.14 Electronic Commerce Compliance

Pursuant to Directive 2000/31/EC on electronic commerce:

Service Provider Information:

- **Legal Entity:** PA #14940668 - Nelexa Networks, a division/d/b/a of Elcro Digital Services, LLC
- **Address:** 1597 Washington Pike, Ste A38, PMB 156, Bridgeville, PA 15017-2876, United States
- **Email:** legal@nelexa.net, support@nelexa.net
- **Website:** nelexa.net

Contract Formation:

- You will receive order/contract confirmation via email to your registered address
- Technical steps: Account registration → Service selection → Payment → Automated deployment
- Contract language: English
- Terms are accessible at: <https://nelexa.net/terms> (or provided during onboarding)

14.7.15 Regulatory Compliance Statement

Nelexa monitors and complies with applicable EEA regulations to the extent required by law, including but not limited to:

- Regulation (EU) 2016/679 (GDPR)
- Directive 2002/58/EC (ePrivacy Directive)
- Directive 2011/83/EU (Consumer Rights Directive) - subject to Article 16 exceptions
- Directive 93/13/EEC (Unfair Contract Terms)
- Regulation (EU) 524/2013 (ODR Regulation)
- Directive 2000/31/EC (E-Commerce Directive)

Compliance Interpretation: Where multiple laws or regulations potentially apply or conflict, Nelexa interprets its obligations in a manner consistent with:

- Pennsylvania law as the chosen governing law

- The commercial, business-to-business nature of infrastructure services
- The physical, non-digital nature of the services
- The immediate resource allocation and deployment model
- The legitimate interests of both parties in legal certainty and predictability

14.7.16 Brexit - United Kingdom Customers

For customers in the United Kingdom:

- UK customers benefit from substantially equivalent protections under UK law (UK GDPR, retained EU law, Consumer Rights Act 2015)
- References to "EEA" in this section include the United Kingdom where UK customers are concerned, to the extent equivalent UK legal provisions apply
- UK customers may contact the UK Information Commissioner's Office (ICO) for data protection matters: <https://ico.org.uk>
- UK customers may use the UK Online Dispute Resolution platform or equivalent mechanisms

14.7.17 Language and Translation

- **Official Language:** This Agreement is executed in English, which is the authoritative and controlling version
- **Translations:** If Nelexa provides translations, the English version shall prevail in all cases, including for consumer contracts, except where this would render a consumer contract term non-transparent or unintelligible in violation of EEA good faith requirements
- **Consumer Language:** For EEA consumers in jurisdictions requiring contracts in a specific language, Nelexa will provide translations upon request, but the English version remains authoritative for interpretation purposes

14.7.18 Severability and Precedence

Severability: If any provision of this Section 14.7 or any other provision of this Agreement is held to be invalid, unenforceable, or contrary to mandatory EEA law:

- The provision shall be **modified to the minimum extent necessary** to comply with law while preserving Nelexa's rights and the commercial intent of the parties
- If modification is not possible, the provision shall be severed
- Remaining provisions continue in full force and effect
- **Pennsylvania Law Governs Severability:** Pennsylvania contract law principles govern the interpretation of severability and modification of provisions

No Waiver of Mandatory Rights: Nothing in this Agreement shall be construed as a waiver of mandatory statutory rights granted to EEA consumers **that cannot be waived by agreement under applicable law**. However, where rights are subject to exceptions, waivers, or limitations (such as Article 16 exceptions to withdrawal rights), those exceptions fully apply.

Precedence:

- In the event of conflict between this Section 14.7 and other sections of the Agreement, **Section 14.7 controls only for EEA customers and only to the extent required by mandatory EEA law that cannot be derogated by agreement**
- For all other matters, the main body of the Agreement controls
- Pennsylvania law governs interpretation of ambiguities and conflicts

14.7.19 Assumption of Expertise and Commercial Nature

Acknowledgment of Technical Services: By accepting this Agreement, you acknowledge and confirm that:

1. **Technical Expertise:** You possess or have access to the technical expertise, knowledge, and resources necessary to utilize Nelexa's services, including:
 - Server administration and systems management
 - Network configuration and IP routing (including BGP for transit customers)
 - Data center operations and infrastructure management
 - Security hardening and vulnerability management
 - Backup and disaster recovery planning
 - Capacity planning and resource allocation
1. **Commercial/Professional Use:** The services are being acquired for commercial, professional, business, or technical purposes, not for personal, household, or family use typical of consumer transactions
2. **Understanding of Infrastructure Services:** You understand that infrastructure services involve inherent technical risks, require ongoing maintenance and management, and depend on complex interconnected systems including third-party providers
3. **Informed Decision:** You have made an informed business decision to contract for these services after evaluating technical requirements, costs, risks, and alternatives
4. **Not Consumer Transaction:** Given the technical nature, complexity, cost, and business application of the services, this transaction does not bear the characteristics of a consumer transaction even if you are technically a natural person

Presumption of Business Capacity: Nelexa operates under a rebuttable presumption that all customers are acting in a business, commercial, or professional capacity given the nature of the services. If you claim consumer status, you bear the burden of proving that you are acting wholly or mainly outside your trade, business, craft, or profession, which will be difficult to establish given the technical and commercial nature of infrastructure services.

14.7.20 Limitation on Claims and Statute of Limitations

Shortened Claims Period for EEA Customers: Notwithstanding any longer limitation period under EEA law, **any cause of action or claim arising out of or**

relating to this Agreement or the Services must be commenced within one (1) year after the cause of action accrues. After one year, such claims are **permanently barred** and may not be brought in any forum.

Accrual of Claims:

- Service quality claims accrue when the alleged service deficiency occurs or is discoverable
- Payment dispute claims accrue when the disputed charge is billed
- Data loss claims accrue when the loss occurs or is discoverable
- Contract breach claims accrue when the breach occurs

Claims Accruing During Service: Claims accruing during active service must be brought within one year of accrual even if service continues. You may not accumulate claims and bring them after termination.

Justification: This shortened limitation period is justified by:

- The rapid evolution of technology and infrastructure
- The difficulty in preserving evidence and reconstructing technical environments after extended periods
- The need for prompt resolution of commercial disputes
- The commercial nature of the relationship
- Industry standard practices for infrastructure service disputes

Consumer Law Interaction: While some EEA jurisdictions may have longer limitation periods for consumer claims, this one-year period reflects the reasonable time within which technical infrastructure disputes should be raised and is consistent with the commercial nature of the services and the parties' mutual interest in prompt dispute resolution.

14.7.21 Mandatory Pre-Litigation Requirements

Exhaustion of Informal Resolution: Before initiating any legal proceedings, arbitration, ADR, or regulatory complaint, you **must**:

1. **Submit Detailed Written Notice:** Send a comprehensive written notice to legal@nelexa.net describing:
 - The specific nature of the dispute with dates, facts, and technical details
 - The specific provisions of this Agreement allegedly breached
 - The specific remedy or resolution sought
 - All supporting documentation and evidence
1. **Good Faith Negotiation Period:** Allow Nelexa thirty (30) calendar days to investigate and respond to your notice
2. **Executive Review:** If not resolved, request escalation to executive review, allowing an additional fifteen (15) calendar days
3. **Documentation of Attempts:** Maintain documentation of all resolution attempts

Failure to Exhaust: Failure to comply with these pre-litigation requirements shall result in:

- Dismissal of any legal proceedings without prejudice
- Your responsibility for Nelexa's attorney's fees and costs incurred in seeking dismissal
- Tolling (suspension) of any statute of limitations during the required notice and negotiation periods

Exception: This requirement does not apply to Nelexa's collection actions or emergency injunctive relief proceedings.

14.7.22 Attorney's Fees and Costs

Prevailing Party Recovery: In any legal action, arbitration, or proceeding to enforce this Agreement or arising out of the Services, **the prevailing party shall be entitled to recover:**

- Reasonable attorney's fees (including paralegal and law clerk fees)
- Expert witness fees and costs
- Court costs and filing fees
- Discovery costs
- Deposition costs
- Trial or arbitration costs
- Appellate attorney's fees and costs if applicable
- Collection costs and fees

Definition of Prevailing Party: The prevailing party is the party who achieves a net favorable judgment or award, or whose position is substantially vindicated, as determined by the court or arbitrator in their discretion.

Multiple Claims: If multiple claims are brought and each party prevails on some claims, the court or arbitrator shall determine the net prevailing party considering the relative importance and value of the claims.

Frivolous or Bad Faith Claims: If any claim or defense is found to be frivolous, without legal or factual basis, or brought in bad faith, the party bringing such claim or defense shall pay the other party's attorney's fees and costs regardless of the overall outcome.

Consumer Limitation: For EEA consumers, attorney's fees shall only be awarded if permitted under applicable mandatory consumer protection law. However, fees may still be awarded for frivolous or bad faith claims.

14.7.23 Injunctive Relief and Specific Performance

Nelexa's Equitable Remedies: You acknowledge and agree that:

1. **Irreparable Harm:** Breach of this Agreement, particularly violations of the Acceptable Use Policy, unauthorized access, security breaches, or payment

defaults, may cause irreparable harm to Nelexa for which monetary damages are an inadequate remedy

2. **Right to Injunctive Relief:** Nelexa is entitled to seek immediate injunctive relief, temporary restraining orders, and specific performance in any court of competent jurisdiction without the need to post bond or prove irreparable harm
3. **No Limitation on Other Remedies:** Pursuit of injunctive relief does not limit Nelexa's right to pursue other remedies including damages, termination, or collection actions
4. **Expedited Proceedings:** You consent to expedited proceedings for injunctive relief matters

Customer Limitations: Your primary remedies are limited to those specified in this Agreement (service credits for consumers under Section 14.7.7, damages subject to caps in Section 14.7.9). You may not seek injunctive relief requiring Nelexa to provide services, restore data, or maintain operations except as specifically provided in applicable mandatory consumer protection law.

14.7.24 No Third-Party Beneficiaries

This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than you and Nelexa. No third party (including upstream providers, facility operators, or other customers) has any right to enforce any provision of this Agreement.

14.7.25 Waiver of Moral Rights and Publicity Rights

To the extent permitted by law, you waive any moral rights, rights of attribution, or publicity rights in any content, data, or materials provided to Nelexa in connection with the Services. This waiver is necessary to enable Nelexa to provide technical support, security analysis, abuse investigation, and service operations.

14.7.26 Compliance with Sanctions and Export Controls

Export Compliance: You represent, warrant, and covenant that:

- You are not located in, under the control of, or a national or resident of any country subject to U.S. embargo or EU/EEA sanctions
- You are not identified on any U.S. or EU/EEA sanctions list (including OFAC SDN List, EU Consolidated Sanctions List)
- You will not use the Services in violation of any U.S. or international export laws, regulations, or sanctions
- You will not permit access to the Services by any sanctioned persons or entities

Breach of Sanctions Compliance: Violation of this provision constitutes a material breach justifying immediate termination without refund and reporting to appropriate authorities.

14.7.27 Force Majeure and Excuse of Performance

Nelexa shall not be liable for any failure or delay in performing obligations under this Agreement due to events beyond its reasonable control (force majeure events as defined in Section 15), including but not limited to:

- Acts of God, natural disasters, severe weather, pandemic, epidemic
- War, terrorism, civil unrest, government actions
- Failures of third-party infrastructure, telecommunications, power, or internet providers
- Cyber attacks, DDoS attacks, or other malicious activities by third parties
- Labor disputes (excluding Nelexa employees), equipment shortages, supply chain disruptions
- Changes in law, regulation, or government policy

Effect of Force Majeure:

- Nelexa's obligations are suspended for the duration of the force majeure event
- No refunds, credits, service credits, or compensation are provided for force majeure events
- If force majeure continues for more than thirty (30) days, either party may terminate the affected services without penalty
- For EEA consumers, prolonged force majeure (90+ days) may entitle you to termination with pro-rata refund for unused prepaid services, but not retrospective refunds for services already provided

14.7.28 Entire Agreement and Integration

Complete Agreement: This Agreement, including all incorporated policies, addenda, Service Level Agreements, and order forms, constitutes the entire agreement between you and Nelexa regarding the Services and supersedes all prior or contemporaneous:

- Oral or written agreements
- Proposals or quotations
- Representations or warranties
- Negotiations or understandings
- Marketing materials or sales communications

No Reliance: You acknowledge that you have not relied on any representation, promise, warranty, or statement not expressly set forth in this Agreement. Any prior representations or negotiations are merged into and superseded by this Agreement.

Modifications: This Agreement may only be modified by:

- Written amendment signed by authorized representatives of both parties, or
- Updated terms posted by Nelexa on nelexa.net with notice to your registered email address

Informal modifications, oral agreements, or modifications by conduct are not valid.

14.7.29 Contact Information for EEA Matters

General Legal and Contractual Matters: Nelexa Legal Department
Elcro Digital Services, LLC
1597 Washington Pike, Ste A38, PMB 156
Bridgeville, PA 15017-2876
United States of America
Email: legal@nelexa.net

GDPR and Data Protection Matters: Email: gdpr@nelexa.net
Subject Line: Include "GDPR Request" or "Data Protection Inquiry"

Consumer Rights and Dispute Resolution: Email: legal@nelexa.net
Subject Line: Include "EEA Consumer Matter"

Technical Support (non-legal): Email: support@nelexa.net
Portal: <https://nelexa.net/support>

Response Times:

- Legal matters: 5-10 business days
- GDPR requests: 30 days (extendable to 90 days for complex requests)
- Technical support: Per applicable SLA

14.7.30 Acknowledgment of EEA-Specific Terms

By accepting this Agreement, you specifically acknowledge and agree that:

1. You have read and understood all provisions of Section 14.7 specific to EEA customers
2. You understand that Nelexa provides physical infrastructure services (colocation, IP transit, dedicated servers, hardware) that are **not digital content or digital services** under EU law
3. You expressly request immediate service deployment and waive any withdrawal rights pursuant to Article 16(a) of Directive 2011/83/EU
4. You understand that the two-year data retention period is mandatory under Pennsylvania law and overrides GDPR erasure rights
5. You understand that Pennsylvania law governs this Agreement subject to limited mandatory EEA consumer protections
6. You understand that refunds are not available due to the immediate deployment model and physical resource allocation nature of the services
7. You consent to jurisdiction in Pennsylvania courts subject to the limited EEA forum option for consumer disputes
8. You understand the limitation of liability provisions and acknowledge they form an essential basis of the commercial relationship
9. You understand that these services are business/professional services requiring technical expertise

10. If you are a business customer, you agree to mandatory arbitration and waive class action rights

This acknowledgment constitutes informed consent to all EEA-specific terms and waivers.

14.7.31 Survival of EEA Provisions

The following provisions of Section 14.7 shall survive termination or expiration of this Agreement:

- Data retention requirements (Section 14.7.5)
- Limitation of liability (Section 14.7.9)
- Governing law and jurisdiction (Section 14.7.8)
- Arbitration and dispute resolution (Section 14.7.10)
- Attorney's fees provisions (Section 14.7.22)
- Indemnification obligations (as incorporated from Section 13)
- Any other provisions that by their nature should survive

14.7.32 Interpretation and Construction

Rules of Construction: In interpreting this Section 14.7 and its interaction with EEA law:

1. **Commercial Reasonableness:** Provisions shall be construed to give effect to the commercial nature of infrastructure services and the parties' legitimate business interests
2. **Narrow Construction of Consumer Rights:** Where consumer protections are ambiguous or subject to interpretation, they shall be construed narrowly given the technical, commercial, and business-oriented nature of the services
3. **Pennsylvania Law Preference:** Where EEA law and Pennsylvania law provide alternative interpretations, Pennsylvania law shall govern unless EEA law is mandatory and cannot be derogated by agreement
4. **Severability Preference:** If a provision is potentially invalid, it shall be modified to the minimum extent necessary rather than completely severed, to preserve the parties' intent
5. **Headings Not Controlling:** Section headings are for convenience only and do not affect interpretation
6. **No Contra Proferentem:** The rule of contra proferentem (construing ambiguities against the drafter) does not apply because both parties are sophisticated, have opportunity to negotiate, and this Agreement has been drafted to be fair and transparent

15. Force Majeure

Nelexa shall not be liable for any failure or delay in performing its obligations under this Agreement due to events beyond its reasonable control, including but not limited to:

- Acts of God, natural disasters, earthquakes, floods, fires, hurricanes, or severe weather
- Epidemics, pandemics, or public health emergencies
- War, terrorism, civil unrest, riots, or acts of government
- Labor disputes, strikes, or lockouts (other than those involving Nelexa employees)
- Failures or disruptions in public or private telecommunications, internet, power, or utility services
- Failures of third-party hosting providers, data centers, transit providers, or other vendors
- Cyber attacks, hacking, or other malicious activities by third parties
- Government orders, embargoes, or regulatory actions
- Equipment failures or shortages beyond Nelexa's control

During any force majeure event, Nelexa's obligations shall be suspended for the duration of the event. No refunds, credits, or compensation will be provided for service interruptions caused by force majeure events.

16. Miscellaneous Provisions

16.1 Severability

If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. The invalid provision shall be modified to the minimum extent necessary to make it valid and enforceable while preserving the parties' original intent.

16.2 Entire Agreement

This Agreement, together with any applicable Service Level Agreements, addenda, schedules, and policies incorporated by reference, constitutes the entire agreement between you and Nelexa regarding the Services and supersedes all prior or contemporaneous understandings, agreements, representations, and warranties, whether written or oral.

16.3 No Waiver

No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver. Nelexa's failure to enforce any right or provision of this Agreement shall not be deemed a waiver of such right or provision.

16.4 Assignment

You may not assign, transfer, delegate, or sublicense this Agreement or any of your rights or obligations hereunder without Nelexa's prior written consent. Any attempted assignment in violation of this provision is void. Nelexa may freely assign this Agreement without restriction. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

16.5 Relationship of the Parties

Nothing in this Agreement creates any agency, partnership, joint venture, employment, or fiduciary relationship between you and Nelexa. You have no authority to bind Nelexa or make commitments on Nelexa's behalf.

16.6 Notices

All notices, requests, and other communications under this Agreement must be in writing and delivered via:

- Email to the registered account email address
- Certified mail, return receipt requested, to the address on file
- Overnight courier to the address on file

Notices to Nelexa must be sent to: **Elcro Digital Services, LLC**
1597 Washington Pike, Ste A38, PMB 156
Bridgeville, PA 15017-2876
Email: legal@nelexa.net

Notices are deemed received: (a) if by email, upon transmission; (b) if by certified mail, three (3) business days after mailing; (c) if by overnight courier, one (1) business day after delivery to the courier.

16.7 Survival

The following provisions shall survive termination or expiration of this Agreement: Sections 4 (Payment Terms), 7 (Data Retention), 11 (Intellectual Property), 12 (Limitation of Liability), 13 (Indemnification), 14 (Dispute Resolution), and 16 (Miscellaneous Provisions), along with any other provisions that by their nature should survive.

16.8 Third-Party Beneficiaries

This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than you and Nelexa.

16.9 Interpretation

In this Agreement: (a) headings are for convenience only and do not affect interpretation; (b) "including" means "including without limitation"; (c) singular includes plural and vice versa; (d) "or" is not exclusive; (e) "may" means has the right but not the obligation; (f) "shall" and "will" denote mandatory obligations.

16.10 Export Compliance

You agree to comply with all applicable export and import control laws and regulations. You may not use the Services in violation of any U.S. or international export laws or regulations.

16.11 Government Users

If you are a U.S. government entity, the Services constitute "commercial computer software" and "commercial computer software documentation" as defined in FAR 12.212 and DFARS 227.7202. Use, reproduction, and disclosure are subject to the terms of this Agreement.

17. Contact Information

For questions about this Agreement, contact:

**Nelexa Legal Department
Elcro Digital Services, LLC
1597 Washington Pike, Ste A38, PMB 156
Bridgeville, PA 15017-2876
Email: legal@nelexa.net**

Acknowledgment and Agreement

BY CLICKING "I AGREE," CHECKING THE ACCEPTANCE BOX, CREATING AN ACCOUNT, MAKING A PURCHASE, OR ACCESSING OR USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE LEGALLY BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO THESE TERMS, YOU MUST NOT ACCESS OR USE THE SERVICES.

Last Updated: 12th Of October 2025