



All references to InfoBlox in these Terms and Conditions should be read as “Contractor (immixTechnology, Inc.), acting by and through its supplier, InfoBlox.”

## **TERMS AND CONDITIONS FOR INFOBLOX PRODUCTS AND SERVICES**

“Customer” refers to you, the individual or entity registering, purchasing and/or using the Product. If the Product is being purchased, registered or used on behalf of an entity by a representative authorized to register or use the Product on behalf of such entity, then “Customer” also refers to such entity.

**1. Products.** “Products” mean the Infoblox products registered by Customer and all Infoblox products specified in a purchase order issued by Customer and accepted by Infoblox (“Purchase Order”). All Purchase Orders are binding non-cancelable commitments. Infoblox may modify or discontinue Product offerings without notice provided that outstanding Purchase Orders shall not be affected.

**2. Inspection/Acceptance.** The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer’s (“INFOBLOX”) published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

- (1) Within the warranty period; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

**3. Software; Restrictions.** All software and firmware incorporated into or provided for use in or with a Product, whether initially, as part of support or otherwise (collectively, “Software”) is not sold, but rather is licensed solely for Customer’s internal use only as incorporated in that Product in object code form and strictly in accordance with the documentation and any other use restrictions applicable for that Product. Such license is non-exclusive, non-transferable and does not include the right to (and Customer will not directly or indirectly) extract, transfer, modify, decompile, disassemble, reverse engineer (except to the extent applicable law prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, copy any portion of the Software, or use the Software on a service bureau basis or for the benefit of third parties. Notwithstanding anything else in this Agreement, Infoblox retains all right, title and interest relating to the Software and any intellectual property resulting from services; except as expressly set forth in this Section 3, no other licenses express or implied are granted. Customer will not remove any names, designations or notices from any Product. The Software and Product documentation constitutes confidential and trade secret information of Infoblox and shall not be disclosed to any third party. Any references to “sale” or “purchase” in this Agreement shall be interpreted in accordance with this Section 3.

**4. Limited Warranty for End Users in North America.** THE WARRANTY AND RELATED TERMS SET FORTH IN THIS SECTION 4 APPLY ONLY TO INFOBLOX END USERS IN NORTH AMERICA; IF CUSTOMER IS OUTSIDE OF NORTH AMERICA, THIS WARRANTY DOES NOT APPLY AND CUSTOMER MUST LOOK SOLELY TO THE DISTRIBUTOR OR RESELLER FROM



WHOM CUSTOMER PURCHASED PRODUCTS FOR WARRANTY TERMS AND SERVICE. If Customer is located and taking delivery within North America, Infoblox warrants to Customer that the Products when shipped to Customer will materially conform to the published specifications applicable to the Product (“Limited Warranty”). Customer may make a claim for breach of this Limited Warranty (i) at any time prior to 1 year after the date of shipment by Infoblox with respect to Product hardware and (ii) at any time prior to 90 days following the date of shipment by Infoblox with respect to Product software whether or not embedded (each a “Limited Warranty Period”), after which time the Limited Warranty shall be deemed expired and void. For each claim of breach of the Limited Warranty which is received by Infoblox during the applicable Limited Warranty Period for the Product, Infoblox will, at Infoblox’s option and as Customer’s exclusive remedy: (1) repair the defective Product hardware or software, as applicable, (2) replace the defective Product hardware or software with comparable Product hardware or software, as applicable, or (3) refund the amount paid for the defective Product hardware or software, as applicable, upon its return. All warranty claims are subject to the warranty service process set forth in Exhibit A. Infoblox will not have any other obligations under the Limited Warranty. The warranty does not apply to Product units that have been (i) mishandled or damaged by failure to provide an suitable installation or operating environment, (ii) used, maintained or stored other than in conformity with documentation and instruction provided by Infoblox, (iii) subjected to physical damage, neglect or the elements, (iv) damaged by third party software, equipment or viruses or (v) opened or serviced by anyone other than Infoblox or an authorized service provider. Replacement Products and parts used to repair Products will be new or serviceably used, comparable in function and performance to the original part or Product, and warranted for the remainder of the original Limited Warranty Period or 30 days from the date of shipment of the repaired or replacement Products, whichever is longer. Purchasing additional parts or Products from Infoblox does not extend this warranty period.

**5. Disclaimer. EXCEPT FOR THE LIMITED WARRANTY IN SECTION 4 APPLICABLE ONLY TO CUSTOMERS IN NORTH AMERICA, INFOBLOX DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. INFOBLOX HAS NOT AUTHORIZED ANYONE TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF INFOBLOX.**

**6. Termination, Survival, and Termination Liability.** Sections 2, 3, 5 through 9, 11, and any accrued rights to payments and remedies for breach shall survive any termination of this Agreement. Neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other (or for any compensation to the other) arising from or incident to any termination by such party which complies with the terms of the Agreement whether or not such party is aware of any such damage, loss or expenses.

**7. Government Use.** If a Product is provided to any unit or agency of the United States Government (“U.S. Government”), the following provisions shall apply: All software and accompanying documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms herein.

**8. Limited Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW, INFOBLOX WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE**



THEORY FOR (I) ANY AMOUNTS IN EXCESS OF THE FEES RECEIVED BY INFOBLOX OR (II) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES, OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, OR (IV) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA OR ACCESS. INFOBLOX SHALL HAVE NO LIABILITY FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL.

**9. FCPA and Export Control.** Customer shall comply with all export laws and restrictions and regulations of the U.S. government, and not export, or allow the export or reexport of any Product in violation of any such restrictions, laws or regulations. Customer shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to the export from the U.S.

**10. Support.** Support services available for purchase by end users in North America are described in Exhibit B. Support service terms are subject to change by Infoblox. Subject to Customer's compliance with all terms of this Agreement and annual advance payment of Infoblox's then standard support fees, Infoblox will provide the support set forth in a Purchase Order. If purchased by Customer, the first annual support period begins upon the date of Product shipment by Infoblox.

**11. General.** All notices under this Agreement shall be in writing, and shall be sent by international overnight courier or prepaid certified or registered U.S. mail. Neither party may assign, transfer, or sublicense any obligation or benefit under this Agreement without the written consent of the other party and any attempt to do so shall be void; provided, however, that either party may assign this Agreement without consent to a corporate affiliate or to an acquirer of the business unit making use of the Products, or of all or substantially all of the party's equity, assets or business. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. No changes or modifications or waivers are to be made to this Agreement unless evidenced in writing and signed for and on behalf of both parties. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

### **Warranty Service Procedures**

THE WARRANTY SERVICES SET FORTH BELOW APPLY ONLY TO INFOBLOX END USERS IN NORTH AMERICA; IF CUSTOMER IS OUTSIDE OF NORTH AMERICA, THESE WARRANTY PROCEDURES DO NOT APPLY AND CUSTOMER MUST LOOK SOLELY TO THE DISTRIBUTOR OR RESELLER FROM WHOM CUSTOMER PURCHASED PRODUCTS FOR WARRANTY TERMS AND SERVICE.

**1. Email Requests** If Customer believes an Infoblox product purchased by Customer is subject to a Material Defect covered by warranty, Customer may request warranty services via email to Infoblox's Technical Support Center ("TSC"). TSC services are available from 6:00 a.m. to 6:00 p.m. Pacific time, Monday through Friday, excluding Infoblox holidays. Email should be sent to support@infoblox.com. Infoblox will use reasonable efforts to respond to requests for support from authorized personnel within one business day. Any telephone services that may be provided by Infoblox hereunder will be limited to that necessary to confirm Material Defects in the applicable Products. In the event customer has not contracted with Infoblox for receipt of Enterprise Support, all additional support services requested shall be subject to Infoblox's then prevailing rates.

2. **Software Updates** For a period of 90 days after shipment by Infoblox, Infoblox shall provide Updates for the Software that are generally released by Infoblox during such period. Warranty services do not include Upgrades; Customer must purchase support in order to receive Upgrades or to receive Updates after the 90 day warranty period.
3. **Access to Web Support.** For a period of 90 days after shipment by Infoblox, Customer may access the self-service web portal at support.infoblox.com for Product installation and configuration assistance.
4. **Replacement/Repair of Product Hardware** For a period of one year after shipment by Infoblox, Infoblox shall provide replacement of Infoblox product hardware subject to a Material Defect. In order to obtain the relevant warranty service with respect to Product hardware containing Material Defects, customer shall return such Infoblox Products to Infoblox in accordance with the following RMA procedure. Before return or replacement of any Product, Customer must contact Infoblox's TSC as described above. If Infoblox's TSC verifies that the Product is likely to be defective and is covered by Warranty Support, Infoblox will issue a Return Materials Authorization ("RMA") number, which allows the Customer to return the defective unit to Infoblox for repair or replacement. Customer must deliver the defective Product to Infoblox with the RMA number on the package. Infoblox will not accept any shipment of returned Infoblox Product, which does not have a valid RMA number issued to Customer pursuant to such RMA procedure. Customer assumes the risk of damage or loss in transit. Customer must use the original container (or the equivalent) and pay the shipping charge. Infoblox will provide Customer with the shipping address at the time of RMA issuance. It is Customer's responsibility to remove all confidential and proprietary data and information before returning Products to Infoblox; Infoblox shall have no obligations or liability with regard to data and information contained in returned Products. In connection with replacement, Infoblox may at its sole discretion modify the replacement unit at no cost to Customer to improve its reliability or performance. If Infoblox reasonably and in good faith determines that the returned Product hardware did not contain the alleged defect, Customer shall pay and/or reimburse Infoblox for all costs of handling, transportation and diagnostics at Infoblox's prevailing rates.
5. **Definitions** "Material Defect" means (A) with respect to Infoblox product hardware, any reported malfunction, error or other defect that: (i) can be reproduced by customer and/or Infoblox, and (ii) constitutes a material failure of such hardware to perform in accordance with applicable Specifications, and (B) with respect to software, means (i) a material failure of such software to perform in accordance with applicable Specifications. "Specifications" means the published specifications applicable to the Infoblox products that are in effect as of the date the Infoblox products are shipped to Customer, as such Specifications may be updated, modified or revised by Infoblox. "Updates" means a Software release, if and when available, consisting of error corrections and patches, in object code form, which is made generally available by Infoblox to its support recipients without additional charge, and is generally indicated by a change in the digit to the right of the release number (e.g., a change from version 3.1r2 to 3.1r3) and any corrections and updates to the associated documentation. "Upgrades" means a Software release, if and when available, containing new enhancements, features or functionality, in object code form to application software, which is made generally available by Infoblox to its support recipients without additional charge and generally indicated by a change in the feature release number to the right of the decimal point (e.g., a change from version 3.2r1 to 3.3r1) and the associated documentation.

## Support Terms

1. **GENERAL.** Infoblox Inc. ("Infoblox") makes available the two levels of support services described below ("Support"): Basic Maintenance Service and Premium Maintenance Service. Provision of Support



is subject to Customer remaining in good standing under an effective Support contract. The start date for the first applicable period of Support begins upon shipment of the applicable Product by Infoblox. Customer must register Product units online at [www.infoblox.com](http://www.infoblox.com) prior to receiving Support; Infoblox requires one business day to process registrations. Customer must provide the Product unit serial number when opening technical support requests with Infoblox technical support. All Support is provided in the English language. Any terms not defined herein shall have the meaning set forth in the Purchase Agreement.

## 2. DEFINITIONS

**2.1** “Error” means an error in the Software that causes the Software to materially fail to perform in accordance with the Specifications.

**2.2** “Software” means the software programs provided to Customer as part of the Product and that are licensed pursuant to the Purchase Agreement together with any Updates and Upgrades furnished by Infoblox to Customer.

**2.3** “Specifications” means the published specifications applicable to the Infoblox Products that are in effect as of the date the Infoblox Products are shipped to Customer, as such Specifications may be updated, modified or revised by Infoblox.

**2.4** “Updates” means a Software release, if and when available, consisting of error corrections and patches, in object code form, which is made generally available by Infoblox to its support recipients without additional charge, and is generally indicated by a change in the digit to the right of the release number (e.g., a change from version 3.1r2 to 3.1r3) and any corrections and updates to the associated documentation.

**2.5** “Upgrades” means a Software release, if and when available, containing new enhancements, features or functionality, in object code form to application software, which is made generally available by Infoblox to its support recipients without additional charge and generally indicated by a change in the feature release number to the right of the decimal point (e.g., a change from version 3.2r1 to 3.3r1) and the associated documentation.

**2.6** “Workaround” shall mean a temporary solution to a software error that Infoblox has implemented, or enabled customers to implement and that allows the software to regain functionality and provide major software functions in accordance with the specifications.

**3. BASIC MAINTENANCE SERVICES.** Basic Maintenance Services described below are subject to payment of all annual Basic Maintenance Services fees. Basic Maintenance Services are provided by email or World Wide Web. Basic Maintenance Services include assistance with initial product deployment and configuration, answers to questions related to product features, diagnoses and corrections of software errors, and provides configuration or software workarounds when applicable. Infoblox is only obligated to respond to requests for support from 4 individuals designated as authorized personnel. Upon request, Customer will allow the use of on-line diagnostics of the Software by authorized Infoblox support personnel to assist with problem diagnosis and Error detection. Such on-line diagnostics access may include the use of remote support tools from Infoblox or third party tools that Infoblox technical support may use to access the Customer’s systems. If purchased by Customer, the initial Basic Maintenance Service period begins on the date of original shipment for the applicable Product unit. Phone numbers and addresses below may be updated by Infoblox from time to time.



**3.1 Email Support.** Technical support is provided through Infoblox’s technical service center (the “TSC”) via email to [support@infoblox.com](mailto:support@infoblox.com). The TSC will use reasonable efforts to respond in accordance with the response targets in Table 1 below to email requests by authorized contacts between the hours of 6:00 AM and 6:00PM Pacific Time, Monday through Friday, excluding Infoblox observed holidays.

**3.2 Web Support.** Web support is available on a 24x7 basis via [www.infoblox.com/support](http://www.infoblox.com/support). All release notes, product documentation and software downloads are available for download from the above mentioned URL. Web support also allows users to log new support incidents and check the status of previously submitted incidents on a 24 x 7 basis. Customer must register at [www.infoblox.com](http://www.infoblox.com) and establish password and log in information prior to access of web support.

**3.3 Updates and Upgrades.** Basic Maintenance Services entitles Customer to receive all Updates and Upgrades applicable to Customer's Product hardware platform. Notification for Update and Upgrade releases is provided electronically by Infoblox technical support. Customer must register its Products online at [http://www.infoblox.com/support/product\\_registration.cfm](http://www.infoblox.com/support/product_registration.cfm) in order to receive such communications from Infoblox

**3.4 Advance Hardware Replacement.** Basic Maintenance Services includes the hardware replacement services set forth in Section 5 below

**3.5 Error Corrections.** Infoblox shall use its reasonable efforts to correct reproducible Errors in the Software in a manner commensurate with the priority of the Error in accordance with the time frames set forth in the table below. Infoblox shall have no obligation to correct all Errors in the Product. Upon identification of any Error, Customer shall notify Infoblox of such Error and shall provide Infoblox with sufficient information to reproduce the Error. Error Priorities will be reasonably assigned by Infoblox based on information provided. Infoblox may require remote access to the applicable Product(s) in order to diagnose and resolve Errors.

#### 4. PREMIUM MAINTENANCE SERVICES

**4.1 Telephone Support.** The TSC will use reasonable efforts to respond to requests by phone for Priority 1 (as defined in Table 2 below) technical support issues within 1 hour on a 24x7x365 basis. The TSC will respond to requests for all other issues will be responded to between the hours of 6:00 AM and 6:00 PM Pacific Standard Time, Monday through Friday. Telephone Support may be obtained by calling: U.S. and Canada: (888) 463-6259 (888) 463-6259 Outside the U.S. and Canada: (408) 716-4300 (408) 716-4300 , Option 1

**4.2 Email Support.** Technical support is provided through Infoblox’s technical service center (the “TSC”) via email to [support@infoblox.com](mailto:support@infoblox.com). The TSC will use reasonable efforts to respond in accordance with the response targets in Table 1 below to email requests by authorized contacts between the hours of 6:00 AM and 6:00PM Pacific Time, Monday through Friday, excluding Infoblox observed holidays. For Priority 1 technical support issues, Customer is encouraged to contact Infoblox through the telephone support described above.

**4.3 Web Support.** Web support is available on a 24x7 basis via [www.infoblox.com/support](http://www.infoblox.com/support). All release notes, product documentation and software downloads are available for download from the above mentioned URL. Web support also allows users to log new support incidents and check the status of



previously submitted incidents on a 24 x 7 basis. Customer must register at [www.infoblox.com](http://www.infoblox.com) and establish password and log in information prior to access of web support.

**4.4 Updates and Upgrades.** Basic Maintenance Services entitles Customer to receive all Updates and Upgrades applicable to Customer's Product hardware platform. Notification for Update and Upgrade releases is provided electronically by Infoblox technical support. Customer must register its Products online at [http://www.infoblox.com/support/product\\_registration.cfm](http://www.infoblox.com/support/product_registration.cfm) in order to receive such communications from Infoblox.

**4.5 Advance Hardware Replacement.** Basic Maintenance Services includes the hardware replacement services set forth in Section 5 below.

**4.6 Error Corrections.** Infoblox shall use its reasonable efforts to correct reproducible Errors in the Software in a manner commensurate with the priority of the Error in accordance with the time frames set forth in the table below. Infoblox shall have no obligation to correct all Errors in the Product. Upon identification of any Error, Customer shall notify Infoblox of such Error and shall provide Infoblox with sufficient information to reproduce the Error. Error Priorities will be reasonably assigned by Infoblox based on information provided. Infoblox may require remote access to the applicable Product(s) in order to diagnose and resolve Errors.

## **5. HARDWARE RETURNS.**

**5.1 Return Material Authorization.** In the event Customer reasonably believes there is a Product hardware failure, Customer may contact Infoblox's TSC. If Infoblox's TSC verifies that the Product is likely to be defective and is covered by Support, Infoblox will issue a Return Materials Authorization ("RMA") number, which allows the Customer to return the defective unit to Infoblox for repair or replacement. Before return or replacement of any Product, Customer must contact Infoblox's TSC and obtain an RMA number.

**5.2 Shipping.** Infoblox will not accept any Product without an RMA number on the package. Customer must deliver the defective Product along with the RMA number to Infoblox. If Customer ships the Product, Customer assumes the risk of damage or loss in transit. Customer must use the original container (or the equivalent) and pay the shipping charge. Infoblox will provide Customer with the shipping address at the time of RMA issuance.

**5.3 Advance Replacement.** Following the issuance of an RMA number, Infoblox will use reasonable efforts to ship Customer a replacement Product unit within 1 business day for RMA requests processed before 3:00 P.M. Pacific Time. Requests for next-day delivery of hardware processed after 3:00 P.M. Pacific Time, ship the following business day for second day delivery. 1 business day advance replacement is not available in all countries outside of the U.S. and Canada. All Product units shipped as advance replacements from Infoblox will be shipped at no cost to Customer and will be comprised of standard or reconditioned components of equal or greater quality, revision level, and/or functionality than the failed Customer unit. Customer must promptly deliver the replaced unit to Infoblox. If the replaced unit is not received by Infoblox within 10 days (20 days for units returning from outside of the U.S. and Canada), Infoblox may invoice the Customer and Customer shall pay for the replacement unit at the then current applicable price. All Products returned for replacement become the property of Infoblox. It is Customer's responsibility to remove all confidential and proprietary data and information before returning Products to Infoblox; Infoblox shall have no obligations or liability with regard to data and information contained in returned Products.



**6. LIMITATIONS/EXCLUSIONS.** Infoblox shall not be responsible or liable for correcting any Errors not reproducible by Infoblox on the unmodified Software or Errors caused by: (i) Customer's failure to implement all Updates and Upgrades issued under this Agreement; (ii) third party software or systems; (iii) the use or operation of the Software or Product with any other software or programming language or in an environment other than that intended or recommended by Infoblox; (iv) changes to the operating system or environment that adversely affect the Software; (v) any alterations, modifications of or additions to the Software or Product made by parties other than Infoblox; (vi) the use or operation of the Software or Product with any other software or programming language or in an environment other than that intended or recommended by Infoblox; (vii) accident, negligence, or misuse of the Product. Infoblox will only provide Support for the 2 most recent maintenance releases (e.g., 3.1r1 to 3.1r2) ("Supported Releases"). For the most recent Supported Release, Infoblox will only provide Support for the 3 most recent Updates and, for the penultimate Supported Release, Infoblox will only provide Support for the 2 most recent Updates. Support for any earlier versions or for errors not covered under this Agreement may be obtained, if available, at Infoblox's sole discretion and at its then current published rates. Infoblox may declare any Product obsolete and no longer supported by Infoblox, provided that Infoblox shall use reasonable efforts to provide one year prior notice of any planned obsolescence.

**7. SUPPORT FEES.** Customer is required to pay Infoblox the annual support fee in the amount set forth in the applicable Purchase Order in order to receive the first year of Support. If Customer allows Support to lapse and later requests to resume Support, Infoblox may require Customer to pay the fees that would have been paid for all missed Support periods, prior to reinstating Customer's Support.

**THESE TERMS AND CONDITIONS CONSTITUTE A SERVICE CONTRACT AND NOT A PRODUCT WARRANTY. THE PRODUCTS, INCLUDING HARDWARE AND ALL SOFTWARE ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE PURCHASE AGREEMENT. THESE TERMS AND CONDITIONS DO NOT CHANGE OR SUPERSEDE ANY TERMS OF SUCH WARRANTY.**