



## Standard Form of Agreement (Managed Products)

This Standard Form of Agreement is available at [http://www.visits.com.au/documents/Documents\\_and\\_forms/VISITSsfoamanagedproduct.pdf](http://www.visits.com.au/documents/Documents_and_forms/VISITSsfoamanagedproduct.pdf)  
It was last updated 8 July 2013

### Purpose

This Standard Form of Agreement [SFOA] sets out the terms and conditions which accompany the following VISITS Managed Products:

- vSafeENDPOINT, vSafeMAIL and vSafeWEB
- vAppMAIL and vAppARCHIVE

### Definitions

In this SFOA, the terms 'we', 'our', 'us' and 'VISITS' refer to VISITS Pty Ltd, ABN 15089406477. The terms 'you', 'your', 'client', 'customer', and 'applicant' refer to the Company or entity to which the products are provided and to the company named in the quotation. The term 'Partner' or 'Partners' refers to the VISITS partners and/or suppliers whose products/services form part of the Managed Product. The terms 'proposal' and 'quotation' refer to the quotation for these products provided to you.

## Pricing, Quantity and Term

### Ongoing Product

Unless otherwise stipulated in the Proposal, there is no minimum or maximum term. Until terminated by either party in accordance with this SFOA, the provision of the Product is ongoing.

### Termination by You

If you no longer require the Product, you may request VISITS to cease delivery of the product by providing at least one (1) months' notice in writing, or alternatively, at least one (1) month's payment in lieu of notice.

At the end of the notice period:

- **For Hosted Products:** VISITS will cease providing the Product.
- **For Products installed on your systems:** VISITS will remove or deactivate the Product from your systems. In such case, you must provide VISITS with appropriate access to your systems such that the Product can be properly removed. If access is not provided, you must continue to pay for the Product until such time that VISITS can determine, to our satisfaction, that the Product has been removed from your Systems.

### Prices and Payments

The price of the product is listed in the Proposal and is subject to the following payment arrangements and obligations.

### Upfront / Installation charges:

Fixed once-off, installation or upfront charges will be invoiced prior to the Product being delivered. Hourly rate services may be invoiced prior or following the product being delivered. In general, quoted prices are for the **supply of the Product only** and do not include technical services for the installation, maintenance and ongoing support of the product. Such services may be covered under a different service agreement with us.

### Ongoing charges:

Ongoing charges will be applied at the beginning of the period (ie: in advance). Payments are to be made by Direct Debit unless otherwise agreed by VISITS in writing. Unless otherwise stipulated in the quotation, all prices are subject to this payment arrangement and higher charges may apply if payments are not made by Direct Debit in advance.

### Quantity of Products

The quantity of each Product shown in the Proposal is indicative, based on estimated required quantities at the time of the Proposal. The actual quantity of each Product invoiced each month will be based on the number of Products being supplied to the Customer at the time of invoice.

### Adjustment of charges for quantity changes mid-period

In general, charges will not be calculated pro-rata, unless at VISITS' discretion, the change in quantity justifies such a calculation. This means that in months where you increase the number of services, you may receive free use of these additional services for the remainder of the billing period, and vice-versa for reductions in the number of services.

### Pricing Changes

VISITS may vary the quoted prices by providing written notification with at least one month's notice.

## Product Details

VISITS Managed Products may combine a range of product and service offerings (such as software, cloud services and infrastructure services) from other parties, combined with products and services produced and supplied by VISITS.

### Product Changes

Given the pace of technological & industry change, we constantly review our Products to ensure they continue to deliver an excellent outcome for our clients. As such, we may make changes to our Products from time to time, and we will notify you if any of these changes have a material impact on the Product being provided.

### Product Guarantee

We strive to deliver high quality products. However, no hardware, software or service is perfect and Product outages or failures may occur from time to time. Each Product is covered by a VISITS Guarantee which stipulates Product Availability targets for each product in any month. Where the Product fails to meet the specified Product Availability in a specified month, a percentage of the monthly fee paid for that Product in that month will be refunded to the Customer. The Product Availability targets, definition of Availability and percentage refund are specific to each product, and listed in the relevant Product sections below.

### Calculation of Product Availability

Product Availability is the percentage of time during a month where the Product is Available to the Customer. It is calculated as follows:

$$\text{Product Availability} = \left( \frac{\text{Total Minutes in Month} - \text{Total Minutes in Month Unavailable}}{\text{Total Minutes in Month}} \right) \times 100$$

### Events that do not Constitute Unavailability

The following circumstances are not included in the calculation of Total Minutes in Month Unavailable:

- Planned Maintenance
- Unavailability caused by the customer, including but not limited to incorrect configuration, customer equipment failure, acts or omissions of the customer or their agents, network unavailability or bandwidth limitations.
- Circumstances where the Product itself is functional, but unable to be utilised by the Customer due to an outage of a different system or product.
- Service suspension due to non-payment or any other event leading to suspension.
- A Force Majeure event.

### Claiming the Product Guarantee

To make a claim against the Product Guarantee, the Customer must submit a written request to [servicedesk@visits.com.au](mailto:servicedesk@visits.com.au) within 30 days after the end of the month in which the Product failed to meet the Product Availability targets. VISITS will review the claim, and any refund will be credited to the next product invoice.

### Security of Data in Transit and Storage

Some Products may involve transmission of data over the internet and/or Storage of data 'in the Cloud'. VISITS cannot guarantee that such transmission and storage is secure from interruption, interception or loss, and the Customer is responsible for ensuring that appropriate data encryption and data backup systems are in place to meet their specific needs.

## Specific Product Details - vSafeENDPOINT

### Product Overview

vSafeENDPOINT provides anti-malware protection for Endpoints on which it is installed (computers, servers and similar devices).

### Product Availability

<b>Definition of Availability</b>	Product is installed on the Endpoint	
<b>Product Availability Target</b>	99%	
<b>Availability Refunds</b>	Between 95 and 99%:	25% Credit
	Between 90 and 95%:	50% Credit
	Less than 90%	100% Credit
	Refund applies to individual Endpoints where Availability Target was not achieved.	

### Billing Quantity

vSafeENDPOINT is billed **per device** on which the product is installed. Devices includes servers, computers, tablets, mobile devices or any other device on which vSafeENDPOINT is installed.

### Product Specific Terms

vSafeENDPOINT is powered by a leading anti-malware software product. Its ability to protect your Endpoints is determined by the capabilities of the software and ongoing software and anti-malware updates provided by the software vendor. Anti-malware software products cannot deliver 100% protection against Malware and may also falsely detect some legitimate emails and applications. VISITS services required to rectify any failure of the Product to prevent malware or falsely detect malware is not included in the Product agreement (but may be covered under another service agreement).

## Specific Product Details - vSafeMAIL

### Product Overview

vSafeMAIL provides anti-virus and anti-spam protection in the Cloud, removing threats before they arrive at your Mail Server or Mail Service.

### Product Availability

<b>Definition of Availability</b>	Emails are able to transit through the vSafeMAIL service and are being scanned for viruses and spam.	
<b>Product Availability Target</b>	99.9%	
<b>Availability Refunds</b>	Between 99 and 99.9%:	25% Credit
	Between 98 and 99%:	50% Credit
	Less than 98%	100% Credit

### Billing Quantity

vSafeMAIL is billed **per mailbox or per staff member** (whichever is greater). The count excludes aliases, distribution lists and domain aliases.

### Product Effectiveness

The following is an indication of the expected effectiveness of the Product. This performance is subject to many different variables and is therefore provided as an indication of performance and not a guarantee.

- Percentage of **actual spam** detected by the product: 99.9%
- Percentage of known **viruses** detected by the product: 99.999%
- False positives (legitimate emails incorrectly detected as Spam): Less than 0.001%

Note that false positives will be higher where the email contains more than 20 recipients, is written in a language other than English, is written in a manner that resembles spam, where the sender is on a blacklist or is using a compromised machine and where the senders email system is misconfigured.

## Specific Product Details - vSafeWEB

### Product Overview

vSafeWEB provides a dual function. It allows you to monitor and control use of the internet by your staff, whilst at the same time protecting your organisation from browser based security threats.

### Product Availability

<b>Definition of Availability</b>	Ability to access the Web through vSafeWEB	
<b>Product Availability Target</b>	99.9%	
<b>Availability Refunds</b>	Between 99 and 99.9%:	25% Credit
	Between 98 and 99%:	50% Credit
	Less than 98%	100% Credit

### Billing Quantity

vSafeWEB is billed **per staff member**.

### Product Effectiveness

The following is an indication of the expected effectiveness of the Product. This performance is subject to many different variables and is therefore provided as an indication of performance and not a guarantee.

- Percentage of known **website based spyware** detected by the product: 99.99%

## Specific Product Details - vAppARCHIVE

### Product Overview

vAppARCHIVE is an email archiving solution which allows you to achieve legal or contractual obligations for storage of email communication, find emails across the organisation and reduce email storage requirements within your email system.

### Product Availability

<b>Definition of Availability</b>	Emails stored in the archive are searchable through the email client or web interface.	
<b>Product Availability Target</b>	99.9%	
<b>Availability Refunds</b>	Between 99 and 99.9%:	25% Credit
	Between 98 and 99%:	50% Credit
	Less than 98%	100% Credit

### Billing Quantity

vSafeMAIL is billed **per mailbox or per staff member** (whichever is greater). The count excludes aliases, distribution lists and domain aliases.

### Definitions

- 'Journaled Data' means email messages after the start date of the Services that are automatically generated by Customer's email server(s) to a journal pickup mailbox for archiving.
- 'Historical Data' means email messages created prior to the start date of the Services.

### Product Effectiveness

Emails are transferred to the archive from Journaled Data. The timeframe for these emails to be transferred to the archive is dependent on the configuration of your systems and performance of your network.

### Data Storage Limitations

vAppARCHIVE allows unlimited Journaled Data and "unlimited" refers to the quantity (not lifespan) of data, subject to the following terms and conditions:

- The Customer shall not insert Historical Data into the journal pickup mailbox to avoid paying historical data hosting fees or for any other reasons. Historical data may not be archived as Journaled Data and is not unlimited. The Product will only archive messages journaled from the start date of the Product unless they have been specifically imported as "legacy data" as agreed by prior written agreement with VISITS.
- The Customer shall not cause messages to be inserted into the journal pickup mailbox that were not generated by the Customer's server journaling function.
- The Customer may not use a disproportionate amount of per user storage, defined as exceeding 150% of the average usage of VISITS' vAppARCHIVE customers. VISITS reserves the right to renegotiate the terms of the Agreement in the event that a violation of this provision occurs.
- Each individual message in either Journaled Data or Historical Data shall not exceed 25MB in size.

## Historial Data Import

VISITS will only import the amount of Historical Data quoted and ordered by the Customer. In the event the amount of data has increased, a new quote and Agreement will be required. The Customer is responsible for providing all Historical Data to VISITS in PST or EML format. Corrupt or unreadable files will not be imported. All quotes and billings are based on aggregate file sizes.

## End-of-Life

In the event Customer chooses to cancel the provision of vAppARCHIVE, the customer's options are:

- The Customer may, at its cost, download the archived data via the vAppARCHIVE website. Such export of the archived messages must be completed by the expiration of the Agreement, or
- All or part of the Customer's archive may be exported to portable media by VISITS professional services at VISITS' current standard hourly rate, plus media, shipping, and handling costs. Such request for the export of the archived messages must be in writing and must be received by VISITS at least 45 days prior to the expiration of the Agreement.

Upon expiration VISITS shall have the right to permanently remove all the Customer messages from the archive without any liability to the Customer.

## Anti-Spam and Anti-Virus

The Customer is required to use an effective anti-spam & anti-virus solution at its own cost in order to reduce the occurrence of long-term online storage of unsolicited or harmful messages. Such a solution must effectively prevent delivery of spam and virus infected messages to the journal mailbox.

# Specific Product Details - vAppMAIL

## Product Overview

vAppMAIL is a hosted email service which replaces a traditional email server. VISITS offers a number of different services under the vAppMAIL product name and the terms and conditions associated with each service varies as noted below.

## vAppMAIL Unsolicited Bulk Email Policy

For all forms of vAppMAIL, VISITS prohibits the use of the Product to transmit or distribute:

- Emails which breach the provisions of the Australian Spam Act 2003
- Emails which use or contain invalid or forged headers, invalid or non-existent domain names or any other form of deceptive addressing.
- Emails which use any technique to hide or obscure the source of the email, including but not limited to emails which relay from a third party's email server without the permission of that party.

Any prohibited use may result in the immediate suspension of vAppMAIL.

## Outbound Emails

The following standards apply to the delivery of outbound email through vAppMAIL and at VISITS' sole discretion we may enforce the following policies:

- VISITS' servers will not accept connections from unsecured systems. These include open relays, open proxies, open routers, or any other system that has been determined to be available for unauthorised relay.
- VISITS will not deliver email that contains a hex-encoded Universal Resource Locator (URL). (Ex: <http://%6d%6e%3f/>)
- VISITS' mail servers will reject messages with more than 500 recipients.
- VISITS' mail servers will reject messages with attachments that exceed 100MB.
- VISITS will reject connections from servers that consistently generate a higher than 10% invalid recipient rate (i.e. over 10% of a sender's mailing list is destined for users that do not exist).
- VISITS will reject connections from senders who are unable to accept at least 90% of the bounce-return messages (mailer-daemon failure/error messages) destined for their systems.
- Complaints and/or blacklists from sources deemed reasonably credible by VISITS will be used as a basis for refusing connections from any mail server.

## vAppMAIL when directly sold by VISITS

### Product Overview

This is a hosted Microsoft Exchange Server, with VISITS billing the customer for the service provision.

### Product Availability

<b>Definition of Availability</b>	Ability to send and receive emails	
<b>Product Availability Target</b>	99.9%	
<b>Availability Refunds</b>	Between 99 and 99.9%:	25% Credit
	Between 98 and 99%:	50% Credit
	Less than 98%	100% Credit

### Billing Quantity

vAppMAIL in this form is billed **per mailbox**.

## vAppMAIL powered by Microsoft Office 365

### Product Overview

This is Microsoft's own hosted Exchange Service, supplied in Australia through Telstra.

### Product Availability

VISITS does not contract this service to the customer. The service is contracted between the Customer and Telstra directly, with VISITS only acting as an agent to facilitate establishment of the product. Terms and Conditions for this product are available on the Telstra and Microsoft websites.

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## Other Terms and Conditions (All Products)

### Your Obligations

You must

- Ensure that the Product is not used for any purpose that is (i) in violation of any applicable law, (ii) infringes on the rights of any person or entity, (iii) a Prohibited or Unauthorised Use outlined in this SFOA, (iv) interferes with or disrupts the services or any networks connected to the services or (v) a fraudulent activity, including the initiation or propagation of any Malware.
- Not resell the Product, or otherwise permit the use of the Product by any other party.
- Make all payments (subject to the Account Dispute section) by the due date.
- Abide by the terms and conditions outlined in this SFOA.

### Suspension or Termination by VISITS

VISITS may **Suspend** the Product(s) if you do not meet the obligations noted above. In the case of Obligation (a) the suspension may be immediate. In all other cases, you must remedy the breach within five (5) days after VISITS provides written notification of the breach. VISITS may **Terminate** the Product(s) immediately upon written or email notification if (a) you fail to remedy any situation giving rise to a Suspension of service within the required timeframe or (b) you commit a material breach of this SFOA.

Suspension or Termination of the Product(s) shall be without prejudice to any rights or liabilities accruing prior to, during or after the Suspension or Termination, including but not limited to the Customer's obligation to pay Fees.

### Credit, Invoices & Payments

Please refer to the Standard Form of Agreement (Payment & Credit Terms) available at [www.visits.com.au/documents/Documents\\_and\\_forms/VISITSsfoacreditterms.pdf](http://www.visits.com.au/documents/Documents_and_forms/VISITSsfoacreditterms.pdf) which supplements and forms part of this SFOA and outlines details on credit accounts, invoicing & payment obligations, handling of overdue accounts and other account related matters.

### Confidentiality

Each party agrees and undertakes that during the term of this Agreement and for three (3) years thereafter, it will keep confidential and will not use for its own purposes without the prior written consent of the disclosing party any information of a confidential nature which may become known to the receiving party from the disclosing party

("Confidential Information") unless: (i) such disclosure is otherwise permitted or contemplated by this Agreement; (ii) the information is publicly known or already known to the receiving party at the time of disclosure; (iii) the information subsequently comes lawfully into the possession of the receiving party from a third party; or (iv) disclosure is required by court order or otherwise by law. The Customer acknowledges that VISITS' Intellectual Property (defined below) constitutes Confidential Information of VISITS.

Some Products may involve the transmission or storage of data through VISITS' or Partner systems. In VISITS' normal provision of the Product, the Customer's traffic is processed electronically, and is not reviewed by VISITS personnel. VISITS recognises that user specific information and the content of the traffic sent to or from the Customer constitutes Confidential Information of the Customer. VISITS will not sell, rent, license or exchange data with a third party without the Customer's consent unless required to do so by law or to enforce this Agreement. Notwithstanding the foregoing, VISITS and its Partners reserves the right to utilise any content of the traffic to maintain or improve the performance of the Product, or to observe, study and test the functioning of the Product. In addition, some information may be shared on an aggregate basis only as a part of a larger set of statistics (for example, statistics that indicate volume of traffic, transmission rates & volume of data).

### Intellectual Property

The Product (including any associated software, hardware, websites, passwords, components and tools) are and will remain the sole property of VISITS or its Partners, respectively. VISITS or its Partners, respectively, will retain sole ownership of all right, title and interest in and to the Product, as well as any derivative works thereof, including but not limited to copyrights, patent rights, trademark and service mark rights, trade secret rights, moral rights, and all other intellectual property and proprietary rights ("Intellectual Property"). The Customer agrees, on behalf of itself, its employees and agents, that it will not remove or alter any trademarks, or other proprietary notices, legends, symbols, or labels appearing in the Product or other materials delivered by VISITS.

### Indemnification

The Customer agrees to indemnify, defend, and hold VISITS harmless from and against any and all claims, liabilities, damages, fines, penalties, losses, costs and expenses (including reasonable attorneys' fees) arising out of or relating to (i) any breach by Customer of this Agreement; (ii) any information or content passing through the Products and/or VISITS' network to or from Customer; (iii) any taxes arising from the Products whether now in effect or imposed in the future (excluding taxes based on VISITS' income); and (iv) claims by third-parties arising from Customer's use of the Products (excluding claims that the Products, as provided by VISITS, infringe third party intellectual property rights).

### Disclaimer of Warranties and Limitations of Liability

Any use by you of the Product (s) is at your own risk. The Product(s) are provided "as is," and VISITS make no warranties of any kind to the maximum extent permitted by law, with respect to the Product, including but not limited to warranties of quality, performance, merchantability, fitness for any particular purpose, conformity to any representation or description, or non-infringement. To the extent not prohibited by applicable law, VISITS' aggregate liability under this agreement, whether for breach or in tort, is limited to the fees paid by Customer for the three months immediately preceding the event giving rise to such liability. In no event will VISITS be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of this agreement (including but not limited to any lost profits, lost savings, loss of customers, loss of, or loss of use of, any software, data, web traffic, or emails, business interruption, delays or failure to deliver web traffic or email, delays or failure to detect undesirable web traffic or malware, or wrongfully identifying web traffic or email for filtering or as containing malware) however caused and regardless of the legal theory of liability, even if VISITS has been previously advised of the possibility of such damages, and even if any exclusive remedy provided for herein fails of its essential purpose. VISITS does not warrant that the Products are error-free or that operation of the services will be uninterrupted.

### Waiver

The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

### Jurisdiction

All contracts between VISITS and the Customer shall be deemed to have been entered into in the State of Victoria and shall be construed according to the Laws of the State of Victoria.

### Survival

Rights and obligations which by their nature should survive will survive the termination or expiration of this Agreement.

### Notifications

Any written notification provided in relation to the SFOA must be provided to:  
Managing Director, VISITS, Level 8, 636 St Kilda Road, Melbourne VIC 3004