



Provider Terms and Conditions

Level 11, 66 Clarence St, Sydney NSW 2000 | 1300 302 500 | network@365roadsideassistance.com
365 Assistance Pty Ltd ABN 59160 076 200 trading as 365 Roadside Assistance



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365 Assistance Group Pty Ltd ABN 44 608 814 679 (365 Assistance) and its related bodies corporate provide a telephony and mobile telephone application based platform (Platform) for the provision of roadside assistance and motor vehicle support services (Services).

365 Assistance may provide access to (and limited rights to use) the Platform to approved service providers so that they may respond to requests for Services (Service Request) from customers and drivers of 365 Assistance and its clients (Guests).

By accessing the Platform or accepting a Service Request, you agree personally, and (where applicable) on behalf of your directors, officers, employees, agents and subcontractors (Representatives), to be bound by these terms and conditions (Terms) together with all guidelines, policies and procedures of 365 Assistance (including, without limitation, those relating to privacy and data protection) as notified to you by 365 Assistance or its authorised providers in writing from time to time (Policies).

References in these Terms to 'you' and other similar expressions include you personally and each of your Representatives (where the context permits) and references to in these Terms to 365 Assistance include each related body corporate of 365 Assistance (where the context permits).

1 Preliminary

1.1 You acknowledge and agree that:

- (a) you are a registered driver with a current unrestricted Australian drivers licence and are the holder of all authorisations required to supply the Services;
- (b) you are solely responsible for your use and access of the Platform;
- (c) all Services you supply using the Platform are supplied in your capacity as independent contractor to 365 Assistance and not as employee or agent of 365 Assistance, any client of 365 Assistance or any of its related bodies corporate;
- (d) you are solely responsible for the Services that you supply to Guests;
- (e) whether or not you access the Platform in your own right, you are liable for the acts, defaults and omissions of your Representatives as if they were your own acts, defaults or omissions;
- (f) 365 Assistance is not obliged to provide you with a minimum number of Service Requests capable of acceptance;
- (g) you are not obliged to accept a minimum number of Service Requests received by you via the Platform; and
- (h) without limiting clause 1.1(g), these Terms do not restrict:
 - (i) you from supplying Services to any third party; or
 - (ii) 365 Assistance from engaging any third parties to supply Services.

1.2 You agree to promote the Services to Guests (unless it would be inappropriate to do so in a particular case) by explaining the Services to them and, when directed by 365 Assistance, making available promotional materials that 365 Assistance provides to you from time to time.

2 Service Requests

2.1 You represent and warrant that, as at the date you accept these terms and each date on which you supply Services:

- (a) you are skilled and experienced in providing the Services and have the necessary appropriately skilled personnel and equipment (including motor vehicle, mobile phone and limited spares and parts consistent with the Policies) to access the Platform and respond to Service Requests; and
- (b) all information you provide to 365 Assistance in connection with any Services you supply is accurate and complete in all respects.

2.2 If you accept a Service Request:

- (a) you must supply the Services to the relevant Guest:
 - (i) with due care and skill and to a standard that would be expected of a skilled professional experienced in providing the same or similar services;
 - (ii) promptly and without unnecessary delay;
 - (iii) that are fit for their intended purpose, if the purpose is expressly made known to you by 365 Assistance or the Guest;
 - (iv) in a manner that prioritises the safety of you and the Guest at all times; and
 - (v) in compliance with:
 - (A) these Terms and all applicable Policies;
 - (B) all Australian standards applicable to the Services; and

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- (C) all statutes, regulations, by-laws, ordinances and other laws (including common law and the principles of equity); and
- (b) any goods you supply in connection with the Services must:
 - (i) be supplied with good title and free of any security, charge or encumbrance;
 - (ii) be of merchantable quality;
 - (iii) be fit for their intended purpose; and
 - (iv) conform to:
 - (A) their description;
 - (B) all applicable Australian product standards; and
 - (C) all statutes, regulations, by-laws, ordinances and other laws (including common law and the principles of equity).

2.3 When you accept a Service Request, you must:

- (a) as soon as possible make your way directly to the Guest's vehicle to supply the Services. 365 Assistance may suspend or terminate your use of the Platform for serious or repeated failure to comply with this clause 2.3(a);
- (b) verify the Guest by asking for their name and registration details before you supply Services to ensure you have the correct person and for your own security; and
- (c) without limiting any other provision of these Terms, comply with all traffic laws, including all laws relating to the use of mobile technology.

2.4 You acknowledge and agree that:

- (a) if a Guest's mobile phone number is made available to you:
 - (i) that information is made available solely for the purpose of you contacting that Guest in relation to a Service Request you have accepted from them; and
 - (ii) you must not use, misuse, disclose or copy a Guest's mobile phone number in any other way or for any other purposes;
- (b) you must not accept a Service Request:
 - (i) from a person other than 365 Assistance or on behalf of another person (including another 365 Assistance provider); or
 - (ii) that you cannot complete within the time frame specified in the Policies (or if no such time frame is specified, within a reasonable timeframe); and
- (c) if you accept a Service Request and subsequently believe that you will not be able complete it either at, or in accordance with clause 2.4(b)(ii), you must cancel it immediately via the Platform or by any other means notified to you by 365 Assistance from time to time.

3 Fees and payment

- 3.1 365 Assistance will notify you of the fees payable to you for acceptance of a Service Request via the Platform or by other means from time to time and will pay you the relevant fees for the supply of Services supplied as completed Service Requests (as well as the cost of any goods you supply in connection with the Services).
- 3.2 Unless expressly stated otherwise, the fees 365 Assistance pays to you include all applicable fees, tolls, extras and surcharges. You must not charge any amounts, including fees, tolls, extras and surcharges separately to the Guest for or in connection with the provision of Services.
- 3.3 Payments for completed Service Requests will be:
 - (a) automatically processed by 365 Assistance through the Platform; or
 - (b) otherwise processed and paid to you by 365 Assistance in the manner notified to you from time to time.
- 3.4 If you accept a Service Request and subsequently cancel the Service Request, you acknowledge agree that a cancellation fee (in the amount notified to you from time to time) may be applied by 365 Assistance.
- 3.5 If your account with 365 Assistance falls below zero as a result of the amount you owe to 365 Assistance exceeding the amount 365 Assistance owes you, that amount is a debt due and payable to 365 Assistance. You must pay that amount within 7 days of being notified by 365 Assistance. If you fail to do so, 365 Assistance may, without limiting any other rights or remedies it may have, suspend or terminate your use of the Platform.
- 3.6 365 Assistance may withhold payment of any amounts at its discretion where 365 Assistance reasonably suspects you have engaged in fraudulent activity.
- 3.7 You must make all payments due to 365 Assistance under or in connection with these Terms without set off or counterclaim.

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4 GST

- 4.1 Except where expressly stated otherwise, each amount payable under these Terms is inclusive of GST.
- 4.2 If GST is payable by a supplier on any supply made under these Terms, the recipient must pay to the supplier an amount equal to the GST payable on the supply in addition to and at the same time that the consideration for the supply is to be provided.
- 4.3 If an adjustment event arises in respect of a taxable supply made by a supplier under these Terms, the amount payable by the recipient under clause 4.2 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- 4.4 Where a recipient created tax invoice has not and will not be issued under clause 4.5, the supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 4.2. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.
- 4.5 For the purposes of satisfying the requirements of the GST Law and any additional requirements as determined by the Commissioner of Taxation from time to time, the parties agree that:
- (a) where directed to you in writing by 365 Assistance:
 - (i) 365 Assistance can issue recipient created tax invoices for any supply made by you under these Terms; and
 - (ii) you will not issue a tax invoice in respect of any supply by you under these Terms unless 365 Assistance notifies the you that it will not be issuing a recipient created tax invoice for that particular supply;
 - (b) 365 Assistance is registered for GST purposes at the date of these Terms. 365 Assistance will notify you in the event that it ceases to be registered for GST purposes or ceases to satisfy the requirements for issuing recipient created tax invoices as set out in the GST Law or as determined by the Commissioner of Taxation from time to time;
 - (c) you are registered for GST purposes at the date of these Terms, or will be so registered as soon as required under law to register, and have notified 365 Assistance of your ABN. You will notify 365 Assistance in the event that you cease to be registered for GST purposes. If you cease to be registered, 365 Assistance will immediately cease paying GST to you in respect of any supply made by you under these Terms; and
 - (d) you agree to provide 365 Assistance with any relevant information required from time to time to assist 365 Assistance to issue each recipient created tax invoice required for the purposes of payment of GST under these Terms.
- 4.6 In these clause 4:
- (a) GST Law has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
 - (b) a term or expression given a meaning in the GST Law, that is not otherwise defined in these Terms, has the same meaning in these Terms as in the GST Law.

5 Use of Platform

- 5.1 You acknowledge and agree that:
- (a) to use and access the Platform, you may need to:
 - (i) download and install mobile telephone applications and other software that 365 Assistance does not control under licence from one or more third party providers; and
 - (ii) pay a fee for using such applications or software; and
 - (b) your use of such applications or software is subject to the terms of any licence notified to you by the applicable third party provider(s) at the time of such installation and as subsequently amended by such third party provider(s) and notified to you from time to time.
- 5.2 Subject to your compliance with these Terms, 365 Assistance grants to you a non-exclusive, non-sub licensable, non transferrable, revocable, royalty-free licence to:
- (a) access and use those parts Platform that 365 Assistance controls; and
 - (b) access and use any content, information and related materials that may be made available through the Platform, for the sole purpose of exercising your rights and performing your obligations under these Terms.
- 5.3 You must not:
- (a) remove any copyright, trademark or other proprietary notices from any part or aspect of the Platform;
 - (b) reproduce, modify, prepare derivative works based upon, distribute, licence, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Platform except as expressly permitted by these Terms;

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- (c) decompile, reverse engineer or disassemble the Platform except as may be permitted by applicable law;
 - (d) link to, mirror or frame any part or aspect of the Platform;
 - (e) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any part or aspect of the Platform or unduly burdening or hindering the operation and/or functionality of any part or aspect of the Platform; or
 - (f) attempt to gain unauthorised access to, or impair, any part or aspect of the Platform or its related systems or networks.
- 5.4 The Platform may be made available or accessed in connection with third party services and content (including advertising) that 365 Assistance does not control. You acknowledge that different terms of use and privacy policies may apply to your use of such third party services and content. 365 Assistance does not endorse such third party services and content and in no event shall 365 Assistance be responsible or liable for any products or services of such third party providers.
- 5.5 As between you and 365 Assistance, the Platform and all rights related to the Platform are and shall remain 365 Assistance's property or the property of 365 Assistance's licensors (as the case may be). Neither these Terms nor your use of the Platform convey or grant to you any rights:
- (a) in or related to the Platform except for the licences contemplated by clauses 5.1 or granted to you under clause 5.2; or
 - (b) to use or reference in any manner 365 Assistance's company names, logos, product and service names, trademarks or services marks or those of 365 Assistance's licensors or clients.

6 Access details and proof of Identity

- 6.1 You must keep secure and confidential your account details, password and any other information 365 Assistance provides you which allows access to the Platform (Access Details). You must not to share your Access Details with any other person except with the prior written consent of 365 Assistance.
- 6.2 You are solely responsible for all activities that occur using your Access Details and must immediately notify 365 Assistance if you become aware of any actual or suspected unauthorised use of your Access Details or any other breach of security related to Platform.
- 6.3 You must keep all information about Guests confidential and you must not disclose such information, including any name or contact details to any person other than where required by law.
- 6.4 365 Assistance may request that you supply us with the following information:
- (a) information that it may require to initially identify you or your Representatives (including, without limitation, name, home address, email address and your date of birth details);
 - (b) information that it can use to contact you or your Representative (including, without limitation, telephone number, mobile number, email address, work address, mailing address, next of kin or nominated contact details); and
 - (c) information it may require to confirm your or the identify of your Representatives and to run criminal history and background checks (including, without limitation, driver's licence number, car registration, tax file number, passport, business name, domain names and Medicare card details).
- 6.5 You also acknowledge that the Platform may incorporate features which permit 365 Assistance to track your location or the location of your Representatives.
- 6.6 You are not obliged to provide us with any such personal information or permit us to track such locations, but if you do not do so 365 Assistance may limit or disable your access to the Platform.
- 6.7 You consent to 365 Assistance:
- (a) storing any personal information you provide in 365 Assistance's databases;
 - (b) using and disclosing your personal information for the purposes for which it was collected and related purposes including, without limitation:
 - (i) to Guests so that they can verify that you (or your Representative) are (is) the service provider that accepted their Service Request;
 - (ii) to any third party suppliers of our goods or services forming part of the Platform, including third party application or software owners or licensors;
 - (iii) to third party service providers engaged to assist in analysing service trends and improving the notification of Service Requests to you and supply of Services to Guests;
 - (iv) to law enforcement bodies (including, without limitation, to enable 365 Assistance to run criminal history and background checks for law enforcement related activities including, without limitation, the prevention, detection, investigation and prosecution or punishment of criminal offences); and

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- (v) where 365 Assistance reasonably believes the disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health; and
 - (c) where you permit us to track your location, to:
 - (i) using that information to notify you of Service Requests;
 - (ii) disclosing your location to Guests, clients of 365 Assistance and other users of the Platform; and
 - (iii) using and disclosing your locations:
 - (A) for the purposes contemplated by clause 6.7(b); and
 - (B) without identifying you, for 365 Assistance's commercial purposes (including, without limitation, for profiling, logistics and planning purposes and to improve our services and performance).
- 6.8 You may request that 365 Assistance provide you with access to your personal information. 365 Assistance will respond to any such request within a reasonable period after the request is made. 365 Assistance may deny you access to your personal information where such access would pose a serious threat to the life, health or safety of another person or unreasonably impact on the privacy of others. 365 Assistance will notify you in writing, providing reasons, if it does so.
- 6.9 If you are concerned that any of your personal information is inaccurate, incomplete or out-of-date, you may request that 365 Assistance correct any of your personal and 365 Assistance will take all reasonable steps to correct that information promptly.
- 6.10 If you are concerned with the way your personal information has been handled then you are entitled to make a complaint which 365 Assistance will respond to promptly. If your complaint is not resolved to your satisfaction, you may approach an external dispute resolution service or apply to the Office of the Australian Information Commissioner to have the complaint heard and determined.
- 6.11 All requests or complaints in relation to your personal information should be made by contacting 365 Assistance at the following email address complaints@365assistance.com.au

7 365 Assistance's liability

While 365 Assistance endeavours to ensure high levels of availability, the nature of information technology platforms and, more importantly, communication networks means that 365 Assistance cannot and does not warrant or promise that the Platform will:

- (a) perform as specified in cases of:
 - (i) software malfunction;
 - (ii) misuse of software;
 - (iii) modification of software by any party other than 365 Assistance; or
 - (iv) use the software with other software or bugs in other software in which the software operates; or
 - (b) be free from error, viruses or will operate without any interruption, and 365 Assistance is not responsible, and disclaims all liability, for claims, losses, damages, costs and expenses arising out of or in connection with the non-availability of the Platform during any period.
- 7.2 365 Assistance relies on a number of third party providers of plug-ins, tools and services to maintain continuous operation of its systems. 365 Assistance will not be liable for any prolonged or repeated disruptions arising from causes beyond its control, including (without limitation) where a key service provider suffers outages or other disruptions.
- 7.3 The Platform and its content are delivered on an "as-is" and "as-available" basis. In particular, you may not be able to access the Platform if you are in a location where telecommunications reception is poor or unavailable.
- 7.4 365 Assistance cannot ensure that files you download from the Platform will be free of viruses, contamination or destructive features although 365 Assistance will take steps consistent with industry practice to protect against this occurring.
- 7.5 365 Assistance does not by these Terms exclude any rights and remedies in respect of goods or services under the Australian Consumer Law which cannot be excluded, restricted or modified. However, to the maximum extent permitted by law, 365 Assistance excludes all rights, remedies, conditions, warranties and liability in respect of goods or services which arise from your use or inability to use the Platform. In particular, to the fullest extent permitted by law, 365 Assistance:
- (a) will not be liable for injury or damage of any kind arising from the use of the Platform, including without limitation, direct, indirect, incidental, punitive and consequential damages;
 - (b) makes no guarantee of any specific result from use of the Platform or use of its services; and
 - (c) disclaims any and all liability for the acts, omissions or misconduct of any Platform users, service providers, Guests, advertisers sponsors, employees, contractors or otherwise, whether authorised or not, in connection with any use of the Platform or any other service offered or provided by 365 Assistance.

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8 Indemnity by you

You acknowledge that you will undertake the whole of the risk of responding to accepted Service Requests and will be responsible and liable for and must indemnify, defend, and hold 365 Assistance and its related bodies corporate, and each of their respective employees, officers, directors, subcontractors and agents harmless, and keep them indemnified at all times, against any liability, loss, damage, cost (including legal fees on fully indemnity basis), claim, expense or proceeding arising directly or indirectly from:

- (a) any wilful default by you or any of your Representatives in the performance of the Services or any of your other obligations under these Terms;
- (b) any breach of law by you or any of your Representatives;
- (c) any breach of these Terms by you or any of your Representatives;
- (d) any fraudulent or negligent act or omission by you or any of your Representatives in connection with your response to a Service Request;
- (e) any damage to, or loss or destruction of, any real or personal property of any person (including 365 Assistance or any client of 365 Assistance); to the extent caused or contributed by you or your Representatives; and
- (f) any death of, or personal injury to, any person to the extent caused or contributed by you or your Representatives.

9 Insurance

9.1 You must effect and maintain the following insurances:

- (a) public liability insurance for an amount not less than \$5 million;
- (b) CTP insurance in accordance with the applicable Australian, State or Territory legislation; and
- (c) if you are an employer, workers' compensation insurance in accordance with the applicable Australian, State or Territory legislation.

9.2 Whenever requested by 365 Assistance, you must supply to 365 Assistance a certificate of currency and any reasonably requested supporting documentation in respect of each insurance policy required under clause 9.1.

10 Suspension and termination

10.1 The contract that is formed with you under these Terms, and your access to the Platform, may be suspended or terminated by 365 Assistance:

- (a) at any time upon 30 days written notice to you;
- (b) if you commit a breach of these Terms which is:
 - (i) not capable of remedy; or
 - (ii) is capable of remedy and you fail to remedy the breach within 14 days after receiving notice from 365 Assistance requiring you to do so;
- (c) if you:
 - (i) cease to be able to pay your debts as they become due;
 - (ii) cease to carry on your business;
 - (iii) being a corporation, become the subject of insolvency proceedings, or has an administrator, a liquidator or receiver and/or manager or other like person appointed over any of your assets; or
 - (iv) being a firm or partnership, become the subject of an event of bankruptcy or dissolution or
- (d) as otherwise permitted in accordance with these Terms.

10.2 365 Assistance has no liability to you upon such suspension or termination other than in respect of payments for Service Requests successfully completed by you prior to such suspension or termination.

10.3 You agree that monetary damages may not supply a sufficient remedy to 365 Assistance for breach of these Terms and you consent to injunctive or other equitable relief for such breach.

11 Relationship

11.1 You are engaged as an independent contractor of 365 Assistance. These Terms do not create a relationship of employment, trust, agency or partnership between 365 Assistance, or any of clients of 365 Assistance, and you or any of your Representatives.

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- 11.2 If you are an employer, you are responsible for your employees, including their wages or salaries, paid public holidays, annual leave, personal leave, superannuation, PAYE and other taxes, workers' compensation and other insurances and all other obligations arising out of or in connection with your activities.
- 11.3 You will not assume nor attempt to assume or create directly or indirectly any obligation on behalf of or in the name of 365 Assistance (or any of its related bodies corporate).

12 General

- 12.1 365 Assistance may amend these Terms from time to time by notification to you via the Platform or by other means. Your continued access or use of the Platform after such notification constitutes your consent to be bound by the amended Terms.
- 12.2 If you consist of more than one person, your rights and obligations are joint and several.
- 12.3 You must not assign your rights under these Terms without 365 Assistance's prior written consent which may be withheld in 365 Assistance's absolute discretion.
- 12.4 Any failure by 365 Assistance to enforce an obligation under these Terms does not constitute a waiver of any of its rights.
- 12.5 If any provision of these Terms is illegal or unenforceable in any jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions.
- 12.6 These Terms are governed by the laws of New South Wales. You submit to the non-exclusive jurisdiction of the courts of New South Wales and their courts of appeal and waive any rights to object to such courts assuming jurisdiction or to claim that jurisdiction is an inconvenient forum.