



## **RAC Go App** **RAC Insurance - TERMS OF USE**

### **1 Formation of agreement**

- (a) Please read these Terms of Use carefully and completely.
- (b) If you want to install and activate the RAC Go App (**App**) you must agree to be bound by these Terms of Use.
- (c) By clicking on the 'I agree' button to download the App you agree that these Terms of Use form an agreement between you and RAC (**Agreement**).
- (d) From time to time, RAC may require changes to be made to the App in order to respond to changes in Law and other environmental factors. RAC will advise you of its intention to make any such changes through the Website.

### **2 Smartphone safety warning**

- (a) While using the App or the Device, RAC reminds you that you remain responsible for observing all relevant Laws and codes.
- (b) The use of mobile phones while driving endangers the safety of all road users. It distracts a driver's attention from the road and prevents the driver from maintaining proper control of their vehicle. For this reason, the use of hand-held mobile phones (including your Smartphone) while driving is illegal in Australia and attracts a significant fine and the loss of licence demerit points.

### **3 Product offering**

- (a) To be eligible to install and use the App Device you must:
  - (i) be an Australian resident aged 17 or over;
  - (ii) have internet and email access;
  - (iii) have a Smartphone that is compatible with the App;
  - (iv) have your own internet data plan; and

- (v) ensure Location, Motion & Fitness services are enabled on your Smartphone.

### **4 Cost**

- (a) The App is free to all eligible users.

### **5 Quality of the App and the Device**

- (a) Subject to clause 5(b) you agree that:
  - (i) the App may contain errors and may not be available from time to time;
  - (ii) RAC gives no warranty that use of the App will be free from defects or be fit for any particular purpose or function in any specified manner; and
  - (iii) all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to the App are excluded to the maximum extent permitted by Law.
- (b) Nothing in this Agreement excludes, restricts or modifies any right, remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any Law which cannot be lawfully excluded or limited. This may include any rights you have under the Australian Consumer Law.
- (c) Where any Law implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation, in relation to the App and RAC is not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation, and RAC is able to limit your remedy, then RAC's liability is limited, at RAC's election, to the resupply of the App.

### **6 Acknowledgements**

You acknowledge and agree:

- (a) you use the App at your own risk;
- (b) you are responsible for your own conduct and any Generated Content that you create, transmit or display via the App.



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- (c) you will only use the App for purposes that are legal, proper and in accordance with this Agreement; and
- (d) the App will utilise your Smartphone for the purposes of transmitting and receiving information, including in accordance with clause 10 and that this transfer of information is facilitated by your telecommunications carriage provider using your Smartphone and data plan.

## **7 Warranties**

- (a) You represent and warrant to RAC that:
  - (i) you will use the App in accordance with this Agreement;
  - (ii) any information you provide to RAC will be accurate, complete and current;
  - (iii) you will not use the App:
    - (1) in a manner that violates any Law, including but not limited to improperly conducting surveillance of any person;
    - (2) to defame or harass any third party;
    - (3) to circumvent any security measures;
    - (4) to distribute, view or create any material that is or may be defamatory, offensive, obscene, or infringes any third party's Intellectual Property Rights;
    - (5) through act or omission, to mislead or deceive others; or
    - (6) in any other manner that we deem to be unacceptable.

## **8 Third party and other terms**

- (a) You are also bound by and must comply with:
  - (i) Usage Rules applicable to your Smartphone application store.
- (b) This Agreement prevails to the extent of any inconsistency with the terms of a document listed in clause 8(a).

## **9 Intellectual Property**

- (a) You acknowledge and agree that you do not obtain a right of ownership of any Intellectual Property Rights in:
  - (i) the App;
  - (ii) the Licensed Data; or
  - (iii) any Licensed Data Product.
- (b) RAC grants you a royalty-free, revocable, non-exclusive, non-transferable, limited licence to use the App on your Smartphone as permitted by this Agreement.
- (c) You must only use the App, Licensed Data or Licensed Data Products for your own personal use.
- (d) You must not attempt to modify, repair, alter, dismantle or reverse engineer the App or any associated components.

## **10 Privacy**

- (a) As a condition of use of the App you agree that RAC (through the Aggregator) will collect and use your Personal Information, together with other relevant information collected from your use of the App for the primary purpose of providing the features of the App.
- (b) In order to use the App you agree to provide Personal Information about yourself (including location-based information and other data collected from the App) and you acknowledge and agree that RAC may:
  - (i) use the App to collect, monitor and store your location;
  - (ii) access your Smartphone accelerometer to detect motion in your vehicle; and
  - (iii) disclose information (including Personal Information) to you and to others authorised by you through the App.
- (c) RAC may also use and collect non-personal aggregate, statistical, and other information (including Personal Information such as location information) during your use of the App for research purposes and to help RAC



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enhance and improve the App and to develop current and future services and functionality.

- (d) RAC may share the non-personal aggregate, or anonymised summary information above with partners or other third parties.
- (e) RAC's use of any Personal Information will at all times be governed by RAC's Privacy Policy available on the Website and the Privacy Act, together with any other relevant Laws.
- (f) You permit RAC to:
  - (i) contact you seeking feedback on the App; and
  - (ii) use your Personal Information to notify you about other products, services or special offers and provide your Personal Information to RAC's Related Bodies Corporate for this purpose.
- (g) You can request not to receive the information in clause 10(f)(ii), request access to any Personal Information that RAC holds about you, or request a copy of the RAC Privacy Policy by calling RAC (13 17 03).
- (h) If you provide RAC with feedback you consent to RAC and its Related Bodies Corporate using your feedback, opinion or expression in its advertising, awareness campaigns, marketing, or promotional activities.

### **11 Storage of Generated Content**

- (a) You agree that RAC has no responsibility or liability for the deletion or failure to store any Generated Content that you create using the App.
- (b) You acknowledge that RAC has no set maximum number of transmissions you may send or receive through the App, or the amount of storage space used. However, RAC retains the right (in its sole discretion) to create limits at any time and without notice.
- (c) If this Agreement is terminated, you may no longer be able to access or retrieve your Generated Content.

### **12 Disclaimer**

- (a) To the fullest extent permitted by law, RAC disclaims any liability for any loss or damage of any kind you or any other person may suffer as a result of your use of the App or any Generate Content, advertisements or products provided or distributed through the App or RAC's Websites.
- (b) RAC does not warrant or guarantee that any Generated Content or Licensed Data on the App is accurate or free from errors. The App is intended as an aid, and it does not provide comprehensive or accurate information on all occasions.
- (c) You acknowledge that the App is not intended, or suitable, for use while driving or where time of arrival or driving directions may impact your safety or the safety of the public.
- (d) RAC will not in any event be liable for any fine, penalty, or punishment issued to any user of the App in a vehicle.
- (e) The App contains information that may be provided by third party Data Suppliers. These Data Suppliers may issue warnings and updates that may affect your driving experience. Where the App provides a warning concerning the safety of you, your passengers or your property, RAC recommends that you always undertake additional checks (such as looking at the Data Supplier's website or warnings page) as RAC will not accept any liability for losses sustained by you if you rely solely on the App.
- (f) This clause 12 survives the termination or expiry of this Agreement.

### **13 Indemnity**

- (a) You must indemnify RAC and its Related Bodies Corporate against any loss or damage RAC, or its Related Bodies Corporate suffer or incur whatsoever arising from:
  - (i) your breach of this Agreement;
  - (ii) loss or damage to property, personal injury, illness, or death in connection with your use of the App,except to the extent that the loss or damage is caused or contributed to by RAC.



- (b) This clause 13 survives the termination or expiry of this Agreement.

#### **14 Term and termination**

- (a) This Agreement commences when you click 'I accept and download the App and continues until terminated.
- (b) RAC reserves the right to vary this Agreement and will ensure that the amended Agreement is placed on the Website. Your continued use of the App means that you agree to be bound by any changes that may be made by RAC and posted on our Website.
- (c) RAC may terminate this Agreement with immediate effect by posting a notice on RAC's Website if;
- (i) any Laws or government or other regulatory approvals for the use of the App is withdrawn, suspended or amended at any time;
  - (ii) a Data Supplier no longer agrees to supply RAC with Licensed Data necessary to continue the App; or
  - (iii) if RAC, at its discretion, discontinues supporting the App.
- (d) RAC may terminate this Agreement and your rights to use the App if you breach the terms of this Agreement.

#### **15 Suspension**

- (a) RAC may suspend your use of the App if you fail to comply with this Agreement.

#### **16 Law**

- (a) This Agreement is governed by the laws of Western Australia. RAC and you submit to the non-exclusive jurisdiction of the courts of Western Australia.

#### **17 General**

- (a) **Assignment:** you must not assign your rights under in this Agreement, without RAC's prior consent.
- (b) **Prohibition, enforceability, and severance:** If any provision of this Agreement is invalid under the Law of any jurisdiction, the provision is enforceable in

that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not, except where this would materially affect the nature or effect of the parties' obligations under this Agreement.

#### **18 Definitions**

In this Agreement:

**Aggregator** means Sentiance NV of Korte Lozanastraat 20-26, 2018 Antwerp, Belgium which will implement, operate, manage, and maintain the App on behalf of RAC.

**Data Supplier** means a third-party supplier which supplies Licensed Data to the App.

**Generated Content** means all information, data, text, music, sound, photographs, videos, message, or other materials created or generated by the App.

**Intellectual Property** means all intellectual and industrial property rights, including trademarks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts and database rights, including any application or right to apply for registration of any of these rights.

**Law** means any law in force in Australia, whether common law, equity or any law under any statute, ordinance or code and includes subordinate legislation.

**Licensed Data** means any data supplied by a Data Supplier from which the Licensed Data Product is derived from, or on which the Licensed Data Product is based (regardless of whether such data has been reformatted or converted onto different media or translated into another format).

**Licensed Data Product** means the Licensed Data provided or made available to you through the App.

**Personal Information** has the meaning given to that term in the Privacy Act.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**RAC** means RAC Insurance Pty Limited (ABN 59 094 685 882).

**Related Bodies Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).



**Smartphone** means any mobile device that combines cellular and mobile computing functions into one unit; with compatible operating systems.

**Usage Rules** means the terms applicable to your download and use of applications on your Smartphone's electronic application store.

**Website** means the RAC Go website at: [rac.com.au/racgo](http://rac.com.au/racgo)

### **Interpretation**

In this Agreement, unless the context requires otherwise, the singular includes the plural and the plural includes the singular; words of any gender include all genders; a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; a reference to a party to a document includes that party's successors and permitted assigns; and specifying anything in this Agreement after the word "includes" or "for example" or similar expressions does not limit what else is included unless there is express wording to the contrary.