



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 wish to install and activate the RAC Go App (**App**) you must agree to be bound by, and must abide by, these Terms of Use.
- (c) If you are under the age of 18 years, you must have a parent or legal guardian's permission to use the App and to accept these Terms of Use. Your parent or legal guardian agrees to be bound by, and abide by, these Terms of Use on your behalf.
- (d) 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**).
- (e) From time to time, RAC may make changes to the App in order to respond to changes in Law, to address bugs, or to enhance the performance, security or functionality of the App. RAC will take reasonable steps to advise you of any such changes through the Website.

2 Smartphone safety warning

- (a) While using the App or the Smartphone on which the App is installed, you remain responsible for observing all relevant Laws and codes (including driving-related Laws).
- (b) You acknowledge that:
 - (i) 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; and
 - (ii) the use of mobile phones or other devices 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 handheld mobile phones (including your Smartphone) while driving is unlawful in

Australia and can attract significant penalties (including, potentially, significant fines, demerit points and/or loss of driver's licence).

- (c) In no event will RAC be liable for any fine, penalty or punishment issued to any person due to their use of the App in a vehicle.

3 Product offering

- (a) To be eligible to install and use the App you must:
 - (i) be an Australian resident;
 - (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 certain services (such as location services), as advised by the App, are enabled for the App.

4 Cost

- (a) The App is free to download for all eligible users.
- (b) You acknowledge and agree that fees may apply for some of the features available through the App, such as:
 - (i) towing call outs and associated storage;
 - (ii) emergency service calls; and
 - (iii) roadside assistance.
- (c) You acknowledge that you are responsible for verifying and accepting any fees that may apply to the features available through the App.

5 Acknowledgements

You acknowledge and agree:

- (a) subject to section 5(b), your use of the App is 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;
- (c) you will only use the App for purposes that are legal, proper and in accordance with this Agreement;



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- (d) you will not use the App in a harmful manner or upload harmful content to the App;
- (e) the App will utilise your Smartphone for the purposes of transmitting and receiving information, including in accordance with section 9, and this transfer of information is facilitated by your telecommunications carriage provider using your Smartphone and data plan;
- (f) the fuel discount is only available to RAC members who hold a valid RAC membership number and is only available in participating locations which may be amended from time to time. Participating locations can be found on RAC's Website; and
- (g) certain features of the App are only available in Metropolitan Perth.

6 Your 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 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 or obscene, or that 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 RAC deems to be unacceptable.

7 Third party and other terms

- (a) You are also bound by, and must abide by, with Usage Rules applicable to the Smartphone

application store via which you downloaded the App (such as the Apple App Store or Google Play Store).

- (b) This Agreement prevails to the extent of any inconsistency with the terms of a document referred to in paragraph (a).

8 Intellectual Property

- (a) You acknowledge and agree that you do not obtain any right of ownership of any Intellectual Property Rights in:
 - (i) the App;
 - (ii) the Licensed Data; or
 - (iii) any Licensed Data Product.
- (b) To the extent that you upload, or RAC processes, any User Generated Content, you grant to RAC and its Related Bodies Corporate a non-exclusive licence to use that User Generated Content:
 - (i) to enable RAC to provide the features of the App;
 - (ii) to improve and enhance the App;
 - (iii) to perform analytics (including machine learning) or research on aggregated and de-identified data, including by sharing it with partners or other third parties, provided that we do not disclose any of your Personal Information or identify you as the source of the User Generated Content; and
 - (iv) to promote RAC affiliated products, services and information on discounts.
- (c) 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.
- (d) You must only use the App, the Licensed Data and the Licensed Data Products for your own personal use.
- (e) Except as permitted by applicable Law, you must not attempt to modify, repair, alter, dismantle, or reverse engineer the App or any associated components.

9 Privacy

- (a) As a condition of use of the App you agree that RAC (through the Aggregator) will collect and use your



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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, motion and fitness, interactions-based, other contextual information, and other data collected via 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, including sharing your location information to other App users who are members of your group (as defined by you in the App).
- (c) RAC's use of any Personal Information will at all times be governed by RAC Go App Privacy Policy available on the Website and the Privacy Act, together with any other applicable Laws.
- (d) You permit RAC to contact you seeking feedback on the App.
- (e) You can request not to receive the contact referred to in paragraph (d), to request access to any Personal Information that RAC holds about you, or request a copy of the RAC Privacy Policy, by writing to us at racgo@rac.com.au.
- (f) 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.

10 Storage of Generated Content

- (a) You agree that RAC has no responsibility or liability for the deletion or failure to store any User 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 User Generated Content.

11 Disclaimers, warranties and liability

- (a) Subject to section 5(b) you acknowledge 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, except to the extent that Non-excludable Obligations apply;
 - (iii) the App is intended as an aid only, and it does not provide comprehensive or accurate information on all occasions; and
 - (iv) the App may contain information sourced from 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 your safety, 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.
- (b) To the extent you acquire goods or services from us as a consumer within the meaning of the Australian Consumer Law, you may have certain rights and remedies (including consumer guarantee rights) that cannot be excluded, restricted or modified by agreement. Nothing in this Agreement operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:



- (i) contravene that statute; or
- (ii) cause any term of this Agreement to be void,

(Non-excludable Obligations).

- (c) Except in relation to the Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities, or other terms that may be implied by custom, under the general law or by statute, are expressly excluded under this Agreement.
- (d) In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which our liability is not so limited under this paragraph (d)), our liability to you for a failure to comply with any Non-excludable Obligation is limited to:
 - (i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
 - (ii) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

Except in the case of a major failure (as that term is defined in the Australian Consumer Law), RAC may elect as between the remedies set out in paragraphs (i) and (ii) above.

- (e) Except in relation to the Non-excludable Obligations, RAC's liability to you arising directly or indirectly under or in connection with this Agreement or the performance or non-performance of this App, and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:
 - (i) RAC excludes all liability for loss of revenue, loss of goodwill, loss of customers, loss of capital, downtime costs, loss of profit, loss of or damage

to reputation, loss under or in relation to any other contract, loss of data, loss of use of data, loss of anticipated savings or benefits, or any indirect, consequential or special loss, damage, cost or expense or other claims for consequential compensation, incurred by or awarded against you under or in any way connected with this Agreement or the provision of the App; and

- (ii) RAC's total aggregate liability under or in any way connected with this Agreement or the provision of the App is limited to \$10,000.

- (f) This section 11 survives the termination or expiry of this Agreement.

12 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's breach of this Agreement or its negligence or wilful misconduct.
- (b) This section 12 survives the termination or expiry of this Agreement.

13 Term and termination

- (a) This Agreement commences when you download the App and click 'Sign In' and continues until it is terminated in accordance with its terms.
- (b) RAC may terminate this Agreement with immediate effect by posting a notice on RAC's Website to that effect if:
 - (i) any Laws or government or other regulatory approvals for the use of the App are withdrawn, suspended or amended at any time;
 - (ii) a Data Supplier no longer agrees to supply RAC with Licensed Data necessary to continue delivering the App; or



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- (iii) RAC, in its discretion, discontinues supporting the App.
- (c) RAC may terminate this Agreement and your rights to use the App if you breach the terms of this Agreement.
- (d) You have the right to terminate this Agreement without cause, at any time, under these Terms of Use, by deleting the App from your Smartphone.

14 Suspension

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

15 Law

This Agreement is governed by the laws of Western Australia, and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

16 General

- (a) **Variation:** RAC reserves the right to amend, modify, add, delete, and make corrections to this Agreement at any time, as follows:
 - (i) if RAC considers that the change is likely to benefit you or have a neutral or minor detrimental impact on you, RAC may make any changes immediately without notifying you except by publishing the amended terms on the Website;
 - (ii) if RAC considers that the change is likely to have a significant detrimental impact on YOUR rights or obligations under this Agreement, we will make the change after we have notified you of the change (solely by using the email address you have provided) and will display a notice on the Website describing the change. Your continued use of the App after an amendment will mean that you agree to that amendment. You must stop using the App if you do not agree to an amendment.
- (b) **Assignment:** You must not assign your rights under this Agreement without RAC's prior consent.

- (c) **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.

17 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.

Australian Consumer Law has the meaning given to that term in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Data Supplier means a third-party supplier who supplies Licensed Data to 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 a Licensed Data Product is derived from, or on which a 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 in one unit, such as an Apple iPhone or a Google Pixel device.

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

User Generated Content means all information, data, text or other materials that you upload to the App or that is generated about you through the App.

Website means the RAC Go website at rac.com.au/racgo (or at a successor URL).

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 words **includes, for example, such as** or similar expressions does not limit what else is included unless there is express wording to the contrary.