

Terms and Conditions

NOTICE: Please read these terms and conditions (the **"Agreement"**) and the Privacy Policy carefully. We strongly recommend you print them out and read them in their entirety or alternatively a hard copy is available on written request to us using the contact details below, please see the Customer Service section. This Agreement and the corresponding Privacy Policy are legally binding and set out the terms and conditions upon which you may access and use the services on this web app, www.bunnykulcha.co.za (the **"WebApp"**).

This Agreement and the corresponding Privacy Policy also explain how we use and share or otherwise process your personal information. By accessing this WebApp you agree to be bound by this Agreement and the Privacy Policy located at <http://www.bunnykulcha.co.za/terms/privacy>, each of which may be amended from time to time.

You accept that you have been given an opportunity to read and accept this Agreement before using any of the services offered. We recommend that you check this Agreement on each visit to this WebApp. If you do not wish to be bound by this Agreement and/or the Privacy Policy, you may not access or use the WebApp, the Service or any part of them (as defined below) and should exit immediately.

If you are under 18 (eighteen) you should cease using this Service and exit this WebApp immediately. Please note that in some jurisdictions there are obligatory provisions in the consumer legislation that may be relevant to services provided under this Agreement.

1. INTRODUCTION

1.1 **Buongiorno South Africa (Pty) Ltd**, trading as **"BunnyKulcha"**, a limited liability company registered in South Africa whose registered office address 9th Floor The Terrace, 34 Bree Street, Cape Town 8001 under company number 1990/04637/07 (the **"Company"**) provides you with the best curated content for your mobile (the **"Content"**), for a daily subscription fee, on your supported smart device through the WebApp (the **"Service"**).

Please call our helpline noted at the bottom of this Agreement without hesitation should you have any questions regarding any aspect of our Service.

In this Agreement references to **"we"**, **"us"**, **"our"** and any similar expression shall include the Company and any of its affiliates. This Agreement is to be entered into between the customer **"you"**, and the Company.

2. EFFECT OF THIS AGREEMENT

2.1 By agreeing to this Agreement and/or by continuing to use the Service you are bound by the entirety of this Agreement and the Privacy Policy, as well as any rules governing any Content provided on or via the WebApp. If there are any inconsistencies between any rules on our WebApp and this Agreement, then the terms of this Agreement shall prevail.

2.2 We reserve the right to make any amendments to this Agreement or the Privacy Policy, and any such changes will be highlighted in red for a period of 4 (four) weeks. We encourage you to review this Agreement and our Privacy Policy, which are available on our WebApp and updated periodically. Your continued use of the Service will be deemed to be your acceptance of any changes to this Agreement and Privacy Policy (as applicable). If the modified Agreement and/or Privacy Policy is not acceptable to you, your only recourse is to cease using the Service, for further details on cancellation please see the Customer Service section below.

3. REFUNDS

If you reside in the Republic of South Africa and have purchased one of our subscription services with a recurring charge, section 44 of the Electronic Communications and Transactions Act 25 of 2002 (**"ECT Act"**) entitles a customer to cancel without reason and without penalty any sale concluded on a website within 7 (seven) days after date of the conclusion of an agreement for services (**"Cooling Off Period"**) and to obtain a full purchase price refund within 30 (thirty) days of date of cancellation thereafter, but provided that you notify us of your cancellation in writing.

Where the Cooling Off Period does not apply, you may cancel the Service, at any time, and all future charges by following the instructions given in the text SMS message sent to you after your purchase, but if you do, we are not obliged to refund any part of the subscription fee, unless we have breached a material term set out in this Agreement or are otherwise required by law. In all other circumstances, a refund will be at our discretion. No refunds will apply for early abortive Content, or termination of the Service following a payment period.

Nothing in this Agreement affects or limits your legal rights as a consumer under Consumer Protection Act, 2008, as amended from time to time ("**CPA**") or any other applicable law. For further details on cancellation (whether or not within the Cooling Off Period) or any enquiries, please contact us directly using the details stated in the Customer Service section below. The Customer Service section also contains details of the Department of Trade and Industry (the "**DTI**") as well as the National Consumer Tribunal ("**NCT**") (who can provide further advice about your rights).

4. YOUR REPRESENTATIONS

4.1 By seeking to register for the Service and using the Service you hereby confirm to us that at all such times you:

- a) are located in the Republic of South Africa;
- b) are aged 18 years or over;
- c) are of sound mind and capable of taking responsibility for your own actions;
- d) have the power to enter into a legally binding agreement (you are not be legally barred from doing so for any reason) and you are the person whose details are provided in connection with your Subscription, as defined below;
- f) are acting as principal and not on behalf of anyone else;
- h) are the authorized owner of the mobile device which you registered to your Account on the WebApp during the Registration process, as described below.
- i) you are located in a jurisdiction in which such Registration, as defined below, and access and/or use of the Service is not unlawful or contrary to any applicable regulation. It is your responsibility to ensure that this is not the case.

4.2 Persons in breach of this Agreement are not entitled to access and/or use the Service and could be committing fraud and be subject to criminal prosecution.

4.3 You cannot use the Service unless you have first completed Subscription, as defined below.

4.4 You hereby warrant to us that all information provided in your Subscription , as described below, and all personal information provided to us is complete, true and accurate and not misleading and that you will notify us immediately of any change.

4.5 You undertake to access and/or use the Service for legitimate and personal entertainment purposes only.

4.6 You undertake to abide by all applicable laws and regulations when using the WebApp and/or Service and to be solely responsible for all things arising from your use of the WebApp and/or Service.

4.7 You undertake not to use the WebApp and/or Service in any way which might infringe any rights of any third party or give rise to a legal claim against Company by any third party;

4.8 You undertake not to damage, interfere with or disrupt access to the WebApp and/or Service or do anything that may interrupt or impair its functionality.

4.9 You undertake not to obtain or attempt to obtain unauthorized access, through whatever means, to the WebApp and/or Service.

5. SUBSCRIPTION

5.1 Before you are able to fully access any of the Content or use the Service, you will be required to subscribe to the Service via the WebApp in one of the following ways: 1) clicking on an advertising banner and following the instructions noted on the subsequent landing pages to a) click on the button "**Subscribe**" or "**Accept**" or "**Yes**" to complete your subscription or 2) By visiting our WebApp directly and following the instructions to subscribe for our Service ("**Subscription**"). Once your Subscription is complete, you will be able to use and/or access the Service via the WebApp subject to this Agreement.

5.2 Upon completion of the Subscription, we will confirm by SMS text message to the mobile number which you provided, that you have successfully subscribed to the Service.

5.3 The Subscription fee /charges are always mentioned at the point of purchase i.e. commencement of subscription period or date of accessing the Content/Service.

5.4 For security purposes, following Subscription you will be provided with access to the Service via <http://www.bunnykulcha.co.za>. Transactions made using your registered mobile number are accepted by us on the understanding that you are authorized to register this mobile number, access and/or use the Service. If your mobile phone is

used by anyone other than yourself, we will accept no liability for the consequences or costs incurred from such misuse, or for the loss, theft, and misuse of your information.

5.5 You agree to be solely responsible at all times for all access and/or use of this WebApp and the Service. You are responsible for keeping all your user identification details, such as your mobile number ("**User details**"), confidential. You shall not impersonate any person or entity or misrepresent your identity or affiliation with any person or entity, including using another person's User details, password or other account information, or another person's name, likeness, voice, image or photograph, or providing false details for a parent or guardian, if our subscription process requires such information. You are also responsible for ensuring that all persons who access the WebApp through your internet connection are aware of this Agreement and are in compliance with its terms.

5.6 We reserve the right to disable any User details, whether chosen by you or allocated by us, at any time, if in our opinion you have failed to comply with any of the provisions of this Agreement.

5.7 We reserve the right to ask for proof of age documentation and evidence to verify your identity at any time (including any third party, which may keep a record of such information). We reserve the right to conduct checks against any of the details provided to us and to pursue this information through any channels and methods available to us. Failure to provide substantiated proof of age or other requested information will result in the suspension or termination of your Subscription.

5.8 We reserve the right to refuse, suspend and/or terminate your Subscription immediately and without consulting or notifying you or giving you reasons in the event that you publish, cause the publication of and/or send via the WebApp any actual or potentially defamatory, offensive, illegal or obscene language, material, activity or discussion or if you breach, or are suspected of any breach of this Agreement, any applicable law, regulation, code or request of a MNO and/or regulators or should we deem it in the best interests of the Company and/or other customers to do so.

5.9 It is your sole responsibility to ensure that at all times you comply with all laws and regulations with respect to the Service and the Content made available through the WebApp in any jurisdiction where you are located or are a resident and that you have a complete and unrestricted legal right to register to the Service, access and/or use the Service.

5.10 Use of the WebApp will be closely monitored to ensure that no customer is using the WebApp or the Service with a frequency or in a manner which might suggest that he or she is using it except solely for personal use or is using it on behalf of others, and we reserve the right to suspend and/or terminate the Subscription if we consider or suspect that the Service is being used in this way.

5.11 If any of your personal information or other information relevant to your Subscription change, you must inform us immediately by contacting us using the contact information provided in the Customer Service section below.

6. SUBSCRIPTION CHARGES

6.1 BunnyKulcha is a mobile subscription service charged at a flat fee of **R7** per day per Service (exact price depending on the existing campaign at time of joining and network operator) which offers you unlimited access to the Content while you remain subscribed to the Service. When you make the decision to purchase the Service and indicate your decision by clicking on the "**Subscribe**" or "**Accept**" or "**Yes**" buttons or directly via the WebApp by following the instructions to register for our Service and complete your Subscription, you enter into a contract with us and agree that you will pay the price detailed by charging the purchase to your monthly account or prepaid account provided by your mobile network operator ("**MNO**"). The subscription fee shall become due at the end of the specific subscription period while you are subscribed to this Service irrespective of whether or not the Content is actually accessed during any particular subscription period.

6.2 Your contract for the Service is with us and not with your MNO. Your MNO has agreed with us to simply to charge the amount directly to your bill or prepay account. Once this charge has been authorized by you, you must pay your MNO (for monthly accounts) the amount charged. You are therefore wholly responsible for checking that you are happy with the seller (us), price and the Service before making a purchase commitment.

6.3 MNO charges may also apply and all prices stated in the WebApp and/or otherwise communicated to you are inclusive of VAT (where applicable). The Service is offered on subscription basis which will renew automatically after the end of the specific subscription period, unless and until the you decide to opt out or unsubscribe.

6.4 You agree to return in the same condition or forthwith settle to us the cash equivalent (if applicable, and calculated as at the date(s) of the prize(s) being awarded) any and all prizes which may have been awarded to you under the Service, in circumstances where we subsequently discover that you have breached this Agreement (including without limitation where the mobile number used to register to the Service, the use of the Service and/or the registration itself is disputed).

6.5 You can access the Service until you SMS "**STOP**" to **36692** at any time to out opt or unsubscribe from the Service, for further details on cancellation please see the Customer Service section below.

7. ACCESS AND USE OF THE SERVICES

7.1 In order to access and/or use the Service follow the information shown on your device's screen to complete Subscription.

7.2 Any use of the service by you is on an "as is" and an "as available" basis. You agree and accept that the WebApp is not a fault-free service and is for your own personal use and shall not be used for commercial purposes.

7.3 Your agreement with us will be null and void if we discover or suspect that you have in any way interrupted, deviated, tried to manipulate the outcome or tampered with any of the Content.

7.4 We reserve the right to change the format of the Service, the WebApp or the Content that we offer to enhance them and under the circumstances as prescribed in the Regulation of Interception of Communications and Provisions of Communications-Related Information Act, 70 of 2002, as amended from time to time ("**RICIA**") we reserve the right to record all telephone calls made to us and to monitor, intercept, block, filter, read, delete, edit, disclose and use communications and all information sent or posted via the WebApp and/or relating to the Service for which purposes you consent.

8. VIRUSES, HACKING AND OTHER OFFENCES

8.1 You must not attempt or encourage the misuse of the WebApp or Service by introducing viruses, Trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorised access to the WebApp, the server on which the WebApp is stored or any server, computer or database connected to the WebApp. You must not attack the WebApp or Service via a denial-of-service attack ("**DoS**") or distributed denial-of-service attack ("**DDoS**").

8.2 By breaching Clause 7.1 above, you would commit a criminal offence under South African Law. We will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your identity to them. In the event of such breach, your right to use the WebApp and/or the Service will cease immediately without notice to you and without us incurring any liability whatsoever.

8.3 We will not be liable for any loss or damage caused by the DDoS , viruses or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the WebApp, the Service or to your downloading of Content , or other material posted on the WebApp, the Service or any WebApps linked to it.

9. SPECIAL PROMOTIONS

9.1 We may, from time to time, run promotions including free news and/or content which is free to access, award prizes and provide you with marketing or promotional materials if you have completed your Subscription.

9.2 The rules of entry or access to any promotions will be displayed on the WebApp and may sometimes be restricted only to a first time user. For the purposes of this Agreement, a 'first time user' is a customer who has not subscribed to the Service before.

10. SECURITY POLICY

10.1 We will not rent, sell or share your personal details with third parties, however, we may pass on your details to relevant authorities or regulators if we and/or they wish to investigate or assist in the investigation of any suspected or alleged fraud or abuse of the Services and/or WebApp or if we are required by law to do so, for example under money laundering or data protection legislation.

10.2 All information received by us from your use of the Service and/or WebApp shall be used in accordance with our Privacy Policy, which is available on our WebApp and which we encourage you to review as it details how we may process your personal information. By using our WebApp, you consent to such processing and you warrant that all information provided by you is accurate, up to date and complete. It is your responsibility to update and maintain changes to that information and the Company is entitled to rely on any information you provide to us.

10.3 If we have reason to believe that there has been or is likely to be a breach of security or any other misuse of the WebApp we may suspend and/or terminate your Subscription to the Service.

10.4 We are not obliged to monitor, detect or report any unauthorised use of the WebApp and you shall be solely responsible for all use of the WebApp and/or Service made by you or anyone else using your User details, for preventing unauthorised use of your User details and/or device you are liable for all user charges that are incurred as a result of any such unauthorised use.

10.5 If you believe there has been any breach of security such as the disclosure, theft or unauthorised use of your User details or device, you must notify us immediately by e-mailing us at: bunnykulcha.za@buongiorno.com.

11. COMPATIBILITY

11.1 You may experience problems or be unable to access certain Content successfully depending on the mobile device used to access the Content. Non-android smart phones (such as iOS devices and Windows devices) and possibly some Android phones will only be able to access limited Content due to the type of operating systems on the mobile devices. This is an issue with the third party technology used in the provision of the Content which is not available on all handsets and out of the Company's control. If you have this type of issue that limits your access to some or all of the Content and would like to raise a query or ask for technical assistance, please contact our call centre on 021 415 2166 or email our customer support team at

bunnykulcha.za@buongiorno.com. You acknowledge that we are not responsible for any costs or losses incurred by you, damage to your mobile device or loss of data resulting from any such incompatibility.

11.2 We make no representation as to the compatibility of your mobile device with the Service and you acknowledge and agree that the Company shall have no liability for the compatibility or non-compatibility of your mobile handset with the Service and/or the Content.

12. CUSTOMER SERVICE

12.1 Cancellation:

You are free to cancel your subscription at any time by following the instructions below:

SMS: "STOP" to **36692** to unsubscribe from the Service at any time. The subscription can also be terminated anytime by clicking on to the unsubscribe option and following the instructions via the account section of the WebApp portal.

If you have any questions concerning this Agreement or should you or you wish to make a complaint with respect to this Service, any Content, competition or any other matter, please contact us by telephone, email or write to us using the following details:

12.2 Customer Service:

Address: Buongiorno South Africa (Pty) Ltd, 9th Floor The Terrace, 34 Bree street, Cape Town 8001

Helpline: 021 415 2166 (local call charge rate)

Email: bunnykulcha.za@buongiorno.com

12.3 The Company is a member of WASPA and is bound by the WASPA Code of Conduct. Customers have the right to approach WASPA to lodge a complaint in accordance with the WASPA complaints procedure. The Company may be required to share information relating to the Service or a customer with WASPA for the purpose of resolving a complaint. WASPA website: www.waspa.org.za

12.4 The Consumer Protection Act gave rise to the establishment of the National Consumer Commission, a body assigned to investigate consumer complaints, as well as the National Consumer Tribunal, which is responsible for the adjudication of violations and transgressions of the Consumer Protection Act.

You can contact the DTI or NCT for further advice about your rights:

Department of Trade and Industry (DTI) Customer Contact Centre: 0861 843 384

the DTI Office of Consumer Protection: (012) 394 1436 / 1558 /1076

DTI E-mail: contactus@thedti.gov.za This e-mail address is protected from spambots. You need JavaScript enabled to view it.

DTI Website: www.thedti.gov.za

National Consumer Tribunal (NCT): (012) 663 5615

NCT E-mail: Registry@thenct.org.za

NCT Website: www.thenct.org.za

13. OUR LIABILITY

13.1 The following provisions set out all our liability to you (including any liability for acts and/or omissions of our parent company, subsidiaries, associated companies, employees, agents and sub-contractors) regarding:

- a) any breach of this Agreement by a party, or our employees, agents or subcontractors; and
- b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Services.

13.2 Nothing in this Agreement excludes or limits our liability for:

- a) death or personal injury caused by our negligence; or
- c) any matter which it would be illegal for us to limit or exclude or attempt to limit or exclude our liability for; or
- d) fraud or fraudulent misrepresentation.

12.3 We are not liable for anything out of our control including but not limited to any loss or damage that you may suffer or incur because of any act of God, power cut; trade or labour dispute, failure or any omission of any government or authority; delay, interruption, obstruction, or failure of telecommunication services; or any other cessation; delay or failure caused by a

third party or loss or corruption of data. In such an event, we reserve the right to cancel or suspend the WebApp and/or the Service indefinitely and without notice or incurring any liability whatsoever.

13.4 All representations, warranties and terms (express or implied) not set out in this Agreement are excluded to the fullest extent permitted by South African law and we shall have no liability to you in respect of the same. You agree to indemnify us in full and on demand with respect to any liability, damages, costs or claims which we may suffer or incur arising out of or in connection with your use of the WebApp and/or the Service and we will not be responsible for any costs incurred by you to obtain professional advice relating to this Agreement.

13.5 We draw to your attention that you may be entitled to certain consumer rights in terms of the ECT Act and/or the CPA and other applicable laws. No provision of this Agreement is to be interpreted or construed as excluding, limiting or waiving any rights which you may have, or avoiding any obligation which we may have, in terms of the ECT Act, the CPA or any other applicable laws, whether in South Africa or any other country having jurisdiction (unless such laws permit the parties to agree otherwise).

13.6 Subject to Clause 13.2 above:

a) Except in the case of an act or omission carried out with intent to cause damage or in a reckless manner, with knowledge that damage would likely result, our liability to you in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Service shall not exceed the greater of R1,000 (One Thousand Rand) or the monthly subscription charge paid by you in the preceding calendar month to your claim. You agree that the exclusions of liability above and anywhere else in this Agreement are reasonable.

b) any use of the WebApp and/or Service is entirely at your own risk and in no event shall we shall not be liable to you for any direct, indirect or consequential loss (including without limitation, loss of profit, data, loss of goodwill, loss of contract or other information) or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the WebApp and/or Service and any supplied Content or offers whether or not we have been previously made aware of it.

13.7 We accept no responsibility and shall not be liable to you for the content of or use by you of any information or services offered by third parties' advertising (including advertising by any referral companies) or otherwise posting information via the WebApp (whether directly or via links to or from other sites or resources or through framing or other electronic mechanisms), nor can we be said to endorse contents of such advertisements or information. In particular, we shall have no liability in respect of material hyper-linked which may be misleading, inaccurate, defamatory, threatening or obscene or otherwise not in accordance with applicable laws or regulations. The provision by us on the WebApp of a link to another website or WebApp does not constitute any authorisation to access materials held at that website or WebApp, your use of those other websites is subject to any terms of use and/or privacy policies on those sites.

12.8 We make no representation or warranty about information or any other item(s) that may be accessed either directly or indirectly via the WebApp (save to extent expressly provided otherwise in the WebApp) and we reserve the right to make changes and/or corrections at any time to such information, without notice. We accept no liability for any inaccuracies or omissions (other than a fraudulent misrepresentation) in or from such information and any decisions based on such information are the sole responsibility of the visitor to the WebApp.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 Ownership: The copyright, database rights and other intellectual property rights ("IPR") in any Content and/or other material displayed on or via the WebApp as well as its features (the "WebApp Materials", which includes text, data, graphics, photographs, videos, animation, images and audio visual content) is owned by or licensed to us or the owners of third party websites or web applications. This IPR is protected under the laws of the Republic of South Africa, International treaties and all other applicable copyright and intellectual property laws. No licence is granted to you in respect of any such rights, except to the extent required for your personal use of the WebApp in accordance with this Agreement. Any unauthorised distribution is strictly prohibited and legal action could be taken against any such person who makes unauthorized distribution of the WebApp Materials or the IPR.

14.2 Trade marks: Our product or service names, slogans and associated logos are and shall remain the exclusive property and trade marks of the Company. You shall not be entitled to reproduce such trade marks without our prior written consent.

14.3 Copying: Any downloading, reproduction, modification, distribution or use of WebApp Materials except as otherwise permitted by this Agreement is strictly prohibited and in particular you agree to use the WebApp Materials solely for your own personal, non-commercial use and specifically not for any business, commercial or public purpose.

14.4 The following activities are prohibited unless you receive our express prior written permission on each occasion:

- a) deployment within this WebApp of any spider, robot web crawler or other automated query program; and
- b) re-use and/or aggregation of any of the WebApp Materials in the provision of a commercial service.

14.5 The copying and use of third party WebApp Materials accessed via the WebApp is governed by the terms of use applicable to the third party website or WebApp accessed by you.

15. SUBMISSION OF INFORMATION

You agree that the information supplied by you to us may be used by us or our affiliates for the following purposes which shall include but are not limited to: sending you messages, sending you promotional materials, monitoring the use of the Service, marketing purposes and from time to time evaluating if we can improve our services for customers, unless you sms "NO" at any time to **36692** to stop receiving promotional and marketing offers from us.

Excluding personal information (which is covered in our Privacy Policy, please see <http://www.bunnykulcha.co.za/terms/privacy>), all other information (including but not limited to comments, ideas, suggestions, concepts and graphics) submitted via the WebApp will become our exclusive property without obligation of confidentiality and we, at our sole discretion, shall be free to use such information for any purpose without any restriction whatsoever.

16. GENERAL

16.1 This Agreement constitutes the whole agreement between you and us to the fullest extent permitted by law with regard to use of the WebApp, the Content and the Service.

16.2 The Privacy Policy forms an integral part of this Agreement.

16.3 If any clause or part of a clause of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then any such part will be severed from this Agreement. The remainder of the clause or paragraph which contains the relevant provision shall not be affected and this Agreement will continue in full force and effect to the fullest extent permitted by law.

16.4 You may not transfer your rights pursuant to this Agreement to any third party.

16.5 Nothing in this Agreement shall be deemed to create a partnership or joint venture between the you and the Company or confer any right or benefit to any third party.

16.6 Any failure to exercise, delay, forbearance or indulgence by the Company in exercising any of right, power or remedy under this Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time by the Company. No waiver will be effective unless it is expressly stated to be a waiver and is communicated to you in writing. In exercising, any right, power or remedy under this Agreement shall not operate as

17. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. You irrevocably agree that the courts of the Republic of South Africa shall have exclusive jurisdiction to resolve any dispute or claim of whatever nature arising out of or relating to this WebApp and/or the Service and that the laws of the Republic of South Africa shall govern any such dispute or claim. However, we retain the right to bring legal proceedings in any jurisdiction where we believe that infringement of our IPR or breach of this Agreement is taking place or originating. You are solely responsible for compliance with any applicable laws and regulations of the jurisdiction from which you are accessing this WebApp or using the Service.

Update: last update July 2016