

Terms & Conditions

Please read these terms and conditions (this “**Agreement**”) and the Privacy Policy found at: <http://m.sexycherry.co.za/platinum/#!/terms/terms> carefully. The Agreements are jointly referred to as (“the **Agreements**”). We strongly recommend you print them out and read the Agreements in their entirety or alternatively a hard copy is available on written request to us using the Customer Service contact details below.

The Agreements are legally binding and set out the terms and conditions upon which you may access and use the services on the web app: <http://m.sexycherry.co.za> (the “**App**”). The Agreements also explain how we use and share or otherwise process your personal information.

You accept that you have been given an opportunity to read and accept this Agreement before using the App.

By accessing this App, you are agreeing to be bound by the Agreements (each of which may jointly and separately be amended from time to time) and you are certifying that you are at least 18 (eighteen) years old or the applicable legal age in the jurisdiction in which you reside and have the legal right to purchase the Service (as defined below).

THE SERVICE (AS DEFINED BELOW) CONTAINS CONTENT FOR MATURE AUDIENCES AND IS RESTRICTED TO ADULT USE ONLY.

IF YOU ARE UNDER 18 (EIGHTEEN) YOU SHOULD CEASE USING THE APP AND EXIT IMMEDIATELY.

Please note that in some jurisdictions there are obligatory provisions in the consumer legislation that may be relevant to service provided under this Agreement.

1. INTRODUCTION

1.1 **Buongiorno South Africa (Pty) Ltd** (trading as “**Sexy Cherry**”), a private company with limited liability registered in South Africa with its registered office at [5th Floor Auto Atlantic, cnr Heerengracht and Hertzog boulevard](#), Cape Town 8001 under company number 1990/04637/07 (the “**Company**”) provides you with a vast amount of mobile content, including the latest sexy video clips, (the “**Sexy Cherry Content**”), for a flat [daily membership](#) fee, on your supported smartphone through the App (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 the Agreements as well as any rules governing any App and/or Sexy Cherry Content provided on or via the Service. If there are any inconsistencies between any rules on the App and this Agreement, then the terms of this Agreement shall prevail.

2.2 We reserve the right to make any amendments to the Agreements or the Service and any such changes will be highlighted in red for a period of 4 (four) weeks. We encourage you to review the Agreements which are updated periodically and available at via the App <http://m.sexycherry.co.za/platinum/#!/terms/terms>. Your continued use of the Service will be deemed to be your acceptance of any changes to the Agreements. If the modified Agreements are 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 [membership](#) services with a recurring charge, section 44 of the Electronic Communications and Transactions Act 25 of 2002 (“**ECTA**”) 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 [membership](#) to the Service at any time by following the instructions given in the text SMS message sent to you after your purchase. However, if you do cancel then we are not obliged to refund any part of the [membership](#) fee unless we have breached a material term of this Agreement or are otherwise required by law to do so. In all other circumstances, a refund will be at our sole discretion. No refunds will apply for early abortive Sexy Cherry 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 Consumer Goods and Services Ombud (the “CGSO”) as well as the National Consumer Tribunal (“NCT”) (who can provide further advice about your rights).

4. YOUR REPRESENTATIONS

4.1 THE SERVICE CONTAINS AGE-RESTRICTED MATERIALS.

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

- a) are resident in the Republic of South Africa and it is your main residence;
- 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 legally barred from doing so for any reason) and you are the person whose details are provided in connection with your [membership](#) to the Service;
- e) are acting as principal and not on behalf of anyone else;
- f) are the authorised owner of the mobile device which you provided when you completed [membership](#) to the Service.
- g) are located in a jurisdiction in which such [membership](#) to the Service 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 the [membership](#) to the Service.

4.4 You hereby warrant to us that all information provided in your [membership](#) to the Service and all personal data 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 Service and to be solely responsible for all matters arising from your use of the Service.

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

4.8 You undertake not to damage, interfere with or disrupt access to the Service or do anything that may interrupt or impair its functionality (nor assist, encourage or permit any other person to do so).

4.9 You undertake not to obtain or attempt to obtain unauthorised access through whatever means to the Service or any part of it (nor assist, encourage or permit any other person to do so).

5. MEMBERSHIP

5.1 Before you are able to fully access or use the Service you will be required to subscribe to the Service in one of the following ways:

WebApp: By clicking on an advertising banner and following the instructions noted on the subsequent pages to:

- i. click on the button e.g. "CONFIRM" and then the "SUBSCRIBE" button to complete your membership signup; or
- ii. by visiting the App directly and following the instructions to subscribe to the Service. Once your membership to the Service is complete you will be able to use and/or access the Service.
- iii. Upon completion of the membership signup to the Service we will confirm by SMS text message to the mobile number which you provided, that you have successfully subscribed to the Service.

5.2 The membership fee/charges to the Service are always mentioned at the point of purchase i.e. commencement of membership period or on date of accessing the Service.

5.3 Following membership signup to the Service you will be provided with access to the Service via <http://m.sexycherry.co.za>. Transactions made using your registered mobile number are accepted by us on the understanding that you are authorised 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.

5.4 You agree to be solely responsible at all times for all access and/or use of the Service. You are responsible for keeping all your user identification details, such as your **mobile number and pin password** ("**User Data**") confidential. You are also responsible for ensuring that all persons who access the Service through your internet connection are aware of this Agreement and are in full compliance with its terms.

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

5.6 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 membership to the Service.

5.7 We reserve the right to refuse, suspend and/or terminate your membership to the Service 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 Service any actual or potentially defamatory, offensive or obscene language or material or if you breach, or are suspected of any breach of this Agreement, any applicable law, regulation, code or request of a MNO (mobile network operators) and/or regulators or should we deem it in our best interests and/or other customers to do so.

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

5.9 Use of the Service will be closely monitored to ensure that no customer is using 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 membership to the Service if we consider or suspect that the Service is being used in this way.

5.10 If any of your User Data or other information relevant to your Membership of the Service change you must inform us immediately by contacting us using the contact information provided in the Customer Service section below.

6. MEMBERSHIP CHARGES

6.1 The Service being a mobile membership service is charged at a flat fee of R 7 per day (exact price depending on the existing campaign at time of joining and network operator) which offers you unlimited access to the Sexy Cherry Content via the App while you remain subscribed to the Service. You will pay the price detailed by charging the purchase to your monthly account or prepaid account provided by your MNO. The membership fee shall become due at the end of the specific membership period while you are subscribed to this Service irrespective of whether or not the App is actually accessed during any particular membership 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 authorised by 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 and/or otherwise communicated to you are inclusive of VAT (where applicable). The Service being provided on a membership basis means it will renew automatically after the end of the specific membership period unless and until the you decide to opt out or unsubscribe.

6.4 You can access the Service until you send **"STOP"** to **31191** at any time to out opt or unsubscribe from the Service. Further details on cancellation can be found in the Customer Service section below.

7. ACCESS AND USE OF THE SERVICE

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

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 Service 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 part of the Service.

7.4 We reserve the right to change the format of the Service (in whole or part) to enhance them, correct any defects or provide upgrades.

7.5 We reserve the right to change the format of the Service, the App or the Sexy Cherry 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 ("RICA") 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 App 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 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 server on which the Service is stored or any server, computer or database connected to the Service. You must not attack the Service via a denial-of-service attack ("DoS") or distributed denial-of-service attack ("DDoS").

8.2 By breaching Clause 8.1 above, you would commit a criminal offence under the 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 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 DoS, DDoS, viruses or other technologically harmful material that may infect your device and/or computer equipment, computer programs, data or other proprietary material due to your use of the Service or to your downloading of Sexy Cherry Content, or other material posted on or or via the Service.

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 [membership](#) to the Service.

9.2 The rules of entry or access to any promotions will be displayed on the Service and may sometimes be restricted only to a first time user.

10. SECURITY POLICY

10.1 We will not provide your personal details to third parties, however, we may provide 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 Service or if we are required by law to do so, for example under the Proceeds of Crime Act 2002 (as amended from time to time) and any other anti-money laundering or data protection legislation.

10.2 All information received by us from your use of the Service shall be used in accordance with our Privacy Policy which is available on the App and which we encourage you to review as it details how we may process your User Data. By using the Service, you consent to such processing. It is your responsibility to update and maintain changes to that information and we are 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 Service we may suspend and/or terminate your [membership](#) to the Service.

10.4 We are not obliged to monitor, detect or report any unauthorised use of the Service and you shall be solely responsible for all use of the Service made by you or anyone else using your User Data, for preventing unauthorised use of your User Data and/or mobile 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 Data or mobile device you must notify us immediately by e-mailing us at: sexycherry.za@buongiorno.com

11. CUSTOMER SERVICE

We hope that you are pleased with the Service and that you will never have reason to complain - but if there is something you are not happy with we would like you to tell us about it so that we can try to put matters right. Should you wish to make a complaint with respect to the Agreement or the Service please contact us by emailing or writing to the postal address as follows:

Customer Service:

Address: Sexy Cherry, Buongiorno South Africa (Pty) Ltd, [5th Floor Auto Atlantic, cnr Heerengracht and Hertzog boulevard, Cape Town 8001](#)

Helpline: 021 415 2166 (local call charge rate)

Email: sexycherry.za@buongiorno.com

A copy of our Complaints Procedure will be sent to upon request by you or in the event that you submit a complaint to us.

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.

The CPA gave rise to the establishment of the National Consumer Commission, a body assigned to investigate consumer complaints, as well as the National Consumer Tribunal (“NCT”), which is responsible for the adjudication of violations and transgressions of the CPA.

In the event that we are unable to resolve your complaint you may wish to consider contacting Department of Trade and Industry (“DTI”) or you can also consider using the online service offered by the Consumer Goods and Services Ombud (“CGSO”) to lodge a complaint.

The contact details for these alternatives are set out below:

CGSO Website: <http://www.cgso.org.za/>

Sharecall: 0860 000 272 (CPA)

Email: info@cgso.org.za

Fax: 086 206 1999

Physical Address: Association House, Bond Street Business Park, Cnr Bond Kent Street, Randburg

Postal Address: PO Box 3815, Randburg, 2125

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 and you need JavaScript enabled to view it)

DTI Website: www.thedti.gov.za

NCT Telephone: (012) 663 5615

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

NCT Website: www.thenct.org.za

An application to any of the above listed organisations does not relieve you from any obligation you may have to pay any amounts not in dispute.

Cancellation:

You are free to cancel your [membership](#) at any time by following the instructions below:

Text: To unsubscribe from the Service at any time text “STOP” to: **31191**.

The [membership](#) to the Service can also be terminated anytime by clicking on to the unsubscribe option and following the instructions via the account section of the App portal.

12. OUR LIABILITY

12.1 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 including any deliberate personal repudiatory breach or any deliberate breach of these conditions by the Company, or our employees, agents or subcontractors; and
- b) any representation, statement or tortuous act or omission including negligence arising under or in connection with the Services.

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

- a) death or personal injury caused by our negligence; or
- b) any matter which it would be illegal for us to limit or exclude or attempt to limit or exclude our liability for; or
- c) 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 Service indefinitely and without notice or incurring any liability whatsoever.

12.4 All representations, warranties and terms (express or implied) not set out in this Agreement are excluded to the fullest extent permitted by law and we shall have no liability to you in respect of the same. You agree to indemnify us and hold us harmless 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 Service.

12.5 We draw to your attention that you may be entitled to certain consumer rights in terms of the ECTA 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 ECTA, 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).

12.6 Subject to Clause 12.2 above:

a) our total aggregate liability to you in respect of direct loss and damage and other direct liability, whatsoever (howsoever caused), whether 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 be limited to the aggregate of with the lesser of R1,000 (One Thousand Rand) or the monthly [membership](#) charge paid by you in the preceding calendar month to the claim in question;

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

12.6 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 Service (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 Service of a link to another website or app does not constitute any authorisation to access materials held at that website or the app, your use of those other websites or apps is subject to any terms of use and/or privacy policies on those websites or apps.

12.7 We make no representation or warranty about information or any other item(s) that may be accessed either directly or indirectly via the Service (save to extent expressly provided otherwise in the Service) 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 Service.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 **Ownership:** the copyright, database rights and other intellectual property rights ("IPRs") in any Sexy Cherry Content and/or other material displayed on or via the Service as well as its features (the "**Materials**"), which includes text, data, graphics, photographs, videos, animation, images and audiovisual content, copyright, trademarks, or other proprietary notices are owned by or licensed to us or the owners of third party websites or apps. The IPRs are protected under South African law, 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 Service 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 Materials or the IPR.

13.2 **Trade marks:** Our goods and/or service marks (which may include a name, word, phrase, logo, symbol, design, image, shape, signature or any combination of these elements) are and shall remain the exclusive property and trade marks of the Company. You shall not be entitled to reproduce such trade marks and/or associated logos without our prior written consent on each occasion.

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

13.4 **Sharing:** No Materials within the Service may be transferred to any other person or entity, whether commercial or non-commercial and no Materials within the Service may be distributed through peer-to-peer networks or any other file sharing platforms and may not be displayed publicly, or used for any rental, sale, or display.

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

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

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

14. 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 text “NO” at any time to 31191_(state network operators applicable) to stop receiving promotional and marketing offers from us.

Excluding personal data (which is covered in the Privacy Policy), all other information (including but not limited to comments, ideas, suggestions, data, technical information, concepts and graphics) submitted via the Service 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.

15. GENERAL

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

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

15.3 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 to be valid and enforceable to the fullest extent permitted by law.

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

15.5 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.

16. 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 the Service. However, we retain the right to bring legal proceedings in any jurisdiction where we believe that infringement of our intellectual property rights 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 the Service.

17. RESTRICTED TO ADULTS: All models appearing in any Sexy Cherry Content are 18 (eighteen) years or older. By entering and/or accessing this Service you swear that you are at least 18 (eighteen) years old or the legal age in your jurisdiction to view adult material and that you wish to view such material.

| **Update: last update [October 2017](#)**