

## **Terms of Service:**

### **Website Terms & Conditions of iTouch Messaging Services (Pty) Ltd**

The User understands, acknowledges and agrees that usage of the Website and Services is at the sole discretion and risk of the User. iTouch reserves the right at any time to change or discontinue any service or feature of the Website or Services, including, but not limited to, content, hours of availability, products, Services offered and equipment needed for access or use the Website. Notwithstanding the effort placed on maintaining the availability and accessibility of the Website and Services, iTouch takes no responsibility for, and will not be liable for the Website or Services being temporarily unavailable or inaccessible for whatsoever reason.

The information contained on the Website and the Services provided via the Website is provided by iTouch and/or its partners, members, suppliers or agents without warranty of any kind, express or implied, including (but not limited to) any implied warranties of reliability, fitness for any particular purpose, timeliness, sequence, completeness, non-infringement of third party rights and/or freedom from errors or inaccuracies.

### **Indemnification of iTouch:**

You agree to defend, indemnify and hold iTouch, its officers, directors, employees, agents, licensors and suppliers, harmless from and against any claims, damages, actions and liabilities including without limitation, your loss of profits, direct, indirect, incidental, special, consequential or punitive damages arising out of the use of or inability to use the Website or the Services; and any reasonable legal and accounting fees, resulting from, or alleged to result from your use of this Website or the Services.

### **An account with iTouch:**

iTouch Website invites you to create an Account to use the iTouch Products and Services. You accept and agree that iTouch may cease provision of the Services, and/or terminate your Account, delete your User content, cancel orders and/or prohibit your further use of the Website and/or Services at its sole discretion, with or without notice.

### **Username & Passwords:**

To activate an Account with iTouch, Users will be required to provide a username and password. This username and password will serve as your identification with regard to the Services provided by iTouch. Should your username and/or password's confidentiality have been compromised, you are to notify iTouch immediately so that a new username and password may be issued to you. iTouch accepts no liability

for any transactions performed by third parties who come into the possession of your username and password.

### **Unauthorised use of the Website and Services:**

The User is permitted to use the Website and Services for lawful purposes only. Unauthorised use of the Services and Website includes posting or transmission of data which violates or infringes in any way this Legal Notice or the rights of iTouch or third parties, for the purposes of distribution of defamatory, unsolicited, or otherwise objectionable, or offensive in the discretion of iTouch. Unauthorised use of this Website or content may result in termination of your Account, and/or you may be found guilty of a statutory and/or criminal offence and/or be liable for civil damages. The Services provided by iTouch are not available to minors - under 18 years old - and minors may under no circumstances create Accounts

By using the Services provided by iTouch, you confirm that you are capable of entering into a binding agreement, and you warrant that the information submitted by you in creating your Account is true and accurate.

### **Website Links:**

From time to time this Website may include links to other websites. These links are provided for your convenience for the purposes of providing further information. Such links do not signify that iTouch endorses the website(s) linked to. You agree that iTouch shall have no responsibility or bear no liability in relation to the content of the linked website(s). You may not create a link to this Website from another website or document without iTouch's prior consent in Writing, in which case the terms of your linking to the Website shall be governed by the terms of a "Linking Agreement" with iTouch.

### **Applicable Law and Jurisdiction:**

This Agreement, the Services and the electronic communications and transactions conducted via the Website shall be governed by and be interpreted in accordance with the law of South Africa and the User consents to the jurisdiction of the Cape Town High Court in the event of any dispute. Any dispute regarding this Agreement or the Services that cannot be resolved between the Parties, shall however, first be referred to confidential arbitration in terms of the rules of the Arbitration Foundation of South Africa prior to proceeding to Court and such arbitration shall be conducted in English. Access to the Website and use of the Services in territories or countries where this Website or the Services contained on it is illegal is strictly prohibited. The User may not use this Website in violation of South African export laws and regulations. Further and in addition to the compliance with the laws of South Africa, the User shall procure that any communications sent by the User through the Services of iTouch shall in all instances (i) comply with the local laws of the

recipient of such communications and (ii) not constitute a violation of such recipient's rights. Users operating in the European Union shall comply with all relevant laws, directives and Codes of Conduct in force including without limitation, the EU Directive 2002/58/EC, Directive 2000/31/EC, Directive 95/46/EC, Directive 93/13/EC and all national member state laws promulgated in terms thereof as well as the Mobile Marketing Association Code of Conduct available at <http://www.mmaglobal.com>.

Users of the Services shall further comply with any relevant code of conduct for the wireless industry to which iTouch is subject, including the Wireless Applications Service Provider (WASPA) Code of Conduct located at <http://www.waspa.org.za/code/codeconduct.shtml>. And the POPIA Act

### **Sever-ability:**

If any provision of this Website Legal Notice is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of the Website Legal Notice, which shall remain in full force and effect.

#### **1.10 Website Intellectual Property:**

This Website constitutes software, services and content (such as text, animation, photos, video, graphics, music, sound and voice) that is the intellectual property of iTouch and/or various third parties and subject to the intellectual property laws of South Africa. Further, and to the extent that iTouch does not own specific content or such content falls within the public domain, iTouch may hold copyright in the selection, coordination, arrangement and enhancement of such information on the Website. No license to iTouch's intellectual property or the intellectual property of third parties has been granted to you unless otherwise indicated. The software, Services and content may not be used in violation of the intellectual property rights of iTouch and/or such third parties as applicable. Without limitation on the prohibitions placed on the User, the User expressly agrees not to:

1.10.1 commercially exploit, reproduce, distribute, transmit, display, publish or broadcast any Website content without the prior written of iTouch or in the case of third party content, the owner of that content

1.10.2 the User agrees not to claim or convey ownership of Website content either in its entirety or otherwise

1.10.3 modify the Website content for the purposes of reposting to other websites

1.10.4 alter or remove any trademark, copyright or other notice from the Website content

1.10.5 copy or otherwise incorporate Website content into or store in any other web site, electronic retrieval system, publication or other work in any form

1.10.6 frame the Website or any part of the Website

**Information and Website Compliance:**

**A. The full name of iTouch**

iTouch Messaging Services, a limited liability company incorporated in terms of the Companies Act of South Africa.

**B. iTouch's physical address and telephone number**

18th Floor Portside  
4 Bree Street  
Cape Town, 8001  
Telephone +2721 4183939

**C. iTouch's web site address and email contact address**

[www.itouch.co.za](http://www.itouch.co.za)

[helpdesk@itouch.co.za](mailto:helpdesk@itouch.co.za)

**D. Membership of any self-regulatory or accreditation bodies to which iTouch belongs or subscribes**

Wireless Applicators Service Providers Association (WASPA)

[www.waspa.org](http://www.waspa.org)

Mobile Ecosystem Forum (MEF)

<https://mobileecosystemforum.com>

**E. Registration number of iTouch Messaging Services (Pty) Ltd**

2000/019282/07

**Place of registration**

South Africa

**F. The names of Directors**

Mr. Waheed Adam, Niclas Kjellstrom Matseke and Bulelwa Mtsali

**G. The physical address where iTouch will receive legal service of documents**

iTouch Messaging Services

18th Floor Portside

4 Bree Street

Cape Town

8001

## **H. Description of the main characteristics of the products or services offered by iTouch**

Bulk SMS, Email and Automatic Voice Messaging gateways

## **I. Alternative Dispute Resolution Code**

You agree that in the event of a dispute or alleged breach of the terms hereof you will work together with iTouch in good faith to resolve the matter by escalating it to higher levels of management prior to resorting to arbitration.

## **J. Privacy and Personal Information:**

iTouch endeavours to comply with all laws and regulations including the 1996 South African Constitution and other legislation providing for privacy. As such, iTouch seeks to ensure the quality and accuracy of personal information in its possession and under its control, and also, to ensure that all existing and new personal information is collected and processed in compliance with South African law.3.2 Personal Information Collected, Principle of Minimalism & Purpose of Collection:

Please be assured that the privacy of iTouch customers and Users of our Website is of the utmost importance to iTouch. The iTouch Website and Business collects, processes and stores personal information of its customers and Users of the Website and Business subject to the following principles:

Relevant and minimal personal information of customers is collected for the purpose of managing Customer's affairs with ITouch. For the avoidance of doubt, Customers referred to herein constitute persons with valid Accounts with iTouch and accessing or using the Services, as such Customers shall also constitute Users of the Website. Not all Users however will have valid Accounts with iTouch and therefore not all Users shall be Customers.

Relevant and minimal personal information of Users is collected automatically by iTouch and its authorised technology partners as a result of User's visits to the iTouch's website or contact with its representatives. This information is used to make your visit to the Website site more efficient, and analysis thereof facilitates improvements made to your experience of the Website. Our agents and service providers may also automatically log your "IP address" which is a unique identifier for your computer or other access device. Further and to the extent necessary, iTouch may utilise your contact information. Where applicable, personal information submitted by you may be used for communications with you such as marketing or rendering services requested by you from iTouch. This information may include, without limitation, your name, email address, mobile phone and landline phone details. iTouch will not edit, disclose or sell any personal information to third parties other than required for the provision of the Services and in the ordinary course of business. You agree that your submission of your personal information indicates your willingness for such information to be used as discussed above.

## **K. Handling of Personal Information:**

Users acknowledge that records relating to the provision of services and personal Information may be required to be retained in terms of law, operational purposes and for evidential reasons by iTouch and Users expressly agree to such retention and necessary access to such records by authorised iTouch personnel.

Users acknowledge further that it is customary and in the normal course of business, for certain communications to be intercepted and monitored while travelling over telecommunication networks (for system health and forensic reasons). Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the Customer consents to iTouch's interception, and monitoring of all communications sent by the Customer to iTouch. The Customer agrees and acknowledges such consent meets the “writing” requirement as detailed in the ECT Act and the RIC Act. Further, and to the extent necessary, iTouch may utilise your contact information to provide you with information requested by you in relation to events or new services offered by iTouch.

Your contact information and the contact information of third parties submitted by you may be used for communications such as marketing and distribution of newsletters with you and/or such third parties. This contact information includes without limitation, names, email addresses and/or the name of the respective person's company. In providing information relating to third parties you, the User warrant that you have the right to provide such information. You agree that your submission of your information indicates your willingness for your information to be used as discussed above.

## **L. Disclosure of personal information: iTouch may disclose personal information:**

1. to comply with the law or with legal process
2. protect and defend iTouch's rights, equipment, facilities, and other property
3. protect iTouch against misuse or unauthorised use of the Web site; and/ or
4. protect other Website Users or third parties affected negatively by your use of the Website.

iTouch shall not be obliged to ascertain or provide the identity of the sender of any messages or content.

## **M. Terms and Conditions of Bulk Messaging Services**

### **1. Agreements of Sale by Electronic Transaction:**

The provision of the Service (bulk messaging - sms, email and voice - gateway) through the Website or via a representative constitutes a legally valid transaction between you and iTouch subject to the terms and conditions specified herein.

## **2.Cancellations of Transactions:**

iTouch reserves the right, to refuse to accept, process or honour payment on any order and to cancel any transaction at their discretion including an order for which payment has been received. The reasons may include, without limitation, causes beyond the control of iTouch, where the “stock” or “credit” held by iTouch is insufficient, or not of an adequate quality in the discretion of iTouch. Should iTouch cancel the order, as above mentioned, the User shall be entitled to receive a full refund of any monies actually received by iTouch. Any order cancellations by you will be subject to a deduction of 7.5% of the total purchase price as an administration fee.

## **3.Quality and Functionality of Services:**

**4.Any complaints regarding the quality and/or functionality of the Services** should be directed to [helpdesk@itouch.co.za](mailto:helpdesk@itouch.co.za)

## **5.Anti-Spam:**

iTouch subscribes to an “Anti-Spam” policy in respect of the Services provided. In accordance, the Services shall not be used for the sending of unsolicited messages, notifications, alerts, messages or communications.

iTouch automatically monitors all incoming messages for keywords such as “stop”, “remove”, “delete” and “unsubscribe”. If iTouch detects such a keyword in the contents of communications iTouch shall delete the relevant number from the Customer’s contacts and place the relevant number in a “blacklist” inbox. Should the Customer re-import the number; such number will be filtered out from the import process. In this regard, all Customers of the Service warrant possession of the necessary authority, consent or permissions to enter into communications with the Customer’s contacts when using the Service and indemnify iTouch from any claims against iTouch by any of the Customer’s contacts in respect of unsolicited messages, notifications, alerts, messages or communications.

## **N. Limitation of Liability:**

Neither iTouch, nor any service provider appointed by iTouch shall be held responsible for any injury, loss or damage of any kind whatsoever suffered or incurred as a result of use of the Services including, without limitation, any injury, loss or damage suffered as a result of:

1. Data security, privacy, availability and reliability of message processing and transmission
2. Errors or discrepancies in the information provided
3. Any unauthorised access of the Services by third parties
4. Any breakdown or failure of any equipment or medium of access to the Services
5. Any failure or unavailability of any of iTouch's or any third parties facilities or systems resulting in the inability to process any transaction
6. The destruction or accessing of your or any third parties data or equipment
7. Any alteration, modification, upgrade or update of the Services or any technology, hardware or software modification that may form part of the Services

#### **O. Unauthorised Use of Services:**

Unauthorised use of the Services include reproduction, duplication, copying, adaptation, sale, resell or exploit for any commercial purposes, any portion of the Services, use of the Services, or access to the Services and without limitation, use of the Services:

1. That impersonates or harasses any other person
2. To send any information, the disclosure of which would be abusive, threatening, false, fraudulent, misleading or obscene, that misappropriates or infringes any person's proprietary right
3. That violates any persons right of privacy or publicity
4. To send communications that contain any sexual, racist, or discriminatory content constituting harassment of any individual or organisation
5. That constitutes unauthorised interception of communications
6. To release, post, distribute or execute any viruses or other harmful computer code
7. To transmit any content that infringes any patent, trademark, trade secret, copyright, or other proprietary rights of any part
8. To engage in transmission of unsolicited mass distribution of messages or any similar conduct

#### **P. E-Commerce & Credit Card Payments:**

The Customer authorises iTouch to charge the credit card submitted by the Customer as the manner/ mode of payment for the Services described herein. The Customer warrants that the Customer is an authorised user of such credit card. iTouch takes reasonable precautions to secure the processing of the Customer's credit card but shall not be liable for any security breaches attributable to the Customer including without limitation, the failure of the Customer to ensure that the Customer's electronic devices used to access the Services are secure.