

CustomerBeach Client Agreement and Terms of Use

(Last updated 2/18/2008)

CustomerBeach is a service offered by Sycron Technologies Inc which is also d/b/a CustomerBeach. CustomerBeach provides you, our "Client", with tools, resources, and services, all of which hereinafter will be know as "Services", to collect visitor e-mail addresses and to create, launch, and manage online, permission-based, e-mail campaigns. This Service may not be used for the sending of unsolicited e-mail (sometimes called "spam"). See our [Anti-Spam Policy](#). The following are the terms and conditions for use of the Services. By checking the "I have read the CustomerBeach Terms of Use statement. I accept these terms and conditions" box after logging in for the first time, you accept these terms and conditions. You will be granted access only after accepting these terms and conditions.

1. Services

The Services, which are provided subject to this Agreement, enable Clients to sign up their contacts by collecting and storing their sign up data. With that data, develop and execute permission based e-mail communications with these targeted prospects.

The Services are available only to persons who can form legally binding contracts under applicable law. Without limiting the foregoing, the Services are not available to individuals under the age of 18. If you do not qualify, please do not use the Services

The total KiloByte data transfer of each message can be no more than 200kb.

2. Service Fees and Payment Authorization

All email delivery prices are subject to change at any time. All fees paid to CustomerBeach for CustomerBeach Services are non-refundable, unless an account is terminated by CustomerBeach for a reason other than violation of the [Anti-Spam Policy](#). Payment for Services will be made by a valid credit card accepted by CustomerBeach, unless other payment arrangements have been made between you and an authorized CustomerBeach representative. You hereby authorize CustomerBeach to charge your credit card for such amounts on the first work day of each month, for that month's Services based on the pricing schedule below. Fees are payable in US dollars. If CustomerBeach is for any reason unable to effect automatic payment via your credit card, you will be notified via e-mail or phone.

*Prices are subject to change

**Setup fees may apply

For all accounts, CustomerBeach may charge an account re-activation fee should an account need to be re-activated by Client after an account has become de-activated due to non-payment or an untimely authorization for payment.

3. Account Registration and Security

You must complete the online registration form in order to access the Services. You will provide true, accurate, current, and complete information about yourself as requested in the registration form. As part of the registration process, you will identify an e-mail address and password for your CustomerBeach account. You are responsible for maintaining the security of your account, passwords, and files, and for all uses of your account and of the Services in your name. CustomerBeach reserves the right to refuse registration of, or cancel, accounts it deems inappropriate.

4. Guarantees

It is understood that CustomerBeach makes no guarantee that HTML messages will be rendered properly on all recipients' e-mail programs, due to the wide variety of HTML generation tools available. CustomerBeach makes every attempt to make sure that all e-mail messages sent through our servers follow e-mail standards, but we cannot guarantee that messages will look consistent across all e-mail platforms due to the number of different HTML composition tools available.

5. Restrictions and Responsibilities

You represent, covenant, and warrant that you will use the Services only within the terms of this Agreement and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation). You agree you will not access or otherwise use third party mailing lists in connection with preparing or distributing unsolicited e-mail to any third party. You hereby agree to indemnify and hold harmless CustomerBeach against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise arising from or relating to your use of the Services. Although CustomerBeach has no obligation to monitor the content provided by you or your use of the Services, CustomerBeach may do so and may remove any such content or prohibit any use of the Services it believes may be (or is alleged to be) in violation of the foregoing.

The Services may only be used for lawful purposes. Transmission or solicitation of any material that violates United States Federal, state or other laws that may apply in your local area is prohibited. This may include material that is obscene, threatening, harassing, libelous, or in any way a violation of intellectual property laws or a third party's intellectual property rights.

In using the varied features of the Services, you may provide information (such as name, contact information, or other registration information) to CustomerBeach. CustomerBeach may use this information and any technical information about your use of the Services to tailor its presentations to you, facilitate your movement through the Service, or communicate separately with you.

CustomerBeach will not use any of your contact lists or any other customer information for any other purposes than those intended with the service. Your customer contact information will not be shared with any other parties. In addition, CustomerBeach will not use your customer information for the purpose of sending unsolicited commercial e-mail.

You will adopt and maintain the [Privacy Policy](#), which may be modified by CustomerBeach from time to time.

You may not use CustomerBeach to distribute illegal contests, pyramid schemes, chain letters, or multi-level marketing campaigns

You may not use CustomerBeach to send email campaigns that link to or display nudity, obscene content, gambling related content, illegal software, viruses, or to distribute any other content that we deem inappropriate.

6. CAN-SPAM Act and Spam Policy Compliance

All CustomerBeach Clients must follow the rules of the federal CAN-SPAM act and CustomerBeach's [Anti-Spam policy](#) when sending e-mail through the Service. Accordingly, we require the following of e-mail messages sent through the CustomerBeach system:

1. All e-mails must contain a one-click unsubscribe link. CustomerBeach scans every campaign for the existence of an unsubscribe link. If an unsubscribe link is not detected, the user is informed and is recommended to include an unsubscribe link before continuing.
2. All e-mails must contain non-Internet contact information of the sender, such as your company's address, or your company's phone number.
3. All e-mails must state the reason the recipient is receiving the message. For example, "You are receiving this message from XYZ Company because you signed up for our e-mail list."

CustomerBeach reserves the right to cancel your account, without notice at any time, if our compliance audit shows that your email program does not comply with the above requirements.

7. Permission Based Email Requirements

Every email message sent in connection with the Services must contain an "unsubscribe" link or other mechanism that allows your subscribers to remove themselves from your mailing contact list. Each such link must remain operational for a period of thirty (30) days after the date on which you send the message, and must be in form and substance satisfactory to CustomerBeach. You acknowledge and agree that you will not remove, disable or attempt to remove or disable either link.

You agree to import, access or otherwise use only permission-based lists (note: purchased lists may not be used; please contact CustomerBeach if you have questions).

You cannot mail to distribution lists, newsgroups, or spam email addresses.

Emails that you send through the Service may generate abuse complaints from recipients. You are responsible for ensuring that your email campaigns do not generate a number of abuse complaints in excess of industry norms. CustomerBeach, in its sole discretion, shall determine whether your level of abuse complaints is within industry norms, and its determination shall be final, binding and conclusive for all purposes under this Agreement.

CustomerBeach, at its own discretion, may immediately disable your access without refund to the Services if CustomerBeach believes in its sole discretion that you have violated any of the email and permission practices listed above, or the CustomerBeach Anti-Spam Policy.

8. Licensing and Confidentiality

This is an Agreement for Services, and you are not granted a license to any software by this Agreement. You will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Services or any software, documentation, or data related to the Services ("Software"); remove any proprietary notices or labels from the Services or any Software, modify, translate, or create derivative works based on the Services or any Software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software. The Services shall be used for your internal business (which includes civic or charitable) purposes only and you shall not use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party, unless otherwise agreed upon in writing with a [Service Bureau Agreement](#). Download the PDF [here](#).

You acknowledge and agree that the Services and the CustomerBeach company names and logos and all related product and service names, design marks and slogans, are the property of CustomerBeach or its affiliates or suppliers (collectively, the "Marks"). You are not authorized to use any of the Marks in any advertising, publicity or any other commercial manner without the prior written consent of CustomerBeach. Your use of the Services confers no title or ownership in the Service, the Software or the Marks and is not a sale of any rights in the Service, the Software or the Marks. All ownership rights remain in CustomerBeach or its third party suppliers, as the case may be.

9. Customer Contact List ownership

You will always maintain ownership of your Contact list and can export your list at any time from CustomerBeach to a CSV (Comma separated values) file, which is easily interpreted by Microsoft Excel and other data storage programs.

10. Computer and Software Requirements

In order to use CustomerBeach, a Windows PC with Internet Explorer 6.0 or higher must be used. Additionally, a stable connection to the Internet is required. CustomerBeach may work in a limited manner on Macintosh, Unix, and other platforms, but there is no guarantee of functionality on non-Windows platforms. Additionally, CustomerBeach may work in a limited manner on a non-Internet Explorer web browser (such as Netscape Navigator), but there is no guarantee of full functionality on web browsers other than Microsoft's Internet Explorer

11. Agreement Termination

You may terminate this Agreement at any time by sending an e-mail message to policyinfo@customerbeach.com or by sending written notice to CustomerBeach, 8130 Industrial Park, Grand Blanc, Michigan 48439. Correspondence must include your first name, last name, and CustomerBeach username. No refunds will be issued if you terminate this agreement.

CustomerBeach may terminate this Agreement or the Services at any time with or without cause, and with or without notice. CustomerBeach shall have no liability to you or any third party because of such termination. If CustomerBeach terminates this agreement because you violated the [Anti-Spam policy](#), no refund will be issued.

CustomerBeach may delete any of your archived data within 30 days after the date of termination. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, ownership, warranty disclaimers and limitations of liability.

If you do not log into your account for more than 120 days, the account will become inactive. When an account is classified (at CustomerBeach's sole discretion) as inactive, CustomerBeach will flag that account as inactive. INACTIVE ACCOUNTS HAVE 30 DAYS TO BECOME ACTIVE OR THE ACCOUNT AND ITS DATA, INCLUDING SUBSCRIBER SIGNUPS, MAY BE PERMANENTLY REMOVED FROM THE CUSTOMERBEACH DATABASE

12. Agreement Amendments

The Services are provided subject to this Agreement, as it may be amended by CustomerBeach, and any guidelines, rules or operating policies that CustomerBeach may establish and post from time to time (the "Agreement"). By posting updated versions of the Agreement at the CustomerBeach web site, or otherwise providing notice to you, CustomerBeach may modify the terms of the Agreement and may discontinue or revise any or all other aspects of the Services at its sole discretion. All such changes shall become effective upon posting of the revised Agreement on the Service.

13. Warranty Disclaimer and Remedies

USE OF THE SERVICES AND ANY RELIANCE BY YOU UPON THE SERVICES, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. CustomerBeach DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS

THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" AND CustomerBeach DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

Your sole and exclusive remedy for any failure or nonperformance of the Services shall be for CustomerBeach to use commercially reasonable efforts to adjust or repair the Services.

14. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL CustomerBeach OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, INFORMATION PROVIDERS, ACCOUNT PROVIDERS, LICENSORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "CustomerBeach ") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF CustomerBeach SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT NOTWITHSTANDING THE FOREGOING, CustomerBeach IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE LIABILITY OF CustomerBeach TO YOU WILL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

15. Miscellaneous

If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

CustomerBeach and you agree that the Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of the Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy.

No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind CustomerBeach in any respect whatsoever.

The Agreement shall be governed by the laws of the State of Michigan without regard to its choice or law or conflict of laws provisions. All legal actions in connection with the Agreement shall be brought in the state or federal courts located in the State of Michigan.

Optional signatures for record keeping:

CustomerBeach
8130 Industrial Park Drive
Grand Blanc, Michigan
policyinfo@customerbeach.com

CUSTOMERBEACH
Marc Thompson
It's Authorized Representative

CLIENT: _____

It's Authorized Representative