

# SAGE<sup>®</sup> MAILING LIST DATA LICENSE AGREEMENT

This license agreement ("Agreement") is entered into as of the Effective Date by and between Quick Technologies Inc. d/b/a SAGE ("SAGE"), having a mailing address of 16301 Quorum Drive Suite 200A, Carrollton, Texas, 75001, and the customer ("Customer"), having an office at the address on the order form.

**1. Licensed Data.** "Licensed Data" means the SAGE mailing list data supplied by SAGE to Customer in electronic format pursuant to an order.

**2. Ordering and Fees.** Customer shall complete an order form supplied by SAGE to obtain the Licensed Data ("Order Form"). Customer shall pay to SAGE the license fee for the desired Licensed Data according to the terms of such Order Form. SAGE may refuse to license the Licensed Data for any reason in its sole discretion.

**3. License.** Subject to Customer's full compliance with the terms and conditions of this Agreement, SAGE grants to Customer a personal, non-exclusive, non-transferable, non-assignable right to use the Licensed Data **solely for the purpose a marketing mailing relating to Customer's own products or services (unless a different purpose is specifically stated in the Order Form) to be sent during the three (3) months following the Effective Date.** Customer must include in the first line of the address label any information provided by SAGE in the first field of the Licensed Data records, and Customer agrees not to alter or remove such information. Customer's compliance with this license will be monitored through various techniques, and Customer agrees not to interfere with such monitoring.

**4. Delivery.** Lists will not be provided directly to Customer. Instead, the **Licensed Data will be sent directly to the mail house specified by Customer ("Mail House"). The Mail House must be a legitimate, bonded mail house facility. Customer will require the Mail House to agree to preserve the confidentiality of the Licensed Data, to only use the Licensed Data as specified herein on behalf of Customer, and not to disclose the Licensed Data to Customer or any third party. After mailing, Customer will require the Mail House to destroy the Licensed Data.**

**4. License Restrictions.** Except for the express license granted to Customer in Section 3, SAGE does not grant to Customer any other licenses, whether express or implied, to the Licensed Data or any other proprietary information owned by SAGE. Notwithstanding any other provision of this Agreement, Customer shall not:

- (a) allow access to, disclose, transfer, or distribute the Licensed Data to any third party other than (i) disclosure of each recipient's information to such recipient in conjunction with the mailing, and (ii) to a mailing house which has agreed to protect the Licensed Data to at least the same degree as does this Agreement;
- (b) reproduce the Licensed Data except as strictly necessary to use the Licensed Data as authorized hereunder;
- (c) rent, sublicense, lease, or sell the Licensed Data, or make any attempt to do so;
- (d) make derivative works of the Licensed Data or combine such data with any other database;
- (e) use the Licensed Data to perform any illegal, distasteful, dishonest, or fraudulent act, to damage or injure a third party, or to infringe the intellectual property or privacy rights of any person or entity; or
- (f) use the Licensed Data in any manner that could be detrimental to SAGE.

**5. Destruction of Licensed Data.** Upon termination of this Agreement, Customer shall promptly destroy (and shall cause the Mail House to destroy) all copies of the Licensed Data or any part thereof (including without limitation electronic files, discs, and printouts).

**6. Confidentiality.** Customer acknowledges and agrees that the Licensed Data constitutes valid, proprietary trade secrets of SAGE, and is protected by copyright law. Customer shall hold the Licensed

Data in strict confidence except as required to exercise Customer's express rights granted herein. Customer's employees shall only have access to the Licensed Data if they are bound by an enforceable, written confidentiality agreement which protects the Licensed Data to at least the same degree as does this Agreement. Customer shall promptly report a breach of this Section 6 to SAGE.

**7. Ownership.** The parties acknowledge that the Licensed Data is licensed, not sold, to Customer. As between SAGE and Customer, SAGE owns all right, title, and interest in and to the Licensed Data, as well as the intellectual property embodied therein and related thereto.

**8. Accuracy of Data.** SAGE uses commercially reasonable efforts to ensure the accuracy of the Licensed Data. However, due to the nature of the Licensed Data, SAGE does not guarantee or warrant that the Licensed Data is accurate, complete, or timely. The Licensed Data is used at Customer's sole risk and peril. Customer agrees to indemnify and hold harmless SAGE for all damages, liability, and costs (including attorneys' fees and costs) incurred by SAGE resulting from Customer's use of the Licensed Data or breach of this Agreement. SAGE shall not be responsible for undelivered mail resulting from use of the Licensed Data.

**9. Disclaimer of Warranty and Limitation of Liability.** THE LICENSED DATA IS LICENSED "AS IS." SAGE MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED DATA OR ANY SERVICES RELATED THERETO, AND HEREBY EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF DATA, NON-INFRINGEMENT, AND NON-INTERFERENCE. SAGE SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, EVEN IF SAGE KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL SAGE'S LIABILITY UNDER OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNT OF LICENSE FEES PAID TO SAGE BY CUSTOMER HEREUNDER.

**10. Term.** This Agreement shall be effective as of the date accepted by SAGE ("Effective Date"), and shall remain in effect until the earlier of (i) Customer's one-time use of the Licensed Data, (ii) three (3) months after receipt of the Licensed Data from SAGE, or (iii) Customer's breach of this Agreement. Upon termination or expiration, all rights and obligations set forth in this Agreement shall cease except for (a) Customer's obligation to pay fees owed to SAGE prior to termination or expiration; and (b) Sections 1, 4, 5, 6, 7, 8, 9, 11 and 12, which shall survive.

**11. Remedies.** The parties agree that due to the proprietary nature and high value of the Licensed Data, any breach of this Agreement by Customer will result in irreparable injury to SAGE that cannot be compensated solely by damages. Therefore, SAGE shall be entitled to seek and obtain injunctive relief to protect the Licensed Data without posting bond. In addition to its other remedies, SAGE shall also be entitled to recover its attorneys' fees and costs in connection with enforcement of this Agreement or collection of damages related thereto. *The parties agree that the minimum damage amount (in addition to equitable relief) shall be no less than \$25,000 per each unauthorized use, but SAGE shall be entitled to prove that damages exceed such amount.*

**12. Miscellaneous.** This is the entire Agreement between the parties as to the subject matter hereof and there are no other valid agreements or understandings, express or implied, written or oral. This Agreement may only be modified by a formal written agreement signed by both parties. The Agreement may not be assigned by Customer without SAGE's written permission, and any such prohibited assignment shall be void. SAGE may assign this Agreement without providing notice to or obtaining consent from Customer. If one or more provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected. Should litigation be required to enforce this Agreement, such action shall take place exclusively in Dallas County, Texas and the parties hereby agree to such venue and waive any objections to personal