

Mercury Referral Partner Agreement

Last Modified: October 2024

This Referral Partnership Agreement (the "**Agreement**") is a binding contract between you ("**Referral Partner**") and Mercury Technologies, Inc. ("**Mercury**"). By clicking "**Accept**" or similar action or by accessing or using the Mercury Partner Portal, you agree to be bound by this Agreement as of the moment of such action (the "**Effective Date**"). This Agreement governs your access to and use of the Mercury Partner Portal for managing your referral partnership with Mercury. By proceeding, you confirm that you have read and understood this Agreement, that you have the right and authority to enter into it—either on your own behalf or on behalf of your organization—and that you accept and agree to be legally bound by its terms. If you do not agree to these terms, you must refrain from using the Mercury Partner Portal and will not be eligible to enter into a referral partnership with Mercury.

For good and valuable consideration, the receipt and sufficiency of which each Party acknowledges, the Parties hereby agree as follows:

A. PURPOSE

Mercury is in the business of providing financial and banking solutions to startups and other businesses. Given the nature of the Referral Partner's business, it is well positioned to refer new customers who have an interest in Mercury's services to Mercury.

B. REFERRAL OBLIGATIONS

1. Referral Partner commits to proactively refer new customers to Mercury by utilizing a designated partner referral link provided within the Mercury Partner Portal.

2. Mercury shall track all referrals and will provide the Referral Partner with a summary of the total number of referrals made to Mercury. This summary will be accessible on the Mercury Referrals Page within the Mercury Partner Portal.

C. REFERRAL FEES

The referral fees set out in Annex 1 will apply for paid Referral Partners only.

D. REPRESENTATIONS, WARRANTIES, AND COVENANTS

1. Each party represents, warrants and covenants that:
 - A. As a Financial Workflows subscriber, you are provided with the capability to sync Account data with certain accounting software providers, which may include NetSuite, QuickBooks, and Xero.
 - B. It has all the requisite power and authority to execute, deliver, and perform this Agreement and to fulfill its obligations hereunder, and that it will comply with existing contractual agreements with third parties;
 - C. It shall comply with all applicable laws, regulations, and existing contractual obligations (including, without limitation, applicable licensing laws, and laws and regulations relating to data privacy and security and its own privacy policy);
 - D. It shall not misrepresent (i) the other Party, (ii) the other Party's products, services, pricing, or offers, or (iii) the statement of limited warranties contained in the other Party's standard terms and conditions;
 - E. It shall not intentionally damage the other Party's reputation or goodwill or that of its officers, directors, and/or employees;
 - F. It shall not intentionally provide false information to the other party and/or act or attempt to act in any false, misleading or illegal manner; and
 - G. Its website, application(s), products, services, marks, and any promotional materials provided pursuant to this Agreement do not and shall not violate or infringe upon any third party's intellectual property or proprietary rights.

2. Referral Partner represents and warrants that it is not currently, and has not been in the past, (a) subject to any sanctions administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), the U.S. Department of State, or any other relevant sanctions authority; and (b) designated as a Specially Designated National ("**SDN**") or any other similarly

restricted party under any such sanctions program. The Referral Partner further warrants that it is not owned or controlled by, nor does it act on behalf of, any person or entity that is the subject of such sanctions or listed as an SDN. The Referral Partner covenants that it will promptly notify Mercury in writing if it becomes subject to any such sanctions or designation during the term of this Agreement and any breach of the representations, warranties, or covenants set forth in this clause by the Referral Partner shall be deemed a material breach of this Agreement, entitling the Mercury to terminate this Agreement immediately upon written notice to the Referral Partner.

3. Referral Partner shall comply with the U.S. Foreign Corrupt Practices Act (FCPA) and all applicable anti-bribery and corruption laws and regulations. Referral Partner hereby represents and warrants that, in connection with its performance under this Agreement, it has not, and will not at any time, directly or indirectly, through any employee, agent, subcontractor, or other third party, offer, pay, promise to pay, give, or authorize the giving of money or anything of value for the purpose of influencing the decision of any New Customer or any other individual or entity, in violation of applicable law.

E. INTELLECTUAL PROPERTY RIGHTS

1. **Trademarks and Branding.** All images, trademarks, product names, company names or logos appearing on a Party's website are the property of their respective owners. Use of such materials without the prior written permission (email sufficient) of the applicable owner is prohibited.
2. **Mercury Materials.** All work product, including, without limitation, copyrights, patents, trade secrets, inventions, processes, works of authorship or other intellectual property, developed or created by Mercury will belong to Mercury. Without limitation, Mercury will retain all right, title and interest in and to any and all methodologies, including, without limitation, software and related documentation, utilities, tools, ideas, know-how, techniques, concepts, and any inventions, improvements, additions, enhancements or modifications to any of the foregoing that are developed, acquired or first conceived or reduced to practice by Mercury or any third party on behalf of Mercury prior to, during or after the execution of this Agreement.
3. **Referral Partner Materials.** All work product, including, without limitation, copyrights, patents, trade secrets, inventions, processes, works of authorship or other intellectual property, developed or created by Referral Partner will belong to Referral Partner. Without limitation, Referral Partner will retain all right, title and

interest in and to any and all methodologies, including, without limitation, software and related documentation, utilities, tools, ideas, know-how, techniques, concepts, and any inventions, improvements, additions, enhancements or modifications to any of the foregoing that are developed, acquired or first conceived or reduced to practice by Referral Partner or any third party on behalf of Referral Partner prior to, during or after the execution of this Agreement.

4. **No Jointly-Developed IP.** The Parties acknowledge that they do not anticipate to jointly develop any intellectual property under this Agreement and, to the extent they do, the Parties will handle the ownership and licensing of such intellectual property in good faith as mutually agreed upon.
5. **Reservation of Rights.** There are no implied licenses under this Agreement. Except as expressly provided herein, neither Party conveys to the other Party any intellectual property rights.

F. CONFIDENTIALITY

1. **"Confidential Information"** means any trade secrets or other confidential or proprietary information of a party, whether of a technical, business, or other nature (including information relating to a party's technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects, or other affairs), that is disclosed to a party ("**Receiving Party**") during the Term and that such party knows or has reason to know is confidential, proprietary, or trade secret information of the other party ("**Disclosing Party**"). For the avoidance of doubt, Confidential Information includes the terms of this Agreement, as well as any applicant information, New Customer information or data about either Party's customers, users, or leads that Referral Partner provides Mercury pursuant to this Agreement ("**Customer Data**"). Confidential Information does not include any information that: was known to the Receiving Party prior to receiving the same from the Disclosing Party in connection with this Agreement; is independently developed by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party; is acquired by the Receiving Party from another source without restriction as to use or disclosure; or is or becomes part of the public domain through no fault or action of the Receiving Party.
2. Each Party agrees that it (i) shall maintain the other Party's Confidential Information in strict confidence; (ii) shall not disclose the other Party's Confidential Information to any third party other than as expressly permitted hereby; (iii) shall not use any Confidential Information disclosed to it by the other Party except as expressly permitted by this Agreement; and (iv) shall maintain reasonable measures to maintain the confidentiality of all Confidential

Information of the other Party in its possession or control, which in no event shall be less than the measures it uses to maintain the confidentiality of its own information of similar importance.

3. If a Receiving Party is required by law to disclose the other party's Confidential Information or the terms of this Agreement, such party must give prompt written notice of such requirement, unless prohibited by law, before such disclosure and assist the Disclosing Party in obtaining an order protecting the Confidential Information from public disclosure.
4. Upon the termination or expiration of this Agreement, or upon earlier request, the Receiving Party will deliver to the Disclosing Party all of the Disclosing Party's Confidential Information that it may have in its possession or control.

G. DATA SECURITY

1. Each Party shall at all times maintain comprehensive industry standard controls (including but not limited to administrative, technical and physical safeguards) designed to ensure the security, confidentiality and integrity of the other Party's Customer Data in its possession or to which it has access.
2. Each Party agrees to notify the other Party in the event of any material alterations to its systems or security controls that could significantly and negatively impact the existing security controls. Each Party further agrees (i) to notify the other Party within seventy-two (72) hours of becoming aware of a potential security breach and (ii) to comply with any applicable data breach notification laws.
3. Each Party's security obligations contained in Section G shall apply indefinitely with respect to applicant information and Customer Data of the other Party that it receives from the other Party prior to termination or expiration of this Agreement.
4. Any use by either Party of applicant information and Customer Data must be in accordance with applicable data privacy laws, rules, and regulations and Mercury's privacy policy.

H. PUBLICITY

Subject to the terms and conditions of this Agreement, Mercury grants Referral Partner the right to use Mercury's trade names, logo designs, trademarks, and company descriptions ("**Mercury Marks**") for advertising, promotional products, or marketing purposes; provided that Referral Partner will use Mercury Marks in accordance with any guidelines provided by Mercury [here](#). If Mercury determines that any content published

by Referral Partner does not comply with Mercury's standards, Mercury may request the removal or necessary adjustments to such content. In such cases, within seven (7) business days of receiving a request from Mercury, Referral Partner agrees to promptly remove or make necessary adjustments to the content. Referral Partner acknowledges that Mercury may withhold any payments owed under this Agreement in the event that Referral Partner fails to comply with Mercury's marketing guidelines.

I. TERMINATION AND CANCELLATION

1. **Term.** This Agreement shall be in effect for one (1) year from the Effective Date ("Term"). This Agreement may be renewed upon the Parties' mutual written consent.
2. **Termination for Convenience.** Either Party may terminate this Agreement for any or no reason with thirty (30) days' prior written notice (email sufficient) to the other Party.
3. **Termination for Breach.** Either Party may terminate this Agreement immediately if the other Party materially breaches any terms of this Agreement; provided , however , that if the material breach is curable in nature, then prior to termination, the aggrieved Party must provide the breaching Party with written notice (email sufficient) of the material breach and an opportunity to cure the material breach within thirty (30) days of the notice. If a material breach is not curable in nature, the aggrieved Party may terminate this Agreement immediately upon written notice (email sufficient).
4. **Termination for Insolvency or Reputational Harm.** Either Party may terminate this Agreement immediately upon written notice (email being sufficient) if the other Party files for bankruptcy, becomes subject to a proceeding under any insolvency law, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or is wound up or liquidated (voluntarily or otherwise) causes reputational harm, or undergoes a material adverse change in financial position.
5. **Effect of Termination; Survival.** Upon any termination or expiration of this Agreement except as expressly set forth herein, the rights and obligations of the Parties will automatically terminate. Any Section which by its nature should survive shall survive termination or expiration.

J. DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY OFFERS ANY WARRANTY UNDER THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

K. LIMITATION OF LIABILITY

1. EXCEPT AS PROVIDED IN SECTION K.2, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF USE, DATA, BUSINESS, REVENUES OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY AMOUNTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT THAT, IN THE AGGREGATE, EXCEED THE AMOUNTS PAID BY MERCURY TO REFERRAL PARTNER HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE APPLICABLE CLAIM.
2. THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION K WILL NOT APPLY TO LIABILITY ARISING FROM (I) A PARTY'S BREACH OF SECTIONS F AND G (CONFIDENTIALITY AND SECURITY) OF THIS AGREEMENT, (II) A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, (III) A PARTY'S VIOLATION OF ANY APPLICABLE LAW, RULE OR REGULATION, (IV) A PARTY'S INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION L (INDEMNIFICATION) OF THIS AGREEMENT, AND (V) SECURITY BREACHES DUE TO A PARTY'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

L. INDEMNIFICATION

1. **Mercury's Indemnification Obligations.** Mercury shall indemnify, release, defend and hold Referral Partner and its officers, directors, employees,

stockholders, agents, and affiliates ("**Referral Partner's Indemnitees**") harmless from and against all third-party claims, suits, actions, proceedings, damages, losses, liabilities, demands, judgments, penalties, fines, costs and expenses (including reasonable attorneys' fees) ("**Claims**") suffered or incurred by Referral Partner on account of, in connection with, or to the extent arising from (a) any breach by Mercury of this Agreement; (b) any violation by Mercury of any applicable law (including, without limitation, applicable privacy law); (c) the gross negligence, fraud or willful misconduct of Mercury; (d) Mercury's negligent or intentional misrepresentation of Referral Partner or Referral Partner's products or services to a third party; or (e) any allegation that Mercury's website, products or services, or Referral Partner's use of the Mercury marks in accordance with this Agreement, violates any third-party proprietary rights.

2. **Referral Partner's Indemnification Obligations.** Referral Partner shall indemnify, release, defend and hold Mercury and Mercury's officers, directors, employees, stockholders, agents, and affiliates ("**Mercury Indemnitees**") harmless from and against all third-party Claims suffered or incurred by Mercury or any Mercury Indemnitees on account of, in connection with, or to the extent arising from (a) any breach by Referral Partner of this Agreement; (b) any violation by Referral Partner of any applicable law (including, without limitation, applicable privacy law); (c) Referral Partner's gross negligence, fraud or willful misconduct; (d) Referral Partner's negligent or intentional misrepresentation of Mercury or Mercury's products or services to a third party (including but not limited to any statements made by Referral Partner beyond the statement of limited warranties contained in Mercury's standard terms and conditions); or (e) any allegation that Referral Partner's website, products or services, or Mercury's use of the Referral Partner Marks under this Agreement, violates any third-party proprietary rights.
3. **Procedure.** Each Party seeking indemnification shall provide: (a) prompt written notice (email sufficient) of any Claim to the indemnifying Party (provided that failure to provide such notice shall not relieve the indemnifying Party of its obligations pursuant to this Section L, except solely to the extent of any material prejudice as a result of such failure); (b) sole control of the defense and settlement of such Claim to the indemnifying Party; and (c) reasonable assistance to the indemnifying Party in the defense and settlement of such Claim. Notwithstanding the foregoing, if the indemnifying Party fails to assume the defense of any Claim within thirty (30) calendar days after receiving a request for indemnification pursuant to this Section L, then the indemnified Party may control its own defense and follow such course of action as it deems reasonably necessary to protect its interests, and the indemnifying Party shall fully indemnify the indemnified Party for all costs (including reasonable attorneys' fees and

settlement costs) reasonably incurred in such course of action. Unless the indemnifying Party obtains the indemnified Party's prior written consent (email sufficient), the indemnifying Party may not take any action with respect to a Claim (including but not limited to settling a Claim, or consenting to an entry of judgment) if such action (a) admits any liability, fault or wrongdoing on the part of the indemnified Party; (b) imposes any obligations on the indemnified Party; or (c) otherwise adversely affects the indemnified Party's rights, obligations or operations.

M. TAXES

All charges and fees to be paid under this Agreement are exclusive of any applicable sales, use, value added, excise or other tax which may be assessed currently or in the future on services provided under this Agreement. The Parties will cooperate with each other in determining the extent to which any tax is owing under the circumstances and shall make available to each other any withholding certificates and other information regarding payments made pursuant to this Agreement.

N. NOTICES

All notices under this Agreement will be via email to the applicable notice addresses below, and will be effective and deemed given to the other Party on the date the email has been sent (unless the sender receives an automated message that the email was not delivered). Each Party may change its notice address by notifying the other Party in writing (email sufficient) of such change.

| | |
|--------------------------------|--|
| | |
| Mercury Email Address | legal@mercury.com |
| Referral Partner Email Address | indicated in Mercury Partner Portal email |

O. ASSIGNMENT

Neither Party may transfer or assign this Agreement, in whole or in part, whether voluntarily or by operation of law, without the other Party's prior written consent (email sufficient), provided that each Party may assign this Agreement upon notice and without consent to any successor to all or substantially all of the Party's business (whether by sale of equity or assets, merger, consolidation or other similar change of control transaction), who agrees in writing to be bound by this Agreement (unless such assignment is by Referral Partner to a direct competitor of Mercury). Any other attempt to assign or transfer this Agreement shall be void. Subject to the foregoing, the rights and obligations shall be binding upon and inure to the benefit of the parties' successors and assigns.

P. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding its conflict of laws principles. Each Party submits to the personal and exclusive jurisdiction of the state and federal courts of San Francisco County, California. Each Party waives (a) any objection to jurisdiction or venue; or (b) any defense claiming lack of jurisdiction or improper venue in any action brought in such courts.

Q. FORCE MAJEURE:

Neither Party will be liable hereunder by reason of any failure in the performance on account of strikes, shortages, riots, fires, floods, acts of God, war, terrorism, earthquakes, material shortages, or other events beyond a Party's reasonable control.

R. INDEPENDENT CONTRACTORS:

The relationship of Mercury and Referral Partner is that of independent contractors. Nothing in this Agreement is intended, or shall be construed, to create an employer/employee partnership, agency, or joint venture relationship between the Parties.

S. ENTIRE AGREEMENT.

This Agreement constitutes the complete and exclusive agreement between the Parties concerning its subject matter and supersedes all prior or contemporaneous agreements or understandings, whether written or oral, concerning its subject matter.

T. AMENDMENT.

This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party.

U. MISCELLANEOUS.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or electronic signature. If any provision of this Agreement is deemed to be invalid or unenforceable, the remaining provisions of this Agreement shall be valid and binding as though such invalid or unenforceable provision were not included. Any failure by a Party to comply with any term of this Agreement may be waived by the other Party at any time in writing, but such waiver shall not operate as a waiver of, or estoppel with respect to, any other failure to comply. The failure by either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

ANNEX 1

These terms apply exclusively to Referral Partners engaged in paid partnerships, where compensation has been expressly set out agreed upon in writing within the Mercury Referrals Page. These terms do not apply to unpaid Referral Partners, for whom no

referral fees or other forms of compensation have been specified within the Mercury Referrals Page.

1. Mercury will compensate Referral Partner for its referrals in accordance with the terms specified in the Mercury Referrals Page , accessible within the Mercury Partner Portal.
2. Mercury's payment to Referral Partner is contingent upon referrals resulting in individuals or entities applying for and opening a new account on Mercury's platform, thereby becoming a "**New Customer.**" Individuals or entities previously registered with Mercury before the referral under this Agreement are expressly excluded from the definition of "**New Customers.**"
3. Referral Partner acknowledges that certain minimum balance requirements and transaction volume thresholds may apply to qualify a referral as a New Customer. If applicable, these requirements will be provided in the Mercury Referrals Page, accessible within the Mercury Partner Portal.
4. These payment terms will remain in effect for the duration of the Term.