

Effective 11/11/2015

Minor text corrections made 1/28/2016

MERCURY NETWORK END USER LICENSE ("License") BY Mercury Network, LLC

**IMPORTANT NOTICE TO USER - PLEASE READ CAREFULLY**

YOU MAY NOT ACCESS THE MERCURY NETWORK (THE "NETWORK") OR USE ANY OF THE INFORMATION INCLUDED THEREON UNLESS YOU FIRST REVIEW AND ACCEPT THE TERMS AND CONDITIONS OF THIS USER AGREEMENT (The "AGREEMENT") BY CLICKING ON "I AGREE," YOU REPRESENT AND WARRANT TO MERCURY NETWORK, LLC (REFERRED TO HEREIN AS "MN" or "WE") THAT YOU ARE AN AUTHORIZED EMPLOYEE OF A BANK, MORTGAGE COMPANY, OR OTHER PARTICIPANT IN THE REAL ESTATE MORTGAGE INDUSTRY. THIS AGREEMENT CONSTITUTES A BINDING AGREEMENT BETWEEN MN AND THE MERCURY NETWORK USER ("USER" OR "YOU"). AFTER REVIEWING THE TERMS AND CONDITIONS BELOW, PLEASE ACKNOWLEDGE YOUR AGREEMENT BY CLICKING ON "I AGREE," OR THAT YOU DECLINE THIS AGREEMENT BY CLICKING ON "I DO NOT AGREE" AT THE BOTTOM OF THIS FILE. YOU CANNOT OBTAIN ACCESS TO THE NETWORK UNLESS YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT BY CLICKING ON "I AGREE."

1. Access to Network. MN hereby grants to you, and you hereby accept, a limited, revocable, non-exclusive right to access the Network solely for purposes directly related to your professional activities arising in the ordinary course of business, subject to and in accordance with the terms and conditions hereof. Any other use of the Network is strictly prohibited.

2. Fees.

2.1 Transaction Fees. You shall pay the fees and other charges for the Services as stated on the Mercury Network Transaction Fees page or in this Agreement. MN reserves the right to change its fees at any time upon ninety (90) days' notice to User (other than volume discounting). You shall make all payments in U.S. currency. Your credit card will be billed in arrears for any and all fees. MN reserves the right to suspend or terminate your account if credit card charges are denied. Such suspension or termination shall not relieve you of the obligation to pay the transaction fees due. You agree to pay MN its reasonable expenses, including attorneys' and collection agency fees, actually incurred in enforcing its rights under this Agreement.

2.2 Credit Card Processing. By entering credit card information, User is authorizing MN to charge the supplied credit card for each transaction made by User

2.3 Refunds. MN will refund transaction fees if an order is cancelled. Refunds can take up to three (3) business days to process after the cancellation

3. Solicitation. Soliciting any of the individuals or companies listed on this web site for purposes of selling products or services other than the real estate related products and services for which this web site was specifically designed is prohibited.

4. Use of Network.

4.1 Applicable laws, regulations and rules. In connection with your activities on the Network, you shall operate your business in accordance with all applicable laws, regulations and rules, whether in force at the time you accept these terms and conditions or implemented in the future. Without limiting the generality of the foregoing, for the duration of your use of the Network, you (or your firm, as applicable) will register and maintain registration in good standing as an Appraisal Management Company in any state that requires you or your firm to do so. You agree that you will not use the Network to distribute orders to appraisers selected by you if (i) you or your firm are an Appraisal Management Company under any state law; and (ii) you or your firm have not registered in any state that so requires, or the registration has lapsed or is not in good standing, or you are not diligently proceeding through the process of registration with the expectation of conforming to state law, where the state laws, rules or regulations allow you or your firm to perform appraisal management services while registration is pending; and (iii) you or your firm perform any of the following activities in conjunction with managing the process of ordering residential real estate appraisals:

- a. Receive appraisal service requests (orders) from clients;
- b. Maintain a list of approved appraisers (an appraiser panel);
- c. Verify qualifications of appraisers;
- d. Negotiate and formally contract with or engage appraisers to perform appraisal services;
- e. Receive completed appraisal reports, and submit the same to clients;
- f. Review, verify or conduct quality control of a completed appraisal report;
- g. Contact appraisers with questions or concerns about appraisal reports, including requests to reconsider data and modify conclusions;
- h. Collect fees from clients;
- i. Compensate appraisers for appraisal services rendered.

4.2 Use or performance of appraisal management services. By using the Network you acknowledge that you or your firm, or a third-party vendor contracted by you or your firm, perform all of the actions listed under section 4.1 a-i above, and any other action that is considered "appraisal management" or "appraisal management services" under any state law. MN and the Network do not represent that any such appraisal management services can be performed by the Network. You affirm that your use of the Network is with the expectation and understanding that the Network is not designed to be and cannot be used to perform such appraisal management services, including but not limited to the actions listed under section 4.1 a-i above, nor any other action that is considered "appraisal management" or "appraisal management services" under any state law. You acknowledge that you, your firm, or a third party designated by you or your firm, and not MN nor the Network, will be identified as the "client" on any appraisal report ordered and received by you. You agree to so instruct your selected appraisers.

4.3 Other terms of use. In connection with your activities on the Network, you shall further (i) to the extent reasonably practical, use the Network to obtain products and

services of the type offered by members thereof, (ii) consistently encourage the use of the Network by appraisers and other participants in the real estate mortgage industry, (iii) promptly respond to all requests for services or products received from, and promptly pay for all services or products ordered from, other members of the Network, (iv) make no false or misleading representations to any party with regard to the Network or any product or service offered by you, and (v) not participate or engage in any illegal, deceptive, misleading, unethical or improper practice or infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy. You further agree not to (vi) disseminate any information about another member of the Network without the prior consent of such member, or (vii) send unsolicited e-mails or other types of communications to any member of the Network for any purpose other than requesting the delivery of products or services provided by such member or a proposal to provide any such product or service.

**4.4 Rights and access to appraisal work product.** You acknowledge that MN and the Network do not have access to appraisal work product ordered and received by you. Neither MN nor the Network makes any representation as to the accuracy or quality of appraisal work product. Neither MN nor the Network is granted any rights in or to any appraisal work product ordered or received by you.

**4.5 Service Level Target.** Mercury Network, LLC will keep the Mercury Network platform available 24 hours a day, 7 days a week, excepting Mercury Network's standard maintenance windows, which run every Saturday between the hours of 12AM and 6AM Central Time.

## 5. Privacy.

**5.1 Information Rights.** MN may retain and use information collected in User's use of the Mercury Network. MN will use this information to operate the Network and to provide service(s) or carry out transaction(s) you have requested or authorized. MN may aggregate non-personally identifiable data and may use such aggregated data to provide information on appraisal fees. No User will be identified or associated with any such aggregated data. MN will not share personally-identifiable information with any third parties unless we (i) have Your consent; or (ii) provide such information in certain limited circumstances to third parties to carry out tasks on MN's behalf (e.g., billing or data storage) with strict restrictions that prevent the data from being used or shared except as directed by MN. When this is done, it is subject to agreements that oblige those parties to process such information only on MN's instructions and in compliance with this Agreement and appropriate confidentiality and security measures, and shall be conducted in compliance with applicable state and federal laws, including but not limited to privacy laws.

**5.2 Confidentiality.** The term "nonpublic personal information" means the same under this Agreement as it does under §509 of the Gramm-Leach-Bliley Act (15 U.S.C. §6809). In the course of providing the services, MN may receive nonpublic personal information ("NPI") about the User's customers. MN shall maintain the confidentiality of the NPI and shall not, without the prior written consent of the User, disclose, copy or use any NPI other than to carry out the services provided hereunder.

**5.3 Safeguarding Customer Information.** MN shall implement appropriate measures designed to: (a) ensure the security and confidentiality of NPI; (b) protect against any

anticipated threats or hazards to the security or integrity of NPI; (c) protect against unauthorized access to or use of NPI that could result in substantial harm or inconvenience to any customer, and (d) meet all applicable state and federal laws as it pertains to this responsibility.

5.4 Incident Response. In the event MN becomes aware of any unauthorized access to or use of NPI (an "Incident"), MN shall undertake appropriate actions to address the Incident including, without limitation, assessing the nature and scope of the Incident, identifying what NPI may have been compromised, notifying appropriate law enforcement authorities where applicable, notifying User and taking appropriate steps to contain and control the Incident.

5.5 Indemnification. MN agrees to indemnify and hold the User harmless from and against any and all claims, demands, liability, damages, loss, cost and expenses, including reasonable attorney's fees arising out of or in any way related to MN's failure to maintain the confidentiality of any NPI.

6. Use of Name. MN will not include your name and/or company logo in the Network membership directory and in advertisements and releases promoting the Network without your consent.

7. User Communication. MN reserves the right to send service e-mails notifying User of operational or other changes that may affect or change the Services offered by MN. Please note that you cannot opt out of such service e-mails because these service e-mails provide information critical for the operation of the Network.

USER HEREBY GRANTS MN EXPRESS WRITTEN PERMISSION TO SEND FAX AND OR EMAIL SOLICITATIONS OR ADVERTISEMENTS, THUS SATISFYING ANY EXPRESS WRITTEN PERMISSION REQUIREMENT.

8. Restrictions. You may not publish, display, disclose, rent, lease, sublease, modify, loan, distribute, or create derivative works based on the Network, its software architecture, or any part thereof (collectively, the "Software"). You may not reverse engineer, decompile, translate, adapt, or disassemble the Software, nor shall you attempt to create the source code from the object code for the Software. You shall not transmit the Software over any network or between any devices, although you may use the Software to make such transmissions of other materials.

9. Ownership. You have no ownership rights in the Network. Rather, you have a license to use the Network as long as this Agreement remains in full force and effect. Ownership of the Network, documentation and all intellectual property rights therein shall remain at all times with MN. Any other use of the Network by any person, business, corporation, government organization or any other entity is strictly forbidden and is a violation of this Agreement.

10. Copyright. The Network, Software, and documentation contain material that is protected by United States Copyright Law and trade secret law, and by international treaty provisions. All rights not granted to you herein are expressly reserved by MN. You shall not remove any proprietary notice of MN from any copy of the Software or documentation.

11. Termination. This Agreement shall become effective upon your acceptance of the terms and conditions contained herein and shall continue until terminated. You may terminate this Agreement by ceasing your use of the Network.

MN may terminate this agreement upon sixty (60) days' notice. MN reserves the right to terminate this Agreement immediately for any breach of the provisions of the Agreement, as determined by MN in its sole discretion. If a breach or other misuse of the Network is susceptible to cure, and MN determines that User will diligently correct its actions and conform its behavior to the standards of this Agreement if given notice, MN will give User notice and an opportunity to conform its use to this Agreement. MN shall have no obligation to refund any of User's fees due to MN's early termination of this Agreement.

12. Amendments/Modifications. MN reserves the right to amend the Network offerings, and add, delete, suspend or modify the terms and conditions of the Network at any time, and to determine whether and when, at its sole discretion, any such changes apply to existing or future Users.

13. MN's Rights. You hereby acknowledge that the Network is the proprietary property of MN, the names and marks "Mercury" and "Mercury Network," and all associated names, marks and logos (collectively, the "Marks") are the trademarks and/or service marks of MN or its affiliates, and that any trade dress, trademarks, service marks or designs related to Mercury, Mercury Network and/or the Marks are the intellectual property of MN and are protected by United States copyright laws, trademark laws, trade secret laws, international treaties and applicable laws of the states and jurisdictions where they are used. This Agreement does not grant to you any ownership rights in the Marks or in any other intellectual property of MN. All right, title and interest in and to the Marks, and any other intellectual property of the MN shall remain with MN. You further acknowledge that the Network and its functionality, structure and organization, and the code format of the Network are valuable confidential trade secrets of MN.

14. Disclaimer of Warranties. User understands that the Internet and other various networking communication mediums are not secure, unless explicitly specified as such, and may be subject to interception or loss. MN makes no representations or warranties of any kind, either express, implied or statutory, concerning the data or information available through Mercury Network or the Internet. MN'S SERVICES ARE PROVIDED ON AN "AS IS" BASIS. MN MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT; THAT THE SERVICES WILL MEET USER'S REQUIREMENTS OR WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE OR OPERATE WITHOUT ERROR; AND/OR ANY IMPLIED WARRANTY ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE; REGARDING ANY THIRD PARTY SOFTWARE OR SERVICES. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, MN DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES.

15. Limitation of Liability.

15.1 No Special Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, INDIRECT, SPECIAL OR PUNITIVE

DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOST PROFITS OR LOSS OF BUSINESS) ARISING OUT OF OR RELATED TO (I) THE SERVICES, (II) YOUR USE OF ANY DATA, INFORMATION OR THIRD PARTY SOFTWARE AVAILABLE THROUGH MERCURY NETWORK, (III) THIS AGREEMENT OR (IV) USER'S WEBSITE REGARDLESS OF THE NATURE OR BASIS OF THE CLAIM INCLUDING, BUT NOT LIMITED TO, TORT, CONTRACT OR STRICT LIABILITY CLAIMS. IN ADDITION, MN SHALL HAVE NO LIABILITY OF ANY KIND OR NATURE TO USER ARISING OUT OF OR RELATED TO USER'S USE OF OR INABILITY TO USE USER'S WEBSITE OR ACCOUNT. IN THE EVENT THAT ONE PARTY IS LIABLE TO THE OTHER FOR ANY LOSS ARISING OUT OF OR RELATED TO THE SERVICES, THIS AGREEMENT OR USER'S WEBSITE, EXCEPT WITH RESPECT TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, THE AGGREGATE LIABILITY WILL IN NO EVENT EXCEED THE TOTAL AMOUNT PAYABLE TO MN IN THE TWELVE (12) MONTHS PRECEDING THE APPLICABLE CLAIM UNDER THIS AGREEMENT.

15.2 No Liability for Unauthorized Use or Access. User is solely responsible for ensuring that each password for User's account is utilized only by User or, if applicable, by User's authorized employees and agents. MN shall have no liability for any loss, claim, damage or other liability that may arise from the unauthorized use of a password. If a password is lost or stolen or if you have reason to believe that your account is no longer secure for any reason, it is your responsibility to notify MN of such loss or theft so that the password can be deactivated and a new password assigned. MN will use commercially reasonable efforts to effect password deactivation requests promptly.

16. Indemnity. You agree to indemnify and hold MN harmless from any and all claims and demands, including, but not limited to reasonable attorneys' fees, made by any third party due to or arising out of or in connection with or resulting from your participation in the Network and or any information, including, but not limited to, information provided by MN. The foregoing indemnity shall not apply to any claims and demands arising out of or in connection with or resulting from the negligence or willful misconduct of MN. MN agrees to indemnify and hold the User harmless from and against any claims (i) arising out of or in connection with or resulting from the negligence or willful misconduct of MN; (ii) alleging that the Network misappropriates or infringes the intellectual property rights of a third party; or (iii) any breach of MN's obligations under the terms of this Agreement. The information, software, products, and services may include inaccuracies or typographical errors. Changes are periodically added to the information herein. MN, its affiliates and/or its respective suppliers may make improvements and/or changes in this site at any time. In no event shall MN be liable for any indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the use or performance of MN services and software.

17. Release. In the event a dispute arises between you and any other user of the Network, you shall and do hereby release MN and its officers, directors, employees and agents from any and all claims, demands, losses, costs, expenses, liabilities and damages of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such dispute, except for claims for which MN has agreed to provide indemnity hereunder. If you are a California resident, you waive California Civil Code 1542, which says: "A general release

does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

18. Information Control. MN does not control the information provided by other members that is made available through the Network. You may find other member's information to be inaccurate or deceptive. Please use common sense when transacting business over the Network.

19. Force Majeure. MN shall not be liable for nonperformance, delay, errors, data loss or other loss caused by any event reasonably beyond MN's control including, but not limited to, acts of God, war, terrorism, hostilities, revolution, civil disorder, national emergency, strikes, lockouts, unavailability of supplies, epidemics, fire, flood, earthquake, force of nature, explosion, embargo or any law, proclamation, regulation, ordinance or other act or order of any court, government or governmental agency.

20. Governing Law. This Agreement shall be construed and governed by the internal laws of the State of Florida, U.S.A., excluding the application of its choice-of-law principles.

21. Severability. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. You agree that this Agreement may be assigned by MN, in its sole discretion, to a third party in the event of a merger or acquisition. This Agreement sets forth the entire understanding and agreement between you and MN with respect to the subject matter hereof.

22. Modifications to Terms of Service and Other Policies. MN reserves the right to change or modify any of the terms and conditions contained in this Agreement or any policy governing the Network, at any time, by posting the new agreement to the site located at [www.mercuryvmp.com](http://www.mercuryvmp.com) (or such other URL as MN may provide), and MN will further notify You of any such changes by providing seven (7) days' notice of such change. You are responsible for regularly reviewing the policy. No amendment to or modification of this Agreement will be binding unless (i) You accept updated terms online, or (ii) You continue to use the Network after MN has posted updates to the Agreement or to any policy governing the Network and MN has provided the requisite 7 days' notice.

23. Assignment. User may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of MN, unless such assignment is to an affiliate or successor by merger in which case written consent by MN is not required. MN may assign this Agreement and its rights and obligations hereunder to an affiliate, successor or assign. MN's rights and obligations hereunder will bind and inure to the benefit of its successors and assigns.

24. No Waiver. Neither the failure nor the delay of MN in exercising, enforcing or taking action against you with respect to any of the MN's powers or rights shall operate as a waiver of such powers or rights. No single or partial exercise by MN of any of its powers or rights will preclude MN from exercising such powers and rights in the future or from exercising other powers and rights.

25. Section Headings. The headings of sections in this Agreement are provided for convenience only and will not affect the construction of the sections.

26. Non-discrimination. MN and any of its subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

27. Payment Services. If we provide credit card payment services to You, we do so as a reseller of such services from CyberSource Corporation ("CyberSource"). In such event, You further agree to the following terms.

(a) We are responsible for the security of the cardholder data we process or transmit. (We do not store such information.) We will maintain all applicable PCI DSS requirements to the extent we handle, have access to, or otherwise store, process or transmit Your cardholder data or sensitive authentication data.

(b) You are required to comply with all applicable laws, rules and regulations of the United States, including, without limitation, laws regarding privacy and protection of consumer information.

(c) If applicable, You must comply with the Visa Cardholder Information Security Program and all other applicable rules of card associations, including, without limitation, American Express, MasterCard and Visa.

(d) You hereby disclaim CyberSource from any liability for indirect, incidental, consequential, special or exemplary damages, whether or not CyberSource has been advised of the possibility of such damages.

(e) Any direct damages under any legal or equitable theory are hereby limited to fees received by CyberSource for the provision of payment transaction services to you during the three-month period prior to the date the cause of action arose.

**YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER ACKNOWLEDGE THAT THIS LICENSE CONSTITUTES THE ENTIRE AGREEMENT BETWEEN YOU AND MN AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL, OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS LICENSE. YOU ALSO AGREE THAT ALL OF THE TERMS AND CONDITIONS OF THIS LICENSE APPLY TO YOUR USE OF THE NETWORK, SHOULD YOU CHOOSE TO PROCEED WITH THE USE AND IMPLEMENTATION OF THE NETWORK.**