

# Holonyx Partner Program Agreement

## 10.29.07

Read these Terms and Conditions carefully. If you agree, click "I ACCEPT". To be accepted you must 1) accept these Terms and Conditions, 2) submit a completed Partner Registration Form, 3) meet all the partnership qualifications, and 4) Holonyx accept your application.

Acceptance by Holonyx of your application form will constitute the formation of a legal agreement by and between the applicant and Holonyx.

The parties agree as follows:

### 1. Definitions

1.1 The applicant who has submitted the application form, met the partnership qualifications and is accepted by Holonyx will henceforth be referred to with this document as the "Partner". See Section 2 below.

1.2 "Deliverables" means the products, software, collateral, and all other materials or information provided by Holonyx.

### 2. Partner and Agency Disclaimer

Partner acknowledges that the use of the word "Partner" is a commonly used term in the technology industry to designate a marketing relationship between otherwise unaffiliated companies. It is used in accordance with this common usage within this Agreement. The Terms and Conditions, the use of the word "Partner", shall not be deemed to, nor is it intended to create a partnership, agency, distribution, joint venture or other similar arrangement between the parties. Each party shall be deemed to be an independent contractor and shall have no authority to bind the other party. Neither Partner nor Holonyx is authorized to create any obligation, express or implied, on behalf of the other. Therefore, "Partner" in this Agreement or in the Partner Program does not constitute or imply a legal partnership or fiduciary relationship between the parties.

### 3. User Service Agreement

The Holonyx service consists of the computing and communications services, software products, data, training, marketing and technology information, and all other material (collectively technology) available through Holonyx. These terms and any operating rules or policies published for the service constitute the entire agreement between Holonyx and the Partner with respect to the service, and supersedes all other communications.

### 4. Deliverables

4.1 This Agreement entitles the Partner to the rights and privileges of membership in the Holonyx Partner Program. In the event that Holonyx is unable to provide training, troubleshooting, and consulting or a clear plan of remedial action within 72 hours of contact and problem definition, then the Partner is free to solicit alternative assistance. The Partner is entitled to Holonyx Linux support for all of their Linux installations based on the Holonyx Pricing Schedule.

4.2 Holonyx support hours of operation are 8:00 a.m. to 5:00 p.m. Mountain Standard Time, Monday through Friday. Holonyx will respond VIA telephone within four (4) hours of receiving a support call with any calls falling after business hours responded to within four (4) hours the following business day. Holonyx' declared holidays when support service will be unavailable are: Christmas, Thanksgiving, Labor Day, Memorial Day, July 4th and New Years day.

### 5. Duties of Partner

It is agreed that:

5.1 Partner agrees to comply with these Terms and Conditions, applicable License Agreement, and any other terms and conditions that Holonyx makes available as part of or in connection with the Holonyx Partner Program.

5.2 The Partner shall obtain Holonyx' prior written approval for any advertisement or marketing material which incorporates Holonyx' software name, and/or logos. Holonyx reserves the right to prohibit distribution of any advert or marketing or similar material for whatever reason.

### 6. The Partner will NOT at any time:

6.1 Do anything to damage the reputation of Holonyx;

6.2 Pledge the credit of Holonyx in any way or bind or attempt to bind Holonyx by contract or otherwise or represent that the Partner is connected with or an agent of Holonyx;

6.3 Copy, reproduce, translate, adapt, vary or modify software, in whole or in part, nor communicate the same to any person other than in accordance with the terms of this Agreement; While this agreement remains in force, the Partner is authorized to display Holonyx trade marks and logos as provided by the Holonyx, exclusively in connection with the marketing, demonstration, advertisement and promotion of software and services, but only in accordance with guidelines set by Holonyx. The Partner agrees that it will NOT, without Holonyx' prior written consent, market, demonstrate, advertise or promote the software and services under any other name or trade mark and will not remove Holonyx trade marks from any material whatsoever.

7. The Partner's obligations in respect to duties will survive the termination of this Agreement.

#### 8. Rights and Duties of Holonyx:

It is agreed that while this Agreement remains in force, Holonyx will:

8.1 Supply the Partner with software, software keys, and/or hardware after payment of the price has been made by the Partner;

8.2 Provide the Partner with electronic sales promotional literature, or such other material or means as Holonyx may determine;

8.3 Have the right to modify the specifications for software;

8.4 Have the right to contact any party to a Customer License directly without the Partner's further consent.

8.5 Holonyx shall maintain ownership to all inventions, materials, deliverables, product deliverables and all derivations of products without limitation, all architecture for development software and any unique methodologies conceived or developed.

#### 9. Non-Solicitation

Holonyx agrees that during the term of the Partner's contract with Holonyx, Holonyx will not solicit or suggest to the Partner's End Customer that they hire or retain any other supplier in direct competition with the Partner to perform the same or similar services that the Partner has contracted to provide for the End Customer.

#### 10. Confidentiality

The Partner understands that as a Partner of Holonyx it may have access to trade secrets, confidential information, market information, identities of Clients and their specific network solution needs, specific services and products, pricing and/or territory strategies and a variety of other information not generally known to persons not affiliated with Holonyx. Furthermore, the Partner may have access to other confidential information belonging to third parties that may be subject to confidentiality agreements between Holonyx and such third-parties. The Partner understands that Holonyx considers all such information to be proprietary and highly confidential. The Partner further understands that when the relationship with Holonyx ceases, the disclosure or use of any Holonyx' confidential information is strictly forbidden.

#### 11. Limitation of Liability

It is agreed that:

11.1 The use of this service, which includes the contents herein and any storage or use of information, hardware, software, implementation, maintenance, operation or use of service is at the Partner's sole risk.

11.2 Holonyx or any of its information providers, licensor's, employees, or agents will not have any liability to the Partner or to any End Customer or to any other person arising out of the supply of the service, hardware, software, or the implementation, maintenance, operation or use of the service.

11.3 Holonyx or any of its information providers, licensor's, employees, or agents will not be liable under the law of tort, contract or otherwise for any loss of profits or any indirect or consequential loss or damage(s) arising out of or in connection with this Agreement.

11.4 Neither Holonyx or any of its information providers, licensor's, employees, or agents warrant that any service will be uninterrupted or error free; nor does Holonyx or any of its information providers, licensor's, employees, or agents make any warranty as to the results to be obtained from use of

the service, hardware, software, or the implementation, maintenance, operation. The service is distributed on an "as is" basis without warranties of any kind, either express or implied including but not limited to warranties of title or implied warranties of merchantability or fitness for a particular purpose or use with respect to service or information.

11.5 Neither Holonyx nor anyone else involved in creating, producing or delivering the service shall be liable for any direct, indirect, incidental, special or consequential damages arising out of use of the service or inability to use the service or out of any breach of any warranty.

11.6 Holonyx does not guaranty or warranty the work performed by our Partners. Holonyx does not accept any responsibility for the quality of the work performed by a Partner at an End Customer site.

11.7 The Partner acknowledges that all liability and responsibility for any work they perform or do not perform rests solely with the Partner. While we do not warranty the service we will take every precaution to ensure against loss or uninterrupted service.

11.8 The Partners obligation in respect to limitation of liability will survive any termination of this Agreement.

11.9 The Holonyx liability to the Partner arising out of all claims for damages under this Agreement will not exceed in aggregate the total amount paid by the Partner for the service, hardware, software, in respect of which the liability purportedly arose.

11.10 The Partner waives all rights to seek damages from Holonyx for any negligence that results in an End Customer suffering downtime, systems failure, loss of productivity and/or data loss.

## 12. Intellectual Property

It is agreed that:

12.1 Nothing in this Agreement will give the Partner any interest in any Intellectual Property Rights belonging to Holonyx.

12.2 The Partners right to use such Intellectual Property rights as provided in this Agreement will cease upon termination of this Agreement or earlier notice in writing from Holonyx.

12.3 The Partner acknowledges that all Intellectual Property Rights in the software and in any enhancements to or modifications of the software belong to Holonyx or its licensor's and Holonyx will do nothing to contest or dispute such ownership.

## 13. Indemnification

The Partner shall defend, indemnify, protect, and hold harmless Holonyx, its officers, directors, employees, and agents from and against such claims, losses, liens, demands, attorney's fees, damages, liabilities, costs, expenses, obligations, causes of actions, or suits (collectively "Claims") that arise directly or indirectly from the Partner's action or omission while an active Partner of Holonyx.

## 14. Permits and Licenses

It is the not the responsibility of Holonyx to ensure that all existing software is legally licensed. Holonyx makes no representation of the legitimacy or legality of any license currently running or installed by the Partner, or the End Customer.

## 15. Warranties of the Partner

15.1 It has the right to enter into this Agreement and perform its obligations hereunder;

15.2 It shall comply with all applicable laws and regulations;

15.3 It has personnel assigned to perform services hereunder shall have the skill, training, and background so as to be able to perform in a competent and professional manner; and Holonyx shall not enter into any selling arrangements with a Partner that creates a conflict of interest, as determined by Holonyx in its sole direction.

## 16. Amendment of Partner Offering

It is Holonyx' intent to further enhance our Partnership through the development of additional products and service offerings. Holonyx therefore reserves the right to change the terms, conditions, and notices under which the Holonyx Partner program is offered.

## 17. General

Unless otherwise agreed to in writing, the Partner's right to use the service is not transferable and is subject to any limits established by Holonyx. Holonyx reserves the right to refuse any application, or cancel for convenience any Partnership at its sole discretion.

Should Holonyx suspend or terminate the Partner's use of the service pursuant to this Agreement due to outstanding charges, the Partner has no right to any data stored with Holonyx. Holonyx will be under no obligation to make such data, or any copies of it, available to the Partner in any form until all outstanding charges are received. This Agreement is, and shall be governed by and construed in accordance with the laws of the State of Colorado applicable to Agreements, made and performed in Colorado. Any cause of action of the Partner or its designated users with respect to the service must be instituted within one year after the claim or cause of action has arisen or be barred.

17.1 Partner will designate a single key contact to act on behalf of Partner who will have authority to make binding decisions.

17.2 Partner will provide Holonyx with timely access to required Partner resources including but not limited to personnel, existing systems and facilities.

17.3 Partner/End Customer will provide security access to the existing computers and applicable software and services.

#### 18. Term

The term of this contract is for 1 year from the date of signing. Renewal will be automatic unless either party has given 60-days written notice that the subscription will not be renewed.

#### 19. Termination

Holonyx reserves the right to withdraw from this contract with 30 days notice, should we feel that the mutual objectives of this contract cannot be reached, or if we feel that we cannot properly serve your request for support. Should either party withdraw from this engagement, all startup or setup fees are non-refundable, all fees and expenses, hardware/software and labor incurred will be billed and due payable.

#### 20. Payments

20.1 Unless otherwise specified, terms of payment for incidents, hourly rates, quoted work, products and services is by credit card as the service is provided. If the Partner wishes to apply for invoice billing a [credit application](#) must be completed and approved. There will be a standard due date for payments, therefore if payment is not received on the 10th of month the account will be considered past due and will be charged late fees. All software and hardware fees will be due upon receipt. For accounts not approved by Holonyx for invoice billing, the customer must pre-pay or provide payment by credit card or check draft. All past due accounts over 30 days may be terminated, charged a \$100.00 processing fee, 1.5% service charge on all past due amounts and referred to a collection agency.

20.2 All costs incurred by Holonyx in the recovery of any overdue amounts (including legal costs as between the Partner and Holonyx) will be at the Partner's responsibility.