

## C3 RESERVATIONS™ TERMS OF USE AGREEMENT

The purpose of the Terms of Use is to set forth and define the general terms and conditions of an arrangement under which Creative Collaborating Component Solutions C3 Inc. a Canadian corporation, having its principal place of business at 1751 Richardson Street, Suite 7103, Montreal, QC, Canada, H3K 1G6 (“**C3**”) will grant to the Customer a license to access and use C3 Reservations™ online for the benefit of the Customer in accordance with the C3 Reservations Order Form negotiated between the parties.

Your execution of the C3 Reservations Order Form and/or use of C3 Reservations shall be deemed to be your acceptance of the Terms of Use and you shall be bound by all of the following terms and conditions. If you do not agree to such terms and conditions, you agree not to use or access C3 Reservations.

Please note that C3 may modify the following Terms of Use at any time without notice to you by posting revised Terms of Use on C3 website. Your continued use of C3 Reservations is a binding acceptance of the Terms of Use, including any modifications that C3 makes. You are responsible for regularly reviewing the Terms of Use.

If you are agreeing to this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to this Agreement.

### 1. DEFINITIONS

The following terms shall have the following meanings:

“**Agreement**” shall mean the Terms of Use, the C3 Reservations Order Form and any other documents attached to or otherwise specifically incorporated to this Agreement, being the arrangement under which C3 will grant to the Customer a license to access and use C3 Reservation online for the benefit of the Customer, and as modified or amended from time to time in accordance with the terms of this Agreement.

“**C3 Reservations**” shall mean the C3 web-based dock scheduling software, additional options and other related corporate services that may be agreed to and identified in the C3 Reservations Order Form, developed, operated and maintained by C3 accessible via <http://www.c3solutions.com> or another designated web site or IP address, or ancillary online or offline products provided to Customer by C3 in relation to the Software provided by C3 to Customer pursuant to this Agreement and as more fully described under Section 2.

“**C3 Reservations Order Form**” shall mean the C3 Reservations Order Form evidencing the initial subscription to C3 Reservations and any subsequent C3 Reservations Order Form submitted, online or in written form, by the Customer and accepted by C3, specifically incorporated by reference herein. The C3 Reservations Order Form specifies the core of the Agreement

specifically applicable to each Customer. It shall specify, among other things, the customer details and contact information, billing information, maximum number of transactions and other additional options and services contracted for, applicable subscription fees, the term, and other charges as agreed to between the parties. In the event of any conflict between the Terms of Use and the terms of a duly executed C3 Reservations Order Form, these Terms of Use shall prevail.

**“Confidential Information”** shall mean information about the disclosing party’s (or its affiliates, suppliers’ or licensors’) technology, business, suppliers, customers or activities that is proprietary, confidential, or a trade secret including but not limited to: (i) information designated as “confidential” or “proprietary”; (ii) information which, by the nature of the circumstances surrounding the disclosure, ought, in good faith, to be treated as confidential; (iii) the terms of and conditions of this Agreement and, without limitation, C3 Reservations and any other information provided in connection therewith; and (iv) any patents, copyrights, trade secrets or other intellectual property rights, patentable or un-patentable inventions, improvements, discoveries, results, findings, works, materials, work product, data, methods, plans, models, concepts, ideas, processes, formulas, technology, techniques, know-how, designs, prototypes, specifications.

Confidential information shall not include information that: (i) is in or enters the public domain without breach of this Agreement; (ii) the receiving party lawfully receives from a third party without breach of an obligation of nondisclosure; (iii) the receiving party can demonstrate with documentary evidence that it knew or had such confidential information prior to the disclosure of such information from the disclosing party.

**“Customer”** shall mean the person, the company or other legal entity for the benefit of whom a C3 Reservations Order Form has been duly executed. The Customer is more fully described in the C3 Reservations Order Form.

**“Customer Data”** shall mean the data, information or material that the Customer submits or receives via C3 Reservations in the course of its use.

**“Documentation”** shall mean any materials available on the C3 website or otherwise provided by C3 for C3 Reservations either in printed text or machine readable form, including technical documentation, program specification, operation manuals and policies, which may be updated by C3, from time to time, in its sole discretion.

**“Intellectual Property Rights”** means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

**“Software”** shall mean the C3 Reservations software, including additional options, to which Customer is being granted a license to access and use under this Agreement, as more fully described in the Documentation, and all of C3’s proprietary technology, including software,

hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information and any off-line or third party components, data, lists, reports, dashboards, templates, audio and visual information and documents made available to the Customer by C3 pursuant to this Agreement.

**“Transaction”** shall mean a request for a reservation whether it is completed or canceled. There can only be one Transaction per reservation.

**“Terms of Use”** shall mean the present terms and conditions, the Documentation, the C3 Reservations Acceptable Use Policy specifically incorporated by reference herein, which may be updated by C3, from time to time, in its sole discretion. The Terms of Use consist of the general terms and conditions of the Agreement applicable to every customer.

**“User(s)”** shall mean the Customer, its employees, representatives, consultants, contractors or agents who are authorized to use C3 Reservations and have been supplied user accounts (identifications and passwords) by the Customer (or by C3 at Customers request).

## 2. C3 RESERVATIONS ONLINE

Subject to the terms and conditions of this Agreement, C3 hereby agrees to provide the Customer with a non-exclusive license to access and use C3 Reservations online in accordance to the Customer Terms and Conditions as well as any Additional Options and specific terms specified in the C3 Reservations Order Form, solely for the Customers own internal business purposes.

Customer may not access C3 Reservations if it is a direct competitor of C3, except with C3's prior written consent. In addition, Customer may not access C3 Reservations for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

Customer acknowledges that C3 Reservations is provided “as is”. Customer assumes all responsibility to review all features included in C3 Reservations prior to signing a C3 Reservations Order Form.

### TEST ENVIRONMENT

When applicable pursuant to the C3 Reservations Order Form, the access to a Test Environment is provided by C3 to the Customer as a test environment only and cannot be used for production purposes. The Test Environment having limited resources can be used for integration and functionality testing but is not intended for performance testing. The Customer acknowledges and agrees that Customer Data contained in the Test Environment will not be saved nor back-ups be performed. Availability of such Customer Data is not guaranteed.

### WEB SERVICE INTEGRATIONS

Specific Web Service Integrations to be included in C3 Reservations shall be agreed to by the parties in the C3 Reservations Order Form. Furthermore, the definitions and utilization guidelines on the different Web Services can be found in the Documentation.

Web Service Integrations can be categorized as Inbound or Outbound. An **Inbound Web Service Integration** consists of the Customer sending information to C3 Reservations through web services defined and implemented by C3. The related web services are accessed through an internet address provided to the Customer by C3. The Customer acknowledges and agrees that the design, implementation, maintenance and support of the code or program that invokes the inbound web services shall be the sole responsibility of the Customer.

An **Outbound Web Service Integration** consists of C3 Reservations sending information to the Customer through web services defined by C3 but implemented by the Customer. The Customer is responsible for providing C3 an internet access making it possible for C3 Reservations to invoke the appropriate web services implemented by the Customer. The Customer acknowledges and agrees that the design, implementation, maintenance and support of the code or program that will implement the outbound web services shall be the sole responsibility of the Customer.

---

#### DOCUMENT MANAGEMENT AND COMPLIANCE

When applicable pursuant to the C3 Reservations Order Form, for each of the Document Management Option and the Compliance Option, the Customer's total storage capacity will be equal to the maximum number of Transactions specified in the C3 Reservations Order Form multiplied by 1 Megabyte. Nevertheless the maximum amount of storage capacity for a single Transaction cannot exceed 20 Megabytes.

C3 will save and regularly back-up such stored documents as part of Customer Data as more fully described hereafter.

If a Customer requires any customization of C3 Reservations or services not available through the C3 Reservations Order Form, please contact a C3 representative to discuss the possibility of a C3 Professional Services Agreement.

---

#### 2.1 RIGHTS AND LIMITATIONS

Under this Agreement, the Customer shall not be granted any rights or license to C3 Reservations other than a non-exclusive license to access and use C3 Reservations online as provided for here and above.

The Customer acknowledges that through its payment of the subscription fees to C3 it is only granted a license to access and use C3 Reservations for a maximum number of transactions and

solely for the Customers own internal business purposes. Rights not expressly granted to the Customer are reserved by C3.

At no time will Customer hold title to or ownership of: a) any of C3 Reservations software, data, source code in readable forms together with make and build files; and/or, b) any other software, code, data, graphics or other materials or resources transmitted to Customer in order to provide C3 Reservations under this Agreement.

C3 alone (and its licensors, where applicable) owns all right, title and interest, including all related Intellectual Property Rights, in and to C3 Reservations and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the Customer or any other party relating to C3 Reservations or its use.

This Agreement does not convey to the Customer any rights of ownership in or related to C3 Reservations or the Intellectual Property Rights owned by C3.

The names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of each party that may be associated with C3 Reservations are the property of each of the respective parties and no right or license is hereby granted by its owner to the other party to use them except expressly in accordance with this Agreement.

---

## 2.2 C3 COMMITMENT LEVELS

C3 represents and warrants that it will provide C3 Reservations in a manner consistent with general industry standards reasonably applicable to the provision thereof and that C3 Reservations will perform substantially in accordance with the Documentation under normal use and circumstances.

C3 will use commercially reasonable efforts to make C3 Reservations available with a **Monthly Uptime Percentage** (defined below) of at least 99% during each calendar month. Nevertheless, with regards to Test Environments, C3, when applicable pursuant to the C3 Reservations Order Form, only commits to a Monthly Uptime Percentage of at least 97% during each Calendar month. In the event C3 Reservations does not meet such commitment, the Customer will receive a Credit pursuant to the terms and conditions described hereafter.

The Monthly Uptime Percentage shall be calculated by subtracting from 100% the percentage of the applicable down time on the applicable calendar month period.

Ex:  $100\% - \frac{\text{Applicable down time}}{\text{Applicable calendar month period}} = \text{Monthly Uptime Percentage}$

The **Applicable Down Time** shall be the sum of any period of unavailability, suspension or termination of C3 Reservations, or any other C3 Reservations performance issues experienced by the Customer during the applicable calendar month, with the exceptions of down time resulting from or caused by:

- i. a C3 scheduled monthly routine maintenance outages which take place on the first Sunday of each calendar month between 20:00 and 22:00 Eastern Standard Time and/or Eastern Daylight Saving Time;
- ii. any other Customer pre-approved maintenance outages;
- iii. factors outside of C3's reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of C3 Reservations;
- iv. any actions or inactions of Customer or any third party;
- v. Customer equipment, software or other technology and/or third party equipment, software or other technology, other than third party equipment within C3's direct control; or,
- vi. C3's suspension and termination of Customer's right to access and use C3 Reservations in accordance with this Agreement.

To receive a Credit, Customer must:

1. Notify C3 of any down time event of more than 30 minutes taken into account as applicable down time within 1 hours of the beginning of such down time event; and,
2. Submit a credit request within 10 business days of the end of the applicable calendar month stating the dates and times of each applicable down time event claimed to have been experienced by the Customer.

If the Monthly Uptime Percentage applicable to the month of such credit request is less than 99% (or 97% with regards to Test Environments), C3 will issue a Credit to Customer within 30 days following reception of the credit request. Customer failure to provide a credit request and other information as required above will disqualify Customer from receiving a Credit.

Credits will be applicable and issued to Customer against future Customer Subscription fees for up to a maximum dollar credit amount of 25% of the Subscription fees paid by the Customer for the applicable calendar month in which the applicable down time occurred.

Credits shall not entitle Customer to any refund or other payment from C3. Credits may not be transferred or applied to any other account.

Customer hereby acknowledges and agrees that, unless otherwise provided for in this Agreement, Customer's sole and exclusive remedy for any unavailability or non-performance of C3 Reservations or other failure by C3 to provide C3 Reservations is the receipt of a Credit (if eligible) in accordance with the terms of this Agreement

---

## 2.3 CUSTOMER USE OF C3 RESERVATIONS

The Customer acknowledges and agrees to be responsible for all activity occurring under its Users' accounts and to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with its use of C3 Reservations, including those related to data privacy, international communications and the transmission of technical or personal data. The Customer and its Users shall use C3 Reservations according to the C3 Reservations Acceptable Use Policy available on the C3 website and specifically incorporated by reference herein, which may be updated by C3, from time to time, in C3's sole discretion.

The Customer shall report to C3 immediately and use reasonable efforts to immediately stop any breach of the C3 Reservations Acceptable Use Policy that is known or suspected by it or its Users

The Customer further acknowledges and agrees that at no time shall it be entitled to:

- i. License, sublicense, sell, resell, transfer, assign, download, distribute, install, redistribute or otherwise commercially exploit or, make available to any third party for the third party's own benefit, C3 Reservations in any way not explicitly covered by this Agreement;
- ii. Modify or make derivative works based upon C3 Reservations;
- iii. Create Internet "links" to C3 Reservations or "frame" or "mirror" any part of C3 Reservations on any other server or wireless or Internet-based device; or,
- iv. Reverse engineer or access C3 Reservations in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics, or (c) copy any of its ideas, features, functions or graphics.

---

## **2.4 DURATION AND PAYMENTS OF C3 RESERVATIONS SUBSCRIPTION**

The Customer hereby agrees to pay the subscription fees and charges to its account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. C3 subscription fees and charges are exclusive of all taxes, levies, or duties imposed by taxing. Unless otherwise mutually agreed to, invoices will be sent by C3 to the Customer's most recent billing email on file in PDF format. All invoices must be paid within 30 days. C3 reserves the right to either terminate this Agreement in accordance with section 10, or charge 2 % of interest per month of late payment.

The initial subscription fee and set up charges, if any, as well as the initial term will be as mutually agreed upon in the C3 Reservations Order Form. Payments must be made in advance of any access to C3 Reservations and for the complete term, unless otherwise mutually agreed upon in the C3 Reservations Order Form. All payment obligations are non-cancelable and all amounts paid are nonrefundable, except in case of termination of this Agreement for material breach as provided for in section 7.

Unless otherwise mutually agreed to, C3 Reservations shall be available to the Customer for use upon C3 receipt of payment.

If the Customer exceeds the maximum number of transactions provided for in the C3 Reservations Order Form before the end of the term, C3 will periodically inform and invoice the Customer. The renewal fees, if any, will be adjusted consequently.

---

## 2.5 C3 RESERVATIONS SUBSCRIPTION RENEWAL

Upon the expiration of a term, this Agreement will automatically renew for successive renewal terms equal in duration to the last term at C3's then current fees. The Customer hereby acknowledges and agrees that renewal fees and charges may be adjusted, from time to time, in C3's sole discretion. C3 will invoice the Customer for the subsequent term 60 days before the end of the current term.

The Customer may terminate this Agreement, by notifying C3 in writing at least thirty (30) days prior to the end of a term. If no such cancellation has been received by C3 the renewal fees and charges invoiced will become due and payable 29 days prior to the end of a term.

Renewal of subscription by Customer indicates agreement to any contract revisions and price changes. Renewal fees for the following term will be automatically invoiced to Customer's account unless C3 has received a proper cancellation notice. To prevent any interruption in the use of C3 Reservations the Customer must pay C3 the renewal fees and charges, if any, before the beginning of a new term.

## 3. C3 RESERVATIONS SUPPORT

Subject to specifications described in the C3 Reservations Order Form, help, support, setup, installation, or other assistance for the C3 Reservations shall be conducted in a manner consistent with general industry standards reasonably applicable to the provision thereof and in accordance with the following provisions.

When support is needed by the Customer, the following reporting procedure must be followed:

1. One of the Customers named representative(s) who will have access to the C3 support site will report an issue with C3 according to the then current Issue Reporting Procedure available to the Customer;
2. Such issue report must specify: a) the severity level of the issue according to the severity level descriptions detailed hereafter; and, b) a detailed description of the issue with test case and screen shots if possible.

**Level**

**Description**

**Severity 1:** An essential business service is stopped or severely impacted and Customer is unable to continue performing its work. There is no workaround. C3 Reservations needs to be restored immediately and all necessary resources are expected to work on restoring the C3 Reservation.

---

**Severity 2:** An important Customer business service is severely impacted, or an essential business service is critically impacted, but there is a workaround. All necessary resources are working on the issue until it is resolved.

---

**Severity 3:** A normal business service is slightly impacted.

---

**Severity 4:** There is no impact to the business. These are informational only, and may reflect an area for possible service enhancement.

C3 will use all reasonable efforts to resolve any problems until such time as the problem is resolved.

The Customer acknowledges and agrees that C3 shall have no obligation to support, train or troubleshoot issues for any third-party user due to problems arising out of the use of the C3 Reservations provided to Customer by C3. Third parties shall include, but are not limited to: vendors, contractors, Customer's customers, Customer's clients or any third party not directly contracted with C3 for C3 Reservations.

#### 4. THIRD PARTY INTERACTION

During use of C3 Reservations, the Customer may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through C3 Reservations. Any such activity, and any terms, conditions, warranties or representations associated with such activity are solely between the Customer and the applicable third-party. C3 shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between the Customer and any such third-party.

The Customer recognizes, however, that certain third-party providers of ancillary software, hardware or services may require its agreement to additional or different license or other terms prior to its use of or access to such software, hardware or services.

#### 5. CUSTOMER DATA

C3 will exercise no control whatsoever over the content of the information passing through C3 Reservations, its network, emails, or web site. The Customer agrees that all Customer Data may be periodically monitored by C3, in strict confidentiality, for C3's sole internal business.

The Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use, of any data, information or material that the Customer submits or receives via C3 Reservations in the course of its use.

Except for Customer Data contained in the Test Environment, C3 will ensure that the Customer Data is saved and that back-ups are regularly performed. The Customer Data back-ups will be kept by C3 for a period of 2 years after which it will be automatically deleted.

If this Agreement is terminated other than by reason of a material breach by Customer, C3 will make available to the Customer a file containing all available Customer Data within 30 days of termination, upon request at the time of termination. C3 reserves the right to deny access, withhold, remove and/or discard Customer Data without notice for any material breach, including, without limitation, Customer non-payment.

The Customer agrees and acknowledges that C3 has no obligation to retain the Customer Data, and may delete such Customer Data, 30 days after termination.

## 6. CONFIDENTIALTY

### 6.1 CONFIDENTIALITY OBLIGATIONS

Except with the express prior written consent of the other party, each party shall maintain the confidentiality of the Confidential Information and each party shall ensure that each of their respective affiliates maintain the confidentiality of the Confidential Information using the same measures that it uses to maintain the confidentiality of its own confidential and proprietary information, but not less than reasonable measures. Except in connection with the performance of its obligations or exercise of its rights hereunder, neither party shall use or disclose to any third party the Confidential Information.

### 6.2 EXCEPTIONS

Notwithstanding the foregoing, each party may disclose Confidential Information: (i) to the extent required by a court of competent jurisdiction or otherwise as required by law, provided that the disclosing party shall minimize such disclosure to the extent legally permissible, and shall notify and assist upon request (at the other party's expense) the other party before the disclosure, so that such party may seek a protective order; or (ii) on a "need-to-know" basis under an obligation of confidentiality to its legal counsel, consultants, accountants, banks and other financing sources and their advisors.

## 7. MUTUAL INDEMNIFICATION

### 7.1 INDEMNIFICATION BY C3

C3 shall defend the Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of C3 Reservations as permitted hereunder infringes or misappropriates the Intellectual Property Rights of a third party, and shall indemnify Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with any such claim; provided, that Customer (a) promptly give C3 written notice of the claim; (b) give C3 sole control of the defense and settlement of the claim (provided that C3 may not settle such claim unless the settlement unconditionally releases Customer of all liability); and (c) provide to C3 all reasonable assistance, at C3's expense.

### 7.2 INDEMNIFICATION BY CUSTOMER

Customer shall defend C3 against any claim made or brought against C3 by a third party alleging that Customer Data or Customer use of C3 Reservations in violation of this Agreement, infringes or misappropriates the Intellectual Property Rights of a third party or violates applicable law, and shall indemnify C3 for any damages finally awarded against, and for reasonable attorney's fees incurred by, C3 in connection with any such claim; provided, that C3 (a) promptly give Customer written notice of the claim; (b) give Customer sole control of the defense and settlement of the claim (provided that Customer may not settle such claim unless the settlement unconditionally release C3 of all liability); and (c) provide to Customer all reasonable assistance, at Customers expense.

### 7.3 EXCLUSIVE REMEDY

Subject to Section 8, this Section 7 (Mutual Indemnification) states the indemnifying party's sole liability to, and exclusive remedy against, the other party for any type of claim described in this Section 7.

## 8. EQUITABLE RELIEF

The Reseller acknowledges that any breach or threatened breach of this Reseller Agreement involving an unauthorized use of Confidential Information or C3 Intellectual Property Rights will result in irreparable harm to C3 for which damages would not be an adequate remedy, and therefore, in addition to its rights and remedies otherwise available at law, C3 will be entitled to seek injunctive or other equitable relief, as appropriate, and the Reseller hereby waives the right to require C3 to post a bond. If C3 seeks injunctive or other equitable relief in the event of a breach or threatened breach of this Reseller Agreement by Reseller involving an unauthorized use of Confidential Information or C3 Intellectual Property Rights, Reseller agrees that it will not

allege in any such proceeding that C3's remedy at law is adequate. If C3 seeks any equitable remedies, it will not be precluded or prevented from seeking remedies at law, nor will C3 be deemed to have made an election of remedies.

## **9. DISCLAIMER OF WARRANTIES**

C3 RESERVATIONS IS PROVIDED TO THE CUSTOMER STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY C3.

C3 DOES NOT REPRESENT OR WARRANT THAT:

- A. THE USE OF C3 RESERVATIONS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA;
- B. C3 RESERVATIONS WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS;
- C. ANY STORED DATA WILL BE ACCURATE OR RELIABLE;
- D. THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY THE CUSTOMER THROUGH C3 RESERVATIONS WILL MEET THE CUSTOMER' REQUIREMENTS OR EXPECTATIONS;
- E. ERRORS OR DEFECTS WILL BE CORRECTED; OR,
- F. C3 RESERVATIONS OR THE SERVER(S) THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

C3 RESERVATIONS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. C3 IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## **10. TERMINATION**

A party may terminate this Agreement for cause if the other party: (i) has materially breached this Agreement, and such breach has not been cured within 30 days of notice of such breach; or, (ii) becomes the subject of a petition for bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

The Customer hereby acknowledges and agrees that failure to pay outstanding fees and/or a violation of the C3 Reservations Acceptable Use Policy constitute a material breach of this Agreement by the Customer and that in such cases C3 may terminate this Agreement and deny access to C3 Reservations to the Customer and its Users, at C3 sole discretion.

Upon termination of this Agreement by the Customer for material breach, C3 shall refund the Customer any prepaid subscription fees covering the remainder of the term after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees or charges payable to C3 for the period prior to the effective date of termination.

Upon termination of this Agreement by C3 for a material breach, the Customer shall not be entitled to a refund. In no event shall any termination relieve Customer of the obligation to pay any fees payable to C3 prior to the effective date of termination.

This Agreement may be terminated by the Customer without cause after the expiration of a 30-day delay after receipt by C3 of a notice of cancellation of its subscription by the Customer. Upon termination by the Customer without cause, the Customer shall not be entitled to a refund.

## 11. LIMITATIONS OF LIABILITY

C3'S SOLE LIABILITY HEREUNDER SHALL BE LIMITED TO DIRECT AND OBJECTIVELY MEASURABLE DAMAGES. IN NO EVENT SHALL C3 BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH C3 RESERVATIONS, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE C3 RESERVATIONS, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH C3 RESERVATIONS, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF C3 HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT FOR LIABILITIES ARISING FROM A CLAIM PURSUANT TO SECTION 7 (MUTUAL INDEMNIFICATION), IN NO EVENT SHALL C3'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM THE CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THE PARTIES ACKNOWLEDGE THAT THESE LIMITATIONS ON POTENTIAL LIABILITIES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT.

## 12. TAXES

The Customer agrees to pay C3 all the applicable taxes with respect to C3 Reservations as detailed in the C3 Reservations Order Form other than C3's income or personal property taxes; provided that C3 must invoice the Customer for such tax payment(s).

## 13. GENERAL PROVISIONS

**Notice:** C3 may give notice: i) by means of a general notice on the web site ii) by electronic mail to Customer's e-mail address on record in C3's account information; or, iii) by written communication sent by a nationally recognized overnight delivery service or first class postage

prepaid mail to Customer's address on record in C3's account information. Such notice shall be deemed given when received by the Customer (if sent by overnight delivery mail or first class pre-paid mail) or 12 hours after sending (if sent by email). Customer may give notice to C3 (such notice shall be deemed given when received by C3) at any time by any of the following: letter sent by confirmed facsimile to C3 at the following fax: (514) 932-0671; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to C3 at the following address: C3 Solutions, inc., 1751 Richardson street, Suite 7103, Montreal, QC, Canada, H3K 1G6 addressed to the attention of: Chief Financial Officer.

**Entire Agreement:** These Terms of Use, together with any applicable C3 Reservations Order Form, comprises the entire agreement between the Customer and C3 and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

**No joint venture:** No joint venture, partnership, employment, or agency relationship exists between the Customer and C3 as a result of this agreement or use of C3 Reservations.

**Transfer of Agreement:** The Customer may not assign or transfer this Agreement without the prior written approval of C3. Any purported assignment in violation of this section shall be void. Furthermore, any actual or proposed change in control of the Customer that results or would result in a direct competitor of C3 directly or indirectly being able to access C3 Reservations shall entitle C3 to terminate this Agreement for cause immediately upon written notice. This Agreement may be assigned or transferred without your consent by C3 to a parent or subsidiary, an acquirer of assets, or a successor by merger.

**Failure to exercise:** A failure by any party to exercise or any delay in exercising a right or power conferred upon it in this Agreement shall not operate as a waiver of any such right or power unless acknowledged and agreed to by such party in writing.

**Enforceability:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

**Attorney's Fees:** In the event any party to this Agreement employs an attorney to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover its actual reasonable attorney's fees and reasonable associated costs, including expert witness fees.

**Force majeure:** Each affected party will not be liable to the other party for any failure to perform due to unforeseen circumstances or causes beyond its reasonable control or its suppliers or contractors, including, but not limited to, acts of God, natural disasters, acts of terrorism, war, riot, embargoes, acts of civil or military authorities, fire, flood, accident, strikes, inability to secure transportation, facilities, fuel, energy, labor or materials. In the event of force

majeure, the affected Party's time for delivery or other performance will be extended for a period equal to the duration of the delay caused thereby.

**Arbitration and Governing Laws:** Unless otherwise specifically provided for by the parties in the C3 Reservations Order Form, any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally resolved by arbitration administered by the International Centre for Dispute Resolution under the International Arbitration Rules of the International Centre for Dispute Resolution in effect on the date the arbitration is commenced, which rules are deemed to be incorporated by reference into this clause, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over any party or any of its assets. The arbitrator has no authority to award damages in excess of those permitted in this Agreement for any reason. Any award in excess of such limitation will be deemed void as between the parties. It is further agreed that this Agreement shall be construed and enforced in accordance with the laws of the Province of Quebec. The place of the arbitration shall be New York, NY, USA. The language to be used in the arbitral proceedings shall be English.

**Surviving Provisions:** Due to the nature of the rights or obligations they create, some provisions, such as, without limitations, Sections 2 (C3 Reservations online), 5 (Customer Data), 6 (Confidentiality), 7 (Mutual Indemnification), 8 (Disclaimer of Warranties), 9 (Termination), 10 (Limitation of Liability), 11 (Taxes) and 12 (General Provisions) shall survive any termination or expiration of this Agreement.