

# Software Usage Agreement

## **§ 1 Object of the Agreement**

Clearstream Banking AG, Mergenthalerallee 61, 65760 Eschborn, Germany – subsequently referred to as “CBF” – shall grant to the Customer the non-transferable and non-exclusive right to use the front-end application CASCADE-PC - subsequently referred to as “CASCADE-PC”.

## **§ 2 Delivery**

The CBF shall deliver a copy of CASCADE-PC and a manual to the Customer. The CBF shall assist the Customer with the initial installation, insofar as this is necessary. Furthermore, the CBF shall provide updated versions of the program, to be installed by the Customer itself. Should the Customer require assistance from the CBF with the installation of updates, the necessary time and effort involved for the CBF shall be remunerated on the basis of an hourly rate which has yet to be agreed.

## **§ 3 Scope of the Right of Use**

The Customer is entitled to use CASCADE-PC on its data carriers. Copying of the program in any form whatsoever is permitted for back-up purposes only.

## **§ 4 Obligations of the Customer**

CASCADE-PC may not be made accessible, either in whole or in part, to unauthorised third parties. The Customer may not change identification marks and intellectual property right notices of CBF with respect to the program in any way. The Customer undertakes to install the updates provided by the CBF according to the instructions of CBF, so that each party can work on the assumption that the other is using the same version of the program.

## **§ 5 Ownership and Copyright**

CASCADE-PC shall remain the property of the CBF . The CBF shall continue to hold all rights in the program, even if the Customer links it with its own programs or those of a third party. In case such links and copies are made (§ 3), the Customer is obliged to include corresponding copyright notices.

## **§ 6 Remuneration**

CASCADE-PC and any subsequent updated versions will be provided without remuneration.

## **§ 7 Proprietary Rights of Third Parties**

The CBF shall indemnify the Customer against all claims of third parties against the Customer which arise out of the infringement of proprietary rights in the version of CASCADE-PC as stipulated in the agreement. The CBF is entitled to carry out or to have carried out at its own expense any changes to the program on the Customer's system which become necessary due to proprietary rights asserted by third parties.

## **§ 8 Warranty**

The CBF warrants that CASCADE-PC fulfils the functions outlined in the manual. The warranty only applies if the program is used in accordance with the terms of the agreement. No warranty is given for any feature above and beyond this. The Customer must report program errors to the CBF immediately. The CBF will do its utmost to rectify reported errors or to have them rectified. Should the rectification of errors prove to be impossible or out of all proportion, the CBF shall endeavour to find an alternative solution. If the errors are not corrected successfully, the Customer may demand that the agreement be rescinded. The CBF does not warrant that CASCADE-PC meets the particular requirements of the Customer.

## **§ 9 Liability**

The CBF shall assume liability for any direct damage to persons or property incurred by the Customer through wilful misconduct and gross negligence. Direct damage means the expense required to restore the damaged property to its original state. If the damage

incurred by the Customer entails a loss of data, the CBF is obliged to retrieve the data only if the Customer can prove that notwithstanding its compliance with its obligation to make data back-ups the data was lost.

The Clearstream Banking AG shall assume no liability for damage of any kind resulting from the Customer's failure to install CASCADE-PC or subsequent updates correctly or promptly or in accordance with the instructions of Clearstream Banking AG, or its failure to use the program in accordance with the terms of this agreement.

## **§ 10 Term of the Agreement**

The agreement shall become effective upon installation of CASCADE-PC, and is concluded for an indefinite period of time. Both parties may terminate the agreement with one month's notice. This shall not affect the right of both parties to terminate the agreement without notice for cause.

Upon termination of the agreement, the Customer is obliged to return the program in its entirety, including the manual and the other pertinent materials, and to destroy any copies immediately.

## **§ 11 General Provisions**

This agreement is the exclusive statement of all rights and obligations of the contracting parties. Amendments shall be effective only when made in writing. This also applies to any waiver of this requirement of the written form.

The place of jurisdiction for all disputes arising out of this agreement is Frankfurt am Main.

Should individual provisions of this agreement be invalid or become invalid due to a subsequent change in circumstances, or should this agreement be incomplete, this shall not affect the validity of the remaining provisions. In place of the invalid or incomplete provision, an appropriate provision shall apply which corresponds as closely as possible to that which the parties would have intended, had they considered the point.