



## End-User License Agreement ("Agreement")

Last updated: March 30, 2021

This End-User License Agreement ("Agreement") is between You (both the individual installing, downloading and/or using the Program and any single legal entity on behalf of which such individual is acting) ("You" or "Your") and Comprehensive Adult Student Assessment Systems, Inc. (hereinafter "CASAS," "Our," "Us" or "We").

IT IS IMPORTANT THAT YOU READ CAREFULLY AND UNDERSTAND THIS AGREEMENT. BY CLICKING THE "I ACCEPT" BUTTON LOCATED AT THE BOTTOM OF THIS AGREEMENT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT AND DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, CLICK THE "I DO NOT ACCEPT" BUTTON. IF YOU DO NOT ACCEPT THIS AGREEMENT, YOU WILL NOT BE REGISTERED TO USE OR PERMITTED ACCESS TO THE OBJECT CODE, DOCUMENTATION AND UPDATES ASSOCIATED WITH THE CASAS TOPSPRO™ ENTERPRISE SOFTWARE (HEREINAFTER COLLECTIVELY "APPLICATION").

The Application is licensed, not sold, to You by CASAS for use strictly in accordance with the terms of this Agreement.

### License

CASAS grants You a revocable, non-exclusive, non-transferable, non-sublicensable, limited license to download, install and use the Application on Your own systems and solely for the purpose of accessing, managing, tracking and reporting on data and outcomes involving Your own students and training programs.

### Application Restrictions

You agree not to, and You will not permit others to:

- (i) license, re-license, sub-license, sell, rent, lease, assign, distribute, transmit, host, outsource, disclose, use the Application for any third party training program or use the Application for the benefit of any student enrolled in any other school district, school agency or school (other than You) or otherwise commercially exploit the Application or make the Application available to any third party;
- (ii) copy or use the Application for any purpose other than as permitted by the License section above;
- (iii) modify, make derivative works of, disassemble, decrypt, reverse compile or reverse engineer any part of the Application;
- (iv) use any aspect of the Application to develop or attempt to develop one's own software that is substantially similar to or performs a substantially similar function of the Application; or
- (iv) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of CASAS or its affiliates, partners, suppliers or the licensors of the Application.



(v) transfer, export or otherwise provide data containing CASAS next test recommendations or diagnostic test results related to CASAS competencies, task areas and/or content standards to any 3<sup>rd</sup> party application without the express written consent of CASAS.

### **Intellectual Property**

You acknowledge that the Application and any derivative works thereof is legally protected by the U.S. copyright and other intellectual property laws, and all right, title and interest including all copyrights, patents, trademarks, trade secrets and other intellectual property rights associated with the Application are, and shall always remain, the sole and exclusive property of CASAS. You acknowledge that You do not acquire any rights, express or implied, in the Application other than those rights expressly granted You under this Agreement.

### **Data and Data Restrictions**

You will retain all right, title and interest in and to data created by Your use or operation of the Application, including, without limitation, any student data ("Data"). We make no claim of ownership to the Data but You agree to provide CASAS with access to such Data. Accordingly, You hereby grant to CASAS and Our suppliers the right to use such Data solely to test and enhance the Application but not to share or use the Data for any other purpose, including for any commercial purpose. You also represent and warrant to Us that (i) You have obtained all legal right, power, permission and authority to share with Us the Data for this purpose and (ii) We are not receiving such Data in violation of any law or regulation or in violation of the rights of any person.

If You are a school district that is also a member of a consortium of districts, You are permitted the right to share any Data created by Your use or operation of the Application with other consortium members but You agree that under no circumstances shall You ever sell or attempt to sell such Data to others.

### **Modifications to Application**

CASAS reserves the right to modify, suspend or discontinue, temporarily or permanently, the Application or any service to which it connects, with a minimum of 30 days notice and without liability to You.

### **Updates to Application**

CASAS may from time to time provide enhancements or improvements to the features/functionality of the Application, which may include patches, bug fixes, updates, upgrades, new releases and other modifications ("Updates").

Updates may modify or delete certain features and/or functionalities of the Application. You agree that CASAS has no obligation to (i) provide any Updates, or (ii) continue to provide or enable any particular features and/or functionalities of the Application to You.

You further agree that all Updates will be (i) deemed to constitute an integral part of the Application, and (ii) subject to the terms and conditions of this Agreement.



### Third-Party Services

The Application may display, include or make available third-party content (including data, information, applications and other products services) or provide links to third-party websites or services ("Third-Party Services").

You acknowledge and agree that CASAS shall not be responsible for any Third-Party Services, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. CASAS does not assume and shall not have any liability or responsibility to You or any other person or entity for any Third-Party Services.

Third-Party Services and links thereto are provided solely as a convenience to You and Your access and use of them is entirely at Your own risk and subject to such third parties' terms and conditions.

### Privacy Policy

CASAS collects, stores, maintains, and shares information about You in accordance with its Privacy Policy, which is available at <https://www.casas.org/about-casas/privacy-and-copyright-policy>. By accepting this Agreement, You also acknowledge that You hereby agree and consent to the terms and conditions of our Privacy Policy.

### Term and Termination

This Agreement shall remain in effect until terminated by You or CASAS.

CASAS may, in its sole discretion, at any time and for any or no reason, suspend or terminate this Agreement with or without prior notice.

This Agreement will terminate immediately, without prior notice from CASAS, in the event that You fail to comply with any provision of this Agreement. You may also terminate this Agreement by deleting the Application and all copies thereof from Your mobile device or from Your computer.

Upon termination of this Agreement, You shall cease all use of the Application and delete all copies of the Application from Your mobile device or from Your computer.

Termination of this Agreement will not limit any of CASAS' rights or remedies at law or in equity in case of breach by You (during the term of this Agreement) of any of Your obligations under the present Agreement.

Except for the license granted herein and as expressly provided herein, the terms of this Agreement shall survive termination.

### Indemnification

You agree to indemnify and hold CASAS and its parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors (if any) harmless from any claim or demand, including reasonable attorneys' fees, due to or arising out of Your: (a) use of the Application; (b) violation of this Agreement or any law or regulation; or (c) violation of any right of a third party.



## Online System

### No Warranties

THE APPLICATION IS PROVIDED TO YOU “AS IS” AND “AS AVAILABLE” AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, CASAS, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. Without limitation to the foregoing, CASAS provides no warranty or undertaking, and makes no representation of any kind that the Application will meet Your requirements, achieve any intended results, be compatible or work with any other software, applications, systems or services, operate without interruption, meet any performance or reliability standards or be error free or that any errors or defects can or will be corrected.

Without limiting the foregoing, neither CASAS nor any CASAS' provider makes any representation or warranty of any kind, express or implied: (i) as to the operation or availability of the Application, or the information, content, and materials or products included thereon; (ii) that the Application will be uninterrupted or error-free; (iii) as to the accuracy, reliability, or currency of any information or content provided through the Application; or (iv) that the Application, its servers, the content, or e-mails sent from or on behalf of CASAS are free of viruses, scripts, trojan horses, worms, malware, timebombs or other harmful components.

Some jurisdictions do not allow the exclusion of or limitations on implied warranties or the limitations on the applicable statutory rights of a consumer, so some or all of the above exclusions and limitations may not apply to You.

### Limitation of Liability

Notwithstanding any damages that You might incur, the entire liability of CASAS and any of its suppliers under any provision of this Agreement and Your exclusive remedy for all of the foregoing shall be limited to the amount actually paid by You for the Application.

To the maximum extent permitted by applicable law, in no event shall CASAS or its suppliers be liable for any special, incidental, indirect, punitive or consequential damages whatsoever (including, but not limited to, damages for loss of profits, for loss of data or other information, for business interruption, for personal injury, for loss of privacy arising out of or in any way related to the use of or inability to use the Application, third-party software and/or third-party hardware used with the Application, or otherwise in connection with any provision of this Agreement), even if CASAS or any supplier has been advised of the possibility of such damages and even if the remedy fails of its essential purpose.

Some states/jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to You.

The parties acknowledge that the limitation of liability in this Section and in the other provisions of this Agreement and the allocation of risk herein are an essential element of the bargain between the parties, without which CASAS would not have entered into this Agreement.



### **Severability**

If any provision of this Agreement is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

### **Waiver**

Except as provided herein, the failure to exercise a right or to require performance of an obligation under this Agreement shall not effect a party's ability to exercise such right or require such performance at any time thereafter nor shall a waiver of a breach constitute waiver of any subsequent breach.

### **For U.S. Government End Users**

The Application and related documentation are "Commercial Items", as that term is defined under 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used under 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. In accordance with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

### **Export Compliance**

You may not export or re-export the Application except as authorized by United States law and the laws of the jurisdiction in which the Application was obtained.

In particular, but without limitation, the Application may not be exported or re-exported (a) into or to a nation or a resident of any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List.

By installing or using any component of the Application, You represent and warrant that You are not located in, under control of, or a national or resident of any such country or on any such list.

### **Amendments to this Agreement**

CASAS reserves the right, at its sole discretion, to modify or replace this Agreement at any time. If a revision is material we will provide at least 30 days' general notice posted on the CASAS web site prior to any new terms taking effect. What constitutes a material change will be determined at our sole discretion.

By continuing to access or use our Application after any revisions become effective, You agree to be bound by the revised terms. If You do not agree to the new terms, You are no longer authorized to use the Application.



### **Governing Law**

The laws of California, United States, excluding its conflicts of law rules, shall govern this Agreement and Your use of the Application. Your use of the Application may also be subject to other local, state, national, or international laws. In the event of any controversy, claim or dispute between the parties arising out of or relating to this Agreement, such controversy, claim or dispute may be tried solely in a state or federal court for San Diego County, California, and the parties hereby irrevocably consent to the jurisdiction and venue of such courts.

This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

### **Contact Information**

If You have any questions about this Agreement, please contact us.

### **No Assignment**

You may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of CASAS. Any purported assignment, transfer or delegation by You will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

### **Entire Agreement**

The Agreement constitutes the entire agreement between You and CASAS regarding Your use of the Application and supersedes all prior and contemporaneous written or oral agreements between You and CASAS.

You may be subject to additional terms and conditions that apply when You use or purchase other CASAS's services, which CASAS will provide to You at the time of such use or purchase.