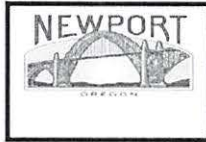


3624



AUTHORIZATION FOR AGREEMENTS, MOUs, OR OTHER DOCUMENTS OBLIGATING THE CITY

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Recast Software Sales Order Form Date: 03/15/2024

Statement of Purpose: Agreement to lock in discount of 7% on annual services with renewals occurring each year at the discounted rate until services are canceled.

Department Head Signature: [Signature]

Remarks, if any: Email with David Alan, amending T's and C's attached. This is reflected in the signed agreement.

City Attorney Review and Signature: Sec Attorney eo Date: 2-27-2024

Other Signatures as Requested by the City Attorney: \_\_\_\_\_

Name/Position  
Date: \_\_\_\_\_

Budget Confirmed: Signature Yes  No  N/A

Certificate of Insurance Attached: Yes  No  N/A

City Council Approval Needed: Yes  No  Date: \_\_\_\_\_

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 3-15-24

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Date posted on website: \_\_\_\_\_

## Travis Reeves

---

**From:** David Allen  
**Sent:** Tuesday, February 27, 2024 1:28 PM  
**To:** Travis Reeves  
**Cc:** Spencer Nebel; Erik Glover  
**Subject:** Re: Recast's T's and C's  
**Attachments:** recast software terms - 6.9.2023 (1) - city edits.docx

This is the first I've seen of this vendor's terms/conditions. Attached with edits in track changes in sections 5 and 15.1, but most of the provisions are technical in nature, so you'll need to review them. --David

---

**From:** Travis Reeves  
**Sent:** Monday, February 26, 2024 1:16 PM  
**To:** David Allen  
**Subject:** FW: Recast's T's and C's

Good Afternoon David,  
Attached is the Terms and Conditions for a vendors software that we use in house. They have updated the T's and C's and I told them that we can not renew till legal reviews the new ones. I don't know if Richard ever sent you the previous ones, but we have been using them for over 3 years, and this year their pricing is increasing and I the Terms are updated. Let me know what you think.

## Travis Reeves

City of Newport  
IT Director

**From:** Wayne Mathews <Wayne.Mathews@recastsoftware.com>  
**Sent:** Monday, February 26, 2024 12:45 PM  
**To:** Travis Reeves <T.Reeves@NewportOregon.gov>  
**Subject:** Recast's T's and C's

**WARNING:** This message comes from an external organization. Be careful of embedded links.

---

Good talking to you again, Travis.

Please see our T's and C's attached.

If it works for your team, I'll send over in a formal sales order with quote.

Thanks!  
Wayne.



**Recast Software, Inc.**  
 1660 Highway 100 S  
 West End Plaza – Suite 528  
 St. Louis Park, MN 55416  
 United States

**SALES ORDER FORM** for City of Newport

Offer Valid Through: 3/22/2024

Quote Number: [REDACTED]

Proposed by: Wayne Mathews

**Address Information**

**BILL TO:**

169 SW Coast Hwy  
 Newport, Oregon 97365  
 United States

**SHIP TO:**

169 SW Coast Hwy  
 Newport, Oregon 97365  
 United States

Billing Company Name: City of Newport

Prepared for:

Billing Contact Name: Jozelle Cason

Account Contact Name: Travis Reeves

Billing Email Address: j.cason@newportoregon.gov

Account Email Address: t.reeves@newportoregon.gov

**Order Details**

Contract Number:	[REDACTED]	Billing Frequency:	Annual, upfront
*Subscription Start Date:	Begins upon delivery	Payment Method:	EFT / Credit Card / Check
*Subscription End Date:		Payment Terms:	Net 30
Auto-Renew:	Yes	Currency:	USD

\*Unless specified above, the initial date of the subscription shall be the initial date you are provided access to the software and shall run through the quantity of months in this sales order.

Product	Monthly/Unit Price	Quantity/ Months	Total Price
Endpoint Insights Subscription (Up to 1000 devices)	USD 500.00	12	USD 6000.00
Right Click Tools Subscription (Up to 1000 devices)	USD 750.00	12	USD 9000.00
Privilege Manager Subscription (Up to 1000 devices)	USD 300.00	12	USD 3600.00
Application Manager Enterprise (Up to 1000 devices)	USD 416.67	12	USD 5000.00

Subtotal	USD 23600.00
Total Discount	USD 1652.00
Taxes	NOT INCLUDED
<b>Grand Total</b>	<b>USD 21948.00</b>

Prices shown above do not include any taxes that may apply. Any such taxes are the responsibility of the Customer and will appear on the final invoice.

For customers based in the United States, any applicable taxes will be determined based on the laws and regulations of the taxing authority(ies) governing the "Ship To" location provided by Customer on this Sales Order Form.

**\*Is the contracting Customer exempt from sales tax?**

No [  ]      Yes [  ]

\*If yes, provide a State Sales Tax Exemption form to [accounting@recastsoftware.com](mailto:accounting@recastsoftware.com) that demonstrates your organization is exempt from paying sales taxes on qualifying purchases and we will remove any such taxes from your upcoming invoice(s).

---

### Accounts Payable Information

Invoices for this order will be emailed automatically from [accounting@recastsoftware.com](mailto:accounting@recastsoftware.com). Please make sure this email is on an approved setting or safe senders list so notifications do not go to a junk/spam folder.

\*Invoices will be electronically sent to the Billing Email Address you provided in the Address Information section of this Sales Order Form.

**\*Is a Purchase Order (PO) required for the purchase or payment of the product(s) on this Sales Order Form?**

No [  ]      Yes [  ] Yes – Please complete below before signing

PO Number: \_\_\_\_\_

PO Amount: \_\_\_\_\_

---

### Terms & Conditions

Upon signature by Customer and Recast Software, this Sales Order Form shall become legally binding. Subscriptions are non-cancelable before their Subscription End Date.

This Sales Order Form is governed by Recast Software, Inc's Terms of Service, available online at: <https://www.recastsoftware.com/terms-of-service/> and Recast Software, Inc's Privacy Policy, available online at <https://www.recastsoftware.com/privacy-policy/>, unless (i) Customer has a written agreement executed by Recast Software, Inc. for such product(s) as referenced in the Documentation, in which case such written Recast Software Terms of Service agreement will govern or (ii) otherwise set forth herein.

---

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## Amendments to Recast Terms & Conditions

- i. In section 5 (Accounts and Authorized Users), delete "GROSS" in the last sentence.
- ii. In section 15.1 (Enforcement/Choice of Law/Choice of Forum), delete "Minnesota" in sentences 3 and 5 and replace with "Oregon".

---

By signing this agreement, I certify that I am authorized to sign on behalf of City of Newport and agree to the Terms and Conditions of this Sales Order Form and any documents incorporated herein.

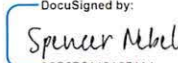
### Recast Software Inc.

Authorized Signature:   
Name: **Rod O'Connor**

Title: **President**

Date: **3/15/2024**

### City of Newport

Authorized Signature:   
Name: **Spencer Nebel**

Title: **City Manager**

Date: **3/15/2024**



# RECAST SOFTWARE

Recast Software, Inc.

1660 Highway 100 S

West End Plaza – Suite 528

St. Louis Park, MN 55416

United States

Quote Number: [REDACTED]

Client: City of Newport

Address: 169 SW Coast Hwy, Oregon 97365, United States

Prepared for: Travis Reeves

Email: t.reeves@newportoregon.gov

Quote Expiration Date: March 22, 2024

Prepared by: Wayne Mathews

[wayne.mathews@recastsoftware.com](mailto:wayne.mathews@recastsoftware.com)

### Order Details

Subscription Start Date	Begins upon delivery	Payment Method	Credit Card, ACH/Wire, Check
Subscription End Date		Payment Terms	Net 30
Maximum Device Count		Currency	USD

Product(s)	Rate	Quantity	Term (in Months)	Discount	Total
Right Click Tools Subscription (Up to 1000 devices)	\$750.00	1,000	12	7%	\$8,370.00
Endpoint Insights Subscription (Up to 1000 devices)	\$500.00	1,000	12	7%	\$5,580.00
Application Manager Enterprise (Up to 1000 devices)	\$416.67	1,000	12	7%	\$4,650.00
Privilege Manager Subscription (Up to 1000 devices)	\$300.00	1,000	12	7%	\$3,348.00
				Subtotal	\$23,600.00
				Discount	\$1,652.00
				Taxes	Not Included
				Grand Total	\$21,948.00

### Terms & Conditions

This Quote Form is governed by Recast Software, Inc.'s Terms of Service, available online at: <https://recastsoftware.com/terms-of-service> and Recast Software, Inc.'s Privacy Policy, available online at <https://recastsoftware.com/privacy-policy>.

Prices shown above do not include any taxes that may apply. Any such taxes are the responsibility of the Customer and will appear on the final invoice. For customers based in the United States, any applicable taxes will be determined based on the laws and regulations of the taxing authority(ies) governing the 'Ship To' location provided by Customer on the final invoice.

Discount shown



**Wayne Mathews**

Account Executive at Recast Software

Mobile 512-757-0011

Email: [wayne.mathews@recastsoftware.com](mailto:wayne.mathews@recastsoftware.com)

Website [www.recastsoftware.com](http://www.recastsoftware.com)



RECAST SOFTWARE

**Webinar**

**Recast Software 5.4:**  
Leading the way in Patch  
and IT Management

February 28 at 10AM CT

**REGISTER NOW**

**MARTY MILLER,**  
Sr. Manager  
Solution Engineering

**AMANDA PUFALL-NOWAK**  
Head of Product

**RECAST SOFTWARE, INC.**  
**Terms of Service**

**Effective Date:** June 9, 2023

These Terms of Service (together with any documents referred to in them) (collectively, these “Terms”) are between you and Recast Software, Inc. (“Recast,” “we,” “us,” or “ours”). These terms govern your license and use of the Software you download or access from Recast.

**By Using the Software, you agree to be bound by these Terms and our Privacy Policy (<https://www.recastsoftware.com/privacy-policy/>). If you are entering into these Terms on behalf of an entity, you represent that you have authority to bind that entity. If you do not have such authority or you do not agree to these Terms, neither you nor the entity may use the Software.**

- 1. Grant of License.** Conditioned upon compliance with these Terms, Recast grants to you a nonexclusive, nontransferable, limited license, without right to sublicense, to use and access, for your internal business purposes only, that Recast makes available for download or access (the “Software”), including all bug fixes, error corrections, improvements, modifications, revisions and updates to the Software that Recast makes available to you (“Updates”), along with related written information (whether contained in user or technical manuals, training materials, specifications or otherwise) specifically pertaining to the Software and made available by Recast with the Software (“Documentation”) and any associated services provided by Recast (“Services”). You are permitted to make copies of the Software under the following conditions: (a) you limit your use of the Software to use on a computer, tablet, smartphone, or any other electronic device (“Device”) that you own or lease; and (b) unless otherwise provided in the Documentation, make and use additional copies solely for backup purposes, where backup is limited to archiving for restoration purposes. You may grant access to the Software to your employees or contractors that you authorize to use the Software and register by name as registered users (“Users”). To use the Software, you must provide a Device and software necessary to use the Software, including, but not limited to, an operating system compatible with the Software. You are responsible for ensuring that your Device and software do not disturb or interfere with the operation of the Software. If any Update requires changes in your Device or software, you must implement these changes at your own expense. Unless explicitly stated otherwise, any Updates shall be subject to these Terms. For purposes of this Agreement, “Affiliate” means any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, you. You may permit use of the Software by your Affiliates, provided that such use is in compliance with this Terms and any applicable sales order.
- 2. Your Representations.** You represent and warrant that (a) you are the owner of any content, data, or other information stored, shared, collected, or otherwise submitted by you on the Software; and (b) you shall use the Software only for lawful purposes, and will comply at all times with all applicable federal, state, and local laws and regulations.
- 3. Restrictions.** You specifically agree not to: (a) transfer, assign or sublicense your license to another person or entity and you acknowledge that any attempted transfer, assignment, sublicense or use shall be void; (b) make error corrections to, or otherwise modify or adapt the Software, or to create derivative works based upon the Software, or permit third parties to do the same;



(c) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction; (d) use or permit the Software to be used for commercial use (beyond its general use by you in the operation of your business) or to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Recast; (e) disclose, provide, or otherwise make available trade secrets contained within the Software in any form, to any third party without the prior written consent of Recast; (f) use any automated or manual process to interfere with, modify, or attempt to interfere with or modify the Software or (g) use the Software to develop any software application or similar products and services.

4. **Ownership and Rights of Use.** Recast and/or its licensors, if applicable, own all intellectual property rights in and to the Software, including, without limitation, all copyrights in the Software (including the look and feel), trademarks, trade dress, and trade secrets. You acknowledge that the Software contains trade secrets of Recast, its suppliers, or licensors, including but not limited to, the specific internal design and structure of individual programs and associated interface information. Your rights to use the Software are limited to those expressly granted by these Terms. You are granted no implied licenses to any other intellectual property rights other than as specifically granted herein. Recast shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate in the Software any suggestion, enhancement requests, recommendations or other feedback provided by you, including Users, relating to the operation, features or functionality of the Software.
5. **Accounts and Authorized Users.** The Software may require activation via a license key. Each User will log into the Software with an email address and password and each User is responsible for the security of their password. You are responsible for ensuring all Users are authorized to access the Software, and are informed of, and abide by, these Terms. If Recast becomes aware of unauthorized access or use of the Software by any third party using an unauthorized username, password, or other login credentials, Recast may suspend or terminate access to the Software. UNLESS CAUSED BY RECAST'S GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, RECAST EXPLICITLY DISCLAIMS ALL LIABILITY FOR ANY LOST, STOLEN, OR DELETED CONTENT, DATA, OR OTHER INFORMATION STORED, SHARED, COLLECTED, OR OTHERWISE SUBMITTED BY USERS, INCLUDING ANY DATA DELETED REMOTELY DUE TO THE COMPROMISE OF A PASSWORD, ACCOUNT CREDENTIALS OR ACCESS TO YOUR EMAIL ACCOUNT.
6. **Term and Termination.** The term commences upon acceptance of these Terms and remains in effect for the term specified in a sales order or until the Software is uninstalled as specified in Section 7 (the "Subscription Term"). Each Subscription Term shall automatically renew for an additional 12-month terms, unless either party gives the other 45 days' notice of non-renewal before the end of the relevant subscription term. Pricing (not including prior term incentives) during any such renewal term shall automatically increase by 5 percent over the prior term unless we provide written notice of an additional pricing increase at least 90 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal. All renewals are also considered the "Subscription Term." If either party breaches these Terms and fails to cure such breach within 30 days after written notice thereof, the other party shall have the right to terminate these Terms (including all Sales Orders) with written notice. Upon termination: (a) all Software licenses shall immediately terminate, and you shall, and shall ensure all Users shall, immediately cease use of all Software; (b) you shall delete or destroy all copies of the Software;

and (c) you shall pay any fees past due. **“Customer Data”** means all electronic data or information submitted or collected by the Software during the Subscription Term that is stored or hosted in Recast’s systems, but it specifically excludes: (i) any suggestion, enhancement request, or feedback provided by You, including Users, relating to the operation, features or functionality of the Software; (ii) account or usage information stored in our relationship management, accounting, and support systems; (iii) information collected when only using the Community Edition (iv) and any de-identified or aggregated information. Recast shall have no obligation to maintain and provide any Customer Data to You and shall delete Customer Data within 90 days after the Subscription Term termination date in Recast’s systems, unless legally prohibited.

7. **Right Click Tools Software Terms.** This provision applies only to the Right Click Tools software licensed by Recast. **“Community Edition”** means the free version of the Right Click Tools software that Recast makes available to download from [www.recastsoftware.com](http://www.recastsoftware.com). **“Enterprise Edition”** means the upgraded version of the Right Click Tools software that Recast makes available to download for a fee from [www.recastsoftware.com](http://www.recastsoftware.com). For the Enterprise Software, Recast will deliver the initial access credentials that allow you to create an account through [www.recastsoftware.com](http://www.recastsoftware.com) and download the Enterprise Software. The Community Edition may include a 30-day trial period of Recast Enterprise Software. Upon expiration of the subscription term for the Enterprise Edition, you may continue to use the Community Edition in accordance with these Terms. Your license to the Community Edition remains in effect until you uninstall the Software and delete all copies of the Software.
8. **Pilot Specific Terms.** In the event that Recast provides you with access to Software under a limited trial term (a **“Pilot License”**), Sections 6, 9, 13 and 14.6 will not apply to the Pilot License. The Pilot License will have a term of 30 days and no fees will be due to Recast for access to Software under a Pilot License. Recast may terminate a Pilot License at any time upon written notice to you.
9. **Fees.**
  - 9.1 **Subscription Fee.** You shall pay all fees specified in Sales Order, as applicable. All fees are quoted and payable in United States dollars unless specified differently in the Sales Order. All payment obligations are non-cancellable, and fees paid are not refundable.
  - 9.2 **Invoicing and Payment.** You are responsible for providing complete and accurate billing information. Invoices are made in advance, either annually or in accordance to alternative billing frequency specified in the Sales Order. Invoices are due net 30 days unless stated otherwise in the Sales Order. Any terms and conditions on any purchase order shall not be deemed a part of these Terms or binding on Recast.
  - 9.3 **Overdue Charges and Software Suspension.** If you owe any amount that is more than 30 days overdue, then at Recast’s discretion, a late fee equal to the minimum of 1.5% of the outstanding balance per month, or maximum rate permitted by law, may be applied until the date paid. Recast, without limiting its other rights and remedies, may suspend access to Software upon written notice until amounts are paid in full if any amount due is more than 60 days overdue.
  - 9.4 **Taxes.** Unless otherwise stated, Recast fees and expenses do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to

value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with your purchases.

**10. Confidentiality.**

**10.1 Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information.

**10.2 Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (a) the Receiving Party shall only use the Confidential Information for the purposes set forth in these Terms, (b) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) to protect the Confidential Information of the Disclosing Party, and (c) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, vendors, contractors, and agents who need such access for purposes consistent with these Terms and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

**10.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**11. Warranty.** THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED BY RECAST. RECAST DOES NOT WARRANT THAT THE SOFTWARE OR ASSOCIATED DOCUMENTATION WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE AND SERVICES IS WITH YOU. RECAST EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY THIRD-PARTY SOFTWARE PRODUCTS OR DEVICES THAT MAY COMMUNICATE WITH THE SOFTWARE. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES SO THIS EXCLUSION MAY NOT APPLY TO YOU.

- 12. Limitation of Liability.** IN NO EVENT WILL RECAST BE LIABLE TO YOU FOR ANY LOST PROFITS, LOST SAVINGS, LOST DATA, UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, LOST REVENUE, BUSINESS INTERRUPTION, LOSS OF CAPITAL OR OTHER SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THESE TERMS, THE SOFTWARE, THE SERVICES OR THE USE THEREOF, EVEN IF RECAST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE AGGREGATE LIABILITY OF RECAST UPON ANY AND ALL CLAIMS HOWSOEVER ARISING OUT OF OR RELATING TO THESE TERMS, THE SOFTWARE OR THE SERVICES WILL IN ANY EVENT BE ABSOLUTELY LIMITED TO THE LICENSE FEE ACTUALLY PAID BY YOU DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM, LEGAL ACTION OR DAMAGE UNDER ANY SALES ORDER TO WHICH THE CLAIM RELATES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THESE LIMITATIONS MAY NOT FULLY APPLY TO YOU. No claim, regardless of form, which in any way arises out of these Terms, may be made or brought by you more than two years after the basis for the claim becomes known to you.
- 13. Indemnification.** Recast shall indemnify, defend and hold you harmless from and against any and all third party claims against you alleging that the use of the Software as permitted herein by you constitutes an infringement of any US patent, copyright, trademark or other intellectual property right subject to (a) you giving Recast sole control of the defense of such claim, (b) you providing Recast all reasonable assistance and cooperation in the defense of such claim, at Recast's expense for such assistance, and (c) you not settling any claim without Recast's prior written consent. If the Software (except for third party products) is held to, or may, constitute a misappropriation or infringe upon any US patent, trademark, copyright, trade secret or other intellectual property of any third party, and your use of such Software is enjoined or interfered with in any manner, Recast shall, at its option and sole expense, within the shortest time period practical, either procure for you the right to continue using such Software, or modify or replace such Software with a non-infringing Software of equivalent or better functionality or terminate these Terms with no penalty to you. THE REMEDIES IN THIS SECTION ARE YOUR SOLE REMEDY AND RECAST'S EXCLUSIVE LIABILITY FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT.
- 14. Services Provider Terms.** "Service Provider" means an organization, which provides services for its own customers ("Sub Customers") and may use the Software or Services as a part of its own services or provide services to its own customer in other ways. Service Providers may use the Software or Services as part of its own services but the Software or Services cannot be modified in any way. Service Providers will provide information to Recast regarding customers who are entitled to enroll as Sub Customers. Service Provider is responsible for usage of the Software and Services and compliance with its agreement with Recast, including compliance with these terms by its Sub Customers. Recast has right to unenroll a Sub Customer without any notification if Service Provider neglects this responsibility. Recast shall invoice Service Provider and Service Provider will manage Sub Customer invoicing. This Agreement shall not limit in any way the current or future business actions between Recast and Sub Customers.
- 15. General Provisions.**
- 15.1 Enforcement/Choice of Law/Choice of Forum.** Every provision of these Terms will be construed, to the extent possible, so as to be valid and enforceable. If any provision of these Terms is held by a court of competent jurisdiction to be invalid, illegal or otherwise

unenforceable, such provision will be modified by a court of competent jurisdiction to be valid and enforceable while maintaining as close as possible the intent of the parties as indicated by the wording of these Terms or, if the provision cannot be so modified, deemed severed from these Terms, and all other provisions will remain in full force and effect. The laws of the State of ~~Minnesota~~Oregon, excluding its conflicts of law rules, govern these Terms and your use of the Software. Your use of the Software may also be subject to other local, state, national, or international laws. Any action between the parties will be venued in a state or federal court situated within the state of ~~Minnesota~~Oregon, and you irrevocably submit yourself to the personal jurisdiction of such courts for such purpose. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms, nor does any enactment of the Uniform Computer Information Transactions Act.

- 15.2 No Waiver.** The failure by Recast at any time to enforce any of the provisions of these Terms or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, will not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of these Terms. The waiver of any default by Recast will not be deemed a continuing waiver, but will apply solely to the instance to which such waiver is directed.
- 15.3 Surviving Provisions.** Sections 4 (Ownership), Sections 6-15, and any terms stated to survive in Sales Order shall survive any termination of these Terms.
- 15.4 No Joint Venture.** These Terms shall not be construed as creating or constituting any partnership, joint venture or agency relationship between the parties.
- 15.5 Assignment and Resale.** Recast may assign its rights and obligations under these Terms but your rights under these Terms are not assignable or transferable. You agree not to sell or resell the Software or any portion thereof. These Terms will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- 15.6 Customer Identification.** You agree that Recast may identify you as a customer and use your logo solely for the purpose of customer identification in sales presentations and/or marketing materials.
- 15.7 No Third-Party Beneficiaries.** No third-party beneficiaries are intended or shall be construed as created by virtue of these Terms.
- 15.8 Force Majeure.** Neither party shall be liable for delay and damage caused by an impediment beyond the party's control and which the party could not have reasonably taken into account at the time of conclusion of the Agreement and whose consequences the party could not reasonably have avoided or overcome. Such force majeure events shall include, if not proven otherwise, inter alia, war or insurrection, earthquake, flood or other similar natural catastrophe, interruptions in general traffic, data communication or supply of electricity, import or export embargo, strike, lockout, boycott or other similar industrial action. A strike, lockout, boycott or other similar industrial action shall also be considered, if not proven otherwise, a force majeure event when the party concerned is target or a party to such an action. Each party shall without delay inform the other party in writing of a force majeure event and the termination of the force majeure event.

**15.9 Entire Agreement/No Waiver.** These Terms, together with any sales order, sets forth the entire agreement and understanding between Recast and you regarding the subject matter hereof and supersedes any prior representations, advertisements, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter.

**Product Specific Terms.** These terms only apply if referenced in your sales documentation or when using the product during a trial or pilot period.

### **Supplemental Terms for Application Manager**

September 22, 2022

1. Recast will provide you with access to the Recast Application Manager services and associated software (the "**Services**") as described in the sales order between your organization and Recast. Recast shall: (a) retain the right to modify, add to or remove features to the Services; and (b) retain sole technical control and discretion with respect to the maintenance and operation of the applications that Recast has included in the Services ("**Supported Applications**"). In the event that any modifications, additions, or deletions require changes for your environment, Recast shall notify you as quickly as possible, which changes you will need to undertake at your own cost.
2. Recast will use commercially reasonable efforts to develop and maintain the collection of Supported Applications (the "**Application Catalog**") within five business days of the third party making the update available. Recast will not be liable for any damages caused by outdated applications due to delays in publishing them to the Application Catalog or your failure to install the update.
3. You are responsible to perform testing for all Supported Applications versions in your own testing operating environment, including the system requirements such as computer equipment, browser software and other third-party software and Internet access or third party devices or software requirements (the "**Operating Environment**") with all computing devices (physical or virtual) with operating system capable to run the Operating Environment ("**Endpoints**") where possible problems cannot cause problems to your production Operating Environment. You are responsible for deciding if Supported Application can be deployed to your production Operating Environment with the process defined by you and for performing required actions when Supported Application version cannot be deployed to production Operating Environment. Recast is not responsible for possible problems caused by (a) your decision not to test the compatibility; (b) your decision to deploy the Supported Application even if problem has been detected; or (c) deployment of Supported Applications in your Operating Environment. Recast will fix problems in the installation package for Supported Applications where the problem is not related to your Operating Environment.