

June 7, 2021

Coughlan Companies LLC dba Capstone
Attn: Rick Beale
1710 Roe Crest Drive
North Mankato, MN 56033

Reference: RFP#2000003265 – PreK-12 Library Databases and eBook Collections

Dear Rick Beale:

Acceptance Agreement

Contract Number: 4400010488

This acceptance agreement signifies a contract award to Coughlan Companies LLC dba Capstone for PreK-12 Library Databases and eBook Collections. The period of the contract shall be from date of award through June 30, 2026 with the option to renew for three (3) one-year periods.

The contract award shall be in accordance with:

1. This Acceptance Agreement;
2. The Terms and Conditions of RFP#2000003265, and all addenda;
3. Your proposal dated January 22, 2021;
4. The Memorandum of Negotiations and
5. The attached summarized Pricing Schedule.

Please note that this is not an order to proceed. A purchase order, which constitutes your notice to proceed, will be issued to your company. Please provide your Insurance Certificate according to Special Provisions Paragraph 20 within ten (10) days after receipt of this letter. Contract award documents may be viewed on the Fairfax County, Department of Purchasing and Supply Management website at: www.fairfaxcounty.gov/cregister.

Sincerely,

Michelle Pratt

Michelle R. Pratt
Director

MRP/trf

MEMORANDUM OF NEGOTIATION

RFP 2000003265 PreK-12 Library Databases and eBook Collections

The County of Fairfax, Fairfax County Public Schools (hereinafter called the County or FCPS) and Coughlan Companies LLC dba Capstone (hereinafter called the Contractor) hereby agree to the following in the execution of Contract 4400010488. The final contract contains the following items:

- a. Fairfax County's Request for Proposal 2000003265 and all Addenda;
- b. Coughlan Companies LLC dba Capstone Technical and Business proposal as amended by this Memorandum of Negotiations;
- c. Coughlan Companies LLC dba Capstone revised Pricing Schedule dated April 8, 2021;
- d. The Memorandum of Negotiations; and
- e. All subsequent amendments to the contract.

The following are to be included in the contract:

1. Contractor guarantees 99% uptime of all services, excluding scheduled maintenance. If 99% uptime is not maintained, the Contractor will compensate FCPS appropriately to the downtime.
2. The Contractor will give FCPS three days advanced notice of any scheduled downtime of services.
3. Attached User License Agreement.
 - a. 11. General Provisions, a. Entire Agreement is removed.

All other prices, terms, and conditions remain the same.

ACCEPTED BY:

Doug Smith
Name: Doug Smith, Proposal Specialist
Coughlan Companies LLC dba Capstone

5/11/21
Date

Noel Klimenko
Noel Klimenko, Director
PreK-12 Curriculum & Instruction

5/24/21
Date

Michelle Pratt
Michelle R. Pratt, Director
Office of Procurement Services

6/7/2021
Date

PRICING SCHEDULE

Item No.	Item Description	Unit Price
1.	Current four databases, district purchase	\$90,058.00
2.	Current four databases with 1 add-on (PebbleGO Next or Spanish), district purchase	\$117,075.00
3.	Current four databases with 2 add-on (PebbleGO Next and Spanish), district purchase	\$135,087
4.	PebbleGo Health, school purchase	\$200.00
5.	PebbleGo Spanish, school purchase	\$499.00
6.	PebbleGo Read More, school purchase	\$499.00
7.	PebbleGo Next, school purchase	\$499.00
8.	PebbleGo Health, Spanish, and Next combo, school purchase	\$800.00
9.	PebbleGo Health, Spanish, Read More, and Next combo, school purchase	\$1,200.00
10.	Capstone Connect, school purchase	\$1,000.00

Annual price increase capped at 2% based on CPI starting in the 2022-23 school year.

PebbleGo Credit with district subscription package

Bronze = \$1,299.00 Credit = \$1,700 (per school for Connect)

Silver = \$1,799.00 Credit = \$1,200.00 (per school for Connect)

Gold = \$1,999.00 Credit= \$1000.00 (per school for Connect)

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The terms and conditions contained in this document (the “Standard Terms”) and the additional terms of use listed in Capstone Digital Products (“Terms of Use”) apply to any sales made by Coughlan Companies, LLC, d/b/a Capstone of license rights to Capstone Digital Products. These Standard Terms will be binding upon electronic or written acceptance by You or an authorized representative at Your organization.

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- 4. Restrictions on Use.** You may not do any of the following, nor may you permit any of your students or faculty, or any third party, to do any of the following: (i) exceed the limited license rights granted in this Agreement including, without limitation, the sharing of passwords or other login credentials with those not given explicit rights to access and view Capstone Digital Products under this Agreement; (ii) remove any proprietary notices, labels, or marks from Capstone Digital Products, (iii) sell, transfer, lend, lease, license, or sublicense Capstone Digital Products, (iv) copy, distribute, display, perform, modify, or create derivative works from Capstone Digital Products or circumvent any digital rights management or copyright management protection associated with Capstone Digital Products, or (v) translate, reverse engineer, decompile or disassemble Capstone Digital Products or the hardware, executable software, software source code, or any other technology used as a means for delivering the Capstone Digital Products or securing Capstone’s rights in the Capstone Digital Products including without limitation any digital rights management or copyright protection. In addition, you agree and are responsible for ensuring that neither you nor your students or faculty will use any website, ftp site, media, or other methods or materials provided by Capstone for your access and viewing of Capstone Digital Products for any purpose beyond that which is explicitly contemplated in this Agreement.
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11. General Provisions.

- a. ~~**Entire Agreement.** This Agreement and the related documents referenced herein constitute the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous written or oral agreements between the parties with respect to such subject matter.~~
- b. **No Waiver.** No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default.
- c. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable, that provision will be enforceable to the maximum extent permissible, and the other provision of the Agreement will remain in force.
- d. **Force Majeure.** Either party will not be liable for, nor will be considered to be in breach of or default under, this Agreement on account of any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond the party's reasonable control and that either party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, Capstone will give prompt notice to you and will use commercially reasonable efforts to minimize the impact of the event. This clause in no way abrogates or limits the Disclaimer of Warranty, Limitation of Liability, and Indemnification provisions otherwise set forth in this Agreement.
- e. **Enforcement.** If You are a publicly funded, non-profit educational institution, this Agreement will be governed by the internal laws of the State in which You are situated, without regard to its 'conflicts of laws' rule. In all other cases, this Agreement will be governed by the internal laws of the State of Minnesota.
- f. **Assignment.** Your rights under this Agreement are not assignable or transferable (by operation of law or otherwise). This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No third-party beneficiaries are intended or shall be construed as created by virtue of this Agreement, including without limitation, the parties agree that Your students and faculty are not third-party beneficiaries to this Agreement.
- g. **Student Data.** Capstone does not collect any personally identifiable information (PII) or data through the Capstone Digital Products contemplated under this Agreement.
- h. **Modifications to Agreement.** Capstone reserves the right to make any necessary changes, modifications, or updates to this Agreement. Should Capstone make any changes to this Agreement, customer will be required to agree to the updated terms and accept the updated Agreement before continued use of the product.
- i. **General Contact Information.** If you have any questions about this Agreement, you may contact Capstone as the following address:

DS
5/11/21



1710 Roe Crest Drive
North Mankato, MN 56003
Email: support@capstonepub.com; legal@capstonepub.com
Fax: 1- 888-262-0705

Pursuant to section 1 above, the terms set forth in this Agreement shall be deemed accepted by the parties upon the earliest of:

- i. Your installation, access, or use of Capstone Digital Products or.
- ii. Your execution of this Agreement.

You/Your (subscriber acknowledgment):

Signed: Michelle Pratt

Printed Name: Michelle Pratt

Title: Director, Office of Procurement Services

Entity: Fairfax County Public Schools

Date: 6/7/2021