

DIGITAL LICENSE AGREEMENT

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

AGREEMENT

This Digital License Agreement (the "Agreement") is a legal Agreement between You and Coughlan Companies, LLC d/b/a Capstone, on behalf of itself, its subsidiaries, affiliated companies, joint venturers, business partners, licensors, employees, agents, and third-party information providers ("Capstone"). The parties agree as follows:

AS USED IN THIS AGREEMENT, "YOU" AND "YOUR" REFER TO THE ENTITY RECEIVING THE RIGHT TO USE THE CAPSTONE DIGITAL PRODUCT. THE INDIVIDUAL EXECUTING THIS AGREEMENT DOES SO ON BEHALF OF SUCH ENTITY AND NOT IN HIS OR HER INDIVIDUAL CAPACITY. YOU REPRESENT THAT THE PERSON EXECUTING THIS AGREEMENT IS DULY AUTHORIZED TO BIND YOU TO THE TERMS OF THIS AGREEMENT.

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- 1. Acceptance of Terms.** 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 the Capstone Digital Product, its Product, and any related documentation (in whole or in part, the "Capstone Digital Product") or; (ii) Your execution of this Agreement.
- 2. Grant of License.** Capstone grants to You, Your students, Your faculty and building Guests, for the term of this Agreement, a non-exclusive, non-transferable and non-assignable Building Specific Site License to access and view Capstone Digital Products solely for Your internal, non-commercial use in connection with their

studies and work at the Building and in accordance with the terms of this Agreement, in the United States and worldwide. “Building Specific Site License” shall mean that this license is strictly limited to a site license granted to you on a per building basis. This Building Specific license allows all of Your students that attend and faculty that work in the licensed Building identified by You when purchasing this license, to access and view the Capstone Digital Product. Those students and faculty of the identified Building may also view and access the Capstone Digital Product at home. Individuals who do not remain students or faculty of the Building shall have no ongoing right to view or access the Capstone Digital Product. In the case of consortium, district, regional center, state or other entities consisting of multiple institutional Buildings of any type, a site license is required for each Building with students or faculty accessing or viewing the Capstone Digital Product. For the purposes of clarity, a “Building” is defined as having a unique mailing address and principal, director or manager. You are solely responsible for providing the required facilities, hardware, software (including third-party software), services and systems (including telecommunications and bandwidth, electrical and physical systems), for You, Your students and Your faculty to access and view the Capstone Digital Product.

- 3. Payment.** By entering into this Agreement, you agree to be bound by the payment terms set forth by Capstone for the license granted to the Capstone Digital Product. Failure to abide by the payment terms set forth by Capstone may, at Capstone’s discretion, automatically terminate this Agreement including without limitation all of your license rights to the Capstone Digital Product. Any acceptance of partial payment, reduced payment, or late payment by Capstone shall not constitute a waiver as to Capstone’s right to recover full amounts due under the payment terms and Capstone’s right to terminate this Agreement for non-payment.
- 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 Product under this Agreement; (ii) remove any proprietary notices, labels, or marks from Capstone Digital Product, (iii) sell, transfer, lend, lease, license, or sublicense Capstone Digital Product, (iv) copy, distribute, display, perform, modify, or create derivative works from Capstone Digital Product or circumvent any digital rights management or copyright management protection associated with the Capstone Digital Product, or (v) translate, reverse engineer, decompile or disassemble Capstone Digital Product or the hardware, executable software, software source code, or any other technology used as a means for delivering the Capstone Digital Product or securing Capstone’s rights in the

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- 5. Ownership.** As between you and Capstone, Capstone is the owner of all Intellectual Property rights in and to Capstone Digital Product and any information, suggestions, comments, or other materials You, Your students, or Your faculty submit to Capstone. “Intellectual Property” shall mean all of the following, arising under equity or law, whether or not filed, perfected, registered or recorded anywhere in the world: all patents and applications for patents; all copyrights, copyright registrations and copyright applications, copyrightable works, and all other corresponding rights; all trade dress and trade names, logos, trademarks and service marks and related registrations and applications, all other indicia of commercial source or origin, and all goodwill associated with any of the foregoing; and, all trade secrets and confidential information of any kind. The license granted under this Agreement is not a sale of Capstone Digital Product or any copy of Capstone Digital Product and does not grant you any ownership rights to or in any copies of Capstone Digital Product. Ownership of Capstone Digital Product and copies thereof will at all times remain with Capstone (or its licensors), regardless of who may be deemed the owner of the tangible media in or on which Capstone Digital Product may be copied, encoded or otherwise fixed.
- 6. Duration of Access to Capstone Digital Product.** Capstone will provide access to the Capstone Digital Product in a form and format that is in the sole discretion of Capstone. Due to licensing restrictions, Capstone reserves the right to remove, modify or replace the Products of the Capstone Digital Product in its sole discretion.

 - a. Under a Subscription License:** In the event that a content must be removed from the Capstone Digital Product, You, the customer, will remain whole and in possession of that content until the end of Your annual subscription, at which time the content will be removed from the Capstone Digital Product.
 - b. Under a Perpetual License:** In the event that content must be removed from the Capstone Digital Product, You, the customer, will remain whole.
- 7. Term & Termination.** This Agreement will terminate automatically and immediately in the event that You violate any provision of this Agreement. On termination, You must destroy all copies of the Capstone Digital Product in Your

possession or control, cease any and all attempts at accessing or viewing Capstone Digital Product by You, Your students and Your faculty, and upon Capstone's request, you shall provide written and signed certification of such destruction.

- a. **Under a Subscription License:** This Agreement will begin on the Order Date and will, unless earlier terminated in accordance with this section, continue in effect until, with respect to Subscription Software, the end of the last Subscription Term covered by this Agreement. You shall be responsible for any and all fees charged by Capstone for the license granted under this Agreement and for any subsequent renewals.
- b. **Under a Perpetual License:** The material contemplated under this Agreement shall be granted to You as a Perpetual License. For purposes of this Agreement, a 'Perpetual License' to the Capstone Digital Product shall mean that the material will be made available to You for as long as said material is owned, maintained and made available by Capstone in the form of the Capstone Digital Product purchased under this Agreement.

8. Disclaimer of Warranties. CAPSTONE DIGITAL PRODUCT AND ALL METHODS AND MEDIA THROUGH OR ON WHICH IT IS PROVIDED INCLUDING WITHOUT LIMITATION ANY HOSTING OR PROVISION OF CAPSTONE DIGITAL PRODUCT THROUGH THE INTERNET IS PROVIDED BY CAPSTONE AND ACCEPTED BY YOU "AS IS," "WITH ALL FAULTS," AND WITHOUT ANY WARRANTY WHATSOEVER. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED BY CAPSTONE. CAPSTONE DOES NOT WARRANT THAT THE ACCESS TO CAPSTONE DIGITAL PRODUCT OR CAPSTONE DIGITAL PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT ANY WEBSITE OR SERVER THAT MAKES CAPSTONE DIGITAL PRODUCT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. CAPSTONE DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING USE, OR THE RESULT OF USE, OF THE CAPSTONE DIGITAL PRODUCT IN TERMS OF ACCURACY, RELIABILITY, OR OTHERWISE. THE CAPSTONE DIGITAL PRODUCT MAY INCLUDE TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS.

9. Limitation of Liability. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, CAPSTONE WILL NOT BE LIABLE FOR ANY LOSS OR

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10. Indemnification. To the extent permitted by applicable law, You are legally responsible for any inappropriate access, viewing, or other misuse of Capstone Digital Product that occurs in violation of, or outside of, the rights granted in this Agreement whether by you, your students, your faculty, or any third party that gains access to the Capstone Digital Product by or through your, your students', or your faculties' actions or inactions (collectively "Inappropriate Behavior"). Unless You are a publicly funded, non-profit educational institution and therefore unable to legally indemnify Capstone, to the extent permitted by applicable law, You agree to indemnify, defend and hold harmless Capstone, its officers, directors, and employees from and against any and all claims, losses, expenses, damages (including, but not limited to, direct, indirect, incidental, consequential, and exemplary damages), liabilities, and costs (including reasonable attorneys' fees, expert fees, and other litigation or investigation costs), whether for defense or prosecution of any of Capstone's, or Capstone's licensors', Intellectual Property rights or other rights under this Agreement resulting from or arising out of your use of or inability to use Capstone Digital Product, any violation by you of this Agreement, and any Inappropriate Behavior.

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. Some

Capstone Digital Product itself may contain additional terms of use. To the extent of any inconsistency between the terms of this Agreement and any additional terms of use contained in Capstone Digital Product itself, the terms and conditions of this Agreement shall control.

- 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 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 via fax (888-262-0705); mail (1710 Roe Crest Drive, North Mankato, MN 56003); or email (support@capstonepub.com; legal@capstonepub.com).