

BOARD MEETING DATE: October 15, 2024

ITEM NUMBER: VII b

RECOMMEND THAT the District Board of Trustees for North Florida College approve the attached agreement for the Welding department

- This agreement has been sent for review by the Board Attorney on 9/23/2024.

THIS RECOMMENDATION is needed to provide online curriculum for students in NFC's Welding department

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American Welding Society

AMERICAN WELDING SOCIETY  
8669 NW 36 Street  
Miami, FL 33166  
www.aws.org

### AWS CURRICULUM LICENSE AGREEMENT

This License Agreement is made and entered into as of the Effective Date below, by and between the American Welding Society, Inc. ("AWS") and North Florida College

I. ("Licensee").

AWS and Licensee agree as follows:

#### a. Definitions

(a) "Services" means the **AWS Fundamentals of Welding Curriculum**, including all learning modules, instructor accounts, the AWS learning management system, and all associated print materials. A full description is available at <https://pubs.aws.org/p/1924/aws-fundamentals-of-welding-curriculum>. The content and programs of the Services may be expanded, restricted, updated or otherwise changed by AWS in its sole discretion at any time.

(b) "Authorized Users" means those of Licensee's current employees or current students designated by Licensee who will have access to the Services.

(c) "Licensee Content" means data regarding the performance of Authorized Users, including progress reports and test/quiz results, as well as communications between Licensee and the Authorized Users. As between AWS and Licensee, Licensee will be solely responsible for the content of all Licensee Content submitted to the Service and will comply with all laws, rules and regulations relating to the use, disclosure and transmission of such Licensee Content.

#### 2. License Grant.

(a) Licensee is granted a limited, non-exclusive, non-transferable license to use and access the Services for its own internal educational purposes during the term of this Agreement. The Services may only be used by Authorized Users; Licensee shall not allow any other party to access, operate or otherwise use the Services. Licensee may permit no more than the maximum number of Authorized Users specified herein and designated by Licensee, though Licensee may change such designees without effecting a fee increase provided that the total number does remain constant.

(b) Licensee shall undertake best efforts to prevent unauthorized access to or use of the Service; shall notify AWS promptly of any such unauthorized use of which Licensee becomes aware of; and shall work cooperatively with AWS to cause such unauthorized access or use to be discontinued.

(c) Licensee may not reproduce, retransmit, distribute, disseminate, sell, license, sublicense, lease, publish, broadcast or circulate any content or other materials accessed through the Services, except for Licensee Content.

#### 3. Fees.

(a) The initial fee is an amount equal to **\$4,271.79** for 26 individuals to have print and digital access and who will be authorized Users during the one-year Term beginning on or before **January 15, 2025**. This fee is to be paid within (30) days of being invoiced. This fee shall not increase during the initial term of this Agreement. If the payment is not received by 10 days after the invoice due date, a late fee of 5% (five percent) will be assessed. Additionally, access may be revoked until payment is fulfilled. Should additional users be required by the Licensee, then a new payment at \$150.00 per additional student will be required.

(b) If Licensee receives a discount from the standard license fee due to a multi-year commitment and then terminates or abandons this Agreement prior to the end of that commitment, the discount will be discontinued retroactively to the Effective Date, and Licensee will pay AWS the difference between the discounted fees and the full standard fees for the entire period of the Agreement, up to the date of termination of this Agreement.

(c) Licensee will be responsible for payment of all applicable taxes, however designated or incurred, in connection with provision of the Services, including state and local excise, sales, withholding and use taxes.

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**4. Term and Termination.**

(a) The Term of this Agreement shall commence on the date set forth in 3(a) (the "Effective Date") and, unless sooner terminated pursuant to provisions herein, shall continue in effect for one (1) year and thereafter shall renew for successive one (1) year renewal terms (each, a "Renewal Term"), unless either party provides the other party with written notice of its intent not to renew no less than (60) sixty days prior to the end of the initial or any renewal term..

(b) Upon termination of this Agreement, the license granted by this Agreement shall be revoked, and therefore Licensee and its Authorized Users will no longer have access to the Services.

**5. Intellectual Property.**

(a) The Services are the property of AWS and protected by copyright and other laws relating to proprietary rights. This Agreement does not convey or transfer any ownership rights in the Services or products offered by AWS and there are no implied rights.

(b) Licensee retains all rights to Licensee Content. Licensee grants AWS a royalty-free, worldwide, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Licensee relating to the operation of the Service.

**6. Disclaimer of Warranties.** THE SERVICES ARE BEING PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. AWS, ITS AGENTS, EMPLOYEES, AND DIRECTORS EXPRESSLY DISCLAIM ANY SUCH WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. AWS DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE ERROR FREE OR WITHOUT INTERRUPTION.

**7. Limitation on Liability.** IN NO EVENT SHALL AWS, ITS EMPLOYEES OR DIRECTORS BE LIABLE TO LICENSEE, OR ANYONE CLAIMING THROUGH LICENSEE, FOR (1) INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR (2) ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH LICENSEE'S USAGE OF THE SERVICES, OR THE PERFORMANCE OR NON-PERFORMANCE OF THE SAME OR THE CONTENT ACCESSIBLE THROUGH THE SERVICES, EVEN IF THE POSSIBILITY OF SUCH DAMAGES HAD BEEN FORESEEABLE. LICENSEE AGREES THAT THE LIABILITY OF AWS, ITS EMPLOYEES AND DIRECTORS IS LIMITED SOLELY TO LICENSEE DIRECT DAMAGES AND IN NO EVENT SHALL IT EXCEED, IN THE AGGREGATE, THE TOTAL LICENSE FEE PAID HEREUNDER.

**8. Force Majeure.** AWS shall not be liable for, nor shall AWS be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement as a result of the elements, fire, natural disaster, or unavailability of Internet.

**9. Miscellaneous.** This Agreement and the parties' obligations hereunder will be governed by the laws of the State of Florida, without giving effect to the conflict of laws provisions thereof. The exclusive forum for the resolution of disputes will be a court of law in or for the county in which AWS is headquartered. Licensee shall not assign this Agreement or any of its rights or obligations hereunder in whole or in part, whether by operation of law or otherwise, without the advance, written consent of AWS. Any purported transfer or assignment in violation of this Section shall be null and void and of no force and effect. This Agreement and any applicable order forms issued hereunder, constitutes the entire understanding of both parties with respect to the subject matter hereof and supersedes all previous agreements, arrangements and understandings, written or oral and any terms and conditions set forth on any purchase order issued by Licensee. No waiver or modification of this Agreement will be valid or binding unless in writing and signed by both parties and no waiver of any breach or default will be deemed to be a waiver of any preceding or subsequent breach or default. In the event any of the provisions of this Agreement is found to be invalid or unenforceable, the remaining provisions shall not be deemed impaired and a similar, enforceable provision shall be substituted in the place of the invalid or unenforceable one.

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**Licensee:**

<b>Authorized Signature:</b>
<b>Print Name of Authorized Signature:</b>
<b>Title:</b>
<b>Date:</b>

**American Welding Society:**

<b>Authorized Signature:</b>
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<b>Title:</b>
<b>Date:</b>