



Master Agreement

Southwest Contract Inc.
Residential Life Furnishings
Master Agreement Number EI00350~2023MA
September 1, 2023

This Master Agreement (the “Agreement”) is effective as of September 1, 2023 by and between Southwest Contract Inc., a corporation with offices located at 2405 Industrial Blvd, Temple, Texas 76504 (“Supplier”), and Educational and Institutional Cooperative Services, Inc., a New York non-profit corporation with offices located at 2 Jericho Plaza, Suite 309, Jericho, NY 11753 (“E&I”), hereinafter collectively referred to as the “Parties” or individually to as the “Party”.

This Agreement has been established based on RFP#EI00196-2023 for Residential Life Furnishings, all addenda, Supplier response, best and final offer, and negotiations.

I. Scope

This National agreement shall apply to all E&I Member institutions (“Member”) (as listed in the Official Member List, as updated from time to time, to be provided to the Supplier), its divisions, subsidiaries and affiliates. In addition, if E&I elects to participate in the Agreement, they shall be considered a Member.

This Agreement does not constitute a purchase order or a commitment to purchase products and/or services by E&I or its Members. Any purchases made under this Agreement shall be made by the individual participating Member and any resulting contract shall be between the Member and the Supplier.

II. Term of Agreement

The Agreement’s initial term shall be for Five (5) years (“Initial Term”), effective 09/01/2023 through 08/31/2028, and may be renewed for a Renewal Term not to exceed Five (5) years. Prior to the end of the Initial Term, and for each successive Renewal Term, the Agreement will be evaluated in overall context and performance. Exercise of any renewal will require formal written notification and mutual agreement between E&I and Supplier at least one (1) year prior to Agreement expiration.

III. Pricing

The pricing/discount percentage for the products and/or services as listed on Attachment A shall be applicable to all purchases made under this Agreement for the Initial Term of the Agreement and any Renewal Terms thereafter, unless amended by the Parties. Prices shall remain firm for at least the first twenty-four (24) months of the Agreement Initial Term unless improved for the benefit of Members. Supplier is authorized to offer Members enhanced pricing on a case-by-case basis or under a Member Specific Agreement (“MSA”) and both shall be considered part of this Agreement. Any variances in pricing for Members shall be reported to E&I’s applicable Contract Manager.

After the first twenty-four (24) months of the Agreement Initial Term, the Supplier may request pricing and/or discount changes or increases. With any price increase request, the Supplier must certify in writing that the price change request meets the criteria in Section B10 and shall be accompanied by justification for any increase to include, but not limited to, manufacturers’ national price increase announcement letter, a complete and detailed description of the specific products and/or services impacted and by what percentage, a complete and detailed description of the specific raw materials and/or other specific costs that have increased that substantiate the increase, index data and any other relevant information to support the increase. Price increases must be approved by E&I no less than ninety (90) days in advance for proper communication to Members and must be memorialized in writing and signed by both parties with an amendment. Under no circumstances shall price increases requests be made more than once in a twelve (12) month period.

IV. EDGAR Provisions

Supplier certifies compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances as acknowledged in Supplier’s response to RFP#EI00196-2023 EDGAR Certifications requirements.

V. Terms and Conditions

Unless otherwise superseded by the terms and conditions of the contracting Member, the terms and conditions contained herein shall apply to all purchases made under this Agreement. Any terms and conditions of any Supplier invoice or acknowledgment form which are inconsistent with the terms and conditions of this Agreement shall have no effect.



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VI. Entire Agreement

This Agreement together with the Attachments annexed hereto, constitutes the entire agreement between the parties and except as set forth in paragraph B37 hereof supersedes all prior agreements whether written or oral between the parties. Documents subject to Freedom of Information Act may only be released after execution of this Agreement.

VII. Member List

The E&I Official Member List will be sent to the Supplier via an electronic file from E&I's Member Success Team upon execution of this Agreement.

VIII. Signatures

In witness whereof, the parties have executed this Agreement and do hereby warrant and represent that their respective signatories whose signatures appear below have been and are on the date of this Agreement duly authorized to execute this Agreement.

Each Party agrees that the electronic signatures whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this Agreement or any other document contemplated hereby bearing an original or electronic signature by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

Southwest Contract Inc.
Supplier

E&I Cooperative Services, Inc

DocuSigned by:
Steven Thompson
Signature

DocuSigned by:
Jill M Schunk
Signature

Steven Thompson
Printed Name

Jill Schunk
Printed Name

VP Finance
Title

Vice President, Strategic Alliances
Title

8/4/2023 | 2:20 PM EDT
Date

8/4/2023 | 2:29 PM EDT
Date

*Master Agreement*

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Attachment A

Pricing/Discount Schedule

Category	Installed %	Drop Shipped %
Beds-Loft beds, bed frames, platform beds, twin, full, queen and king	53%	55%
Beds – spare parts	Negotiated	50%
Chest with Lock Option - Three drawer chest with other sizes available in the category at the same discount	54%	56%
Chest – spare parts	Negotiated	50%
Desk - Single pedestal desk with lock option with other models available in the category at the same discount	52%	54%
Desk – spare parts	Negotiated	50%
Bookcase - Three shelf bookcase with other models available in the category at the same discount	53%	57%
Bookcase – spare parts	Negotiated	50%
Storage Cabinet and Wardrobes - 36" x 60" with other models available in the category at the same price	48%	52%
Storage Cabinet- spare parts	Negotiated	50%
Discount from the entire product line - All items in the category that fall outside the above categories	47%	49%

Volume Discounts will be applied on the net price after the base percentage discount (as listed above) is applied in a tiered structure as follows:

Tiered Discounts*:

Tier I: > \$150K - <\$250K	3%
Tier II :> \$250K - <\$500K	7%
Tier III:> \$500K - <\$750K	11%
Tier IV: >\$750K - <\$1M	Negotiated discount starting at 13%
Tier V:>\$1M	Negotiated discount starting at 15%

* Tiered Discount Volume is based on a Single Purchase. Tiered Discounts for both delivered and installed or Drop shipped with no installation - Applies to base categories and entire catalog. Volume discounts applied on the net price after the base percentage discount is applied.



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Performance and payment Bonds - Performance and payment bonds if required shall be provided at 1.35% on the total dollar amount of the purchase order. Bonds under \$500,000 may require a negotiated amount as smaller bonds are more expensive to secure.

Removal of furniture - This must be a negotiated amount once the scope of the removal is detailed along with the disposition of the removed items. We have removed free standing items and built-in items, so the scope is critical before providing a cost of removal.

Mattress Recycling - This must be a negotiated amount once the scope of the removal and quantity to be recycled are known on the project.

Furniture Disposal• We have sources that will take the old furniture but it depends on the region of the country and the condition of items wanting to be disposed.

Construction Projects - If a member institution is the end-user, we extend the contract discounts to the GC or Contractor.

Other Relevant Terms:

Freight Terms - FOB Destination prepaid and allowed

Delivery Terms - 45-60 days except for our in-stock program. In-stock items ship in 72 hours

Warranty- All beds, desks, chests, bookcases, wardrobes, storage cabinets, nightstands and other Casegoods carry a 25-year warranty against manufacturing defects. Seating, lounge items, occasional tables and other related items carry a 10-year warranty.

Should it prove that there is a defect in our product, such defect will be cured by prepaid shipment of the part or entire product, as the case may be, at no cost to the customer. This guarantee excludes abnormal or abusive use of the furniture. It also excludes foam and fabric. Other exclusions include wood parts subjected to extreme temperature or environmental changes.

Payment Terms - Net 30, unless superseded by State Statute

Returns - Custom Manufactured products, returns not allowed.



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Relevant Terms

A1. Customer Support

Supplier shall provide a single point of contact plus a backup for each Member. This individual may support multiple Members. Members shall have access to their corresponding customer service representative during normal business hours of every business day (8am to 5pm ET).

A2. Orders/Purchases

All terms and conditions of Member's standard terms and conditions for ordering may apply. With each ordering occurrence, it is mutually agreed that the Supplier's notice of acceptance shall create an agreement between the parties thereto containing all pricing, specifications, terms and conditions of the Agreement, to the extent that the terms and conditions are not inconsistent with the Members' terms and conditions or this Agreement.

A3. Invoices and Payment

Invoices shall be directed to the appropriate location(s) specified by the Member. Invoices and payment terms must comply with the requirements of each Member. The Member placing the order with the Supplier shall alone be liable or responsible for payment for products and/or services ordered and will be invoiced direct by the Supplier. Neither E&I nor its other Members shall be liable for the indebtedness of any one Member.

If a Member does not specify payment terms, the default payment term shall be no later than thirty (30) days after receipt of a valid invoice or delivery, whichever is later, and include invoicing at time of billing or delivery completion, whichever is later.

Discounts for prompt payment may be offered to any Member from the date of receipt and acceptance of products or services or the invoices, whichever is later. Supplier is encouraged to offer/propose discounts for expedited payment of invoices rendered under this Agreement. Negotiated discounts with Members for aggregated billing (monthly/bi-weekly, etc.) may be negotiated on an individual basis.

A4. Order Fulfillment, Distribution and Installation Agreements

Order Accuracy rate shall be maintained at 95% or greater. Order Accuracy rate is defined as "the number of items delivered as ordered divided by the total number of items ordered."

Order Fill rate shall be maintained at 95% or greater. Order Fill rate is defined as "the number of items on an order filled completely as ordered divided by to the total number of lines on an order."

Supplier, within twenty-four (24) hours after receiving a purchase order, shall notify the Member of any potential delivery delays. The following information regarding backorder(s) shall be provided to the Member:

- PO Number, if applicable
- Item ID
- Item Name & Description
- Reason for shortage
- Plan of action (when delivery may be expected or suggested replacement)

Members may have their own order fulfillment/distribution/installation agreements with a third-party agent or distributor. The terms and pricing of this Agreement are passed through to the Member and separate from any additional distributor terms and conditions, fees or markups resulting from Members' separate fulfillment/distribution/installation agreements.

A5. Delivery

Deliveries to Members range from but are not limited to: (1) one central receiving location, (2) multi-campus locations, (3) campus building(s), or (4) department(s). Frequency of delivery may range from: (1) daily, (2) weekly, (3) monthly, or (4) as needed to assure that institutions' needs are met. Delivery may be based on storeroom delivery, Just-in-Time agreements, drop shipments, and delivered and installed.



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Normal delivery of orders must be accomplished at established times as set by the Member. On-time delivery shall be maintained at 95% or greater. On-time delivery is defined as delivery of order within the specified delivery time frame after the placement of order. Orders will be defined as late without approved notification. The Supplier shall have the capability of expediting the delivery of orders to assure no shortage of product during installation.

Title and risk of loss shall pass to the Member at the F.O.B. destination point or after installation by authorized dealer/representative. The title and risk of loss of the products shall not pass to a given Member until receipt and acceptance of the products at the point of delivery and or installation. The products furnished shall be delivered:

F.O.B. Destination, Full Freight Allowed (Supplier pays freight)

Selection of a carrier for shipment will be at the Supplier's option unless otherwise specified by the Member. If special delivery or handling charges are applicable, they shall be pre-approved by the order initiator.

The Supplier shall maintain records evidencing the delivery of products and upon request by the Member provide such proof of delivery.

A6. Member Specific Agreement (MSA)

Member and Supplier may enter into a separate MSA to further define the level of service requirements over and above the minimum defined in this Agreement, e.g., invoice requirements, ordering requirements, on campus service, specialized delivery, etc. Any MSA developed is exclusively between the Member and Supplier. E&I, its agents, and employees shall not be made a party or parties to any claim for breach of such agreement. Supplier shall report any applicable MSA information to E&I upon request (pricing variation, start/end dates, etc.).

A7. Third Party Distributors/Subcontractors

If Supplier chooses to subcontract any service or delivery of the products under the terms herein, Supplier shall fully warrant prompt performance of the subcontractor in a fully complete, workmanlike manner customary to the trade. Failure by the subcontractor to perform in a timely manner as specified above shall not relieve Supplier of its obligations to make complete timely delivery of products, supplies or service and shall be at no additional cost to the Member.

A8. Substitutions

No substitutions of alternate items for products ordered are permitted without the express prior written approval of the Member. Any and all remanufactured or refurbished products are not acceptable, in lieu of a new product, unless authorized in writing by the Member.

A9. Minimum Orders

No Minimums.

A10. Supplemental Charges (Negotiated)

Supplier shall be required to state, at the time of order or purchase where applicable, all supplemental charges that may be assessed in addition to the pricing for the products and/or services provided including additional shipping charges, cost of products, delivery, freight fuel surcharges, installation or any other charges incurred by the Member. If Supplier offers multiple pricing options (i.e. drop ship, inside delivery, delivered and installed) they shall be specified herein. Notwithstanding the foregoing, Supplier shall not assess any type of transaction/convenience fee for the acceptance of a credit card as a method of payment. The maximum amount for credit card usage is \$5,000 with no convenience fee. Supplemental charges shall not be applied to entire pricing lists or discount tiers and shall not be applied Agreement-wide. Supplemental charges apply to individual orders or purchases only between the Supplier and Member.

A11. Emergency Purchases

Members reserve the right to make purchases of items included under this Agreement when emergency conditions exist and do not require a Letter of Participation as defined in B43. All emergency purchases shall be reported as regular sales to E&I. An Emergency Purchase, for the purposes of this Agreement, means a purchase made in a crisis situation where immediate action is required to prevent the possible loss of life or property or significant financial loss or environmental impacts. An emergency



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purchase may be made when the existence of an emergency condition creates an immediate and serious need for goods or services that cannot be met through normal procurement methods.

A12. Storage

If applicable, Supplier or Dealer shall be responsible for all warehousing and storage expenses, which may be incurred, until products are delivered and/or installed as per the terms of the Member's order.

A13. Tracking Lost and Damaged Shipments

If Supplier fails to deliver, or erroneously delivers products, Supplier shall take immediate corrective action to make the correct delivery at no cost to Member.

Should any action on the part of the Supplier or a subcontractor cause visible damage to the facilities during transport, the Supplier shall immediately contact Member and forward a confirming damage report detailing the damages. Supplier shall track all shipments and provide order status to Members.

A14. Returns – Defective and Non-Conforming Products or Services

If any products or services furnished under the Agreement are defective or non-conforming, or fail to meet warranties, specifications or any other provisions of the Agreement or Member's purchase order, any of the following remedies shall be available to the Member:

- Repair and Replacement: Supplier shall promptly repair, replace, or correct non-conforming or defective products and services at the Supplier's own expense.
- Cancellation: Member may cancel an order or any part thereof or any undelivered portion thereof without incurring any liability to Supplier and any payments made by Member for products or services purchased shall be refunded by the Supplier and/or its agents.
- Like-for-Like: Like-for-like equipment throughout the entire term of the contract maintenance or warranty shall be provided at no cost to the Member if the equipment experiences excessive down-time or fails to maintain acceptable quality standards.
- Removal: Supplier shall remove such products at its own expense and if the Supplier fails to remove such products, Member may return all or any portion of such products at the expense of Supplier.
- Risk of Loss and Storage: All products shall be held at Supplier's risk and the Supplier shall pay all expenses incurred including storage costs.
- Supplier Liability: The Supplier shall be liable for any and all losses, claims, expenses, (including reasonable attorney's fees and court costs) and other incidental and consequential damages resulting from such failure to meet all the requirements of this Agreement and/or a Member order.
- Products under warranty. The decision to replace such products or accept warranty repair shall be at the sole discretion of the Member except in the event the Member fails to provide timely notice of product failure to the Supplier.
- After the Warranty Period: After the warranty period, the Supplier is responsible to make sure that service agreements are available to the Member. The Supplier, the manufacturer or an authorized third party may provide the maintenance.

A15. Reasons for Return or Credit

The Supplier shall accept the following as reasons for return or credit:

- The product is defective or nonconforming.
- The product is incorrectly ordered or shipped. The product is received as an overage or the order is duplicated and shipped in error and the overage is noted on the shipping document(s).
- The product receipt is late or delayed and because of the late or delayed delivery is deemed in good faith by the Member to be unusable or no longer needed.

Supplier and/or its agents will issue credit with waiver of any claims against Member.

A16. Restocking Policy

Supplier shall not impose a restocking fee on Member under the following circumstances:

- Item is returned due to damage, incorrect product shipped, or Supplier customer service order entry error.



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- Inventory is returned within 24 hours of delivery.
- Inventory is returned but exchanged for other inventory.

Re-stocking fees for all other reasons can be no greater than 10% of the value of the items needing re-stocking.

A17. General Warranty and Product Condition of Sale

At a minimum, there shall be a three (3) year warranty from the date of delivery to include parts, labor, and travel. For third party providers, the manufacturer's standard warranty shall apply. Lifetime warranties shall remain in force regardless of whether the resulting agreement is still in place.

Supplier may offer a warranty that clearly illustrates an improvement to the manufacturer's standard warranty and benefit to the Member. Supplier shall track the product warranty for all products sold to Member. Loaner products shall be made available while Member's equipment is out for warranty repair.

Supplier certifies and warrants that all products sold to Members shall be:

- New and genuine
- Free from defects in content and materials
- Provided as per manufacturer's requirements
- Sold or manufactured via legal and reputable channels
- Not misbranded

Supplier certifies and warrants those services provided under this Agreement will be provided in a competent and professional manner and in accordance with industry standards. This warranty shall be valid for ninety (90) days from performance of service.

A18. Extended Warranty Option

Supplier shall offer an optional one (1) year warranty extension on all products. The same terms and conditions that apply to the standard warranty coverage shall apply during additional year of ownership if the extended warranty option is included in the original purchase.

A19. User Manuals

Supplier shall provide on-line links to original instruction manuals for each unit ordered, including complete documentation on all components used. Electronic notification of bulletins, revisions and corrections shall be provided as they are issued. Instruction manuals shall contain:

- Definition of equipment capabilities
- Technical description of equipment operation
- Description of malfunction identification
- Troubleshooting procedures
- Detailed schematics
- Installation and use instructions
- Operating system software manual

A20. New and Discontinued Products

The Supplier shall, at least thirty (30) days prior to their introduction or discontinuance, notify E&I and the Member of any new or discontinued products. Unless noted otherwise the discount and pricing established for new products will be equal to the pricing structure proposed. If the Supplier offers a different discount structure for new products, then a separate category of "New Products" pricing should be added to the proposed discount structure on appropriate attachment. In such a case, the Supplier shall clearly indicate the number of months products are considered as "new products."



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A21. Replacement Parts

If Supplier offers replacement parts, then a separate category of “Replacement Parts” pricing should be added to the proposed discount structure.

A22. Business Review Meetings

To maintain a partnership between the Member and the Supplier, Members may require business review meetings. These meeting may be held on a quarterly basis, or as agreed to by the Parties. The business review meeting may include, but not be limited to, the following:

- Review of Supplier performance
- Review of minimum required reports (as described in the following section)
- Order or purchase summary over a specified period of time

A23. Reporting

At a minimum, the following reports shall be provided to Member, as requested, in an electronic format on a quarterly basis, or as negotiated:

- Total orders year to date, including item ID, item description, unit of measure, total quantity ordered, total quantity shipped, sales price, list price, total sales price (total quantity shipped x sales price), method of payment, department
- Overall order accuracy and fill rates
- Number of orders returned due to Customer error
- Total re-stocking charges (\$) applied
- Number of orders returned due to Supplier error
- Total dollar value of surcharges, transaction fees, delivery charges, and other misc. charges
- Current market updates, i.e. company news, systems failures, product recalls, etc.

A24. Employee Purchase Program

Supplier may offer discounted products to Members’ students, faculty, and staff for personal purchases. If offering an Employee Purchase Program, Supplier shall describe how it intends to protect Members from liability from personal purchases made by students and employees.

A25. Samples

If requested, Supplier shall provide samples of the products for evaluation free of charge. The quantity of any sample requested will be reasonable but sufficient to undertake an appropriate evaluation.



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Attachment B

E&I General Terms and Conditions

B1. Interpretation, Enforcement and Forum of Laws

For disputes between the Member and Supplier, this Agreement shall be governed by, construed, interpreted, and enforced solely in accordance with the laws of the state in which the Member resides, and the venue of any action shall lie in such state.

For disputes between E&I and Supplier, this Agreement shall be governed by, construed, and interpreted solely in accordance with the laws of the State of New York, and the venue of any action shall lie in the appropriate federal or state courts located in the State of New York.

B2. Compliance with Laws

Supplier warrants and represents that in the performance of this Agreement, it has complied with and will comply with all applicable federal, state, and local laws, statutes, rules, regulations, and orders, including but not limited to, laws and regulations pertaining to labor, wages, hours, and other conditions of employment.

B3. Funding Provided by Federal Contracts or Grants

Where Federal Contracts or Grants provide funding to Members used for orders or purchases made under this Agreement, it is the responsibility of the Supplier and the Member to comply with all Federal Acquisition Regulations (FAR) and Educational Department General Administrative Regulations (EDGAR) applicable laws and regulations by completing any certifications and disclosures and any other requirements.

B4. Insolvency

In the event of any proceedings in bankruptcy or insolvency by or against Supplier, or in the event of the appointment (with or without its consent) of an assignee for the benefit of creditors, or a receiver, E&I may cancel this Agreement without prior notice and without incurring any liability whatsoever to Supplier.

B5. Assignments

Supplier shall not assign this agreement or any of Supplier's rights or obligations hereunder, without E&I's prior written consent. Any purported assignment made without E&I's prior written consent shall be void and of no effect.

B6. Resale

If E&I and/or Member purchase any products for resale, the customer shall have the benefit of every right, warranty, and interest enjoyed by E&I and/or Member.

B7. Patent Trademark and Copyright Infringement

The Supplier warrants that the products/services hereby sold, either alone or in combination with other materials, do not infringe upon or violate any patent, copyright, trademark, trade secret, application, or any other proprietary right of any third party existing under laws of the United States or any foreign country. The Supplier agrees, at its own expense, to defend any and all actions or suits alleging such infringements and will hold E&I, its officers, agents, servants, employees and Members harmless from any and all losses, expenses, claims or judgments, including reasonable legal fees, arising out of cases of such infringement.

B8. Use of Name, Logos, etc. in Advertising

Supplier agrees not to make reference to this Agreement or use the logo of E&I or any of its Members in any advertising material of any kind without the expressed written permission of the relevant party. E&I agrees not to make reference to this Agreement or use the logo of Supplier in any advertising and marketing materials of any kind without the expressed written permission of the Supplier.



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B9. Transactions between Supplier and Member

The purchase of products and/or services by a Member from Supplier is a transaction solely between Member and Supplier. Supplier acknowledges that E&I makes no representation or commitment that any quantities will be purchased, or services utilized and agrees that E&I shall have no liability relating to Member decisions to purchase or not purchase Supplier products or to use or not use Supplier services. It is understood and agreed that if any litigation arises between Supplier and any Member, Supplier shall not make E&I a party to that litigation. A violation of this provision shall be deemed a material breach of this Agreement warranting termination by E&I, and Supplier agrees to indemnify E&I against and hold it harmless from all costs associated with such litigation, including reasonable legal fees.

B10. Education/Pricing Parity

The pricing and/or discounts established under this Agreement are to be equal to or less than those offered to other cooperatives or comparable consortiums serving education. If, during the Initial Term of this Agreement, including any Renewal Terms, Supplier offers more favorable pricing and/or discounts to other cooperatives or comparable consortiums, Supplier agrees to notify E&I in writing. Supplier agrees to immediately amend the agreement to reflect the more favorable pricing and/or discounts. E&I must be notified of any proposed changes ninety (90) days prior to their implementation.

B11. Responsibility for Damage Claims

The Supplier shall hold harmless E&I and the Member from all suits, actions or claims brought on account of any injuries or damages sustained by any person or property as a consequence of any neglect in safeguarding the work by the Supplier; or from claims or amounts arising or recovered under the "Workman's Compensation Law" or any other laws. Supplier shall be responsible for all damage or injury to property occurring during the prosecution of the work resulting from any act, omission, neglect, or misconduct on its part or on the part of any of its employees, in the manner or method of executing the work; or from its failure to execute the work properly; until all claims have been settled and suitable evidence to that effect furnished to E&I and the Member.

B12. Protection of Property and Liability

The Supplier shall take care not to damage the premises or the property of others, and in case such damage occurs as the result of operations under this contract, Supplier shall make appropriate restitution. If the Supplier fails to pay for damage, the amount of such damage may be deducted from any remaining balance due to the Supplier or may be processed as a breach of contract to the full extent the law allows.

B13. Indemnification of E&I and Member

Supplier agrees to indemnify and hold harmless E&I and its Members from and against all liability, to the extent of and in proportion to, losses, damages, claims, liens, and expenses (including reasonable legal fees) arising out of or connected with the products purchased, work or services performed, or resulting from property damage or injuries incurred by or to any third party, the Member or its officers, agents, servants and employees by reason of any defect in manufacture, construction, inspection, delivery, material, workmanship, and/or design of any products and services furnished hereunder, excepting only such liability as may result solely from the acts of negligence of the Member, E&I or its employees. Supplier, at the request of the Member and/or E&I, shall undertake to participate fully in the defense of the Member (in accordance with the statutes of the State where the Member resides) and/or E&I against any and all suits and to investigate and participate fully in the defense of the Member (in accordance with the statutes of the State where the Member resides) and/or E&I against any and all claims whether justified or not, if such claim or suit is commenced against Member or E&I, or their respective officers, agents, servants, and employees.

B14. Insurance

If fabrication, construction, installation, service or other work is specified to be conducted on Member's premises, Supplier shall maintain in force during the period of such work the following coverages: (a) worker's compensation, as required by the laws of the State of Member; (b) commercial general liability for bodily injury and/or property damage in an amount of not less than \$1,000,000 single limit, per occurrence; (c) automobile liability for bodily injury and/or property damage in an amount of not less than \$1,000,000 single limit, per occurrence. Supplier shall provide a certificate of insurance naming E&I and Member as additional insureds. Upon request, Supplier shall furnish to E&I satisfactory proof of such insurance coverage.



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Individual Members may require coverage in addition to the above limits. If the need for additional coverage develops, it will be the responsibility of the Member to arrange for such coverage with the Supplier. Supplier shall furnish to Member satisfactory proof of such insurance coverage prior to commencement of the work.

B15. Licenses/Permits/Taxes and Tax-Exempt Status

Supplier shall be responsible for obtaining all permits, licenses, and bonding, to comply with the rules and regulations of any state, federal, municipal or county laws or any city government, bureau or department applicable and assume all liability for all applicable taxes.

E&I is a non-profit corporation. Members are 501(c)(3) corporations but have varying requirements to either pay or are exempt from state sales tax.

All prices listed and discounts offered are exclusive of all taxes. Supplier shall collect all taxes in connection with the sale, delivery or use of any items, products or services included herein from Member or from E&I (if for the purpose of resale), at the taxable rate in effect at the time of invoicing. Supplier shall comply with the state sales tax requirements of each Member. If sales to Member are exempt from such taxes, Member shall furnish to Supplier a certificate of exemption in form and timeliness acceptable to the applicable taxing authority.

B16. Americans With Disabilities Act and Rehabilitation Act

Supplier shall comply with all applicable provisions of the Americans with Disabilities Act, the Rehabilitation Act of 1973 and applicable federal regulations. All electronic and information technology and products and services to be used by E&I Member institutions' faculty/staff, students program participants or other constituencies must be compliant with the Americans With Disabilities Act and Section 508 of the Rehabilitation Act of 1973, as amended from time to time. Compliance means that a disabled person can acquire the same information, engage in the same interactions, and enjoy the same services as a nondisabled person, in an equally effective manner, with substantially equivalent ease of use.

B17. Compliance with Immigration Reform and Control Act of 1986

Supplier is aware of, is fully informed, and in full compliance with its obligations under the Immigration Reform and Control Act of 1986. Supplier shall be responsible for assuring that all persons engaged in the performance of work hereunder are authorized to work as required by the Act in both its present form and any future requirements passed under said Act.

B18. Alcohol, Tobacco & Drug Rules and Regulations

Employees of the Supplier and its subcontractors shall comply with all instructions, pertaining to conduct and building regulations of the Members. The Member reserves the right to request the removal or replacement of any undesirable employee at any time.

All buildings on the Member's grounds are tobacco-free. Use of tobacco products is not permitted in any area inside Member's buildings. The Supplier shall comply with this tobacco-free policy. The Supplier agrees that in the performance of this Agreement, neither the Supplier nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, including alcohol, in conducting any activity covered by this Agreement. E&I and the Member reserve the right to request a copy of the Drug Free Workplace Policy. The Supplier further agrees to insert a provision similar to this statement in all subcontracts for services required.

B19. Non-Appropriation of Funds

An order by a Member may be cancelled due to non-appropriation of funds. This funding out clause is required by several states and can be for non-appropriation of State and Federal funds.



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B20. Weapons, Explosive Devices and Fireworks

Supplier agrees that neither its employees or agents nor its subcontractors, their employees or agents shall use, possess, display, or store any weapon, explosive device or fireworks on all land and buildings owned, leased or under the control of E&I Member institutions or their affiliated or related entities, unless written permission is given by the commanding officer of the Member's police department or a designated representative. Notification by Supplier to all persons or entities who are employees, agents, officers, subcontractors, consultants, guests, invitees, or licensees of Supplier ("Supplier Notification Parties") is a requirement of this Agreement. Supplier further agrees to enforce this requirement against all Supplier Notification Parties.

B21. Equal Opportunity and Non-Discrimination

The parties will comply with all applicable federal and state laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and non-discrimination, including but not limited to the Americans with Disabilities Act. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The provisions of Section 202 of Executive Order 11246.41 CFR 60-1.1 CFR 60-250.4 and 41 CFR 60-741.4 are incorporated herein by reference and shall be applicable to this Agreement unless this Agreement is exempted under the rules, regulations, or orders of the U.S. Secretary of Labor. If applicable, the parties will abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

B22. Sexual Harassment

Title IX protects individuals from discrimination based on sex, including sexual harassment. E&I fosters an environment that is built on respect and free of sexual harassment. Federal law and the policies of E&I prohibit sexual harassment. Supplier is required to exercise control over its employees so as to prohibit acts of sexual harassment. If a Member in its reasonable judgment determines that any employee of Supplier has committed an act of sexual harassment, Supplier agrees as a term and condition of this Agreement to cause such person to be removed from Member's facility and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

B23. Employee Documentation

At any time during the term of the Agreement, a Member may require Supplier to provide a complete dossier of each employee who has been given an assignment at a Member institution. This may include employment history, education, job references, certificates and licenses, conviction records and documentation of random drug testing.

B24. Expropriation

Suppliers should indicate if, by any existing agreement with any party, its operations, delivery vehicles and or personnel can be in any way expropriated or annexed. If such an agreement exists, supplier should indicate when this agreement or those terms will expire.

B25. Hazardous Materials and OSHA Communication Standards

The Supplier shall be responsible for providing Material Safety Data Sheets (MSDS) to the appropriate user(s). The Supplier shall retain title and/or ownership and responsibility for hazardous materials delivered in error. Within three working days of notification, the Supplier shall retrieve hazardous materials that are delivered in error. The Supplier shall safely and legally dispose of all hazardous materials generated in the performance of this Agreement. In addition, the Supplier shall provide its employees with chemical safety training mandated by OSHA Hazard Communication Standard. The Supplier shall provide E&I and its Members with safety/recall updates for any equipment/products provided.



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B26. Compliance with Specifications

The Supplier warrants that all products supplied under this Agreement shall conform to specifications, drawings, samples, or other descriptions contained or referenced herein, shall be merchantable of good quality and workmanship and free from defect. The Supplier also warrants that all products covered by this Agreement which are the product of the Supplier or are in accordance with its specifications, will be fit and subject to the Member's inspection before acceptance, and also to later rejection if use reveals defects not apparent upon receipt; and if rejected will be held at Supplier's risk and expense for storage and other charges; after 60 days of storage, products may be disposed of without cost to Member, at Supplier's expense. Neither receipt of products nor payment therefor shall constitute a waiver of this provision.

Supplier also warrants that all of the services to be performed under this Agreement shall be performed in a professional and workmanlike manner and in conformity with industry standards by persons reasonably suited by skill, training, and experience for the type of services they are assigned to perform, that Supplier owns or has sufficient rights in all products and services to be delivered by Supplier, that the products and services delivered by Supplier will not infringe upon or violate any intellectual property of any third parties, and that any code or software developed or delivered by Supplier under this Agreement will not contain any viruses, worms or other disabling devices or codes.

B27. Gratuities

Supplier represents and warrants that it has not offered, given, accepted, or promised gratuities, in the form of entertainment, gifts, or other incentives (financial or otherwise) to or from any officer or employee of E&I or any Member to secure this Agreement or to secure favorable treatment with respect to the awarding of this Agreement or any post-award activities, including potential Renewal Terms.

B28. Covenant Against Contingency Fees

Supplier represents and warrants that it has neither offered nor paid a contingency fee or other financial or similar incentive to any individual, agent, or employee of E&I or Member to secure or influence the decision to award this Agreement to Supplier.

B29. Suspension or Debarment

Supplier represents and warrants that the Supplier is presently not debarred, suspended, proposed for debarment, declared ineligible, is not in the process of being debarred, nor is voluntarily excluded from covered transactions by any federal, state, or local governmental entity.

E&I may, by written notice to the Supplier, immediately terminate the Agreement if it is determined that the Supplier has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor by any public procurement unit or other governmental body.

Supplier represents and warrants that the Supplier and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity, and that Supplier is in compliance with all applicable statutes and rules relating to procurement, and that Supplier is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

B30. Conflict of Interest

During the term of this Agreement, to include Renewal Terms, neither Party shall solicit for employment or contractor relationship any employee of the other Party who was engaged in or became known to the other because of the performance of this Agreement, provided that the foregoing shall not prohibit offers of engagement which result from general, non-targeted solicitations.



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B31. Strikes or Lockouts

In the event Supplier should become involved in a labor dispute, strike or lockout, Supplier will be required to make whatever arrangements that may be necessary to ensure that the conditions of this Agreement are met in their entirety. Should the Supplier be unable to fulfill its obligations under this Agreement, E&I and/or Member shall have the right to make alternative arrangements to ensure the satisfactory performance of the Agreement during the time Supplier is unable to perform the required duties. Any costs incurred by E&I and/or any Member, as a result of such job action, shall be reimbursed by the Supplier.

B32. Force Majeure

Neither party shall be held responsible for delays, failures or any losses resulting from the performance of the terms of this Agreement where such performance is outside of the performing party's control by exercising reasonable diligence and which such party is unable to prevent. Such delays, failures or loss may include, but shall not be limited to, acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, riot, war, act of terrorism, freight embargo, pandemic/epidemic, failure of public regulated utility or governmental statutes or regulations superimposed after the fact, or generalized lack of availability of raw materials or energy; provided that the Parties stipulate that Force Majeure shall not include the novel coronavirus Covid-19 pandemic, which is ongoing as of the date of the execution of this Agreement. The performing party shall be released without any liability on its part from the performance of its obligations under this Agreement, but only to the extent and only for the period of time that its performance of such obligations is prevented by circumstances of Force Majeure, and that the party so affected shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and provided that such party shall have given notice to the other party within forty-eight (48) hours of the commencement of the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, its cause, and its possible consequences. The party claiming circumstances of Force Majeure shall promptly notify the other party of the conclusion of the event.

For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either Party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a Party's financial inability to perform its obligations hereunder.

B33. Modification of Terms

No waiver or modification of any of the provisions hereof shall be binding unless mutually agreed upon by E&I and the Supplier, in writing, with signatures of authorized representatives of all parties authorizing said modification.

B34. Termination for Convenience

E&I may terminate this Agreement for any reason (convenience) without penalty or liability of any kind by delivering not less than one hundred eighty (180) calendar days prior written notice thereof to the Supplier.

B35. Termination for Default

E&I will notify the Supplier upon discovery of a breach of this Agreement. E&I may terminate this Agreement immediately upon the breach of this Agreement by Supplier by delivering written notice to Supplier, or if such breach is capable of being cured, E&I shall notify the Supplier in writing of such breach and demand that the same be cured within fourteen (14) calendar days. Should the Supplier fail to cure the same within said period, E&I shall then have the right to terminate this Agreement at the end of the fourteenth (14th) day. A notice will be sent to the Supplier to confirm the termination.

The failure of E&I on behalf of its Members to exercise its rights of termination for cause due to Supplier's failure to perform as required in any instance shall not constitute a waiver of termination rights in any other instance.

B36. Continuation of Performance Through Termination

Supplier shall continue to perform, in accordance with the requirements of this Agreement, up to the date of termination, as directed in the termination notice.



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B37. Holdover Clause

Supplier shall continue to provide products and services pursuant to any quotation, purchase order, or MSA executed prior to the expiration or termination of this Agreement. The term of this Agreement shall then automatically extend through the final invoice date or expiration of the MSA, not including evergreen or automatic renewal periods (“Holdover Period”). The terms and conditions of this Agreement shall remain in effect for the duration of the Holdover Period.

B38. Independent Audit

Members may, for a period of three years after expiration of this Agreement, audit the Supplier’s records pertaining to its compliance with the terms of this Agreement. The audit will be conducted by Member and/or its designee. Supplier shall provide Member with access to records. The audit may address any or all of the following conditions and may not be limited to the stated conditions: product compliance, pricing, order processing, order fulfillment, delivery records, invoicing, and receipt of payment.

B39. Open Records

All information, documentation, and other materials submitted by Supplier in response to the solicitation or under this Agreement may be subject to public disclosure under the Freedom of Information Act and/or Open Records laws of the Members.

B40. Student Educational Records.

Student educational records are protected by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Supplier will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from Member or as otherwise provided by law.

B41. Strict Compliance

The parties may at any time insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice or course of dealing to the contrary.

B42. Limitation of Liability

Supplier agrees that E&I shall have no liability for any lost profits, loss of revenue, loss of opportunity, loss of use, indirect damages, special damages, consequential damages, incidental damages, punitive damages or multiple damages arising out of or in connection with this agreement, regardless of any notice of the possibility of such damages and regardless of whether such liability arises in contract, tort (including negligence), or otherwise.

B43. Member Alignment

Members will complete an online form (“Alignment Form”) indicating their desire to purchase products and/or services offered under this Agreement. The content and format of the Alignment Form is at the sole discretion of E&I. At a minimum, the Alignment Form will contain the following fields: First Name, Last Name, Title, Institution Name, Business Unit, Primary Role, Phone, E-mail, and Supplier.

The Alignment Form shall supersede any previous Member declaration for the purchase of product and services, unless otherwise specified, and will remain in effect during the term of this Agreement, including any Renewal Terms and extensions. Supplier shall provide E&I with an email address and point of contact for the receipt of Alignment Forms prior to Agreement launch.

Upon receipt of the Alignment Form, Supplier shall link all Member accounts, existing and new, to the E&I Agreement within 4-7 business days and credit all future purchases to Member and E&I whether an existing or new client of Supplier (“Alignment”); provide E&I Member a confirmation email message within 24 hours of its receipt of the Alignment Form; and send E&I Member a final confirmation email message once the new or existing account(s) is/are Aligned to the Agreement. For the avoidance of doubt, applicable Statement of Work (SOW) and/or MSA execution or finalization is not required for Alignment to be complete.



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Notwithstanding the forgoing, any Members who are existing customers of Supplier will automatically be converted to this Agreement (unless the Member elects to opt out through written notification). The effective date of this automatic conversion shall be the effective date of this Agreement.

B44. Confidentiality

In the course of the performance of this Agreement, either party (the “Recipient”) acknowledges that its employees may, in the performance of the Agreement, come into the possession of proprietary or confidential information owned by or in the possession of the other party (“Owner”). Neither party will use any such information for its own benefit or make such information available to any person, firm, corporation, or other organizations, whether or not directly or indirectly affiliated with either party without the written consent of owner or unless required by law, regulation, or accounting oversight body. “Confidential Information” means information, including hard copy or electronic form, written or oral, which a reasonable person would consider to be confidential in nature. Confidential Information does not include information that (1) becomes public through no breach of Recipient; (2) Recipient rightfully receives from a third party without restriction; (3) Recipient develops it independently or already had knowledge of such information prior to disclosure by Owner; and (4) Owner gives to any third party without confidentiality limitations. All Confidential Information will be considered trade secrets and will be entitled to all protections under the law for trade secrets. The parties’ obligations under this section will survive the termination of this Agreement.

B45. Price Gouging Prohibited

Supplier shall not sell goods or services which are vital and necessary for the health, safety and welfare of consumers to a Member during a declared state of emergency at a price that is in excess of ten percent (10%) above the price that existed immediately prior to the declaration. A violation of this paragraph shall constitute a material breach of this Agreement and Supplier shall make prompt restitution to Member of the excessive amount charged.

A declared state of emergency means, for the purposes of this Agreement, a circumstance in which government officials determine that there is a threat to the safety of the citizens of the United States, or region thereof. During such a time, officials may implement procedures to protect or provide care for the affected population until the threat has diminished.

B46. Notices

Any notice to be given by any party hereunder shall be in writing, mailed by certified mail, return receipt requested, or by delivery to a reputable overnight courier with a copy thereof furnished by email to the recipient’s email address set forth below and shall be effective the earlier of (a) actual receipt or (b) five days after mailing or one day after delivery to overnight courier and shall be addressed as follows:

If to E&I: Andrew Brennan
Senior Vice President, Sourcing
E&I Cooperative Services, Inc.
2 Jericho Plaza, Suite 309
Jericho, NY 11753
abrennan@eandi.org

If to Supplier: Lee Thompson Sr.
Southwest Contract Inc.
2405 Industrial Blvd
Temple, Texas, 76504
254-760-5510
leesr@swcontract.com

B47. Data Security and Privacy

Supplier agrees that it shall protect the data it receives from or on behalf of E&I and Member at all times in accordance with the Agreement. Supplier shall follow all applicable laws and all relevant publicly posted policies, notices, and statements



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concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the services being provided. Supplier shall provide true and correct copies of all current privacy policies adopted by Supplier in connection with their operations, when requested. Where applicable, Supplier has (i) complied with all any applicable law related to the protection, privacy and security of sensitive personal information, including, but not limited to, the Gramm-Leach-Bliley Act, the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), General Data Protection Regulation (GDPR), and any similar federal, state or foreign law and other laws regarding the disclosure of data, (ii) not violated its applicable privacy policies and (iii) taken commercially reasonable steps to protect and maintain the confidential nature of the personal information provided to the Supplier in accordance with its applicable privacy policies.

B48. Compliance with Member Policies

While at Member's premises, Supplier personnel shall (i) comply with Member's requests, rules, and regulations regarding personal and professional conduct (including the wearing of an identification badge and adhering to regulations and general safety, dress, behavior, and security practices or procedures) generally applicable to such premises and communicated to the Supplier, and (ii) otherwise conduct themselves in a businesslike and professional manner. If requested by Member, Supplier shall have all applicable Supplier personnel execute acknowledgement of Member's conduct and other policies.

B49. Supplier Diversity

Supplier agrees to endeavor to purchase goods and services utilized in connection with the Agreement with diverse suppliers where possible. Supplier, upon request and as agreed by the Parties, will report to E&I the amount of such purchases. E&I reserves the right to audit compliance with these requirements on reasonable advanced notice at the expense of E&I.

B50. Member Incentive Program - Rebates

If a Member is unable to or elects not to participate in any member-direct rebate program, the Supplier shall offer an alternative incentive program tailored to the Member's needs and applicable state and/or federal requirements (i.e. additional discount "in-kind" services, equivalent credit or discount towards future purchase, etc.). Supplier shall provide documentation to E&I, for historical reference and record keeping, of any Member-elected alternative rebate structure. Member will be given flexibility to change their institutions' rebate program or alternative incentive program if necessary or applicable.