



**STATE OF MICHIGAN**  
**Department of Military and Veterans Affairs**  
Grand Rapids Home for Veterans  
3000 Monroe Ave NE  
Grand Rapids, MI 49505

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. **511B7700012**  
between  
THE STATE OF MICHIGAN  
and

<b>CONTRACTOR</b>	Wallguard.com
	32 Nelson Hill Road
	Wassaic, NY 12592
	Jennifer Killmer
	877-943-6826
	jkillmer@wallguard.com
	ID# 7823

<b>STATE</b>	Program Manager	Walter Sullivan	GRHV
		(616) 364-5245	
		SullivanS@michigan.gov	
	Contract Administrator	Kerri Bielski	DTMB
		(616) 364-5327	
		BielskiK@michigan.gov	

CONTRACT SUMMARY			
<b>DESCRIPTION:</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
February 10, 2017	February 28, 2020	Two 1-year	
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45			
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			<b>\$25,000.00</b>

**FOR THE CONTRACTOR:**

Waukegan, Com  
Company Name

Jennifer Kilmer  
Authorized Agent Signature

Jennifer Kilmer  
Authorized Agent (Print or Type)

2/27/17  
Date

**FOR THE STATE:**

Jennifer Kilmer Lacey Wilke  
Signature

Jennifer Kilmer Sales Account Lacey Wilke, Procurement  
Name & Title Representative Manager

Waukegan, Com  
Agency

DTMB/GRHV

2/27/17  
Date

3/1/17



# STATE OF MICHIGAN

## ENTERPRISE PROCUREMENT

### STANDARD CONTRACT TERMS (SHORT FORM)

This STANDARD CONTRACT ("Contract") is agreed to between the State of Michigan (the "State") and [Insert Company Name] ("Contractor"), a [Insert State & Entity Status, e.g., a Michigan corporation or a Texas limited liability company]. This Contract is effective on February 10, 2017 ("Effective Date"), and unless terminated, expires on February 28, 2020.

Vendor is deemed to have accepted these terms upon the earliest of vendor's: written acceptance of these terms; commencement of work; receipt of payment; or submission of a bid, proposal, or other offer in response to a solicitation.

1. **General.** Vendor's failure to deliver or comply with any of these terms, may result in damages against the Vendor and the termination of the Contract.
2. **Delivery, Title and Risk of Loss.** Vendor will ship product FOB factory.
3. **Inspection.** The State may inspect the work and activities of Vendor, and its subcontractors, at all reasonable times and places before, during and after delivery of the Deliverables. All Deliverables are subject to final inspection and acceptance by the State notwithstanding any prior payments or inspections. Final inspection will take place within 30 calendar days of the later of the delivery date, installation, or completion of services. If any Deliverables are non-conforming or defective, the State is entitled to, at its option and at Vendor's expense: (a) a refund; (b) a credit; or (c) correction or replacement. If Vendor fails to correct defects or replace non-conforming Deliverables within 10 calendar days, the State may, in addition to its other remedies: (i) reject such Deliverables; (ii) accept such Deliverables at a discount; or (iii) make such corrections or replace such Deliverables and charge Vendor any resulting costs incurred by the State plus an additional 10% administrative fee.
4. **Payment.** . Invoices must include an itemized statement of all charges. All undisputed amounts are payable within 45 calendar days of the later of the State's: (a) receipt of an invoice; or (b) final acceptance of the Deliverables. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Deliverables purchased under the Contract are for the State's exclusive use. Notwithstanding the foregoing, all fees are inclusive of taxes, and Vendor is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by federal, state or local government entities on any amounts payable by the State. The State may withhold payment in whole or in part for Deliverables the State determines are defective, untimely, or otherwise non-conforming to the Contract. All amounts due and payable by the State to Vendor shall be subject to deduction or setoff by the State against any claim the State may have against Vendor whether arising out of the Contract or any other transactions with the State. The State will only disburse payments through Electronic Funds Transfer (EFT). If Vendor does not register to receive payments at <http://www.michigan.gov/cpexpress>, the State is not liable for failure to provide payment.
5. **Warranties and Representations.** Vendor represents and warrants: (a) all Deliverables furnished under the Contract will conform to all specifications and industry standards, and will be free from defects, including, where applicable and without limitation, defects in material, workmanship, and title; (b) Vendor is the owner or licensee of all Deliverables it licenses, sells, or develops and Vendor has the rights necessary to convey title, ownership rights, or licensed use; (c) all Deliverables are provided free from any security interest, lien, or encumbrance and will continue in that respect; (d) the Deliverables will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (e)

Vendor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Deliverables; (f) Vendor will not negate, exclude, limit, or modify in any warranty otherwise available to the State in any way; (g) the Deliverables are merchantable and fit for the State's intended use; (h) the Deliverables furnished will conform in all respects to samples, advertisements, and other forms of representation made to the State; (i) the Contract signatory has the authority to enter into the Contract; and (j) all information furnished and representations made in connection with the Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. Vendor agrees to promptly replace or correct any Deliverables not conforming to the foregoing warranty, without expense to the State, when notified of such non-conformity by the State. A breach of this Section is a material breach of the Contract.

6. **Termination for Cause.** The State may terminate the Contract, in whole or in part, at any time for cause in the event Vendor fails to comply with any of these terms, including, without limitation, late delivery or performance, the delivery of defective or non-conforming Deliverables, or failure to provide the State with reasonable assurances of future performance. In the event of termination for cause, the State will not be liable to Vendor for any amount, and Vendor will be liable to the State for any and all damages, including but not limited to, administrative fees, court costs, attorney fees, and cover costs. Any ineffectual termination for cause is hereby deemed a termination for convenience, effective as of the same date and limited to those rights.
7. **Termination for Convenience.** The State may immediately terminate the Contract, in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. Upon termination for convenience, the State will only pay for those Deliverables, not including standard stock, then in progress and which cannot be returned under these terms.
8. **Indemnification.** Vendor must defend, indemnify and hold the State, all of its instrumentalities, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Vendor (or any of Vendor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or other requirements contained in the Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Vendor (or any of Vendor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Vendor (or any of Vendor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable). Due to constitutional prohibitions, the State will not indemnify Vendor, or its employees or affiliates, for any reason whatsoever.
9. **Confidentiality.** Vendor agrees that any information, including State Data, disclosed by the State in relation to the Contract will be used only in the performance thereof. Vendor will keep the information confidential, will not disclose it to any third party, except as authorized by the State, and will only disclose it to those within its organization who need it for performance of the Contract. Upon completion or termination of the Contract, Vendor will return all such information to the State, or make such other disposition thereof as directed or approved by the State. No item furnished under the Contract, or tools, plans, designs, or specifications for producing the same, which have been specifically designed for or by the State, will be duplicated or used by Vendor. Nothing in this provision will restrict Vendor's right to use or disclose any information which is or becomes known to the public without breach of this provision by Vendor, or is rightfully obtained without restriction from other sources.
10. **Proprietary Rights.** All materials, tools, plans, designs, specifications, equipment, and other property either furnished by the State to Vendor or paid for by the State, will remain the

property of the State, but the Vendor assumes the risks of, and will be responsible for, any loss or damage, until returned in good order to the State. Such property must be safely stored and properly maintained by Vendor. Upon completion of this Contract, Vendor will return such property to the State or to any other entity as the State may direct, in the condition in which it was received, manufactured or procured by Vendor, except for reasonable wear and tear and except if such property has been incorporated into the Deliverables.

11. **State Data.** All data and information provided to Vendor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("State Data") and may only be used as specifically required by the Contract; this definition is to be construed as broadly as possible. Upon request, Vendor must provide to the State, or its third party designee, all State Data within 10 calendar days of the request and in the format requested by the State. Vendor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
12. **Intellectual Property.** Unless otherwise stated in the Contract, Vendor: (a) agrees that any computer program, software, documentation, copyrightable work, discoveries, inventions or improvements developed by Vendor resulting from supplying the Deliverables are the property of the State; and (b) hereby assigns all rights therein to the State. Vendor further agrees to provide the State with any assistance which the State may require to obtain patents or copyright registrations.
13. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action. Under no circumstances will the State be liable for any amounts, in whatever form, in excess of the total aggregate value set forth in the Contract.
14. **Reserved.**
15. **Notices.** All notices and other communications required or permitted under the Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.
16. **Modifications.** The Contract may not be amended except by signed agreement between the parties (a "**Change Notice**").
17. **Independent Contractor.** Vendor is an independent contractor and assumes all rights, obligations and liabilities set forth in the Contract. Vendor, its employees, and agents are not considered employees of the State.
18. **Subcontracting and Assignment.** Vendor may not delegate or assign any of its obligations or rights under the Contract without the prior written approval of the State.
19. **Compliance with Laws and Policies.** Vendor must comply with all applicable federal, state and local laws, rules and regulations. Vendor must also comply with all applicable State physical and IT security policies and standards, which will be made available upon request
20. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Vendor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of the Contract.

21. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor, Vendor, or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
22. **Governing Law.** The Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of the Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from the PO must be resolved in Michigan Court of Claims. Vendor hereby waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Vendor must appoint agents in Michigan to receive service of process.
23. **Non-Exclusivity.** Nothing contained in the Contract is intended nor will be construed as creating any requirements contract with Vendor. The Contract does not restrict the State or its agencies from acquiring similar, equal, or like Deliverables from other sources.
24. **Force Majeure.** Neither party will be in breach of the Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Vendor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
25. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State. Vendor will provide the State, for its review, copies of all presentations or articles being submitted for publication at least 30 calendar days in advance.
26. **Website Incorporation.** The State is not bound by any content on Vendor's website unless expressly incorporated directly into the Contract.
27. **Severability.** If any part of the Contract, or these terms, is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract terms will continue in full force and effect.
28. **Waiver.** Failure to enforce any provision of the Contract, or these terms, for any period of time will not constitute a waiver.
29. **Survival.** The provisions of these terms that impose continuing obligations, including warranties and representations, termination, indemnification, intellectual property, and confidentiality, will survive the expiration or termination of the Contract.
30. **Entire Contract.** The Contract and these terms constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. No terms on any invoice, quote, purchase order, website, browse-wrap, shrink-wrap, click-wrap or other non-negotiated terms and conditions provided with any of the Deliverables (including software and hardware) or documentation, whether by Vendor, Contractor, subcontractor, or any third-party, will constitute a part or amendment of the Contract or is binding on the State or any authorized user for any purpose.

# STATE OF MICHIGAN

## SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

<b>1. Specifications</b>
<b>1.1 The Contractor must provide the following:</b>
New Frontier Series, Infinity Defender Series and coordinating adhesives.
<b>1.2 Warranties</b>
Contractor offers a lifetime warranty to protect against all manufacturing defects. Contractor impact protection products are guaranteed from defects in materials and workmanship under normal use and service when installed in conformance with Wallguard.com Installation Instructions. Liability under this warranty is limited to repair or replacement of material only and does not include responsibility for incidental or consequential damage of any nature.
<b>2. Service Levels</b>
<b>2.1 Time Frames</b>
Contractor's manufacturing lead time is 2-3 weeks. Transit time once shipped is 2 business days.
<b>2.2 Delivery</b>
Delivery will be made at Grand Rapids Home for Veterans.
<b>3. Pricing</b>
<b>3.1 Price Term</b>
Each Grand Rapids Home for Veterans project will be quoted by the Contractor and fixed pricing will be based on the quotation.
<b>4. Ordering</b>
<b>4.1 Authorizing Document</b>
The appropriate authorizing document for the Contract will be a purchase order.
<b>5. Delivery</b>
<b>5.1 Delivery Programs</b>
The Contractor will utilize Old Dominion freight 2-day transit time once shipped.
<b>5.2 Packaging and Palletizing</b>
Packaging must be optimized to permit the lowest freight rate. Shipments must be palletized whenever possible using manufacturer's standard 4-way shipping pallets.
<b>6. Invoice and Payment</b>
<b>6.1 Invoice Requirements</b>
All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price.
<b>6.2 Payment Methods</b>
The State will make payment for Contract Activities by Electronic Funds Transfer (EFT) in accordance with Public Act 533 of 2004. All contractors will be required to register as a vendor with

the State of Michigan to receive payment.
<b>7. Liquidated Damages</b>
Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$2,000 and an additional \$50 per day for each day Contractor fails to remedy the late or improper completion of the Work.