

**CONTRACT****DINWIDDIE COUNTY**  
**TRAINING MANIKINS**

The Agreement is made this 10th day of September 2020, by and between **Gaumard, LLC**, of 14700 SW 136<sup>th</sup> Street, Miami, Florida 33196 (party of the first part, and hereinafter known as "Contractor"), and the **County of Dinwiddie**, Virginia (party of the second part, and hereinafter known as "County").

**WHEREAS**, pursuant to the Virginia Public Procurement Act, County solicited a quote for HAL Training Manikins for use by Dinwiddie Fire & EMS; and

**WHEREAS**, Contractor submitted a quote, consistent with the County's needs; and

**WHEREAS**, Contractor was selected as the Sole Source Provider; and

**WHEREAS**, County has selected Contractor to provide equipment;

**NOW THEREFORE**, in consideration of the mutual benefits, promises, and undertakings, the sufficiency and receipt of which are acknowledged, the following terms and conditions are agreed to by the parties to this Contract:

1. **Incorporation by Reference.** The following are made a part hereof as if the same were fully set forth herein, and if any discrepancies arise between the documents, they will prevail in the following order: (1) this Contract including the attached Terms and Conditions, (2) Contractor's quote dated June 30, 2020 and (3) Contractor's Sale Terms and Conditions and End-User License Agreement. This procurement is governed by the Virginia Public Procurement Act and the Dinwiddie County Purchasing Policies and Procedures. All terms and conditions of the Act and the Policies and Procedures are hereby adopted and incorporated by reference herein.
2. **Time of Performance.** Contractor agrees to provide all equipment within ten (10) weeks of the date of this contract.
3. **Costs.** Contractor agrees to provide all equipment pursuant to this Contract for a sum no greater than FIFTY THOUSAND SIX HUNDRED FIFTY-EIGHT AND NO/100 DOLLARS (\$50,658.00) (the "Contract Price"). Payment shall be made to Contractor within thirty (30) days after receipt of equipment and invoice.
4. **Notices.** Any notices required shall be in writing, unless otherwise permitted hereunder, and shall be deemed received five (5) days after mailing of same in the U. S. Mail with postage prepaid at the addresses set forth below or upon actual receipt:

<p><u>Notice to County shall be made to:</u>  W. Kevin Massengill  County Administrator  P. O. Drawer 70  Dinwiddie, Virginia 23841  (804) 469-4500  accounting@dinwiddieva.us</p>	<p><u>Notice to Contractor shall be made to:</u>  James Nicholas  Gaumard  14700 SW 136 Street  Miami, Florida 33196  (308) 971-3790  jamesn@gaumard.com</p>
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- 5. **General Terms and Conditions.** During the term of this Contract, Contractor agrees to procure and maintain insurance which meets all County's requirements in the General Terms and Conditions.
- 6. **Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile or as an attachment to an email, and any such signature shall have the same legal effect as an original.
- 7. **Severability.** If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.
- 8. **Miscellaneous.** This Contract shall be governed by the laws of the Commonwealth of Virginia. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Dinwiddie, Virginia, and such litigation shall be brought only in such courts. All pronouns used herein shall refer to every gender. Headings or titles in this Contract are only for convenience and shall have no meaning or effect upon the interpretation of the provisions of this Contract. This Contract is the entire agreement between the parties and may not be amended or modified, except by writing, signed by each party. If any provision of this Contract is determined to be unenforceable, then the remaining provisions of this Contract shall be interpreted as in effect as if such unenforceable provision were not included therein.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract as of the day first written above.

County of Dinwiddie, Virginia

Gaumard

X *W. Kevin Massengill*

X *[Signature]*

W. Kevin Massengill  
County Administrator

Print Name/Title:

*PETER A. ELLERT, SUP*

Approved as to form:

Department Approval:

X *Wue K. [Signature]*

X *Dennis Hale*

Legal Counsel

Dennis Hale  
Chief of Fire & EMS

DINWIDDIE COUNTY  
GENERAL TERMS AND CONDITIONS

**1. Laws, Regulations, and Courts.**

This procurement is governed by the Virginia Public Procurement Act and the Dinwiddie County Purchasing Policies and Procedures.

The Contractor shall comply with all federal, state and local laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work and shall give all notices required thereby.

A. All solicitations or contracts issued by Dinwiddie County shall be governed by the laws of the Commonwealth of Virginia. Jurisdiction and venue for any litigation arising out of or involving this agreement shall lie in the Circuit Court of the County of Dinwiddie, Virginia, and such litigation shall be brought only in such courts. The County and the Contractor are encouraged to resolve any issues in controversy arising from contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366).

**2. Taxes.** Pursuant to Virginia Code Section 58.1-609.1(4), the County is exempt from the payment of Virginia state sales and use taxes. Vendors should not include such taxes in invoices presented to the County for payment. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request.

**3. Anti-Discrimination Statement by County.** The County certifies that it shall not discriminate against any bidder, offeror or contractor because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the County has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If Contractor is a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

**4. Anti-Discrimination Statement by Contractor.**

A. During the performance of the contract, the Contractor agrees to the following provisions.

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor also agrees to include the provisions in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor.

**5. Immigration Reform and Control Act of 1986.** Contractor certifies that it does not and will not during the performance of the contract knowingly employ unauthorized alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

**6. Drug-Free Workplace.** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and

applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

7. **Authorization to Transact Business in the Commonwealth.** In order to contract with Dinwiddie County, contractors organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Code of Virginia, Title 13.1 or Title 50 or as otherwise required by law. Pursuant to competitive sealed bidding or competitive negotiation, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 shall include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information shall not be awarded a contract unless a waiver of this requirement is granted by the County Administrator. Any business entity as described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at anytime during the contract. Dinwiddie County may void any contract with a business entity if that entity fails to remain in compliance with the provisions of this section.
8. **Indemnification.** Contractor agrees to indemnify, defend and hold harmless the County of Dinwiddie, Virginia and their officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor or any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the County or to failure of the County to use the materials, goods, infrastructure or equipment in the manner already and permanently described by the Contractor on the materials, goods, infrastructure or equipment delivered.
9. **Insurance.** Contractor certifies that it will have the following insurance coverage at the time the contract is awarded. If any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. Contractor further certifies that the Contractor and any subcontractors will maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Subcontractors, if any, will maintain similar insurance coverage during the entire term of the contract.

Minimum Insurance Coverage and Limits Required:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the County of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and

advertising injury, products and completed operations coverage. The “County of Dinwiddie, Virginia, its Officers, agents, and employees” shall be added as additional insured on a primary basis and so endorsed on the policy. Such additional insured status shall be primary without participation by County’s insurers.

4. Automobile Liability - \$1,000,000 combined single limit.
5. Professional Liability - \$1,000,000 per occurrence.

10. **Debarment Status.** The Contractor certifies that it is not currently debarred from submitting proposals or bids on contracts by any department, agency or political subdivision of (i) the Commonwealth of Virginia, (ii) any other state, or (iii) the federal government, nor is it an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by the same.

11. **Payment.**

- A. Contractor shall provide the County with a complete and accurate IRS Form W-9.
- B. Invoices for products/services ordered, delivered, and accepted shall be submitted by the contractor to Dinwiddie County Accounts Payable via email to [accounting@dinwiddieva.us](mailto:accounting@dinwiddieva.us) or via postal mail to P.O. Drawer 70, Dinwiddie, VA 23841.
- C. Unless otherwise specified, any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after correct invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- D. The preferred method of payment for invoices under \$5,000 is with a VISA Credit Card. If the vendor accepts VISA payments, they must do so without any fees.
- E. Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent (1%) per month.
- F. Date of payment is deemed to be (1) the date of postmark in all cases where payment is made by mail, or (2) the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- G. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the County shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve the County of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).
- H. The Contractor is obligated to: (1) pay the subcontractor(s) within seven (7) days of the Contractor’s receipt of payment from the County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or (2) notify the County and the subcontractor(s) within seven days, in writing of the Contractor’s intention to withhold all or a part of the subcontractor’s payment with the reason for nonpayment.
- I. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent (1%) per month on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the contractor of payments from the County, except for amounts withheld as states in Section g above.
- J. These provisions apply to each sub-tier Contractor performing under the primary contractor. A contractor’s obligation to pay an interest charge to a subcontractor shall not be construed to be an obligation of the County. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

12. **Availability of Funds.** It is understood and agreed between the parties that the County shall be bound hereunder only to the extent of the funds available, or which may hereafter become available. The contract will be contingent upon annual appropriations by the Board of Supervisors of Dinwiddie County. Failure of the Board

of Supervisors to appropriate adequate funds for the terms of the contract shall result in the immediate cancellation of the contract. There shall be no penalty should the Board fail to make annual appropriations for the contract.

13. **Assignment of Contract.** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the County.
14. **Default.** It shall be the Contractor's responsibility to make sure that all work is adequately completed as required. In case of failure to deliver goods or services in accordance with the contract terms and conditions, the County, after ten (10) days have passed from the date of delivery of written notice, may procure them from other sources. This remedy shall be in addition to any other remedies which the County may have.
15. **Changes to the Contract.** All contract modifications must be approved by the Dinwiddie County Administrator or his designee. The County will not assume responsibility for the cost of any changes made without proper consent. No fixed-price contract may be increased by more than twenty-five percent (25%) or \$50,000, whichever is greater, without advance approval of the Dinwiddie County Board of Supervisors.

Changes can be made to the contract in any of the following ways:

- A. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
- B. The County may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt, unless the Contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the Contractor shall, in writing, promptly notify the County of the adjustment to be sought, and before proceeding to comply with the notice, shall await the County's written decision affirming, modifying, or revoking the prior written notice. If the County decides to issue a notice that requires an adjustment to compensation, the Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the County a credit for any savings. Said compensation shall be determined by one of the following methods:
  1. By mutual agreement between the parties in writing; or
  2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the County's right to audit the Contractor's records and/or to determine the correct number of units independently; or
  3. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the County with all vouchers and records of expenses incurred and savings realized. The County shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the County within thirty (30) days from the date of receipt of the written order from the County. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the County or with the performance of the contract generally.

16. **Termination of Contract.**
  - A. **Termination for Cause.**

1. If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, the County may terminate the contract. If Contractor violates any provision of the Virginia Governmental Fraud Act, the County may terminate the contract. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or suppliers of material or labor, or persistently disregards laws, ordinances, or the written instructions of the County, or otherwise be guilty of a substantial violation of any provision of the contract, then the County may terminate the contract. The County retains the sole discretion to determine any violation of this section.
2. Prior to termination of the contract, the County shall give the Contractor and his surety ten (10) calendar days written notice, during which the Contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the County within said ten (10) days, the County may rescind its notice of termination. If it does not, the termination for cause shall become effective at the end of the ten-day (10) notice period. In the alternative, the County may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the causes of termination will be remedied in a time and manner which the County finds acceptable. If at any time more than ten (10) days after the notice of termination, the County determines that Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the County may immediately terminate the contract for cause by giving written notice to the Contractor and its surety. This decision shall be final and not subject to an appeal to any court of law or equity. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.
3. Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.
4. Upon termination of the contract, the County shall take possession of its property and of all materials, tools, and appliances thereon and finish the work by whatever method the County may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment.
5. Termination of the contract under this section is without prejudice to any other right or remedy of the County.

B. Termination for Convenience

1. County may terminate this contract at any time without cause, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease work and remove from the project site all of its labor forces and such of its materials as County elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as County may require to assign to the County the Contractor's interest in all subcontracts and purchase orders designated by County. After all such steps have been taken to County's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:
  - All amounts then otherwise due under the terms of this contract as of the latest request for payment,

- Amounts due for work performed subsequent to the latest request for payment through the date of termination, and
- Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the forgoing, County shall have no further obligations to the Contractor of any nature.

i. In no event shall termination for the convenience of the County terminate the obligations of the Contractor's surety on its payment and performance bonds.

17. **Contractual Disputes.** Disputes and claims arising under this agreement shall be processed pursuant to the Code of Virginia Section 2.2-4363.
18. **Audit.** The contractor shall retain all books, records, and other documents directly pertinent to this contract for five (5) years after final payment from the County, or until audited by the County, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period upon reasonable advance notice.
19. **Patents, Copyright and Trademark.** The Contractor shall obtain all licenses necessary to use any invention, article, appliance, process, or technique of whatever kind and shall pay all royalties and license fees. The Contractor shall indemnify, defend, hold and save harmless the County, its officers, agents, and employees, from any loss or liability for or on account of such infringement.



DINWIDDIE COUNTY  
SPECIAL TERMS AND CONDITIONS  
FOR FEDERALLY FUNDED CONTRACTS

1. Compliance with FEMA Policy. FEMA financial assistance may be used to fund services of this contract. In addition to complying with Section 1 of the General Terms and Conditions, the contractor must also comply with all FEMA policies, procedures and directives.
2. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.
3. No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to Dinwiddie County, the contractor, or any other party pertaining to any matter resulting from the contract.
4. Equal Employment Opportunity. This section applies to construction contracts. During the performance of the contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other form of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex or national origin.
  - c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contractor or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
  - e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.



- e. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
7. **Clean Air Act.**
    - a. This section applies to all contracts in excess of \$150,000.
    - b. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.
    - c. The contractor agrees to report each violation to Dinwiddie County, and understands and agrees that the County will, in turn, report each violation as required to assure notifications to the recipient, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
    - d. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
  8. **Federal Water Pollution Control Act.**
    - a. This section applies to all contracts in excess of \$150,000.
    - b. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Contract Act, as amended, 33 U.S.C. §1251 et seq.
    - c. The contractor agrees to report each violation to Dinwiddie County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the recipient, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
    - d. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
  9. **Suspension and Debarment.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by Dinwiddie County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Dinwiddie County and the Commonwealth of Virginia, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. **Procurement of Recovered Materials.** In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designed items unless the product cannot be acquired:
  - Competitively within a timeframe providing for compliance with the contract performance schedule;
  - Meeting contract performance requirements; or
  - At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

11. Access to Records

- a. The contractor agrees to provide Dinwiddie County, the Commonwealth of Virginia, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract

12. DHS Seal, Logo and Flags. The contractor shall not use the US Department of Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

13. Byrd Anti-Lobbying Amendment. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

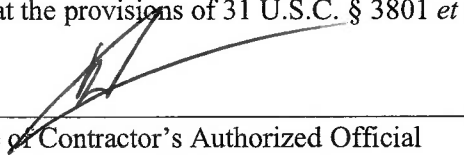
CERTIFICATION OF ANTI-LOBBYING

The undersigned Gawmard Scientific [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Gawmard Scientific, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

  
\_\_\_\_\_  
Signature of Contractor's Authorized Official

Peter Egert, Sr. Vice President  
Name and Title of Contractor's Authorized Official

9/3/2020  
Date



14700 SW 136th Street  
Miami FL 33196  
T: 305-971-3790 | F: 305-252-0755

## Quotation

Quote Number: 68841  
Quote Date: 06/30/20  
Page: 1 of 2

**Quoted To:**  
Dinwiddie County Fire & EMS  
13850 Courthouse Road  
Dinwiddie VA 23841  
USA

**Ship To:**  
Dinwiddie County Fire & EMS  
13850 Courthouse Rd  
Dinwiddie VA 23841  
USA

**Contact:**  
Dawn Titmus  
804-469-5388  
dtitmus@dinwiddieva.us

Customer ID	Good Through	Payment Terms	Shipping Method	Sales Representative
C113638	07/30/20	Net 20	UPS Ground	James Nicholas

Qty.	Item	Description	Unit Price	Amount
1	S3000.PK.M	<p>HAL® medium skin tone multipurpose adult simulator. Includes: Simulated Learning Experiences™ 10 scenario package, Simulated Learning Experiences™ facilitator's guide, Microsoft® Tablet PC preloaded with UNI® control software, UNI software license, RF communications module, accessories kit, battery charger, soft roller case, user manual, 1-year standard warranty</p> <p>Options available at time of purchase: Care in Motion™ Go integrated video-assisted debriefing system, automatic virtual drug recognition arm, 12-Lead ECG, CO2 exhalation, snap-compatible ECG/EKG sites, tibial IO access lower leg</p> <p>Accessories available for purchase: Care in Motion™ Mobile standalone video-assisted debriefing system, Gaumard Vitals™ bedside patient monitor, Gaumard Vitals mobile patient monitor, modified defibrillation cables, NewroSim™</p>	\$ 25,495.00	\$ 25,495.00
1	S3040.50.PK.M	<p>Trauma HAL® medium skin tone adult point of injury and emergency field care patient simulator. Includes: Simulated Learning Experiences™ 10 scenario package, Simulated Learning Experiences™ facilitator's guide, Microsoft® Tablet PC preloaded with UNI® control software, UNI software license, trauma limbs, RF communications module, accessories kit, battery charger, soft roller case, user manual, 1-year standard warranty</p> <p>Options available at time of purchase:</p>	\$ 21,995.00	\$ 21,995.00

Prices and taxes are subject to change without notice.

To gather information about the products quote we invite you to visit our website: <http://www.gaumard.com>

If you should have any questions, please feel free to contact your sales representative James Nicholas at [jamesn@gaumard.com](mailto:jamesn@gaumard.com)



**Gaumard**<sup>®</sup>  
Simulators for Health Care Education

14700 SW 136th Street  
Miami FL 33196  
T: 305-971-3790 | F: 305-252-0755

## Quotation

Quote Number: 68841  
Quote Date: 06/30/20

Page: 2 of 2

**Quoted To:**

Dinwiddie County Fire & EMS  
13850 Courthouse Road  
Dinwiddie VA 23841  
USA

**Ship To:**

Dinwiddie County Fire & EMS  
13850 Courthouse Rd  
Dinwiddie VA 23841  
USA

**Contact:**

Dawn Titmus  
804-469-5388  
dtitmus@dinwiddieva.us

Qty.	Item	Description	Unit Price	Amount
		Care in Motion™ Go integrated video-assisted debriefing system, 12-Lead ECG, CO2 exhalation, snap-compatible ECG/EKG sites		
		Accessories available for purchase: Care in Motion™ Mobile standalone video-assisted debriefing system, Gaumard Vitals™ - Bedside Patient Monitor, Gaumard Vitals - Mobile Patient Monitor		
1	S3000.INST	Training service and installation for HAL® adult tetherless simulator. Region specific	\$ 2,500.00	\$ 2,500.00
			<b>Subtotal</b>	<b>\$ 49,990.00</b>
			<b>Est. Freight &amp; Handling</b>	<b>668.00</b>
			<b>Est. Sales Tax</b>	<b><del>2,552.38</del></b>
			<b>Total US\$</b>	<b>\$ 53,210.38</b>

Customer must supply Sales Tax Exempt Certificate and W-9 with Purchase Order, if applicable.

Please note that the exact shipping charges and taxes will be determined at the time of shipment.

Gaumard Scientific is the sole source for this tetherless simulator(s).

Estimated shipping date: Approximately 8 to 10 weeks after receipt of order.  
Shipment Via: UPS Ground

Prices and taxes are subject to change without notice.

To gather information about the products quote we invite you to visit our website: <http://www.gaumard.com>

If you should have any questions, please feel free to contact your sales representative James Nicholas at [jamesn@gaumard.com](mailto:jamesn@gaumard.com)



## GAUMARD SALES TERMS AND CONDITIONS

These Gaumard Scientific Company, Inc. (“Gaumard”) Sales Terms and Conditions (“Terms”) apply to the sale or use of Gaumard equipment (“Equipment”), Software (“Software” as defined in paragraph 13), and supplies (“Supplies”), collectively referred to as “Product” or “Products” between Gaumard and the entity named on the applicable Gaumard Purchase Order (“Customer”) (collectively, “Party” or “Parties”). The Parties, intending to be legally bound, agree as follows.

- 1. Agreement.** Customer agrees to purchase from Gaumard the Products set forth in quotes and purchase orders accepted by both Customer and Gaumard from time-to-time. These Terms, along with any Exhibits, any applicable Gaumard Purchase Order documents, Gaumard Warranty documents, Gaumard Cares Service Plan documents, and any other purchasing or service documents executed by the Parties, along with the Dinwiddie County contract and Terms and Conditions, which shall take precedence over any terms herein, constitute the complete and entire agreement between Gaumard and Customer (collectively referred to herein as the “Agreement”). This Agreement will supersede all other quotations, agreements, understandings, warranties, and representations (whether written or oral) between the Parties with respect to the subject matter set forth in the Agreement. Any Customer documentation (including Customer’s purchase order terms and conditions) that conflicts with or attempts to modify the Agreement in any way is hereby rejected and of no effect unless specifically agreed to in writing and signed by the Parties. No provision of this Agreement shall be waived, amended, modified, superseded, canceled, terminated, renewed, or extended except in a written document signed by both Parties or signed by the Party against whom the modification is sought to be enforced.
- 2. Prices.** Prices, fees, and charges for Products and services (including maintenance, installation, and training as described in the applicable Gaumard Purchase Order documents, Gaumard Warranty documents, Gaumard Cares Service Plan documents) (“Service” or “Services”) are payable in United States (U.S.) Dollars only, and do not include any applicable taxes or shipping charges. If Customer claims any tax exemption, it must furnish a valid tax exemption certificate before shipment of Products. Unless such certificate is furnished, Customer agrees to pay at its sole expense all applicable taxes, assessments, fees, penalties, import duties, and merchandise processing fees that may be levied or assessed upon Customer or Gaumard with respect to this Agreement, the Products, or any interest thereon.
- 3. Payment.** Customer shall pay all invoiced amounts within twenty (20) days from the invoice date, unless otherwise agreed upon by Gaumard in writing. Gaumard may require some or all of the purchase price to be paid in advance by Customer, unless Gaumard grants credit approval as determined in Gaumard’s sole discretion on a case by case basis (taking into account factors such as credit rating, payment history, and size of order). A late charge will be due on any unpaid balance at a rate of 1.0% per month. Gaumard retains a purchase money security interest in all Products sold to Customer to secure payment of the total purchase price thereof. Customer hereby grants Gaumard the right to file a copy of this Agreement with any appropriate authorities to evidence this security interest. Customer agrees to execute and deliver such other documents as Gaumard may request in connection therewith. Gaumard shall not be obligated to deliver any Product or perform any Service during any period when Customer payment is past due.
- 4. Product Shipment and Risk of Loss.** Gaumard is responsible for shipping the products to Customer, and Customer shall take title upon receipt of the products in undamaged condition.
- 5. Installation and Acceptance.** Product orders are subject to 1) written acceptance by Gaumard, 2) receipt of specified deposits, as applicable and 3) continuing credit approval. If applicable, Gaumard will install Equipment at an agreed upon location (“Installation”). Installation shall be complete upon Gaumard’s demonstration that the Equipment meets Gaumard’s then-current operating specifications (“Installation”). Installation is subject to Customer cooperating in preparing and maintaining the site in compliance with





Gaumard specifications, including but not limited to, applicable electrical and other connection regulations and all environmental conditions. If Customer fails to accept Products and if Gaumard decides to store ordered Products, Customer shall be responsible for Gaumard's reasonable insurance, handling, and storage charges. If Gaumard elects not to store ordered Products, Gaumard may arrange shipment and storage in a bonded warehouse at Customer's sole risk and expense.

6. **Delay of Performance.** The Parties' obligations under this Agreement are subject to force majeure, including but not limited to, civil insurrection, terrorism, fire, flood, labor disputes, shortages, delays of suppliers or contractors, or government priority systems, actions taken or threatened by any governmental agencies, acts of God or other contingencies or acts not within the sole control of the Parties.
  
7. **WARRANTIES.** Gaumard warrants that if a Product proves to be defective in material or workmanship within one year from the date on which title to the Product passes to the Customer ("Warranty Period"), Gaumard will, at Gaumard's option, repair or replace the Gaumard product. This limited warranty covers all defects in material and workmanship in the Gaumard product, except: (a) Damage resulting from accident, misuse, abuse, neglect, or unintended use of the Gaumard product; (b) Damage resulting from failure to properly maintain the Gaumard product in accordance with Gaumard product instructions, including failure to properly clean the Gaumard product; and (c) Damage resulting from a repair or attempted repair of the Gaumard product by anyone other than Gaumard or a Gaumard representative. Replacement parts are warranted for the remainder of the Warranty Period or ninety (90) days from shipment, whichever is longer. Services are warranted to be supplied in a workman-like manner. Gaumard does not warrant that use of the Products will be uninterrupted or error-free, or that the Products will operate with non-Gaumard authorized third-party products. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. SUCH LIMITED WARRANTY IS GIVEN SOLELY TO THE ORIGINAL CUSTOMER AND IS NOT GIVEN TO ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, SUBSEQUENT PURCHASERS OR USERS OF THE PRODUCTS OR CUSTOMERS OF THE CUSTOMER. THIS WARRANTY IS VOID UPON TRANSFER OF PRODUCT BY CUSTOMER TO ANY OTHER ENTITY. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER. These warranties do not apply to any Products that are supplied on a pre-release or "as-is" basis.
  
8. **Warranty Claims and Remedies.** In the event of any warranty claim, Gaumard will replace with new or repaired items any Product part or component that is in breach of the above limited warranties. Alternatively, Gaumard may elect to repay or credit to Customer an amount equal to the purchase price of the defective Product. Items replaced shall become Gaumard property. All claims shall be initiated by contacting Gaumard within the applicable Warranty Period and within thirty (30) days after discovery of the non-conformity. If Customer has failed to notify Gaumard within the Warranty Period, then Customer shall be barred from instituting any action thereafter. Customer shall not return the Product to Gaumard without prior authorization from Gaumard. If the necessary repairs to the Product are covered by this limited warranty, then Customer will pay only the incidental expenses associated with the repair, including any shipping, handling, and related costs for sending the product to Gaumard and for sending the product back to the first purchaser. However, if the repairs are not covered by this limited warranty, then Customer will be liable for all repair costs in addition to costs of shipping and handling. Upon request, Gaumard must be given access to and an opportunity to inspect the Product and any working areas and storage areas. These remedies shall comprise Gaumard's entire liability and Customer's exclusive remedy for breach of warranty and are in lieu of any other remedies at law or equity.
  
9. **LIMIT OF LIABILITY.** GAUMARD SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, DATA, OR USE), DIRECTLY OR INDIRECTLY ARISING



FROM THE SALE, HANDLING, SERVICE, OR USE OF PRODUCT OR SERVICES ORDERED OR FURNISHED, OR FROM ANY CAUSE RELATING THERETO. EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM GAUMARD'S NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS.

- 10. Governmental Authorizations.** Customer is responsible for compliance and costs associated with all required licenses, permits, or other governmental authorizations, including but not limited to, any license or certification needed for Customer to use the Product, and any export or import license, exchange permit, or the like ("Licenses"), even if applied for by Gaumard on Customer's behalf. If any authorization is delayed, denied, revoked, restricted, or not renewed, Gaumard shall not be liable, and Customer is not relieved of its obligations. Customer represents and agrees that it will handle all Product and technical data related to the Licenses so that it conforms to all applicable U.S. laws and regulations, including U.S. export licensing laws and the U.S. Foreign Corrupt Practices Act. Customer shall not trans-ship, divert, re-export or otherwise dispose of any U.S. origin goods or technology obtained from Gaumard except as U.S. laws and regulations expressly permit.
- 11. Indemnity.**
- a. Gaumard agrees to indemnify, defend and hold Customer, its officers, directors, employees, agents and contractors harmless from and against all loss, damage, liability, cost and expense (including reasonable attorneys' fees and expenses) by reason of any claims or actions by third parties against Customer for (1) bodily injury or death, and damage, loss or destruction of any real or tangible personal property, which third party claims arise out of or relate to Gaumard's gross negligence or willful misconduct or (2) infringement or misappropriation by Gaumard of any intellectual property rights under this Agreement.
- 12. Software License.** For purposes of these Terms, the term "Software" includes all Gaumard computer software, firmware, and associated documentation, whether in printed or machine-readable form, supplied by reason of this Agreement or for use in connection with Equipment or Services. To the extent the Product includes Software, Customer's use of the Software is governed by the Gaumard End User License Agreement attached as Exhibit A to these Terms.
- 13. Reserved.**
- 14. Intended Uses.** Products are only intended for the uses described in the applicable user's manual or instructions for use.
- 15. Compliance with Laws.** Gaumard and Customer agree to comply with all federal and state laws that govern the enforceability and performance of this Agreement.
- 16. HIPAA Compliance.** As of the Effective date, the Parties are not planning to transfer any personal patient information between them. However, the Parties understand and agree that this Agreement may become subject to the Health Insurance Portability and Accountability Act of 1996 as amended ("HIPAA"), the privacy and security regulations promulgated thereunder, including 45 C.F.R. 160, 162 and 164, as amended (the "HIPAA Regulations"), and Title XIII of Division A and Title IV of Division B (the "Health Information Technology for Economic and Clinical Health Act" ("HITECH"), part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) ("ARRA"). The Parties agree to strictly comply with HIPAA and to execute any documents that may be required by HIPAA, HITECH, and any other applicable federal or state privacy laws and regulations. The Parties agree that if they directly or indirectly gain access to Protected Health Information ("PHI") held by the other Party during any interaction, the receiving Party will keep the PHI confidential under the terms of this Agreement



- 17. State Reporting and Disclosure Laws.** Unless otherwise noted in this Agreement, the cost of any Product training provided by Gaumard shall be included in the purchase price of the Product where applicable. Customer acknowledges and agrees that state reporting laws may require Gaumard to disclose certain aspects of this arrangement.
- 18. Fraud and Abuse.** Gaumard hereby certifies that it is not currently a listed vendor in the: (a) Federal General Services Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Presidential Executive Orders 12549 and 12689 "Debarment and Suspension;" and (b) in the Office of the Inspector General of the Department of Health and Human Services' "List of Excluded Individuals/Entities." Any discounted pricing terms offered under this Agreement may be a "discount or other reduction in price" under the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). Customer shall take all actions necessary to comply with the Anti-Kickback Statute discount safe harbor regulations, 42 C.F.R. § 1001.952(h), including but not limited to, (1) maintaining accurate records reflecting the pricing terms of items and Services purchased under this Agreement, (2) fully and accurately report any discount received under this Agreement if applicable, and (3) make available information provided to Customer by Gaumard concerning cost reports and other filings with the government, including but not limited to, the Secretary of the U.S. Department of Health and Human Services or other state agencies.
- 19. Bankruptcy.** Except as may be prohibited by applicable bankruptcy laws, a Party to this Agreement may elect to terminate this Agreement (including any Purchase Orders ) if any of the following situations arise: (1) the other Party becomes insolvent or is unable to pay debts as they become due; (2) a voluntary or involuntary bankruptcy proceeding is instituted by or against a Party hereto; or (3) an appointment of a receiver or assignee for the benefit of creditors occurs on behalf of a Party hereto.
- 20. Waiver and Severability.** If either Party fails to perform obligations under this Agreement, such nonperformance shall not affect the other Party's right to enforce performance at any time. Waiver of any remedy or material breach of any subject matter contained in this Agreement shall not be viewed as a waiver unless agreed to by the Parties in writing. Each provision of this Agreement is separate and independent of one another, and the unenforceability of any provision will not affect the enforceability of any other provision. If any provision is held to be excessively broad or unenforceable, such provision shall be modified so that it is enforceable to the fullest extent possible by law.
- 21. Assignment.** Customer shall not assign this Agreement without the prior written consent of Gaumard, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, the rights and obligations herein will be binding upon the successors and assigns of Customer.
- 22. Notices.** Any required notices will be given in writing to Gaumard as set forth in the applicable Gaumard Purchase Order or other purchasing document.
- 23. Miscellaneous.** See applicable Gaumard Purchase Order documents, Gaumard Warranty documents, and Gaumard Cares Service Plan documents for other terms and conditions, which may include, but are not limited to: **Term, Termination, Customer Training and Support, and Product Repairs and Tune Ups.**



## Exhibit A

### GAUMARD END USER LICENSE AGREEMENT

This End User License Agreement (“*EULA*”) sets forth the respective rights and responsibilities between the entity named in the Purchase Order associated with this EULA (“*End User*”) and Gaumard Scientific Company, Inc., a Florida corporation (“*Gaumard*”), relative to the Gaumard Software (as defined below). This EULA is effective as of the date Gaumard accepts and confirms the Purchase Order (the “*Effective Date*”). BY USING THE GAUMARD SOFTWARE, END USER IS AGREEING TO BE BOUND BY THE TERMS OF THIS EULA. IF END USER DOES NOT AGREE, END USER MAY NOT USE THE GAUMARD SOFTWARE.

#### 1. Definitions.

- 1.1 “*Gaumard Documentation*” means the Gaumard user and operations manuals, guides, and related materials provided by Gaumard to End User to facilitate use of the Gaumard Products.
- 1.2 “*Gaumard Equipment*” means Gaumard hardware components for medical simulation and training, including manikins and associated instrumentation, and other hardware and tangible products sold by Gaumard to End User.
- 1.3 “*Gaumard Products*” means Gaumard Software licensed and Gaumard Equipment sold or otherwise made available by Gaumard to End User currently or in the future.
- 1.4 “*Gaumard Software*” means the object code form of computer programs and Gaumard Documentation owned by Gaumard or its licensors and licensed to End User in accordance with this EULA. Gaumard Software includes (a) computer programs embedded in firmware in the Gaumard Equipment; (b) computer programs embedded in a separate medium (such as CD or flash drive) for use in conjunction with the Gaumard Equipment; (c) computer programs downloaded or received via mail from Gaumard; (d) computer programs used on servers storing or processing data related to the Gaumard Products; and (e) computer programs used to create and manage a network for the Gaumard Equipment, interface with the components of the Gaumard Equipment, manage and compute location information related to the Gaumard Equipment, and monitor health of the Gaumard Equipment.

#### 2. Software License and Restrictions.

- 2.1 License. Subject to End User’s compliance with the terms and conditions of this EULA, the Gaumard Sales Terms and Conditions, the Purchase Order, and the Gaumard Cares Service Plan Agreement, Gaumard grants End User a non-exclusive, non-transferable (except as otherwise set forth herein), personal license to execute and use the Gaumard Software for End User’s internal purposes, but only so long as the Gaumard Software is installed on the Gaumard Product on which it was originally installed. End User may not, directly or indirectly, sell, sublicense, display, timeshare, loan, lease, distribute, or create derivative works of the Gaumard Software.
- 2.2 Ownership. All rights, title, and interest in and to the Gaumard Software, and any derivative works thereof, whether created by Gaumard, End User, or a third party, will remain at all times solely and exclusively owned by Gaumard. Nothing in this EULA or the Purchase Order will be construed to grant End User any rights of any kind with respect to the Gaumard Software, except as expressly set forth in this EULA.
- 2.3 Reverse Engineering and Other Restrictions. End User will not, and will not allow any third party to, tamper with, modify, decompile, disassemble, derive the source code of, reverse engineer, or attempt to obtain the internal design of the Gaumard Software or Gaumard Products for any purpose whatsoever (collectively, “*Restricted Acts*”). If applicable law permits End User to take any of the Restricted Acts notwithstanding the previous prohibition, and End User wishes to take any Restricted Act notwithstanding the previous prohibition, End User will first provide Gaumard with thirty (30) days prior written notice. Gaumard may terminate this EULA at any time during such notice period without liability arising from such termination. The parties agree



that all information needed for interoperability is available from Gaumard in accordance with applicable government directives.

- 2.4 Updates. From time to time Gaumard may develop new versions or updates for the Gaumard Software that may be made available to the End User as agreed under the terms of the Gaumard Sales Terms and Conditions, Gaumard Purchase Order documents, Gaumard Warranty documents, or Gaumard Cares Service Plan documents. Unless otherwise agreed to by Gaumard, End User shall be responsible for installing the provided new versions or updates for the Gaumard Software.
- 2.5 Proprietary Notices. End User agrees to maintain and reproduce on all copies of the Gaumard Software, any names, logos, copyright notices, trademarks, other proprietary markings, and legends that appear on the Gaumard Software.
- 2.6 Control of Duplication. End User will not, nor will it allow any third party to, circumvent the protection controlling the duplication or use of the Gaumard Software, for example and without limitation, any software lock controlling the number of copies End User may make of the Gaumard Software.
- 2.7 No Source Code. End User acknowledges and agrees that its rights under this EULA do not include rights to source code. In its exercise of the rights granted under this EULA, End User agrees not to take any action that would result in any requirement to disclose or make available to other parties the Gaumard Software in source code format.
- 2.8 Certification. Upon thirty (30) days written notice to End User from Gaumard, End User shall certify End User's compliance with the restrictions and obligations in this EULA. Such requests will not occur more frequently than once per calendar year. If End User has used the Gaumard Software in violation of this EULA, End User shall, in addition to any other remedies Gaumard may have, pay Gaumard additional fees for the excess use according to Gaumard's then-current price list and policies, plus a late payment charge of one percent (1.0%) per month (or the highest amount allowed by applicable law, if lower) for each month of excess use from the date of initial excess use.
- 2.9 Privacy and Recordings. End User will comply with all applicable laws, rules and regulations related to privacy, publicity and data protection related to use of the Gaumard Products. End User shall not use the Gaumard Software to record or collect personal data from any person in violation of End User's policies or privacy statements. End User shall receive express consent from all persons recorded by the Gaumard Software sufficient for End User's use, storage, and distribution of such recordings.
- ### 3. Term and Termination
- 3.1 Term. This EULA commences on the Effective Date and continues perpetually, unless terminated earlier in accordance with the terms hereof.
- 3.2 Termination for Cause. This EULA is automatically terminated by Gaumard if the other party materially breaches this EULA, the Dinwiddie contract, the Gaumard Sales Terms and Conditions, the Purchase Order, or the Gaumard Cares Service Plan Agreement. In addition, Gaumard may terminate this EULA if (a) End User becomes insolvent or makes an assignment for the benefit of End User's creditors; or (b) a receiver is appointed or a petition in bankruptcy is filed with respect to End User and such petition is not dismissed within thirty (30) days.
- 3.3 Effect of Termination. Upon the termination of this EULA for any reason, all licenses granted in Section 2 above will immediately cease and terminate. Upon termination, End User will immediately cease using the Gaumard Software.
- 3.4 Survival. Sections 3 through 6 will survive the termination of this EULA.



#### 4. Confidential Information; Trademarks.

4.1 Reserved.

#### 5. Disclaimer; Limitation of Liability; Infringement Indemnification

5.1 Warranty and Disclaimer. For a period of twelve (12) months from the Effective Date, Gaumard will (a) provide all updates to the Software that are made available generally, and (2) use reasonable efforts to fix or provide a workaround for any Gaumard Software defect or bug which prevents operation in substantial conformity with the Gaumard Documentation. Other than the above, the Gaumard Software is provided “as-is,” with no express or implied warranties of any kind, including the warranties of merchantability, fitness for a particular purpose, or non-infringement.

5.2 Limitation of Liability. IN NO EVENT WILL GAUMARD BE LIABLE TO END USER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF REVENUES, LOSS OF PROFITS, OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5.3 Infringement Indemnification. Gaumard will, as further described below, indemnify, defend, and hold End User harmless, at its expense, against any claim or suit brought by a third party against End User alleging that any Gaumard Software furnished under this EULA infringes the United States patent, trademark, copyright or other intellectual property right of a third party. Gaumard will pay all settlements entered into or damages finally awarded, including attorneys’ fees and costs, based on any such claim or suit; provided that End User gives Gaumard prompt written notice of such claim and gives Gaumard information, reasonable assistance, and sole authority to defend or settle the claim. In defense or settlement of the claim, Gaumard may obtain for End User the right to continue using the Gaumard Software, replace or modify the Gaumard Software so that it becomes non-infringing, or, if such remedies are not reasonably available, grant End User a refund for the associated Gaumard Products (depreciated over three years) and accept their return. Gaumard will not have any liability if the alleged infringement is based upon (a) the use or sale of the Gaumard Software in combination with other products or devices not furnished by or approved by Gaumard; (b) the use of the Gaumard Software in a manner for which they were not designed as described by the Gaumard Documentation; (c) any modification of the Gaumard Software not performed by or authorized by Gaumard; (d) any use of Gaumard Software by End User after End User learns of such allegation of infringement; or (e) any failure by End User to utilize a non-infringing version of the Gaumard Software made available by Gaumard along with notice that such update is non-infringing. The obligations set forth in this Section 5.3 are Gaumard’s sole obligations, and End User’s sole and exclusive remedy, for the Gaumard Software infringing third party intellectual property rights.

#### 6. Miscellaneous.

6.1 Binding Effect; Assignment. This EULA will be binding upon, and inure to the benefit of, End User’s and Gaumard’s respective permitted successors and permitted assigns. Neither party may assign or transfer this EULA or any of the rights, privileges, duties or obligations under this EULA without the prior written consent of the other party, except that either party may assign this Agreement to any entity controlled by, controlling, or under common control with such party at such time, as well as in connection with the sale, transfer, merger, or acquisition, whether by operation of law or otherwise, of substantially all of the assets of such party. In addition, if End User transfers the Gaumard Product on which the Gaumard Software is installed to a third party, End User may assign this EULA to such third party, provided that the third party agrees in writing with Gaumard to be bound by this EULA.

6.2 Notices. Any written notice required by this EULA will be deemed made (a) when delivered by personal service, (b) one (1) business day after being sent by recognized international overnight courier service (such as FedEx), or (c) when received, if sent by certified or registered mail, postage prepaid, return receipt requested. Any such notice given to a party shall be sent to the addresses on the attached Purchase Order. By giving to the



other party written notice thereof, the parties hereto and their respective permitted successors and assigns will have the right from time to time to change by written notice their respective addressee or address for notices.

6.3 Reserved.

6.4 Export Control. End User will not export or re-export the Gaumard Software, including any technical data, except as authorized and permitted by, and in compliance with, the laws and regulations, including but not limited to all export and re-export laws and regulations, of the United States.

6.5 Severability. If any provision of this EULA is invalid or unenforceable in any circumstances, it will be interpreted as much as possible to reflect the intent of the parties, and its application in any other circumstances and the remaining provisions of this EULA will not be affected thereby.

6.6 Entire Agreement. This EULA constitutes the entire agreement and understanding of the parties relating to the subject matter thereof. This EULA supersedes all prior written and oral agreements and all other communications between End User and Gaumard (or a Gaumard distributor) regarding the subject matter hereof. No contradictory terms and conditions of any purchase order, invoice, or other document issued by End User relating to the subject matter of this EULA shall be binding, unless agreed by the parties.

6.7 Waiver of Breach. No waiver by a party of any breach of this EULA will constitute a waiver of any other breach of the same or other provisions of this EULA. No waiver by a party will be effective unless made in a record signed or otherwise authenticated by an authorized representative of such party.

6.8 Relationship of the Parties. The parties are independent contractors. Nothing in this EULA or in the activities contemplated by the parties will be deemed to create an agency, partnership, employment or joint venture relationship between the parties. Neither party will have any responsibility nor liability for the actions of the other party except as expressly provided in this EULA. Neither party will have any right or authority to bind or obligate the other party in any manner or make any representation or warranty on behalf of the other party. This EULA is made and entered into for the sole protection and benefit of Gaumard, its licensors and suppliers, and End User, and no other person or entity shall be a direct or indirect beneficiary of or shall have any direct or indirect cause of action or claim arising from this EULA.