

11/26/24

PURCHASE AGREEMENT
Between
COUNTY OF GLOUCESTER
And
FERNICO, INC.

This PURCHASE AGREEMENT is made this 26th day of November, 2024, by and between the COUNTY OF GLOUCESTER, a body politic and corporate, with administrative offices at 2 South Broad Street, Woodbury, NJ 08096 (hereinafter "County"), and FERNICO, INC. with offices at 1910 Abbott Street, Suite 201, Charlotte, NC 28203, (hereinafter "Seller").

WITNESSETH:

WHEREAS, the County has a need to purchase software, licensing, maintenance and hardware for use in forensic medical examinations by the County Prosecutor's Office; and

WHEREAS, Seller is the sole source and exclusive provider of the proprietary Cortexflo Photographic Examination System with relative software licensing, maintenance and hardware, hereinafter referred to as "System", and the Cortexflo Alternative Lights Source Module, as set forth in Quote number Q09242401 provided by Seller to the County, and attached hereto as Exhibit A; and

WHEREAS, the County desires to purchase the System Module, as set forth in Exhibit A for an initial term of twelve (12) months, and Seller desires to grant the non-exclusive license(s) on the System to the County.

WHEREAS, the service related to this Agreement pertains to installation and maintenance of proprietary computer software and hardware of which Seller is the sole provider in the United States, and is therefore an exception to the Local Public Contracts Law as described and provided in N.J.S.A. 40A:11-5(dd); and

WHEREAS, in accordance with N.J.S.A. 19:44A-20.4 et seq. the Seller has certified that it has not previously made and will not make a disqualifying contribution during the term of the contract; and

NOW THEREFORE, Seller grants and County accepts a personal, non-transferable and non-exclusive right and license to use the System upon the terms and conditions set forth below:

1. **TERM.**

The term of this Agreement shall be effective for a period of one (1) year from November 26, 2024 to November 25, 2025.

2. COMPENSATION.

The Seller shall be paid a total amount of \$22,636.00, which encompasses the following:

- a. One (1) Cortexflo Photographic Examination System, including the software license, and 12-month maintenance agreement (\$16,995.00);
- b. One (1) Alternative Light Source Module (\$3,500.00);
- c. On-site installation and one (1) day of training (\$1,995.00);
- d. UPS ground delivery (\$146.00).

Seller shall be paid in accordance with this Contract document upon receipt of an invoice and a properly executed purchasing voucher. Upon approval by County, the payment voucher shall be placed in line for prompt payment. Each invoice shall contain an itemized, detailed description of all services or products provided during the billing period. Failure to provide sufficient specificity shall be cause for rejection of the invoice until the necessary details are provided.

3. DUTIES OF SELLER. The specific duties and obligations of the Seller shall be for provision of one (1) Cortexflo Photographic Examination System with relative software licensing, annual maintenance and hardware, and one (1) Alternative Light Source Module, as set forth in Quote number Q09242401, annexed hereto as Exhibit A and incorporated herein.

4. LICENSE.

Each license granted under this Agreement conveys to County only a personal, non-exclusive, non-transferable right and license to use the System on such computer systems and equipment of the County Prosecutor's Office as designated by the Department. This Software License and Maintenance Agreement may not be assigned by County, and the System to which it applies, and documents and materials relating thereto, may not be disclosed, sub-licensed, published, released or transferred to another party by the County without the prior written consent of Seller.

5. WARRANTY.

Seller warrants to the County that the System will substantially perform in the manner described in the Quotation attached hereto as Exhibit A, and Seller's letter dated October 16, 2024 attached hereto as Exhibit B, or Seller will refund the purchase price paid by County. The Warranty and obligation of Seller stated above is conditioned upon: (a) the System being used in connection with the designated computer system; and (b) there having been no alterations or modifications to the System by persons other than Seller, which have not been approved in writing by Seller.

6. OBLIGATION.

In exchange for the payment specified in this Agreement, Seller shall have the obligation to correct any error, malfunction or defect in the System for which it receives notice from County. For the purpose of this Agreement the term "error, malfunction or defect" shall mean

only significant deviations from the design specification for the most current release of the System. Seller further agrees to make available to County all standard up-dates, enhancements, and improvements in the System during the term of the warranty period and during the term of the software maintenance agreement. County's refusal to accept such standard up-dates, enhancements and/or improvements in the System shall void any warranties and/or software maintenance agreements in effect at that time. Similarly, unapproved changes, modifications or alterations in the System's object code shall (a) terminate the warranty provisions of this software license; and, if applicable; (b) terminate any software maintenance.

7. SERVICING OF THE SYSTEM.

County agrees to advise Seller in writing of the precise nature of any suspected error, malfunction or defect and provide Seller with all relevant information upon request in order that Seller may render the services set forth herein.

County will provide Seller with reasonable computer time, if necessary. In addition, County will provide Seller with a "memory dump" and such additional data as Seller requests in machine readable or interpreted form deemed necessary or desirable by Seller in order to reproduce the environment in which the System operated. If County notifies Seller during Seller's normal business hours Monday thru Friday, excluding national holidays, of a suspected error, malfunction or defect, Seller agrees to use its best efforts to confirm, in a timely manner, the existence of such an error, malfunction or defect. If the suspected error, malfunction or defect is confirmed, Seller shall make every attempt to correct such error, malfunction or defect, but may not warrant the results of such an attempt.

8. PROTECTION AND SECURITY.

County acknowledges that the System constitutes a valuable asset or confidential trade secret of the Seller, and that Seller has an exclusive proprietary right and interest in and to the System, and therefore, County agrees to protect all written materials, flow charges, logic diagrams, source code, test materials, or other information relating to the System, in any form, from unauthorized disclosure by its agents, employees or customers. County, further agrees to use the System only as set forth in this Agreement, and only during the term of the license granted by this Agreement. County further agrees not to provide or otherwise make available any written materials, documents, flow charts, logic diagrams, source code, test materials, or other information relating to the System in any form, to any person other than County's or Seller's employees without prior written consent from Seller.

9. PERMISSION TO COPY.

Any portion of the System furnished by Seller in machine readable form may be copied by County only for use with the designated computer system and for the following purposes: (a) to enable County to understand the contents of the System, or (b) to modify the System in accordance with this Agreement, or (c) for safe-keeping and back-up purposes. In addition, it is mutually understood and agreed that the County shall have the right to retain the original and copies of all or any portion of the System, and all data stored within the System in machine readable form or otherwise for so long as necessary to ensure that the County is in compliance

with its obligations under law with respect to the proper storage and use of evidentiary materials and that the County's right to retain the System and data stored within the System shall survive the termination or discontinuance of the rights granted under this software license Agreement.

10. INDEMNIFICATION.

In the event that any portion of the System or related materials furnished to County by Seller is likely to or does become the subject of a claim of infringement of a copyright or patent, Seller may, at its option and expense, procure for County the right to continue using the System or related materials, or, to modify the System or related materials to make them non-infringing. If in Seller's opinion, neither of the foregoing alternatives are reasonably available to Seller then Seller may terminate this Agreement upon thirty (30) days written notice to the County, provided however, that the Seller shall have no right to unilaterally terminate this Agreement or to alter its terms and conditions in any manner which would be inconsistent with the legal obligations of the County with respect to the preservation, storage or use of evidence and evidentiary materials. Seller agrees to hold County harmless from any patent or copyright infringement arising out of the County's use of the System provided Seller is notified promptly and is given complete authority and information required for defending or settling any charge of patent or copyright infringement or suit resulting therefrom, and further provided that County is not in default of any of the provisions of this Agreement.

County shall hold harmless the Seller for any of County's acts or omissions, including without limitation: (a) what information and material County accesses through the software; (b) how County interprets or uses the information and materials accessed through the software; or (c) what actions the County may take as a result of having been exposed to information and materials obtained through the software.

11. CANCELLATION OR TERMINATION.

Except as provided in this Agreement, the right and license granted hereunder may be cancelled by Seller if County is in default of any amount due under this Agreement for a period of ninety (90) days, and may be cancelled by either party at any time upon default by the other party of any covenant of the Software License and/or Maintenance Agreement if such default is not corrected within thirty (30) days after receipt of written notice thereof.

12. LIMITATION OF LIABILITY.

In no event shall the County be liable to the Seller for loss of profit or other economic loss, indirect, special, consequential or other similar damages, arising out of any breach of this license agreement or any obligations under this agreement or the license granted or for any claim made against Seller by any other party, even if County has been advised of the possibility of such claim except as otherwise provided in paragraph 11.

13. **SEVERABILITY.**

Both parties agree that the provisions of this Agreement are severable and should any of the provisions be deemed invalid, then only that provision should fail, and the remainder of this Agreement shall be in full force and effect.

14. **GOVERNING LAW, JURISDICTION AND VENUE.**

This Agreement and all questions relating to its validity, interpretation, performance or enforcement shall be governed by and construed in accordance with the laws of the State of New Jersey. The parties each irrevocably agree that any dispute arising under, relating to, or in connection with directly or indirectly, this Agreement or related to any matter which is the subject of or incidental to this Agreement (whether or not such claim is based upon breach of contract or tort) shall be subject to the exclusive jurisdiction and venue of the state and/or federal courts located in Gloucester County, New Jersey or the United States District Court, District of New Jersey, Camden, New Jersey. This provision is intended to be a "mandatory" forum selection clause and governed by and interpreted consistent with New Jersey law, and each waives any objection based on forum non conveniens.

15. **INDEPENDENT CONTRACTOR STATUS.**

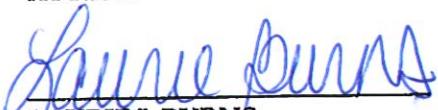
The parties acknowledge that Seller is an independent Contractor and is not an agent of the County.

16. **IMMUNITIES.**

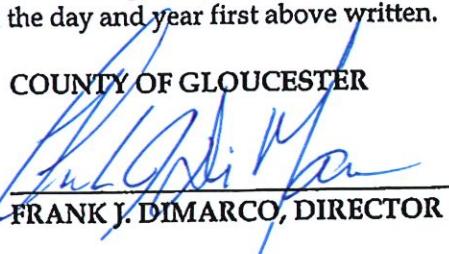
Except for enforcement of the payment terms of this Agreement between the parties, the County reserves all immunities and defenses available to the County as a governmental entity under the laws of the State of New Jersey.

IN WITNESS WHEREOF, the County has caused this instrument to be signed by its Director, and attested by the Clerk of the Board pursuant to a Resolution passed for that purpose, and Seller has caused this instrument to be signed by its properly authorized representative and its corporate seal affixed the day and year first above written.

ATTEST:


LAURIE J. BURNS,
CLERK OF THE BOARD

COUNTY OF GLOUCESTER


FRANK J. DIMARCO, DIRECTOR

ATTEST:

FERNICO, INC.


By: Andrew Thompson
Title: CTO



Quote

Rep	Date	Quote #
JT	9/24/2024	Q09242401

Bill To
Gloucester County Accounts Payable PO Box 337 Woodbury, NJ 08096

Ship To
Gloucester County Special Victims Unit Eileen Caraker 2 South Broad Street Woodbury, NJ 08096

Item	Description	Qty	Rate	Total
FER81002	Cortexflo Photographic Examination System - Including: - Canon EOS R8 - 19" Touch Screen Monitor - Cortexflo Controller - Custom Camera Mount Hardware - Cortexflo Software License - 12 Month Maintenance Agreement	1	16,995.00	16,995.00
FER81009	Cortexflo On Site Installation & Training (1 Day)	1	1,995.00	1,995.00
FER81003	Cortexflo Maintenance Agreement (12 Months) - 1st Year Included - 2nd Year Cost \$2,250	1	0.00	0.00
FER87010	Cortexflo Alternative Light Source Module - Including: - Custom Ring Light - 455NM Blue & "White" Light - Cortexflo ALS Software - Training Documentation	1	3,500.00	3,500.00
UPSDELIVE...	UPS Ground Delivery	1	146.00	146.00

Wiring Payment Information:

Bank: Wells Fargo Bank, N.A.
Account Number: 2000019438409
Routing No: 0312 0146 7

Subtotal	\$22,636.00
Sales Tax (0.0%)	\$0.00
Total	\$22,636.00

All Quotes are in USD unless otherwise specified.

Fernico Inc
1910 Abbott Street, Suite 201, Charlotte, NC, 28203
T: 888-748-1826 - F: 888-748-1827
E: sales@fernico.com - Tax ID: 98-0520513

EXHIBIT B



Gloucester County
2 South Broad Street
Woodbury, NJ 08096

October 16, 2024

Ref: Sole Source Justification

Fernico Inc., a Charlotte, North Carolina based company, is the sole source in the USA for Cortexflo.

Cortexflo is a forensic camera system specifically designed for the photo documentation of victims of sexual and physical abuse. The system is currently being used in both hospitals and child advocacy centers to document the medical examinations of their patients.

The Cortexflo system has been developed by Fernico to meet the needs of SANE Nurses, Pediatricians and other medical staff working in the physical and sexual abuse field. Fernico has worked closely with these users to ensure the product meets their specific needs.

There are a number of unique features in Cortexflo which are not available in other potential solutions:

- Voice Control – Full control of camera focusing, picture taking and video recording can be achieved entirely through voice control.
- Large Touch Screen Display – The software is designed to function on a touch screen, captured photos can be enlarged and reviewed immediately after they are taken.
- Fully Automated Photo Management – Photo's and Video's captured can automatically be written to a password protected, encrypted DVD, with the user only needing to tap two buttons on the touch screen.
- Annotation for Peer Review – Users can annotate their photographs with arrows, boxes, text and clock diagrams to help identify injuries or areas of concern.
- Chain of Evidence Compliant – By utilizing secure AES 256-bit encryption, MDS and SHA1 hashing and a structured user workflow process, Cortexflo is able to produce photographic evidence that will be credible in a court of law.

Due to the sensitive nature of the work undertaken by the hospitals, rape crisis centers and child advocacy centers using the Cortexflo system, all sales and support are managed directly by Fernico Inc.

Please get in touch with us if you have any questions or if you require additional information.

Sincerely,

Jessica Trammel

Jessica Trammel
Sales Manager