

## **AGREEMENT FOR PURCHASE OF PROOFPOINT CYBERSECURITY SOFTWARE**

This Agreement for Purchase of Proofpoint Cybersecurity Software (“Agreement”) is made and entered into as of \_\_\_\_\_ (“Effective Date”) by and between the City of North Las Vegas, a Nevada municipal corporation (“City”) and Dyntek Services, Inc. doing business as Dyntek, a Delaware corporation (“Provider”).

### **RECITALS**

WHEREAS, the City desires to obtain Proofpoint Cybersecurity Software (“Products”) and related services (“Services”) as set forth more particularly in Provider’s Quote #012177 v1 January 10, 2024, attached hereto as **Exhibit A**;

WHEREAS, Provider represents that it has the experience, knowledge, labor, and skill to provide the Services in accordance with generally accepted industry standards, and is willing and able to provide the Services.

**NOW, THEREFORE**, upon good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Provider agree to the following terms, conditions, and covenants:

### **SECTION ONE RESPONSIBILITY OF PROVIDER**

1.1. The Provider shall perform all of its obligations in the manner set forth in this Agreement including, without limitation, selling the Products to the City at the prices and quantities set forth in the Provider’s Quote, and all related additional or incidental tasks necessary to effectuate the intent of this Agreement.

1.2. The Products shall be new and must meet or exceed the technical specifications detailed in the Quote or as otherwise specified by the City.

1.3. If the Provider is shipping any of the Products to City prior to performing the Installation and Maintenance Services, the Provider shall ship the Products to a shipping address specified by the City (“Delivery Location”) F.O.B. Delivery Location as ordered by the City. Provider bears all risk of loss or damage to the Products until delivery of the Products to the City. Title to the Products passes to the City only after the delivery and unloading of the Products at the Delivery Location is complete. Delivery of the Products is not complete until such Products have physically been received and accepted by the City.

1.4. The Provider shall perform the installation Services in accordance with **Exhibit A**, and the terms, conditions, and covenants of this Agreement. Any modification to the installation Services must be specified in a written amendment to this Agreement that sets forth the nature scope and payment for the installation Services as modified by the amendment.

1.5. The Provider shall furnish all user, instruction, or operator manuals for the Products as applicable.

1.6. The Provider shall furnish copies of all standard product warranties, extended warranties, and service and maintenance agreements for the Products from any manufacturer. To the extent possible, the Provider shall transfer or assign such warranties and agreements upon the request of the City.

1.7. The Provider shall promptly notify the City any time that the Provider fails to meet the requirements of this Agreement and shall, at its own expense, promptly take all actions to come back into compliance with this Agreement. If the Provider performs any additional task without obtaining the City's prior written approval, the Provider does so at its own risk and expense.

1.8. The Provider shall at its own expense comply at all times with all municipal, county, state and federal laws, regulations, rules, codes, ordinances, and other applicable legal requirements.

## **SECTION TWO TERM AND COMPENSATION**

2.1. The term of this Agreement shall commence on effective date and will continue for one (1) year ("Term"), unless terminated earlier in accordance with the terms of this Agreement as stated herein.

2.2. The City shall pay the Provider for delivering and installing the Products and performing the Services in an amount not to exceed Sixty-Eight Thousand, Four Hundred Eighty Dollars and 10/100 (\$68,480.10).

2.3. The prices for the Products and Services will remain in effect for the Term of the Agreement. No additional compensation shall be paid, and no increase in the time of performance shall be awarded to the Provider without the prior written authorization of the City to proceed with such changes.

2.3. Payment to the Provider shall be made within thirty (30) calendar days after the City receives each invoice from the Provider, provided that such invoice is complete, correct, and undisputed by the City. Upon reconciliation of all errors, corrections, credits, and disputes, payment to the Provider will be paid in full within 30 calendar days. Invoices received without a valid purchase order number will be returned unpaid. The Provider shall submit the original invoice via email to:

AccountsPayable@CityofNorthLasVegas.com

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**SECTION THREE  
REPRESENTATIONS  
AND WARRANTIES**

3.1. Provider represents and warrants for the benefit of the City, in addition to any other representations and warranties made in this Agreement, with the knowledge and expectation of the City's reliance thereon, as follows:

3.1.1. Provider is a duly formed and validly existing Delaware corporation and is in good standing pursuant to the laws of the State of Nevada and has the full power, authority and legal right to execute, deliver and perform under this Agreement.

3.1.2. The Products are now and shall be at the time of delivery free from any security interest, lien, or other encumbrance.

3.1.3. Provider is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to perform all of its obligations under this Agreement.

3.1.4. The representations and warranties made by Provider survive the termination or expiration of the Agreement.

3.1.5. The person executing this Agreement on Provider's behalf has the right, power, and authority to enter into this Agreement, and such execution is binding on the Provider.

3.1.6. All Services performed, including deliverables supplied, shall conform to the specifications, drawings, and other descriptions set forth in this Agreement, and shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of Provider's profession and in accordance with generally accepted industry standards prevailing at the time the Services are performed, and do not infringe the intellectual property of a third party. The foregoing representations and warranties are not intended as a limitation, but are in addition to all other terms set forth in this Agreement and such other warranties as are implied by law, custom, and usage of the trade.

**SECTION FOUR  
INSURANCE**

4.1. Provider shall procure and maintain, and shall cause each subcontractor, principal or agent to procure and maintain at all times the following insurance coverage for all work related to the performance of this Agreement:

4.1.1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the

general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

4.1.2. Requested Liability limits can be provided on a single policy or combination of primary and umbrella, so long as the single occurrence limit is met.

4.2 The insurance policies are to contain, or be endorsed to contain, the following provisions:

4.2.1. Additional Insured Status: The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Provider including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Provider's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

4.2.2. Primary Coverage: For any claims related to this contract, the Provider's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of the Provider's insurance and shall not contribute with it.

4.2.3. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

4.2.4. Self-Insured Retentions: Self-insured retentions must be declared to and approved by the City. The City may require the Provider to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

4.2.5. Acceptability of Insurers: Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

4.3. Claims Made Policies: If any of the required policies provide claims-made coverage:

4.3.1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

4.3.2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

4.3.3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the

Provider must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.

4.4. Verification of Coverage: Provider shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Provider’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

4.5. Special Risks or Circumstances: The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**SECTION FIVE  
INDEPENDENT CONTRACTOR**

Provider, its employees, subcontractors, and agents are independent contractors and not employees of the City. No approval by City shall be construed as making the City responsible for the manner in which Provider performs the Services or for any negligence, errors, or omissions of Provider, its employees, subcontractors, or agents. All City approvals are intended only to provide the City the right to satisfy itself with the quality of the Products and the Services performed by Provider. The City acknowledges and agrees that Provider retains the right to contract with other persons in the course and operation of Provider’s business and this Agreement does not restrict Provider’s ability to so contract.

**SECTION SIX  
INDEMNIFICATION**

Notwithstanding any of the insurance requirements or limits of liability set forth herein, the Provider shall defend, protect, indemnify, and hold harmless the City, and its officers, agents, and employees, from any liabilities, claims, damages, losses, expenses, proceedings, suits, actions, decrees, judgments, reasonable attorneys’ fees, and court costs which the City suffers, and/or its officers, agents or employees suffer, as a result of, or arising out of, the negligent or intentional acts or omissions of the Provider, its agents, and employees, or anyone employed by any of them, in fulfillment or performance of the terms, conditions or covenants of this Agreement including, without limitation, compliance with the terms of Exhibit A. This Section Six shall survive the completion of the Project, if applicable, and the termination or expiration of this Agreement until such time as the applicable statutes of limitation expire.

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**SECTION SEVEN  
CONFIDENTIALITY AND AUTHORIZATION FOR ACCESS TO CONFIDENTIAL  
INFORMATION**

7.1. Provider shall treat all information relating to the Services and all information supplied to Provider by the City as confidential and proprietary information of the City and shall not permit its release by Provider's employees, agents, or subcontractors to other parties or make any public announcement or release thereof without the City's prior written consent, except as permitted by law.

7.2. Provider hereby certifies that it has conducted, procured or reviewed a background check with respect to each employee, agent, or subcontractor of Provider having access to City personnel, data, information, personal property, or real property and has deemed such employee, agent, or subcontractor suitable to receive such information and/or access, and to perform Provider's duties set forth in this Agreement. The City reserves the right to refuse to allow any of Provider's employees, agents or subcontractors access to the City's personnel, data, information, personal property, or real property where such individual does not meet the City's background and security requirements, as determined by the City in its sole discretion.

**SECTION EIGHT  
TERMINATION**

The City, through its City Manager, may terminate this Agreement at any time for convenience, upon notice to the Provider, and the City shall have no liability to the Provider for such termination except that the City shall pay the Provider for the reasonable value of the Products provided and installed by the Provider to City up through and including the date of termination, provided that the Provider, within thirty (30) days following the date of the City's termination notice, submits an invoice for such Products in a form reasonably acceptable to the City and such invoice is supplemented by such underlying source documentation as is reasonably requested by the City.

**SECTION NINE  
NOTICES**

9.1. All notices, demands, and other instruments required or permitted to be given pursuant to this Agreement shall be in writing and be deemed effective upon delivery in writing if served by personal delivery, by overnight courier service, by facsimile, or by overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City:	City of North Las Vegas Attention: Maria Consengco 2250 Las Vegas Blvd., North, Suite 820 North Las Vegas, NV 89030 Phone: 702-633-1463
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To Provider: Dyntek Services, Inc.  
Attention: Hunter Carreira  
7140 Dean Martin Dr., Suite 1100  
Las Vegas, NV 89118  
Phone: 702-777-2672  
Email: hunter.carreira@dyntek.com

9.2. The address to which any notice, demand, or other writing may be delivered to any party as above provided may be changed by written notice given by such party as above provided.

## **SECTION TEN SAFETY**

10.1. Obligation to Comply with Applicable Safety Rules and Standards. Provider shall ensure that it is familiar with all applicable safety and health standards promulgated by state and federal governmental authorities including, but not limited to, all applicable requirements of the Occupational Safety and Health Act of 1970, including all applicable standards published in 29 C.F.R. parts 1910, and 1926 and applicable occupational safety and health standards promulgated under the state of Nevada. Provider further recognizes that, while Provider is performing any work on behalf the City, under the terms of this Agreement, Provider agrees that it has the sole and exclusive responsibility to assure that its employees and the employees of its subcontractors comply at all times with all applicable safety and health standards as above-described and all applicable City safety and health rules.

10.2. Safety Equipment. Provider will supply all of his employees and subcontractors with the appropriate Safety equipment required for performing functions at the City facilities.

## **SECTION ELEVEN MISCELLANEOUS**

11.1. Governing Law and Venue. The laws of the State of Nevada and the North Las Vegas Municipal Code shall govern the validity, construction, performance, and effect of this Agreement, without regard to conflicts of law. The parties to this Agreement consent to the jurisdiction of any court of competent jurisdiction in Clark County, Nevada to adjudicate any dispute related to this Agreement or actions to enforce or interpret the terms of this Agreement.

11.2. Assignment. Any attempt to assign this Agreement by the Provider without the prior written consent of the City shall be void.

11.3. Non-Waiver. The failure to enforce or the delay in enforcement of any provision of this Agreement by a party shall in no way be construed to be a waiver of such provision or right unless such party expressly waives such provision or right in writing.

11.4. Partial Invalidity. If any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions not held invalid, void or unenforceable, shall continue in full force and effect.

11.5. Controlling Agreement. To the extent any of the terms or provisions in Exhibit A conflict with this Agreement, the terms and provisions of this Agreement shall govern and control. Any additional, different or conflicting terms or provisions contained in Exhibit A or any other written or oral communication to or from Provider shall not be binding in any way on the City whether or not such terms would materially alter this Agreement, and the City hereby objects thereto.

11.6. Attorneys' Fees. In the event any action is commenced by either party against the other in connection with this Agreement, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, as determined by the court, including without limitation, fees for the services of the City Attorney's Office. This Section 11.6 shall survive the completion of this Agreement until the applicable statutes of limitation expire.

11.7. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements, and understandings of the parties. No addition to or modification of this Agreement shall be binding unless executed in writing by the parties hereto.

11.8. Time of Essence. Time is of the essence in the performance of this Agreement.

11.9. Shipping. The Products are to be packaged in a manner that assures they are protected against deterioration and contamination. All shipments are to meet applicable D.O.T. Regulations. Serial numbers noted on the packing slip must match the serial number of the actual goods shipped. Incorrect or questionable documentation of serial numbers may result in shipment rejection. Shipments rejected due to Provider error will be returned solely at Provider's cost.

11.10. Inspection. An authorized representative of the City will inspect the Products at time of delivery. If deficiencies are detected, the Products may be rejected and the Provider will be required to make necessary repairs, corrections, or replacements. Payment and/or commencement of a discount period will not be made until the corrective action is made, the Products are re-inspected, and accepted.

11.11. Further Assurances. The Provider shall execute and deliver all such documents and perform such acts as are reasonably requested by the City to complete its obligations under this Agreement.

11.12. Effect of Agreement Termination. In the event this Agreement is terminated, all rights and obligations of the parties hereunder shall cease, other than indemnity obligations, and matters that by their terms survive the termination hereof.

11.13. Fiscal Funding Out. The City reasonably believes that sufficient funds can be obtained to make all payments during the term of this Agreement. Pursuant to NRS Chapter 354, if the City does not allocate funds to continue the function performed by the Provider under this Agreement, this Agreement will be terminated when appropriated funds expire.

11.14. Public Record. Pursuant to NRS 239.010 and other applicable legal authority, each and every document provided to the City may be a “Public Record” open to inspection and copying by any person, except for those documents otherwise declared by law to be confidential. The City shall not be liable in any way to the Provider for the disclosure of any public record, including but not limited to documents provided to the City by the Provider. In the event the City is required to defend an action with regard to a public records request for documents submitted by the Provider, the Provider agrees to indemnify, hold harmless, and defend the City from all damages, costs, and expenses, including court costs and reasonable attorney’s fees related to such public records request. This section 11.14 shall survive the expiration or early termination of the Agreement.

11.15. Electronic Signatures. For purposes of this Agreement, the use of facsimile, email or other electronic medium shall have the same force and effect as original signatures.

11.16. Federal Funding. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, in receipt of a notice of proposed debarment or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

**IN WITNESS WHEREOF**, the City and the Provider have caused this Agreement to be executed as of the day and year first above written.

City of North Las Vegas,  
a Nevada municipal corporation

By: \_\_\_\_\_  
Pamela A. Goynes-Brown, Mayor

Dyntek Services, Inc.,  
d/b/a DynTek,  
a Delaware corporation

By:  \_\_\_\_\_  
Name: Hunter Carreira  
Title: Account Executive

Attest:

By: \_\_\_\_\_  
Jackie Rodgers, City Clerk

Approved as to Form:

By: \_\_\_\_\_  
Micaela Rustia Moore, City Attorney

EXHIBIT A

Quote

Please see attached page(s).

Proofpoint: P0 for Email Security

Quote #012177 v1

Prepared For:

**City of North Las Vegas**

Ronald Williams  
 2250 North Las Vegas Boulevard  
 North Las Vegas, NV 89030

**P:**  
**E:** williamsrl@cityofnorthlasvegas.com

Prepared by:

**DynTek Services, Inc - Nevada**

Hunter Carreira  
 7140 Dean Martin Drive  
 Suite 1100  
 Las Vegas, NV 89118

**P:** 702-777-2672  
**E:** hunter.carreira@dyntek.com

Date Issued:

**01.10.2024**

Expires:

**03.28.2024**

12Month Term: 1800 Users (P0 Tier) w/ Free Implementation Services

Ln #	Qty	Part Number	Description	Unit Price	Extended Price
1	1	PP-SUP-PS-12	PFPT Platinum Level Support PFPT Platinum Level Support - Tier 1 - 999999999 - Term 12 Months Users: 1,600	\$0.00	\$0.00
2	1	PP-PST-IS-IMP	InfoSec PS Implementation Services, 10% of net subscription - Tier 1 - 1000000 - Term 12 Months	\$0.00	\$0.00
3	1800	PP-B-P0F-S-B-104	NPRE, Email Protection, TAP URL & Attachment Defense, TAP URL Iso. (VAP only), Threat Response Auto-Pull - F-Secure - SaaS - Tier 1001 - 2500 - Term 12 Months	\$28.24	\$50,832.00
4	1	PP-M-EFDBC-S-A-102	PFPT EFD Commercial Basic (up to 1 sending domain) DMARC deployment for up to 1 sending domain (and unlimited defensive registrations) and 5 lookalike seed domains. Understand and configure your email systems to defend against email fraud tactics used ag	\$17,648.10	\$17,648.10
5	1	PP-PST-EFD-INT-101	Proofpoint EFD Initial Configuration - Tier 1 - 5000	\$0.00	\$0.00
Subtotal:					<b>\$68,480.10</b>

Quote Summary	Amount
12Month Term: 1800 Users (P0 Tier) w/ Free Implementation Services	\$68,480.10
<b>Total:</b>	<b>\$68,480.10</b>