



<p><b>Vaya Health</b> Contracting and Procurement Team 200 Ridgefield Court, Suite 206 Asheville, North Carolina 28806</p>	<p><b>REQUEST FOR PROPOSALS</b> <b>BID NUMBER:</b> <b>17-002 Master Data Management Solution</b></p>
<p><b>Refer <u>ALL</u> Inquiries to:</b> procurement@vayahealth.com</p>	<p>Proposals will be publicly opened: <b>June 8, 2017 at 3:00 p.m. EST</b></p>
<p><b>(See below for proper mailing instructions.)</b></p>	<p>Contract Type: Software and Maintenance Commodity: Master data management solution that integrates with Microsoft’s master data management platforms</p>

**NOTICE TO BIDDERS**

Sealed proposals, subject to the Terms and Conditions made a part hereof, will be received by Vaya Health (“Vaya”) at 200 Ridgefield Court, Suite 206, Asheville, North Carolina 28806 no later than June 8, 2017 at 3:00 p.m. Eastern Standard Time (“EST”), for the intent to purchase the following items and services, at which time and place the proposals will be publicly opened and read. Refer below for proper mailing instructions.

**I. GENERAL SCOPE OF PROJECT**

Vaya is seeking bids for a master data management solution that integrates with Microsoft’s master data management platforms. Bidder (defined herein) shall provide a solution in accord with the below specifications:

- A. Data Source Integration
  - 1. Microsoft structured query language (a/k/a SQL) server;
  - 2. Comma separated value (a/k/a CSV);
  - 3. Microsoft Azure;
  - 4. Microsoft Active Directory; and
  - 5. Additional options (preferred).
- B. Multi-Domain Management
- C. Golden Record Management
  - 1. Enterprise grade matching, de-duplication, and harmonization
- D. Data Stewardship Functionality
  - 1. Forms;
  - 2. Workflows;
  - 3. Reporting; and
  - 4. Auditing.

- E. Extensibility for Custom Application Integration
  - 1. Application Program Interface (a/k/a API) and
  - 2. .NET-compatible.
- F. Maintenance & Support

## II. RESPONSES/SUBMISSIONS FOR THIS REQUEST FOR PROPOSALS (“RFP”)

### A. Submission Requirements

#### 1. Proposal Narrative

Proposals should include a narrative description of the offer and a list and description of items and services to be rendered. Bidder should also include material to establish qualifications, including, but not limited to, company history, personnel and areas of expertise, and overall project approach. The Bidder must identify the names of all sub-contracting entities working on the project.

#### 2. Timeline

Responding firms should include an estimated timeline based on project description. **However, the entire scope of this RFP must be fully invoiced no later than June 15, 2017 at 5:00 p.m. EST. In addition, the entire scope of this RFP must be fully completed, including, but not limited to, provision of all deliverables, implementation, testing, and knowledge transfer, no later than June 30, 2017 at 5:00 p.m. EST.** Vaya reserves the right to adjust the timeline for any reason, which could postpone any or all parts of the scope of this RFP.

#### 3. Budget

Bidders should provide a detailed budget for the project, including itemized elements for all phases. Estimated hours needed to complete each task should be specified, when possible. Bidders must also identify rates for providing additional future support after the conclusion of the project.

#### 4. Experience

Proposals should include a list describing projects that are similar in scale that responding firm has completed. *Please include at least one in-depth case study that includes a limited number of creative samples.* Where possible, Bidders should highlight work for analogous organizations.

#### 5. References

Proposals should include a list of references for other governmental like organizations within the Asheville, North Carolina area or surrounding region.

#### 6. Additional Charges

Any additional charges not reflected on the proposal must be authorized by a change order approved by an authorized Vaya representative. Installation, if any, may be delayed to a date after delivery. Bidder shall warrant equipment, if any, from the date of installation, not the date of delivery.

**B. Additional Information/Requirements**

1. If applicable to an RFP, complete plans and specifications can be obtained by one of the following methods:
  - a. Accessing a PDF document located at <http://www.vayahealth.com/procurement/>;
  - b. Requesting a hard copy by mail, addressed as follows:

Vaya Health  
Attention: Contracting and Procurement Team  
Re: Bid No.: 17-002 Master Data Management Solution  
200 Ridgefield Court, Suite 206  
Asheville, North Carolina 28806; or
  - c. Requesting a copy in person at the above address during normal business hours.
2. Please submit written questions or inquiries to [procurement@vayahealth.com](mailto:procurement@vayahealth.com), before June 5, 2017 at 5:00 p.m. EST. Questions or inquiries past this deadline will not be addressed. Responses will be posted on the website on or before June 7, 2017 at 5:00 p.m. EST.
3. Bidders must be properly licensed and insured to perform the work in compliance with the laws of the State of North Carolina.
4. By submitting a proposal or providing materials, equipment, services, or supplies, Bidders and their contractors and subcontractors of any tier attest and affirm that:
  - a. They are aware of and are in full compliance with the North Carolina E-Verify requirements under Chapter 64, Article 2 of the North Carolina General Statutes and
  - b. They are not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. Chapter 147, Article 6E.
5. Where a proposal includes pricing for multiple items, a line item(s) is miscalculated, but the total proposal price is correct, Vaya may consider unit price over extension.

**C. Submission Procedure and Deadline(s)**

1. Proposals are due on or before June 8, 2017 at 3:00 p.m. EST. **Late submissions will not be accepted.**
2. Arrival of all times of the deadlines noted in this Notice to Bidders (sometimes hereinafter “Notice”) is established by the time kept by the Director of Contracting and Procurement and, alternatively, in the absence of the Director of Contracting and Procurement, the individual opening the responsive bids.

3. Proposals must be in writing and signed by the Bidder, and must be sealed before submission. Proposals are subject to rejection unless submitted in compliance with this Notice. Late proposals, regardless of delivery means, will not be accepted. Proposals must remain valid until June 30, 2017. Binding acceptance of an offer shall occur upon Vaya's execution of a contract. Bidders are responsible for distributing all documents to any subcontractors.
4. Bidder may provide additional information on a CD-ROM or USB flash drive (a/k/a thumb drive) with its proposal. However, Bidder should be aware that Vaya will look first to the hard documents within a proposal submission to determine whether a proposal is of interest. Consequently, there can be no assurance that any or all of the material(s) provided on a CD-ROM and/or USB flash drive will actually be viewed or considered by Vaya.
5. To submit a proposal, mail and/or otherwise deliver one fully completed and signed Execution Form (below), along with any addenda/attachments in one envelope, to:

Vaya Health  
Attention: Contracting and Procurement Team  
Re.: Bid No.: 17-002 Master Data Management Solution  
200 Ridgefield Court, Suite 206  
Asheville, North Carolina 28806

Vaya Health reserves the right to reject any or all proposals and/or to waive formalities and/or technicalities required for submission of a proposal and/or for contracting with a selected Bidder, for any or no reason, as it may deem to be in its best interest. We further reserve the right to request any additional documentation that we deem necessary under this RFP, including, but not limited to, documentation to assist with its review of proposals from Bidders and awarding the contract. We reserve the right to change the specifications and/or negotiate and modify requirements after selecting the Bidder, as required to ensure successful/acceptable project completion. While Vaya intends to award all tasks included in this RFP to one firm, we also reserves the right to contract any task or portion of this work separately.

Signed: Vaya Health



By: \_\_\_\_\_  
Francis A. Jurovich, III, JD, MA  
Contracting and Procurement Director

**EXECUTION FORM**

In compliance with this RFP, and subject to all the conditions in this Notice to Bidders, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are proposed, at the prices set opposite each item within the time specified in this Notice to Bidders.

By executing this form, I certify that this proposal is submitted competitively and without collusion (N.C. Gen. Stat. § 143-54).

**Failure to execute/sign proposal prior to submittal shall render proposal invalid.**

BIDDER:	FEDERAL ID OR SOCIAL SECURITY NO.:	
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO.
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:	FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

**It is solely the Bidder’s responsibility to ensure they have all necessary information prior to submitting a proposal. This includes any and all addenda. Bidder is to acknowledge all addenda or risk rejection of proposal.**

**Addenda One** \_\_\_\_\_ **Addenda Two** \_\_\_\_\_ **Addenda Three** \_\_\_\_\_

**Addenda Four** \_\_\_\_\_ **Addenda Five** \_\_\_\_\_ **Addenda Six** \_\_\_\_\_

Offer valid for sixty (60) days from date of proposal opening unless otherwise stated herein.

**[The remainder of this page is intentionally left blank.]**

## **INSTRUCTIONS TO BIDDERS**

- 1. READ, REVIEW AND COMPLY:** It shall be the Bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
- 2. DEFINITIONS:**
  - a. **Vaya:** Is Vaya Health.
  - b. **Bidder:** Is the company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3. NOTICE TO BIDDERS:** All proposals are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to a particular Notice to Bidders, the specifications, and any resulting contract. Vaya objects to and will not evaluate or consider any additional terms and conditions submitted with a Bidder's response. This applies to any language appearing in or attached to the document as part of the Bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** By execution and delivery of this document, the Bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
- 4. EXECUTION:** Failure to sign a proposal will render the proposal invalid.
- 5. ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this Notice, the order of precedence shall be (1) any resulting contract, (2) special terms and conditions specific to this Notice, (3) specifications, and (4) Instructions to Bidders.
- 6. TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, Bidder's offer shall be valid for sixty (60) days from the date of proposal opening.
- 7. SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out. Otherwise, it will be considered that items offered are in strict compliance with these specifications, and Bidder will be held responsible therefore. Deviations shall be explained in detail. **THE BIDDER SHALL NOT CONSTRUCT THIS PARAGRAPH AS INVITING DEVIATION OR IMPLYING THAT ANY DEVIATION WILL BE ACCEPTABLE.**
- 8. INFORMATION AND DESCRIPTIVE LITERATURE:** Where applicable, Bidder is to furnish all information requested. Further, if required elsewhere in this Notice, each Bidder must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous proposal will not satisfy this provision. Proposals which do not comply with these requirements will be subject to rejection.
- 9. CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to Vaya as directed on the Notice to Bidders. Any and all revisions to this document shall be made only by written addendum from Vaya. The Bidder

is cautioned that the requirements of this Notice can be altered only by written addendum and that verbal communications from whatever source are of no effect.

- 10. ACCEPTANCE AND REJECTION:** Vaya reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Bidder, to accept any item in the proposal. If an extended price is obviously in error, the unit price will control.
- 11. REFERENCES:** Vaya reserves the right to require a list of users of the exact item offered. Vaya may contact these users to determine acceptability of the proposal. Such information may be considered in the evaluation of the proposal.
- 12. TAXES:** As a local political subdivision of the State of North Carolina, Vaya is not subject to certain state and federal taxes. Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
- 13. AWARD OF CONTRACT:** Vaya will consider such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the Bidders; the substantial conformity with the specifications and other conditions set forth in the Notice; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by Vaya to be pertinent and/or specific to the purchase in question. Vaya reserves the right to offer a preference to local or regional Bidders. Unless otherwise specified by Vaya or the Bidder, Vaya reserves the right to accept any item or group of items on a multi-item proposal. In addition, Vaya reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; and/or other factors deemed by Vaya to be pertinent or specific to the purchase in question.
- 14. HISTORICALLY UNDERUTILIZED BUSINESSES:** Vaya invites and encourages participation in this bidding process by businesses owned by minorities, women, disabled, veterans, and non-profit work centers for the blind and severely disabled.
- 15. CONFIDENTIAL INFORMATION:** Vaya assumes no responsibility for confidentiality of information offered in a proposal. The Notice to Bidders does not intend to elicit proprietary information. However, if proprietary information is submitted as part of the proposal, the information is to be labeled as such. Proposals are not subject to public inspection until after the contract award. Vaya reserves the right to share any information submitted in response to this Notice to Bidders or process with any person(s) or firm(s) involved in the review and evaluation process. Proprietary or confidential information must be clearly labeled as such at the time of initial submission and, to the extent permitted under N.C. Gen. Stat. Chapter 132, will not be made available for public inspection. In the event that a request for inspection is made under public records law, the Bidder will be notified of the request and may participate in any subsequent civil action to compel disclosure of confidential information.

**16. SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the Bidder's expense. Written request for the return of samples must be made within ten (10) days following date of proposal closure. Otherwise, the samples will become the property of Vaya. Each individual sample must be labeled with the Bidder's name, bid number, and item number. A sample on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.

**17. MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.

**[The remainder of this page is intentionally left blank.]**



## **TERMS AND CONDITIONS**

**Execution of Agreement:** In the event the proposal is accepted by Vaya, Bidder shall be required to enter into a written agreement (“Agreement”) that shall contain the following Terms and Conditions, or Terms and Conditions substantially similar to the following (in addition to any conditions listed in the Notice to Bidders or Instructions above):

- 1. Compliance with Laws:** Bidder agrees to comply with all federal and state laws, rules and regulations applicable to its business and to the Goods and Services provided hereunder.
- 2. E-Verify:** Bidder shall comply with the requirements of Article 2 of Chapter 64 of the State of North Carolina General Statutes. Further if Bidder utilizes a subcontractor(s) of any tier, Bidder shall require its subcontractor(s) of any tier to comply with the requirements of Article 2 of Chapter 64 of the State of North Carolina General Statutes.
- 3. Iran Divestment Certification:** Bidder shall certify and attest that neither it nor its subcontractors are listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. Chapter 147, Article 6E.
- 4. Maintenance of Individual Licensure:** The Bidder represents and warrants that it and all individuals providing Goods and/or Services on its behalf shall continuously maintain all licenses, accreditations, certificates, and necessary qualifications as may be required by state and federal statutes, rules, and regulations. Bidder agrees to notify Vaya immediately of any change in the status of such licenses, accreditations, certifications and/or qualifications, and Bidder shall provide Vaya with proof of licensure and accreditation upon request.
- 5. Non-Exclusion:** Bidder represents and warrants that neither it, nor any of its employees, is excluded from participation in any state or federal healthcare program. Bidder agrees to notify Vaya in writing within five business days of exclusion of Bidder or any of its employees from participation in any state or federal healthcare program.
- 6. Confidentiality of Consumer Information:** When applicable, Bidder agrees to maintain the confidentiality of any and all consumer information and other information received during the course of providing Goods and/or Services hereunder and agrees not to discuss, transmit, or narrate in any form any consumer information of a personal nature, whether medical or otherwise. The Bidder is responsible for informing its employees and agents regarding the confidentiality requirements hereunder prior to sending any agent or employee to any Vaya facility or consumer residence. The Bidder further agrees to comply with all requirements of the Health Insurance Portability and Accountability Act and its implementing regulations at 45 CFR 160 *et seq.*, and all requirements of the Confidentiality Of Alcohol And Drug Abuse Patient Records regulations at 42 CFR Part 2, in addition to other applicable federal and state confidentiality laws, rules and regulations. If applicable, Bidder shall execute a Qualified Service Organization Agreement (“QSOA”) and/or Business Associate Agreement (“BAA”). Terms of the QSOA and/or BAA shall be considered binding upon execution.

- 7. Confidentiality of Non-Public Information:** Bidder acknowledges that it may have access to confidential information belonging to Vaya which is not public information (“Non-Public Information”), including but not limited to competitive health care information as described at N.C. Gen. Stat. § 122C-126.1. Bidder agrees to keep in strict secrecy and confidence any and all Non-Public Information the Bidder assimilates or to which it has access and which has not been publicly disclosed and which is not a matter of common knowledge in Bidder’s fields of work.
- 8. Affiliation Representation:** The Bidder shall not represent itself as affiliated with or endorsed by Vaya or its facilities without the prior written consent of the Vaya.
- 9. Title to Goods; Equipment:** Title to the Goods provided hereunder shall be vested in the Vaya unless otherwise directed in writing by the Vaya. Bidder shall supply, at its sole expense, all labor, equipment, tools, materials, and/or supplies necessary to provide the Goods and/or Services hereunder, unless otherwise agreed in writing. Bidder agrees to execute all instruments necessary to convey all right, title and interest in and to the Goods to the Vaya, unless otherwise directed in writing by the Vaya.
- 10. Ownership of Work Product and Intellectual Property Rights:** All works authored, produced, developed or reduced to practice by the Bidder during its provision of the Goods and/or Services (the “Work Product”) shall be owned by Vaya, and Vaya shall have all common law, statutory and other reserved rights therein. Furthermore, Vaya shall be the sole owner of any and all intellectual property rights, including without limitation, all patent, copyright, trademark and trade secrets rights in and to the Work Product. Vaya shall have the right to secure appropriate registration and protection for any and all intellectual property rights in and to the Work Product. Accordingly, the Bidder hereby expressly assigns to Vaya all right, title and interest in and to the Work Product, including any and all patent, copyright, trademark and/or trade secret rights thereto, and Bidder agrees to execute all documents required to evidence such assignment. Without limiting the foregoing, the Bidder hereby grants to Vaya the sole and exclusive right throughout the world, in all languages, and in perpetuity, to use the Work Product. The Bidder also hereby waives any and all claims it may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of “droit moral” with respect to the use, results and/or proceeds of the Bidder’s Goods, Services and Work Product.
- 11. Warranties:** Bidder agrees to perform Services in a good and workmanlike manner and with the standard of professional care and skill customarily provided in the performance of such Services and in accordance with the standards of applicable professional organizations and licensing agencies. Bidder further warrants that all Goods provided hereunder shall remain free of defects for not less than three (3) years after delivery of such Goods to the consumer. Bidder agrees to promptly provide to Vaya all warranty documentation on all Goods and Services provided hereunder. Bidder further warrants that it is legally authorized to do business in North Carolina, is in good standing with the North Carolina Secretary of State’s Office, and is in compliance with all applicable federal, state and local employment laws, rules and regulations, including but not limited to the North Carolina Workers’ Compensation Act and all safety precautions and programs required by the Occupational

Safety and Health Administration (OSHA). Bidder further warrants that neither the Goods nor the Services to be provided hereunder will violate, infringe, or misappropriate any patent, copyright, trademark, or trade secret rights of any third-party, or any other third-party rights, including without limitation non-competition agreements.

- 12. Default and Performance:** In the event any equipment, software, or service furnished by the Bidder in the performance of any contract awarded by Vaya should fail to conform to the contract specifications, Vaya may cancel and procure the articles or services from other sources and hold the Bidder responsible for any excess costs occasioned thereby. Vaya reserves the right to require performance bond or other acceptable alternative guarantees from the Bidder without expense to Vaya. The rights and remedies of Vaya provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.
- 13. Governmental Restrictions:** In the event any governmental restrictions are imposed that necessitate alteration of the material, quality, workmanship, or performance of the items offered prior to their delivery, it shall be the responsibility of the Bidder to notify Vaya in writing, at once, indicating the specific regulation that required such alterations. Vaya reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
- 14. Availability of Funds:** Any and all payments to the Bidder are dependent upon and subject to the availability of funds to Vaya from the State of North Carolina. If funds to effect such payment are not available, the Bidder agrees to take back any affected equipment and products furnished under this contract, terminate any services supplied to Vaya under this contract, and relieve Vaya of any further obligation thereof.
- 15. Recordkeeping, Access and Audits:** Bidder shall maintain and retain for at least six (6) years following delivery of the Goods or completion of the Services such records as may be needed to fully disclose the extent of Goods and/or Services provided and to evaluate Bidder's compliance with these Terms and Conditions. Bidder shall grant to Vaya prompt access to books, documents, papers, and other records of Bidder, whether on paper or in electronic or other form, for purposes of audit and inspection. For all Goods and Services being provided hereunder, Vaya shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings, whether on paper or in electronic or other form, relating to the provision of the Goods and/or Services. Audits shall take place at times and locations mutually agreed upon by both Parties. Notwithstanding the foregoing, Bidder must make the materials to be audited available within seven (7) calendar days of the request for them.
- 16. Inspection at Bidder's Site:** Vaya reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.

- 17. Condition and Packaging:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
- 18. Standards:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or liquefied petroleum gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector, which customarily requires identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of OSHA, and state and federal requirements relating to clean air and water pollution.
- 19. Advertising/Press Release:** The contractor shall not publicly disseminate any information concerning the contract without prior written approval from Vaya or its agent.
- 20. Termination for Convenience:** Vaya may terminate this contract, in whole or in part, by giving thirty (30) days prior notice in writing to the Bidder. Such notice of cancellation, as required herein, shall be transmitted via U.S. Mail, email or fax, with receipt confirmed. The thirty (30) days notice for termination shall begin on the day the receipt is confirmed.
- 21. Nondiscrimination:** Bidder agrees to provide the Goods and Services hereunder without regard to race, color, age, gender, sexual orientation, creed, religion, disability, national origin, disability or health status. Bidder further represents that it does not discriminate against any employee or applicant for employment because of race, color, age, gender, sexual orientation, creed, religion, disability, national origin, disability or health status and that Bidder takes affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their race, color, age, gender, sexual orientation, creed, religion, disability, national origin, disability or health status.
- 22. Insurance:** Bidder shall procure and maintain, at its own expense, the following minimum insurance coverage from companies that are authorized by the Commissioner of Insurance to do business in North Carolina and to provide such coverage: (a) General Liability insurance covering Bidder and its employees and subcontractors of any tier in policy amounts of \$1 million per occurrence and \$3 million in the aggregate; (b) Professional Liability insurance covering Bidder and its employees in policy amounts of \$250,000 per occurrence and \$500,000 in the aggregate; (c) Automobile Liability insurance covering all of Bidder's owned, non-owned and hired automobiles in policy amounts of \$1 million bodily injury each person each accident, and \$1 million property damage, or \$1 million combined single limit-bodily injury and property damage; and (d) Workers' Compensation and Occupational Disease Insurance, Employer's Liability Insurance if Bidder has employees, in such amounts and as required by N.C.G.S. Chapter 97. All premiums and deductibles shall be at the sole

expense of the Bidder. Bidder shall purchase and maintain Employer's Liability Insurance for an amount not less than \$100,000.00 per accident for Bodily Injury by Accident, \$100,000.00 per employee/disease for Bodily Injury by Disease, with a \$500,000.00 Policy Limit, to the extent that the death of or injury to the Bidder's employees are not covered by the Workers Compensation and/or Occupational Disease Insurance. Any Bidder not required to obtain such coverage shall attest to the same in writing.

- 23. Subrogation:** Bidder shall have its insurance carrier(s) waive its rights of subrogation (whether by loan receipts, equitable assignment, or otherwise) against Vaya and its directors, officers, representatives, agents, employees, contractors, subcontractors of any tier, and the insurers, excess insurers, and underwriters of the foregoing (collectively "Vaya Group"). Bidder agrees to waive its rights of subrogation against Vaya Group.
- 24. Additional Insured/Loss Payee:** Except for Workers' Compensation and Occupational Disease insurance, all policies shall name as additional insureds or loss payees, as applicable depending on the terms of the policy, the members of the Vaya Group, as listed above, and all such insurance policies shall be specified as noncontributory and primary regardless of any other insurance carried by Vaya Group. All policies naming members of the Vaya Group as additional insureds or loss payees shall provide coverage to the additional insureds or loss payees on a broad form basis with such additional insured or loss payee coverage being just as broad as the coverage provided to the named insured including, but not limited to, coverage for the sole or concurrent negligence of each additional insured and not be restricted to and/or contain exclusions for (a) "ongoing services," (b) coverage for vicarious liability, or (c) circumstances in which the named insured is partially negligent. Any policy that limits coverage afforded to Vaya Group as additional insureds or loss payees to liabilities arising out of acts or omissions of Bidder, or any similar limitation, shall not be in compliance with the requirements of this Notice. Bidder understands, acknowledges, and agrees that the insurance coverages required by this Notice shall not be invalidated as regards the interest of the Vaya Group by any act or neglect of the named insured or any member of the Vaya Group.
- 25. Taxation:** Bidder shall be solely responsible for payment of all federal, state and local taxes and assessments, whether such taxes are denominated as income, sales, use, or business taxes, or otherwise, as well as any applicable business license fees arising out of Bidder's provision of the Goods and/or Services. Bidder agrees and understands that it is solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities, and Vaya will not deduct such taxes from any payments to the Bidder hereunder.
- 26. Governing Law; Construction:** This Agreement and the rights and obligations of the Parties hereto shall be construed under and governed by the laws of the State of North Carolina, without giving effect to principles of conflict of laws.
- 27. Venue; Jurisdiction:** The exclusive venue for resolution of any dispute between the Parties related to the subject matter of this Agreement shall be in the State Courts located in Buncombe County, North Carolina, or the U.S. District Court for the Western District of

North Carolina, Asheville division. Bidder hereby consents to the jurisdiction of the state and federal courts located in Asheville, North Carolina.

- 28. Indemnification:** If the proposal is accepted and the parties enter into an Executed Agreement, each Party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other Party and the results thereof. Each Party therefore agrees that it will assume all risk and liability to itself, its agents or employees for any injury to persons or property resulting in any manner from the conduct of its own operations and the operations of its agents or employees under the Executed Agreement, and for any loss, cost, or damage caused thereby during the performance of the Executed Agreement. Notwithstanding the foregoing, nothing contained in these Terms and Conditions shall be deemed to constitute a waiver of the sovereign immunity of Vaya Health as a local political subdivision of the State of North Carolina, which immunity is hereby reserved to Vaya. To the fullest extent permitted by laws and regulations, Bidder shall release, indemnify, defend, and hold harmless Vaya Group from and against all claims, damages, losses, and expenses, whether punitive, direct, indirect, or consequential (including but not limited to attorneys' fees and costs related to court action or mediation), arising out of or resulting from Bidder's sole or concurrent performance of the Executed Agreement or the sole or concurrent actions of Bidder under the Executed Agreement or under contracts entered into by the Bidder in connection with the Executed Agreement.
- 29. Right of Setoff:** Vaya shall have the right to setoff from any Compensation due to Bidder any amounts that may be due to Vaya from Bidder, whether under the Executed Agreement or otherwise.
- 30. Nonexclusive Arrangement:** The Vaya and the Bidder each have the right to enter into similar contracts with any other person or entity in the conduct of their respective businesses.
- 31. Independent Contractor:** The Parties to this Agreement are independent contractors, and their relationship shall not be construed to be a partnership, agency, joint venture, franchise, or employment relationship. Bidder will not be considered an employee of the Vaya for any purpose including, but not limited to, compensation for services, employee welfare and pension benefits, worker's compensation insurance, or any other fringe benefits of employment. Bidder shall be solely responsible to withhold and pay all income taxes, self-employment taxes, and withholding taxes owed upon the Compensation paid to Bidder hereunder and Bidder shall indemnify Vaya Group for any non-payment of such taxes.
- 32. Entire Agreement; Modification:** The Executed Agreement and any Attachments listed therein will constitute the entire agreement between the Parties and supersede all prior agreements and understandings, oral or written, with respect to the subject matter hereof. Once executed, the Agreement may be changed only by an agreement in writing signed by an authorized representative of each Party.
- 33. Price Adjustments (Term Contracts Only):** Any price changes, downward or upward, which might be permitted during the contract period, must be general, either by reason of market change or on the part of the Bidder to other customers.

- a. **Notification:** Must be given to the issuing purchasing authority, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
- b. **Decreases:** Shall receive full proportionate benefit immediately at any time during the contract period.
- c. **Increases:** All prices shall be firm against any increase for one hundred and eighty (180) days from the effective date of any Executed Agreement. After this period, a request for increase may be submitted with Vaya reserving the right to accept or reject the increase, or cancel the contract. Such action by Vaya shall occur not later than fifteen (15) days after the receipt of a properly documented request for price increase. Any increases accepted shall become effective not later than thirty (30) days after the expiration of the original fifteen (15) days reserved to evaluate the request for increase.
- d. **Invoices:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.

**34. Transportation:** Transportation of goods shall be FOB Destination. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by Vaya.

**35. Invalid Provisions; Severability:** Any provision of the Executed Agreement which is determined by a court of competent jurisdiction to be prohibited, unenforceable, or not authorized shall be ineffective to the extent of such prohibition, unenforceability, or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability, or legality of such provision. In such case, such determination shall not affect any other provision of the Agreement, and the remaining provisions of the Agreement shall remain in full force and effect. If any provision or term of the Agreement is susceptible to two or more constructions or interpretations, one or more of which would render the provision or term void or unenforceable, the Parties agree that a construction or interpretation which renders the term or provision valid shall be favored.

**36. Waiver of Breach:** No covenant, term, condition, or undertaking contained in this Agreement, the Terms and Conditions, or the Executed Agreement may be waived except by the explicit written agreement of the Parties. Forbearance or indulgence in any other form by either Party in regard to any covenant, condition or undertaking to be kept or performed by the other Party shall not constitute a waiver thereof, and until complete satisfaction or performance of all such covenants, conditions, and undertakings have been satisfied, the other Party shall be entitled to invoke any remedy available under the Contract, despite any such forbearance or indulgence. The waiver by either Party of a breach of any of the provisions of the Notice, the Terms and Conditions or the Executed Agreement by the other Party shall not be construed as a continuing waiver of such provision, or as a waiver of any subsequent breach by the breaching Party.

**37. Binding Effect:** The rights and obligations of each Party under any Executed Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of such Party.

**38. No Third-Party Beneficiaries:** Nothing in the Notice, these Terms or Conditions, or any resulting Executed Agreement shall be construed as creating or justifying any liability, claim, or cause of action, however alleged or arising, by any third-party against the Vaya Group or Bidder.

**39. Attorney Fees:** In the event of any dispute between the Parties, the prevailing Party shall be entitled to attorney fees and costs.

**40. Signatures:** The counterparts of any Executed Agreement and all Ancillary Documents may be electronically executed and/or delivered by facsimile or other electronic means by any of the parties to any other party. The receiving party may rely on the receipt of such document so executed and/or delivered as if an original had been duly executed and received.

**[The remainder of this page is intentionally left blank.]**