



<b>Vaya Health</b> Attn: Contracts Team 200 Ridgefield Court, Suite 218 Asheville, North Carolina 28806	<b>REQUEST FOR QUALIFICATIONS</b> <b>NUMBER:</b> <b>26-001 Design and Build Services for Caldwell County Substance Use Disorder Services Expansion Project</b>
<b>Refer <u>All</u> Inquiries to:</b> procurement@vayahealth.com	Contract Type: Design-Build Contract
<b>(See below for proper mailing instructions.)</b>	Goods/Services Design-Build Construction Services

## REQUEST FOR QUALIFICATIONS

Sealed responses, subject to the Terms and Conditions made a part hereof, will be received by **Vaya Health** (“Vaya”) at **200 Ridgefield Court, Suite 218, Asheville, North Carolina 28806 no later than March 2, 2026 at 3:00 p.m. Eastern Time (“E.T.”)**, for the intent to procure the following Services (defined herein), at which time and place the responses will be publicly opened and read.

### I. GENERAL INFORMATION

Vaya is seeking qualifications from experienced design-builders and design-build teams (collectively “Vendor”) in North Carolina to perform design (architectural and engineering) and construction services for a commercial office space, all as described in this Request for Qualifications Number: 26-001 Design and Build Services for Caldwell County Substance Use Disorder (“SUD”) Services Expansion Project (“RFQ” or “Notice”), (collectively “Services”). The purpose of this RFQ is to select a Vendor to provide the Services in compliance with applicable federal, State of North Carolina (“State”), and local laws, rules, and regulations.

This RFQ is intended to support a discovery process with prospective Vendors, and it does not represent an offer to contract in any manner whatsoever. Only the execution of a written contract with a chosen Contractor will oblige Vaya under the terms specified therein.

#### A. About Vaya Health

Vaya is a North Carolina area authority and local management entity/managed care organization, as defined in N.C. Gen. Stats. § 122C-3(1) and (20c) and exists as a local political subdivision of the State pursuant to N.C. Gen. Stat. § 122C-116(a).

Vaya manages Medicaid, federal, state, and local funding to connect eligible individuals to whole-person health care services and support. Vaya members and recipients have complex needs related to physical health, mental health, substance use disorders, intellectual/developmental disabilities, and traumatic brain injuries and require specialized care. Vaya is committed to improving the health and wellness of its members while upholding respect, dignity, and care that meet individual needs.

## **II. SCOPE OF PROJECT**

### **A. Project**

1. The project (“Project”) is to design and build a facility at the Site (defined below) for the operation of a SUD facility by a Vaya-contracted provider agency to deliver to Vaya health plan members and recipients.

### **B. Project Site**

1. Existing building measuring approximately 10,800 sq. ft., (“Building”) and surrounding land (“Land”) located at 825 Wilkesboro Blvd. NE, Lenoir, North Carolina 28645 and more particularly described in the following attachments to this RFQ: Attachment B (Legal Description); Attachment C (Lenoir Building Floor Plan); and Attachment D (Lenoir Building Measurements), (collectively “Site”).

### **C. Attachments**

1. Attachment A: Terms and Conditions
2. Attachment B: Legal Description
3. Attachment C: Lenoir Building Floor Plan
4. Attachment D: Lenoir Building Measurements
5. Attachment E: Renovation Requirements
6. Attachment F: Building Code Zoning Classifications

### **D. Requirements of the Vendor**

1. Develop a written proposal and drawings (which include, but are not limited to, architectural and engineering drawings, and construction elements), (collectively “Plans”) for one or each of the following options for the Site:
  - a. Option 1 – Renovate and Extend
    - i. Partition and renovate approximately 6,745 sq. ft. of the Building to meet: (a) all Clinical Requirements described in Attachment E (Renovation Requirements) to this RFQ and (b) the Building Code Zoning Classifications - Requirements for Licensure Categories described in Attachment F (Building Code Zoning Classifications) to this RFQ for the following administrative rules:
      - a) 10A NCAC 27G .3200 (Social Setting Detoxification for Substance Abusers);
      - b) 10A NCAC 27G.3300 (Outpatient Detoxification for Substance Abuse);
      - c) 10A NCAC 27G.4400 (Substance Abuse Intensive Outpatient Program); and
      - d) 10A NCAC 27G.4500 (Substance Abuse Comprehensive Outpatient Treatment Program) and

- ii. Renovate the remaining 3,100 sq. ft. of the Building and add a new extension of approximately 3,500 sq. ft. to the rear of the Building to increase the entirety of the square footage of the Building to approximately 13,345 sq. ft. and meet all Office Requirements described in Attachment E (Renovation Requirements) to this RFQ.
- b. Option 2 – Renovate and Construct
  - i. Partition and renovate approximately 6,745 sq. ft. of the Building to meet: (a) all Clinical Requirements described in Attachment E (Renovation Requirements) to this RFQ and (b) the Building Code Zoning Classifications - Requirements for Licensure Categories described in Attachment F (Building Code Zoning Classifications) to this RFQ for the following administrative rules:
    - a) 10A NCAC 27G.3200 (Social Setting Detoxification for Substance Abusers);
    - b) 10A NCAC 27G.3300 (Outpatient Detoxification for Substance Abuse);
    - c) 10A NCAC 27G.4400 (Substance Abuse Intensive Outpatient Program); and
    - d) 10A NCAC 27G.4500 (Substance Abuse Comprehensive Outpatient Treatment Program) and
  - ii. Construct a new, stand-alone steel building measuring approximately 6,000 sq. ft. on the Land to meet all Office Requirements described in Attachment E (Renovation Requirements) to this RFQ.
2. At least one Site visit by Vendors is highly recommended, but not required, prior to submitting a response to this RFQ. Vendors wishing to conduct a Site visit prior to submitting a response to this RFQ shall be able to do so within the Site visit window indicated in the Due Dates and Deadlines contained herein. Email notification to [procurement@vayahealth.com](mailto:procurement@vayahealth.com) confirming date and time of site visit is required.
3. Oversee work by any and all subcontractors.
4. Ensure that all aspects of Services are completed:
  - a. in compliance with applicable federal, State, and local laws, rules, and regulations, including, but not limited to, licensing, insurance, building codes and zoning and permitting requirements;
  - b. in accordance with the contract between Vaya and Vendor;
  - c. in a timely manner in accordance with all timelines; and
  - d. in accordance with all Plans, which shall minimally address the following aspects:
    - i. Electrical;
    - ii. Plumbing/water;
    - iii. Gas (if applicable);
    - iv. Structural;
    - v. HVAC;
    - vi. Electronic security system;
    - vii. Paint;
    - viii. Exterior and interior materials and finishes, including, for flooring, wall coverings, windows, doors, siding, roof, etc.)
    - ix. Internet/server reconfiguration; and
    - x. Landscaping.
5. Additional deliverables for this Project, including, but not limited to, deliverables for each phase in the proposed Project Schedule (referenced below in Section III(A) will be finalized upon contract award.

**E. Anticipated Project Budget**

1. \$3,000,000.00

**F. Review Process**

1. The responses received by the submittal deadline will be evaluated by a selection committee comprised of representatives of Vaya in its sole discretion ("Committee").
2. Vaya will select a Vendor qualified to provide the Services based on demonstrated competence and qualification for the type of professional services required. Thereafter, Vaya will negotiate a contract for the Services at a fair and reasonable fee with the best qualified Vendor. If a contract cannot be negotiated with the best qualified Vendor, as determined by Vaya in its sole discretion, negotiations with that Vendor shall be terminated and initiated with the next best qualified Vendor as determined by Vaya in its sole discretion.
3. The Committee may conduct interviews/discussions with Vendors as determined by Vaya in its sole discretion. Selection of a Vendor for contract negotiations may be made without interviews/discussions with Vendors. The following will be expected during an interview/discussion:
  - a. Short presentation detailing Vendor history, confirmation of information presented in the response to this RFQ, and additional topics, including, but not limited to, the following:
    - i. Current or recent (last three years) projects relevant to the scope of Services;
    - ii. Vendor ability and capacity to perform the Services;
    - iii. Methods to be used to fulfill the required Services;
    - iv. Program management and communication;
    - v. Use of in-house resources, and subcontractors that would be used for provision of the Services, as well as, how many team members from each area would be dedicated to the provision of the Services; and
    - vi. Time schedule and availability for provision of the Services.
  - b. Responding to any and all questions of Vaya as Vaya deems necessary in its sole discretion to select a Vendor.
4. The Vendor's representative authorized to submit Vendor's response to the RFQ, and in Vaya's discretion, the construction foreman anticipated to oversee the day-to-day provision of the Services, must attend any and all interviews/discussions.

**III. RESPONSES/SUBMISSIONS****A. Submission Requirements/ RFQ Response Deliverables**

1. Complete Vaya's Commercial Vendor Registration form at [Vendor Registration Form – Fill out form](#)
2. Provide a cover letter written on company letterhead signed by the Vendor's officer, manager, partner, or other representative who has actual authority to commit the Vendor/contracting entity to contract with Vaya for the Services.
3. Provide a written statement of qualifications signed by the Vendor's authorized representative:
  - a. General Background of Vendor - Provide a brief history of your firm, including size, volume of business, locations, number of years in business, and business philosophy;
  - b. Proposed Project Personnel;

- c. Projected Project Timeline including for Project initiation date, Project phases 1-3 completion dates, and project substantial completion date.
- d. Scheduling Capabilities; and
- e. Vendor Experience

4. Submit Vendor's Plans for applicable option described in Section II.D.1.

- a. Design development phase services
- b. Build/construction phase services

6. Provide a written explanation of project team selection to include either:

- a. A list of licensed contractors, licensed subcontractors, and licensed design professionals the Vendor proposes to use on the project<sup>1</sup> or
- b. The Contractor's strategy for selecting contractors and subcontractors based on the requirements of Article 8 of Chapter 143 (competitive bidding procedures) of the North Carolina General Statutes.<sup>2</sup>

7. Provide a written explanation on how the following project goals will be met:

- a. Historically Underutilized Business ("HUB") participation: Describe the good faith program (plan) that Vendor has developed to encourage participation by HUB firms to meet or exceed the verifiable ten percent (10%) goal for participation by minority businesses goals set by N.C. Gen. Stats. §§ 143-128.2 through 128.4.
- b. Small business participation: Describe the good faith program (plan) that Vendor has developed to recruit and select small business entities.

8. Provide a written certification that each licensed design professional included as part of the Vendor's team, including subconsultants, was selected based solely on qualifications without regard to fee. Include evidence that a qualifications-based selection process was utilized.

9. Provide written certification that Vendor is properly licensed and insured to perform the work in compliance with the laws of the State and Attachment A (Terms and Conditions) to this RFQ.

10. If awarded a contract by Vaya, provide a written statement indicating the Vendor's ability to meet all applicable bonding requirements, including, but not limited to, N.C. Gen. Stat. §§ 143-128.1A(f) and 44A-26 following contract award. The selected Vendor must provide bonds under Article 3 of Chapter 44A, which requires performance and payment bonds for one hundred percent (100%) of the contract amount for each contract costing more than \$50,000.00 on projects costing over \$300,000.00.

11. By submitting qualifications or providing materials, equipment, services, or supplies, Vendors and their 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

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<sup>1</sup> If this project team selection option is used, the Contractor may self-perform some or all of the work with employees of the Contractor and, without bidding, also enter into negotiated subcontracts to perform some or all of the work with subcontractors, including, but not exclusively with, those identified in the list. In submitting its list, the Contractor may, but is not required to, include one or more unlicensed subcontractors the Contractor proposes to use. If this project team selection option is used, the Contractor may, at its election and with or without the use of negotiated subcontracts, accept bids for the selection of one or more of its firsttier subcontractors.

<sup>2</sup> If this project team selection option is used, the Contractor may also self-perform some of the work with employees of the Contractor, but shall not enter into negotiated contracts with first-tier subcontractors.

- b. They are not listed on the Final Divestment List created by the State Treasurer pursuant to N.C. Gen. Stats. Chapter 147, Article 6E.

## **B. Submission Procedure**

1. Arrival of all times of the deadlines noted in this Notice to Vendors (sometimes hereinafter “Notice”) is established by the time kept by the Contracting and Vendor Management Director and, alternatively, in the absence of the Contracting and Vendor Management Director, the individual opening the responsive bids.
2. Qualifications must be in writing and signed by the Vendor. Qualifications are subject to rejection unless submitted in compliance with this Notice. Late qualifications, regardless of delivery means, will not be accepted. **Submissions must remain valid until September 2, 2026.** Binding acceptance of an offer shall occur upon Vaya’s execution of a contract. Vendors are responsible for distributing all documents to any subcontractors.
3. Vendor may provide additional information on a USB flash drive (a/k/a thumb drive) with its qualifications. However, Vendor should be aware that Vaya will look first to the written documents within a qualifications submission to determine whether qualifications are of interest. Consequently, there can be no assurance that any or all of the material(s) provided on a USB flash drive will actually be viewed or considered by Vaya.
4. To submit qualifications, mail and/or otherwise deliver one fully completed and signed Execution Form (below), along with any addenda/attachments in one envelope, to:

**Vaya Health**  
**Attn: Contracts Team**  
**Re: Bid No.: 26-001, Caldwell County**  
**200 Ridgefield Court**  
**Suite 218**  
**Asheville, NC 28806**

## **C. Qualifications Selection Criteria and Criteria Weighting**

For purposes of evaluating the responses and ranking the Vendors, the selection committee will use the following criteria and corresponding evaluation weighting:

1. Design-Build Firm or Team Experience	50 Points
2. Project Understanding and Approach	25 Points
3. Ability to Meet Proposed Project Schedule	25 Points
4. Total Maximum Score – 100 Points	<b>100 Points</b>

## **D. Due Dates and Deadlines**

RFQ Issue Date	February 2, 2026
Site Visit availability	February 9 – 11, 2026 (between 10 a.m. and 3 p.m. E.T.)

Questions Submission Due	February 16, 2026 (by 5 p.m. E.T.)
Questions Responses Due	February 20, 2026 (by 5 p.m. E.T.)
RFQ responses Due	March 2, 2026 (by 3 p.m. E.T.)
Sealed Bids Opened	March 2, 2026
Vendor evaluations and presentations	March 3 - April 3, 2026
Vendor Awarded	April 15, 2026
Contract Fully Executed	June 1, 2026

Vaya Health reserves the right to reject any or all submissions and/or to waive formalities and/or technicalities required for submission of qualifications and/or for contracting with a selected Vendor, 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 RFQ, including, but not limited to, documentation to assist with its review of qualifications from Vendors and awarding the contract. We reserve the right to change the specifications and/or negotiate and modify requirements after selecting the Vendor, as required to ensure successful/acceptable project completion. While Vaya intends to award all tasks included in this RFQ to one firm, we also reserve the right to contract any task or portion of this work separately.

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Selina Dukhu, MBA  
 Contracting and Vendor Management Director  
 Vaya Health

## **EXECUTION FORM**

In compliance with this RFQ, and subject to all the conditions in this Notice to Vendors, the undersigned offers and agrees to furnish and deliver any or all items proposed, within the time specified in this Notice to Vendors.

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

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

**Each individual signing below certifies that: (i) he or she is the duly authorized representative of the Vendor, with proper authority to bind said Vendor to the terms of this RFQ and any and all appendices, attachments, exhibits, and/or schedules hereto and (ii) the Vendor's response to this RFQ including, but not limited to, any and all attachments and plans thereto, are full, accurate, and complete.**

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

**The Vendor shall be solely responsible to ensure they have all necessary information prior to submitting qualifications. This includes any and all attachments to this RFQ. Vendor is to acknowledge all attachments to this RFQ or risk rejection of qualifications.**

Attachment A \_\_\_\_\_ Attachment B \_\_\_\_\_ Attachment C \_\_\_\_\_

Attachment D \_\_\_\_\_ Attachment E \_\_\_\_\_ Attachment F \_\_\_\_\_

Notice valid for no more than one hundred and eighty (180) days from date of qualifications opening unless otherwise stated herein.

## **INSTRUCTIONS TO VENDORS**

- 1. READ, REVIEW, AND COMPLY:** It shall be the Vendor'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. **Vendor:** Is the company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3. NOTICE TO VENDORS:** All qualifications are subject to the provisions of the Instructions to Vendors, special terms and conditions specific to a particular Notice to Vendors, the specifications, and any resulting contract. Vaya objects to and will not evaluate or consider any additional terms and conditions submitted with a vendor's response. This applies to any language appearing in or attached to the document as part of the Vendor's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.**

By execution and delivery of this document, the Vendor agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.

- 4. EXECUTION:** Failure to sign qualifications submission will render the qualifications 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 Vendors.
- 6. TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, Vendor's offer shall be valid for sixty (60) days from the date of qualifications 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 Vendor will be held responsible, therefore. Deviations shall be explained in detail. **THE VENDOR SHALL NOT CONSTRUE THIS PARAGRAPH AS INVITING DEVIATION OR IMPLYING THAT ANY DEVIATION WILL BE ACCEPTABLE.**
- 8. INFORMATION AND DESCRIPTIVE LITERATURE:** Where applicable, Vendor is to furnish all information requested. Further, if required elsewhere in this Notice, each Vendor must submit with their qualifications sketches, descriptive literature and/or complete specifications covering the products and services offered. Reference to literature submitted with previous qualifications will not satisfy this provision. Qualifications 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 Vendors. Any and all revisions to this document shall be made only by

written addendum from Vaya. The Vendor 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 qualifications, to waive any informality in qualifications and, unless otherwise specified by the Vendor, to accept any item in the qualifications.

**11. REFERENCES:** Vaya reserves the right to require a list of users of the exact service offered. Vaya may contact these users to determine acceptability of the qualifications. Such information may be considered in the evaluation of the qualifications.

**12. TAXES:** As a local political subdivision of the State, Vaya is not subject to certain state and federal taxes.

**13. AWARD OF CONTRACT:** Vaya will consider such factors as: adherence to the budget; the quality of the articles offered; the general reputation and performance capabilities of the Vendor; 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 Vendors. Unless otherwise specified by Vaya or the Vendor, Vaya reserves the right to accept any item or group of items on a multi-item qualifications. 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 qualifications submissions. The Notice to Vendors does not intend to elicit proprietary information. However, if proprietary information is submitted as part of the qualifications, the information is to be labeled as such. Qualifications 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 Vendors 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 Vendor 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 Vendor's expense. Written request for the return of

samples must be made within ten (10) days following date of qualifications closure. Otherwise, the samples will become the property of Vaya. Each individual sample must be labeled with the Vendor'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.]**

## **Attachment A: TERMS AND CONDITIONS**

**Execution of Agreement:** In the event the qualifications are accepted by Vaya, Vendor shall be required to enter into a written agreement (“Executed 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 Vendors or Instructions above):

- 1. Scope of Work/Description of Goods and Services:** Vendor agrees to provide the goods and services as set forth in Attachment A, attached to the Executed Agreement and incorporated therein, which shall be respectively referred to herein as “Goods” or “Services,” or collectively referred to as “Goods and Services” or *vice versa*. “Goods” shall have the same meaning as set forth in N.C. Gen. Stats. Chapter 25, North Carolina’s Uniform Commercial Code. **Time is of the essence with respect to all provisions herein that specify a time for performance.** Vendor shall provide the Goods and Services described in Attachment A in a manner and to the extent authorized by Vaya. Vendor shall supply, at its sole expense, all labor, equipment, tools, materials, and/or supplies necessary to provide the Goods and Services thereunder, unless Vaya otherwise agrees in writing.
- 2. Compliance with Laws:** Vendor agrees to comply with all applicable federal State of North Carolina (“State”), and local laws, rules, regulations, and Vaya requirements applicable to its provision of the Goods and Services described under the Executed Agreement during the Term (defined below) of the Executed Agreement, including, but not limited to, the requirements of N.C. Gen. Stats. Article 2 of Chapter 64 (“E-Verify”). If Vendor utilizes a subcontractor of any tier, Vendor shall require all subcontractor(s) of any tier to comply with E-Verify requirements.
- 3. Participation in Vaya’s Vendor Management Program:** Vendor shall participate in Vaya’s vendor management program (“VMP”). This program is designed to monitor and manage the Vendor’s relationship and performance as it relates to its obligations with Vaya. The VMP provides for ongoing monitoring, issue management, and contractual compliance. The frequency of the monitoring schedule is determined by the complexity of the contracted program as defined by Vaya in its sole discretion.
- 4. Maintenance of Individual Licensure:** The Vendor 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. Vendor agrees to notify Vaya immediately of any change in the status of such licenses, accreditations, certifications and/or qualifications, and Vendor shall provide Vaya with proof of licensure and accreditation within ten (10) business days upon request.
- 5. Non-Exclusion:** Vendor represents and warrants that neither it, nor any of its employees, is excluded from participation in any state or federal healthcare program. Vendor agrees to notify Vaya in writing within five business days of exclusion of Vendor or any of its employees from participation in any state or federal healthcare program.

5. **Confidentiality of Sensitive Information:** Vendor agrees to protect and maintain the confidentiality of any and all sensitive information and other confidential information received during the course of providing Goods and Services under the Executed Agreement, in whatever form or medium, and agrees not to discuss, disclose, transmit, or narrate in any form any sensitive information received during the course of providing Goods and Services under the Executed Agreement. For purposes of the Executed Agreement, "sensitive information" shall mean any information that is protected by federal or State law, rule, or regulation against unwarranted disclosure, including, but not limited to, information governed by: (i) the Health Insurance Portability and Accountability Act of 1996, as amended, ("HIPAA") and the HIPAA Administrative Simplification Rules codified at 45 CFR Parts 160, 162 and 164, (ii) the Confidentiality of Substance Use Disorder Patient Records laws and regulations codified at 42 U.S.C. 290dd-2 and 42 CFR Part 2, (iii) the N.C. Identity Theft Protection Act at N.C. Gen. Stats. §§ 75-61 *et seq.*, (iv) N.C. confidentiality statutes at N.C. Gen. Stats. §§ 122C-52 through 122C-56 and implementing regulations, and (v) other applicable laws and regulations governing personally identifiable information, including, but not limited to, social security numbers and background check information, (collectively "Sensitive Information Laws"). By entering into the Executed Agreement, Vendor explicitly agrees to comply with applicable Sensitive Information Laws, as they may be amended from time to time. Vendor shall inform its employees and agents regarding the confidentiality requirements under the Executed Agreement prior to permitting such agent or employee to access any of Vaya's sensitive information. If applicable due to the nature of the Goods and Services being provided under the Executed Agreement, concurrently with the execution of the Executed Agreement, Vendor shall execute Vaya's Qualified Service Organization/Business Associate Addendum ("QSO/BAA"), if Vendor will have access to protected health information. The QSO/BAA shall be considered binding upon execution of the Executed Agreement and shall remain in effect during the Term of the Executed Agreement, including any modifications or renewals. To the extent expressly stated in the QSO/BAA, the QSO/BAA, or portions thereof, shall survive the termination or expiration of the Executed Agreement. Although Vendor may be at times considered a "Business Associate" of Vaya for purposes of HIPAA, Vendor is not an agent of Vaya and shall in no way otherwise be considered anything but an independent contractor of Vaya.
6. **Confidentiality of Non-Public Information; Nondisclosure:** Vendor understands, acknowledges and agrees that it may have access to information belonging to Vaya which is a trade secret as that term is defined in N.C. Gen. Stats. § 66-152(3), or which is confidential, proprietary, or non-public, (collectively "Non-Public Information"), including, but not limited to, Vaya's finances, business operations and competitive health care information as described at N.C. Gen. Stats. § 122C-126.1. Vendor agrees to keep in strict secrecy and confidence any and all Non-Public Information, in whatever form it may exist, which Vendor assimilates or to which it has access during the Term of the Executed Agreement, which has not been publicly disclosed, and which is not a matter of common knowledge in Vendor's field(s) of work. Vendor agrees that, both during and after the Term of the Executed Agreement, it will not, without the prior written consent of Vaya, and except to the extent necessary to permit Vendor to perform its obligations under the Executed Agreement disclose or provide access to any such Non-Public Information to any person, firm, or entity not a party to the Executed Agreement, and that it will not use such Non-Public Information except as contemplated in the Executed Agreement. Vendor must take all reasonable precautions, including, but not

limited to, entering into appropriate agreements, and affixing notices that re-disclosure is prohibited, wherever appropriate. Vendor agrees to promptly advise Vaya in writing of any unauthorized use or disclosure of Non-Public Information of which Vendor becomes aware and shall provide reasonable assistance to Vaya to terminate such unauthorized use or disclosure. This section and all subparts shall survive for three (3) years following expiration or termination of the Executed Agreement, except that protections for personally identifiable information of any individual or for trade secrets shall survive indefinitely.

7. **Affiliation Representation:** The Vendor shall not represent itself as affiliated with or endorsed by Vaya or its facilities without the prior written consent of the Vaya.
8. **Title to Goods:** Title to the Goods provided under the Executed Agreement shall be vested in Vaya. Delivery of any Goods under the Executed Agreement shall be free on board (FOB) destination. Vendor agrees to execute all documents and instruments necessary to convey to Vaya all right, title, and interest in and to the Goods.
9. **Ownership of Work Product and Intellectual Property Rights:** All works authored, produced, developed, or reduced to practice by Vendor for the benefit of Vaya, during its provision of the Goods and 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, but not limited to, 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, Vendor agrees to expressly assign 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 Vendor agrees to execute all documents and instruments required to evidence such assignment. Without limiting the foregoing, Vendor hereby grants to Vaya the sole and exclusive right throughout the world, in all languages, and in perpetuity, to use the Work Product pursuant to the Executed Agreement. Vendor 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 Vendor's Goods, Services, and Work Product. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Executed Agreement is not to be construed as publication in derogation of Vaya's reserved rights. This section shall survive the termination of the Executed Agreement.
10. **Warranties:** Vendor 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. Unless otherwise stated in Attachment A, Vendor further warrants that all Goods sold or provided under the Executed Agreement shall remain free of defects for not less than three (3) years after delivery of such Goods to Vaya. Vendor agrees to promptly provide to Vaya all warranty documentation on all Goods and Services provided under the Executed Agreement. Vendor 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 applicable safety precautions and programs required by the Occupational Safety and Health Administration ("OSHA"). Vendor further warrants that neither the Goods nor the Services to be provided under the Executed Agreement will violate, infringe, or misappropriate any patent, copyright, trademark, or trade secret rights of any third-party, or any other third-party rights, including, but not limited to, non-competition agreements.

- 11. Recordkeeping, Access, and Audits:** Vendor shall maintain and retain for at least six (6) years following termination or expiration of the Executed Agreement such records as may be needed to fully disclose the extent of Goods and Services provided under the Executed Agreement and to evaluate Vendor's compliance with the Executed Agreement, including, but not limited to, personnel and financial records. Vendor explicitly acknowledges the rights of DHHS and any of its Divisions, of Vaya, and of other state and federal officials to inspect, monitor, and audit the Goods and Services provided under the Executed Agreement, and the rights of DHHS, Vaya, and other state and federal officials to inspect and audit any relevant clinical, financial, personnel and other records, for a period of six (6) years after termination or expiration of the Executed Agreement. Upon Vaya's request, Vendor shall grant to Vaya prompt access to books, documents, papers, and other records of Vendor relating to the Goods and Services, whether on paper or in electronic or other form, for purposes of audit and inspection. For all Goods and Services provided under the Executed Agreement, 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 Services. Audits shall take place at times and locations mutually agreed upon by the Parties. Notwithstanding the foregoing, Vendor shall make the requested materials available within seven (7) calendar days of the request for them at no cost to Vaya. If the Goods and Services to be provided under the Executed Agreement are worth \$10,000.00 or more over a twelve (12) month period, the Comptroller General of the United States, U.S. Department of Health and Human Services, and their duly authorized representatives shall have access to Vendor's books, documents, and records until the expiration of four (4) years after the Goods and Services are furnished under the Executed Agreement. Vendor agrees to cooperate with Vaya in its oversight activities and shall take such corrective action as is necessary to comply with State and federal law and any accreditation standards. Vendor further agrees to provide timely, accurate, and appropriate data and information to enable Vaya to fulfill applicable accrediting organizations' and federal and state regulatory filing requirements, provided the disclosure of such information is consistent with applicable state and federal laws regarding confidentiality. If Vendor is required to have a Statement on Standards for Attestation Engagements No. 18 Type 2 Report (the "SSAE Report"), Vendor shall provide a copy of the SSAE Report to Vaya within ten (10) business days following a request by Vaya. This section shall survive the termination of the Executed Agreement.
- 12. Data Security Assurance Reporting.** Consistent with industry standards, Applicable Law, with the North Carolina Department of Health and Human Services, Vendor shall implement and maintain safeguards necessary to ensure the confidentiality, availability, and integrity of Vaya information and data received, shared, transmitted, hosted, or otherwise accessible to or exchanged with Vendor. Vendor shall safely and securely maintain all Vaya information and data, which may include data received from NCDHHS ("Vaya

Data") in accordance with the Agreement and Applicable Law, including but not limited to, HIPAA; have internal policies, procedures, and mechanisms in place to ensure compliance with such Applicable Laws; and safeguard such Vaya Data against fraud, unauthorized changes, and negligence, for so long as Vaya Data is accessible to Vendor, using precautions and procedures consistent with Applicable Law and industry standards.

13. **Nondiscrimination:** Vendor agrees to comply with all applicable federal and state laws, rules and regulations which prohibit discrimination, including, but not limited to, the Americans With Disabilities Act of 1990; Titles VI and VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 503 and 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Section 1557 of the Affordable Care Act; and subsequent amendments and regulations developed pursuant thereto, including, but not limited to, 45 CFR Part 92, and to provide the Goods and Services under the Executed Agreement without regard to sex, age, race, color, creed, ancestry, religious affiliation, disability, national origin, gender identity, sexual orientation, pregnancy status, genetic information, health status/need for health services, marital status, or parental status, (collectively "Protected Classification(s)"). Vendor further represents that it does not discriminate against any employee or applicant for employment because of his or her Protected Classification(s) and that Vendor takes affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their Protected Classification(s).
14. **Termination for Convenience:** Vaya may terminate the Executed Agreement, in whole or in part, by giving thirty (30) days prior notice in writing to the Vendor. 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.
15. **Termination for Cause:** Vaya may immediately, without prior notice, terminate the Executed Agreement, in whole or in part, if it determines in its sole discretion that the Vendor has material breached the Executed Agreement, as determined by Vaya in its sole discretion.
  - a. **Opportunity to Cure Not Required:** Upon a determination that Vendor has material breached the Executed Agreement, as determined by Vaya in its sole discretion, Vaya may, but is not required to, offer Vendor the opportunity to cure by providing Vendor with written notice of the material breach, specifying the breach and requiring it to be remedied within fifteen (15) calendar days from the date of the notice if a time is not otherwise specified. If the breach is not timely cured, Vaya may terminate the Executed Agreement effective upon delivery to Vendor of written Notice of Termination. If Vendor breaches any provision of the Executed Agreement, Vaya shall have the right to withhold all payments due to Vendor until such breach has been fully cured.
  - b. **Effect of Termination or Expiration:** Vaya shall pay for Goods and Services provided in compliance with the terms of the Executed Agreement which were provided prior to the effective date of termination or expiration of the Executed Agreement, and upon such payment Vaya shall have no further obligation to pay any amounts to Vendor. In the event that Vaya terminates the Executed Agreement in whole or in part as a result of Vendor's material breach of the Executed Agreement, Vaya may: (1) deduct any and all expenses incurred by Vaya for damages caused by Vendor's breach; and/or (2)

pursue any of its remedies at law or in equity, or both, including damages, injunctive relief, and specific performance; and/or (3) procure, upon such terms and in such manner as Vaya may deem appropriate, Goods and Services similar to those provided for under the Executed Agreement. Vendor shall be liable for any and all excess costs incurred by Vaya, as determined by Vaya, for such similar Goods and Services. Vendor shall cooperate with Vaya to assist in the orderly transfer of the Goods and Services provided by Vendor under the Executed Agreement to another provider or to Vaya, as determined by Vaya in its sole discretion. Vendor shall continue the performance of the Executed Agreement to the extent not terminated.

16. **Insurance:** Vendor 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 Vendor and its employees and subcontractors of any tier in policy amounts of \$1,000,000 per occurrence/\$3,000,000 annual aggregate;
  - b. Professional Liability/Errors and Omissions Insurance protecting Vendor and any employee performing work under the Executed Agreement for an amount not less than \$1,000,000 per occurrence/\$3,000,000 annual aggregate;
  - c. Automobile Liability insurance covering all of Vendor's owned, non-owned and hired automobiles in policy amounts of \$1,000,000 bodily injury each person each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit- bodily injury and property damage;
  - d. Workers' Compensation and Occupational Disease Insurance, Employer's Liability Insurance if Vendor has employees, in such amounts and as required by N.C. Gen. Stat. Chapter 97. All premiums and deductibles shall be at the sole expense of the Vendor. Vendor shall purchase and maintain Employer's Liability Insurance for an amount not less than \$100,000 per accident for Bodily Injury by Accident, \$100,000 per employee/disease for Bodily Injury by Disease, with a \$500,000 Policy Limit, to the extent that the death of or injury to the Vendor's employees are not covered by the Workers Compensation and/or Occupational Disease Insurance. Any Vendor not required to obtain such coverage shall attest to the same in writing;
  - e. Vendor shall purchase and maintain Umbrella or Excess Liability Insurance to provide coverage over the primary General Liability, Automobile Liability, and Workers' Compensation Employers' Liability insurance policies protecting Vendor and its employees performing work under the Executed Agreement from claims of bodily injury or property damage arising from operations under the Executed Agreement for an amount not less than \$1,000,000 per occurrence.
    - i. **Approval for Changes:** Vendor shall obtain written approval from Vaya for any deviation from the minimum insurance requirements listed above prior to providing Goods and/or Services.
    - ii. **Self-Insurance:** Vendor shall have the right to self-insure its Workers' Compensation/Occupational Disease liability provided that the self-insurance program is licensed by the State's Department of Insurance and has been actuarially determined to be sufficient currently to pay the insurance limits required in the Executed Agreement.
    - iii. **Certificates of Insurance/Memorandum of Insurance:** Vendor shall submit certificates of insurance/memoranda of insurance ("COIs/MOIs") coverage to Vaya upon request. The insurance policies for the insurance coverage required herein shall be endorsed to reflect the minimum

standards stated above, as well as all other requirements in the insurance provisions of the Executed Agreement. Prior to Vaya's execution of the Executed Agreement, Vaya may, at its sole discretion, require Vendor to provide copies of insurance policies and/or COIs/MOIs evidencing the insurance coverage required herein, as well as all other requirements in the insurance provisions of the Executed Agreement.

- iv. **Form:** The COIs/MOIs shall be on certificate form(s) as furnished by Vendor's insurer(s) and/or underwriter(s). Vaya's acceptance of COIs/MOIs which do not comply with the insurance requirements herein shall not be deemed a waiver of the insurance requirements. Vaya reserves the right to require certified copies of any or all policies required by the Executed Agreement.
- v. **Tail Coverage:** Liability insurance may be on either an occurrence basis or on a claims-made basis. If the policy is on a claims-made basis, Vendor shall purchase, at its sole cost, an extended reporting endorsement (a/k/a tail coverage) for a period of not less than three (3) years after the end of the Term, or an agreement to continue liability coverage with a retroactive date on or before the beginning of the Term, and upon Vaya's request, Vendor shall also provide a copy of such policy to Vaya. Tail coverage shall be in policy amounts of at least \$250,000 per occurrence and \$500,000 in the aggregate. If Vendor fails to obtain such tail coverage, Vaya shall have the option, but not the obligation, to obtain such tail coverage on behalf of Vendor, and Vendor shall pay the costs thereof to Vaya within thirty (30) days of receipt of notice from Vaya.
- vi. **Subrogation:** Vendor 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"). Vendor agrees to waive its rights of subrogation against Vaya Group.
- vii. **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 Vendor, or any similar limitation, shall not be in compliance with the requirements of this Notice. Vendor 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.

17. **Compensation:** In full consideration for the Goods and Services provided by Vendor to the satisfaction of Vaya under this Agreement, Vaya pay or cause to be paid to Vendor compensation at the rates specified in, and in amount not to exceed, those set forth in a Scope of Work ("Compensation"). Vaya Group shall not

be liable to Vendor for any expenses paid or incurred by Vendor, unless as specifically described in a Scope of Work. For Invoice and Payment, Vendor shall submit invoices and receipts to Vaya no later than the 20 day of the month following the month in which Goods and Services were provided or expenses were incurred. Vendor shall send to: Vaya Health, Attention: Accounts Payable 200 Ridgefield Court, Suite 218, Asheville, North Carolina 28806 or payables@vayahealth.com. Undisputed invoices approved by Vaya will be paid within thirty (30) days of receipt. Upon termination or expiration of the Executed Agreement, Vendor shall submit all invoices and receipts related to all outstanding Scopes of Work no later than thirty (30) days after the termination or expiration of the Executed Agreement.

18. **Taxation and License Fees:** Vendor 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 Vendor's provision of the Goods and/or Services, ("collectively, "Taxes and Fees"). Vendor 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 Vendor under the Executed Agreement.
19. **Availability of Funds:** Any and all payments to the Vendor are dependent upon and subject to the availability of funds to Vaya from the State of North Carolina. Vendor agrees that in the event that Vaya, in its sole discretion, determines, in view of its total operations, that available funding for the payment of amounts due under the Executed Agreement is insufficient it may choose to terminate the Executed Agreement by giving Vendor written notice of said termination, and the Executed Agreement shall terminate immediately without any further liability to Vaya other than the payment of compensation due for Goods and Services provided up to and including the date of termination. Vendor further agrees to take back any affected equipment and products furnished under the Executed Agreement, terminate any services supplied to Vaya under the Executed Agreement, and relieve Vaya of any further obligation thereof.
20. **Governing Law; Construction:** The Executed Agreement has been accepted and executed, and is intended to be performed, in the State of North Carolina. The Executed Agreement and the rights and obligations of the Parties under the Executed Agreement shall be construed under and governed by the laws of the State of North Carolina, without giving effect to principles of conflict of laws. Vendor has consulted with counsel of its choice, or has been afforded the opportunity to consult with such counsel and has declined to do so, in the negotiation and preparation of the Executed Agreement. The Executed Agreement has been prepared by counsel for Vaya as a convenience to the Parties, and, therefore, no provision of the Executed Agreement, whether unclear, ambiguous, or otherwise, shall be construed adversely to Vaya merely by virtue of the fact of its preparation by counsel for Vaya. Should the terms of any attachment, appendix, exhibit, and/or schedule conflict with the terms of the Executed Agreement, the terms of the Executed Agreement shall govern, unless expressly provided otherwise in such attachment, appendix, exhibit, and/or schedule. Any capitalized term within an attachment, appendix, exhibit, and/or schedule to the Executed Agreement, which is not otherwise defined in such attachment, appendix, exhibit, and/or schedule, shall have the same meaning and definition as set forth in the Executed Agreement.

21. **Venue; Jurisdiction:** The exclusive venue for resolution of any dispute between the Parties related to the subject matter of the Executed Agreement shall be in the General Court of Justice, Superior Court Division of the Trial Courts for Caldwell or Buncombe County, North Carolina, or the U.S. District Court for the Western District of North Carolina, Asheville Division. Vendor hereby consents to the jurisdiction of the State and federal courts located in Asheville, North Carolina.
22. **Indemnification:** Vendor, and its successors, assigns, owners, members, partners, managers, officers, directors, employees, representatives, agents, and/or subcontractors of any tier, in their representative (and not individual) capacities, (collectively "Vendor Group"), shall fully protect, release, defend, indemnify, and hold harmless, (collectively "Indemnification" or "Indemnify") Vaya Group from and against any and all claims, demands, allegations, suits, losses, liabilities, expenses, costs (including reasonable attorney's fees), judgments, settlements, obligations, damages (whether nominal, compensatory, consequential, punitive, treble, or exemplary), and causes of action of every kind and nature, whether known or unknown, whether contingent or liquidated, whether at law or in equity, whether or not involving a third-party, whether related to or on account of bodily/mental injury or infliction, death, personal injury, property (real, personal, and/or intellectual) damage or loss, or any other injury, damage or loss, incurred or sustained by or made against any or all members of Vaya Group, and whether arising from tort, contract, or otherwise, without limit, directly or indirectly arising out of, relating to, and/or resulting from: (1) any breach, material or non-material, of any representation or warranty, by any or all members of Vendor Group, contained in the Executed Agreement, (2) any breach, material or non-material, of any covenant, obligation, agreement, or duty under the Executed Agreement and/or under applicable laws, rules, and/or regulations, by any or all members of Vendor Group, and/or (3) the wrongful, intentional, grossly negligent, and/or ordinary negligent acts, errors, and/or omissions, by any or all members of Vendor Group in rendering services or performing their obligations, covenants, agreements, and/or duties pursuant to or in furtherance of the Executed Agreement, in each case whether or not caused by the negligence of any or all members of Vaya Group, (collectively "Vendor Claim"), and whether or not the relevant Vendor Claim has merit. Any and all members of Vendor Group expressly waive any defense of prematurity to a claim for Indemnification by any or all members of Vaya Group; and any or all members of Vaya Group shall have the right to a claim for Indemnification pursuant to this section prior to any loss being sustained by it.

Further, neither Party to the Executed Agreement shall be responsible for any obligation or liability assumed by the other Party or its employees, affiliates, subcontractors, or agents, unless expressly set forth in the Executed Agreement. Nothing contained in this section shall prevent either Party from filing and pursuing an action for damages against the other Party based on an alleged failure to satisfactorily render services or to perform obligations pursuant to the Executed Agreement. This section shall survive suspension, expiration, or termination of the Executed Agreement.

23. **Governmental Immunity:** Notwithstanding any provision in the Executed Agreement to the contrary, nothing contained in the Executed Agreement shall be deemed to constitute a waiver of the governmental immunity of Vaya as a local political subdivision of the State of North Carolina, which immunity is hereby

expressly and fully reserved to Vaya. This section shall survive suspension, expiration, or termination of the Executed Agreement.

24. **Limitation of Liability:** NOTWITHSTANDING ANYTHING ELSE IN THE EXECUTED AGREEMENT OR OTHERWISE, NEITHER VAYA GROUP, NOR ANY NOR ALL MEMBERS THEREOF, WILL BE LIABLE TO VENDOR GROUP, OR ANY OR ALL MEMBERS THEREOF, UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, BUSINESS INTERRUPTION, AND LOSS OR INACCURACY OF INFORMATION, EVEN IF VAYA GROUP, INCLUDING ANY OR ALL MEMBERS THEREOF, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY PROVISION OF THE EXECUTED AGREEMENT TO THE CONTRARY, THE TOTAL LIABILITY, IN THE AGGREGATE, OF VAYA GROUP, OR ANY OR ALL MEMBERS THEREOF, IN THE AGGREGATE, TO VENDOR GROUP, OR ANY OR ALL MEMBERS THEREOF, AND/OR ANYONE CLAIMING BY OR THROUGH VENDOR GROUP, OR ANY OR ALL MEMBERS THEREOF, IN THE AGGREGATE, FOR ANY AND ALL CLAIMS, LOSSES, COSTS (INCLUDING ATTORNEY'S FEES) OR DAMAGES, AND CLAIMS EXPENSES, RESULTING FROM OR IN ANY WAY RELATED TO THE EXECUTED AGREEMENT, SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED BY VENDOR UNDER THE EXECUTED AGREEMENT AS OF THE DATE OF THE ALLEGED OFFENSE. IT IS INTENDED THAT THIS LIMITATION APPLY TO ANY AND ALL LIABILITY OR CAUSE(S) OF ACTION, HOWEVER ALLEGED OR ARISING, UNLESS OTHERWISE PROHIBITED BY LAW. IN NO EVENT WILL VAYA GROUP, OR ANY MEMBER THEREOF, BE LIABLE TO VENDOR GROUP, OR ANY OR ALL ITS MEMBERS, FOR ANY MATTER BEYOND THE REASONABLE CONTROL OF VAYA GROUP OR ANY MEMBER THEREOF. THIS SECTION SHALL SURVIVE SUSPENSION, EXPIRATION OR TERMINATION OF THE EXECUTED AGREEMENT.
25. **Liquidated Damages:** If the Vendor fails to achieve Substantial Completion of the Services on or before the Substantial Completion Date, the Vendor shall pay to Vaya, as liquidated damages (not as a penalty), the sum of **\$500.00 (Five Hundred Dollars and 00/100)** for each calendar day that Substantial Completion is delayed, until Substantial Completion is achieved. The Parties acknowledge, agree, and understand that such damages for contractual breach are difficult to estimate or ascertain at the time of entering into this Executed Agreement and that this sum represents a reasonable estimate of Vaya's damages.
  - a. **Substantial Completion:** The Services shall be deemed to be substantially complete when the work to be performed by the Vendor pursuant to the Plans and working drawings approved by Vaya and has been completed and approved by the appropriate governmental authorities, as certified by Vendor and architect, except for items of work and adjustment of equipment and fixtures that can be completed after the Site is occupied by Vaya without causing material interference with Vaya or its tenant's use of the Site, i.e., *punch list items*.
26. **Right of Setoff:** Vaya shall have the right to setoff from any amounts due to Vendor any amounts that may be due to Vaya from Vendor, whether under the Executed Agreement or otherwise.

27. **Nonexclusive Arrangement:** The Vaya and the Vendor each have the right to enter into similar contracts with any other person or entity in the conduct of their respective businesses.
28. **Independent Contractor:** Notwithstanding any provision of the Executed Agreement to the contrary, the Parties agree that Vaya and Vendor are independent contractors, and the Executed Agreement is not intended and shall not be construed to create the relationship of principal-agent, master-servant, employer-employee, partnership, joint venture, or association between the Parties or any of their owners, officers, directors, members, managers, partners, representatives, employees, or agents. Vendor will not be considered an employee of Vaya for any purpose, including, but not limited to, compensation for services, employee welfare and pension benefits, workers' compensation insurance, or any other fringe benefits of employment.
29. **Assignment and Subcontracting:** Vendor shall not have the right to assign, subcontract, or further delegate its obligations under the Executed Agreement without the prior written consent of Vaya. In the absence of Vendor obtaining the prior written consent of Vaya, all assignments, subcontracts, and delegations of the Executed Agreement are void. In the event that Vaya consents to the assignment, subcontracting, or delegation of any of the Goods and Services described in Attachment A, Vendor shall remain fully responsible for performance of all obligations under the Executed Agreement in accordance with the terms of the Executed Agreement and with the standards of Vaya's accrediting body(ies). Any approved subcontract entered into by Vendor under the Executed Agreement shall name Vaya Group as a third-party beneficiary.
30. **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 Executed Agreement may be changed only by an agreement in writing, signed by an authorized representative of each Party.
31. **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 Executed Agreement, and the remaining provisions of the Executed Agreement shall remain in full force and effect. If any provision or term of the Executed 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.
32. **Non-waiver of Breach:** No covenant, term, condition, or undertaking contained in 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 Executed Agreement, despite any such forbearance or indulgence. The waiver by either Party of a breach of any of the provisions of 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.

33. **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, assigns, heirs, and legal representatives of such Party.
34. **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 Vendor.
35. **Attorney's Fees, Costs, and Expenses:** Notwithstanding any provision of the Executed Agreement to the contrary, Vendor shall bear its own attorney's fees, costs, and expenses.
36. **Signatures:** The Executed Agreement may be executed by facsimile or electronic signatures, in two or more counterparts, each of which for all purposes shall be deemed to constitute originals, and all of which together shall constitute one and the same instrument.

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

**Attachment B: LEGAL DESCRIPTION**

All that certain lot or parcel of land situated in the City of Lenoir, Caldwell County, North Carolina described in Deed Book 1768, at Page 282 of the Caldwell County Register of Deeds Office, and as more particularly described as follows:

**TRACT I:**

BEGINNING on an iron stake on the north right of way (approximately) of N. C. Highway No. 18, said beginning point being located 200 feet from a point in the center of N. C. Highway No. 18, which point is 530 feet east of the intersection of N. C. Highway No. 18 and Tremont Road; thence from the point of beginning and with Greer-McPhaul Funeral Home, N 36-03-57 W 501.43 ft. to an iron stake, a corner with Paul Swanson; thence with Paul Swanson, N 62-36 E 482.34 ft. to an iron stake, a corner with Eastwood Associates; thence with Eastwood Associates, S 46-02 E 303.33 ft. to an iron stake on the north right of way of N. C. Highway No. 18; thence with the north right of way of N. C. Highway No. 18 for 6 calls: S 32-19-45 W 93.35 ft. to a concrete monument; S 41-17-31 W 96.43 ft. to a point; S 38-27-16 W 97.70 ft. to a point; S 40-48-16 W 96.35 ft. to a point; S 43-28-26 W 96.35 ft. to a point; S 45-49-16 W 66.31 ft. to the point of BEGINNING, containing 4.76 acres, by coordinates, as surveyed by Western Carolina Surveyors, P.A., T. R. Bishop, RLS, on the 20th day of September, 1983. (The preceding survey was partially taken from a map prepared by Mallonee Surveying, Inc., on September, 1971, and entitled, "Garland W. Swanson Property").

**TRACT II:**

Being that tract of land containing 1.18 acres, more or less, fronting on the north side of N. C. Highway No. 18, and being bounded on the north by property of Paul J. Swanson, on the east by Duke Power Company, and on the west by Graham C. McPhaul, as shown on plat thereof entitled, "Addition to Lenoir Operating Center Acquired from Daniel International Corporation," dated December 15, 1983, marked file No. 7-166, copy of which is attached to that certain deed to Duke Power Company recorded in Book 829, Page 792, Caldwell County Public Registry.

LESS AND EXCEPT (FROM TRACTS I AND II) THE FOLLOWING 0.831± acre parcel which was conveyed by Duke Energy Corporation to Greer-McElveen Funeral Home, Inc. by deed recorded in Book 1455, Page 2025, Caldwell County Public Registry:

All that certain tract, piece, parcel or lot of land located in Lenoir Township, Caldwell County, North Carolina containing 0.831 ± acre and being more particularly shown as the plat of survey identified as Request No. 123934 and entitled "Property Owned By Duke Energy Corporation Lenoir Operating Center Minor Subdivision of Duke Energy Parcel 42910" dated April 14, 2003, and recorded in Plat Book 21 at Page 84 in the Office of the Register of Deeds for Caldwell County.