

TRINIDAD NAVARRO  
COMMISSIONER



STATE OF DELAWARE  
DEPARTMENT OF INSURANCE

**STATE OF DELAWARE  
Department of Insurance  
Office of the Commissioner**

03/27/2020

ISSUED BY: Leslie W. Ledogar, Esq.  
Regulatory Specialist  
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SUBJECT: **AWARD NOTICE**  
**CONTRACT NO. DOI 19002- HEALTH\_CARE**  
**Office of Value-Based Health Care Delivery**

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OF  
KEY CONTRACT INFORMATION**

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## KEY CONTRACT INFORMATION

### 1. CONTRACT PERIOD

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Each contractor's contract shall be valid for a one year period beginning April 1, 2020 and ending March 31, 2021. The contract may be renewed for two, one (1) year periods through negotiation between the contractor and the Delaware Department of Insurance.. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

### 2. VENDOR

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Vendor Name: Freedman HealthCare, LLC  
Address: 29 Crafts Street, Suite 470, Newtown, MA 02458  
Primary Contact Name: Joanne Halpern  
Phone: 617-396-3600 x213  
Email: jhalpern@freedmanhealthcare.com  
FSF Number:

### 3. SHIPPING TERMS

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Not Applicable

### 4. DELIVERY AND PICKUP

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Not applicable

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### 5. STATEMENT OF WORK

The purpose of the OVBHCD as stated in 18 Del. C. § 334(a) is to "reduce health care costs in Delaware by increasing the availability of high quality, cost-efficient health insurance products that have stable, predictable, and affordable rates."

Freedman Health Care, Inc. (FHC) will establish the OVBHCD according to the express provisions of Section 334 and perform the services set forth in Appendix B attached to the RFP (the "Services"). In performance of the Services, FHC, and particularly Project Director Mary Jo Condon, is deemed as an authorized representative per 18 **Del.C.** §309.

### 6. PRICING

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Delaware shall be obligated to pay Freedman Healthcare, Inc. (FHC) up to \$524,909 for Contract Year 1. Should the DOI extend this Agreement for a second year, the DOI shall be obligated to pay FHC up to \$425,641 for Contract Year 2. Should the DOI extend this Agreement for a third year, the DOI shall be obligated to pay FHC up to \$349,416 for Contract Year 3.

## **ADDITIONAL TERMS AND CONDITIONS**

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### **7. BILLING**

FHC shall submit monthly invoices to the DOI in sufficient detail to support the Services provided during the previous month during the term of this Agreement.

### **8. PAYMENT**

The DOI agrees to pay those invoices within thirty (30) days of receipt.

If Delaware disputes a portion of an invoice, the DOI agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and provide FHC a detailed statement of the DOI's position regarding the disputed portion of the invoice within thirty (30) days of receipt. FHC may charge the DOI a fee of up to twelve percent (12%) per annum for any undisputed invoice unpaid for 60 days.

Delaware is a sovereign entity and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency which may become due and payable as a consequence of this Agreement.

Invoices shall be submitted to: [DOI-Accounting@delaware.gov](mailto:DOI-Accounting@delaware.gov).

### **9. PURCHASE ORDERS**

Agencies that are part of the First State Financial (FSF) system are required to identify the contract number DOI 19002- HEALTH\_CARE on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

### **10. FHC WORK PRODUCT**

10.1. Except as otherwise set forth herein, all deliverables developed, prepared, completed or acquired by FHC for the DOI relating to the Services (the "Deliverables") shall become the property of the DOI and shall be delivered to the DOI's designated representative from time to time as requested by the DOI, but in any event no later than either the completion or termination of this Agreement.

10.2. FHC shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, that have been previously developed by FHC or developed during the course of the provision of the Services, provided such generic documents or templates do not contain any Confidential Information (defined at Section 4 below) or proprietary data ("Consultant Tools"). Rights and ownership by FHC shall not extend to or include all or any part of the DOI's proprietary data or Confidential Information. To the extent that FHC may include in the deliverables any Consultant Tools, FHC agrees that the DOI shall be deemed to have a fully paid up license to make copies of the Consultant Tools as part of its use of the Deliverables for its internal business purposes and provided that such Consultant Tools cannot be modified or distributed outside the DOI without the written permission of FHC, except as otherwise permitted herein. For the sake of clarity, this clause shall not apply to the Deliverables designed specifically for DOI.

10.3. The Deliverables are prepared solely for the use and benefit of the DOI in accordance with its statutory and regulatory requirements. FHC recognizes that the Deliverables may be public records subject to disclosure to third parties. However, FHC does not intend to benefit and assumes no duty

or liability to any third parties who receive the Deliverables and may include disclaimer language on the Deliverables so stating. FHC shall not be liable for damages, claims and losses arising out of any reuse of the Deliverables on any other project conducted by the DOI. The DOI shall have the right to reproduce all documentation supplied pursuant to this Agreement without the express written permission of FHC if required by applicable law, including but not limited to the Delaware Freedom of Information Act, or in response to requests from authorized representatives of other Delaware state agencies.

10.4. For a complete list of contract specifications please refer to the original bid solicitation document(s). Any contract specific documentation will be accessible through the hyperlink(s) provided on this contract's details page.

## 11. CONFIDENTIAL INFORMATION

11.1. To the extent permissible under 29 *Del. C.* § 10001, et seq., (the "Delaware Freedom of Information Act") or required by 18 *Del. C.* § ch. 3 or any other applicable provisions of Title 18 of the Delaware Code, FHC shall preserve in confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of the Services under this Agreement. FHC shall not use any data, the Deliverables, or any other information provided to the DOI under this Agreement for any other consulting work, including FHC's current consulting work for the Delaware Health Information Network. The confidentiality obligations of FHC set forth above shall not apply to any information of the DOI which:

11.1.1. was in the public domain at the time of the DOI's communication thereof to FHC;

11.1.2. enters the public domain through no breach of this provision subsequent to the time of the DOI's communication thereof to FHC;

11.1.3. was in FHC's possession free of any obligation of confidentiality at the time of the DOI's communication thereof to FHC;

11.1.4. is developed by FHC without reference to the information of the DOI; or

11.1.5. is required by law or regulation to be disclosed.

## 12. WARRANTY

12.1. FHC warrants that the Services will be performed in accordance with applicable professional standards.

12.2. FHC agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

## 13. INDEMNIFICATION; LIMITATION OF LIABILITY

13.1. FHC shall indemnify and hold harmless Delaware and the DOI, its agents and employees from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the gross negligence or intentionally wrongful conduct of FHC, its agents or employees during the performance of the Services hereunder, or (B) FHC's breach of any material provision of this Agreement not cured after due notice and

opportunity to cure; provided as to (A) or (B) that FHC shall have been notified promptly in writing by the DOI of any notice of such claim.

13.2. FHC warrants that all elements of its services, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the DOI or Delaware, the DOI shall promptly notify FHC in writing and FHC shall defend such claim, suit or action at FHC's expense, and FHC shall indemnify the DOI against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

13.3. If any equipment, software, services, products or other intellectual property used or furnished by FHC (collectively, the "Products") is or in FHC's reasonable judgment is likely to be held to constitute an infringing product, FHC shall at its expense and option either:

13.3.1. procure the right for the DOI to continue using the Product(s);

13.3.2. preplace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or

13.3.3. modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of this Agreement, or only alters the Product(s) to a degree that the DOI agrees to and accepts in writing.

13.4. If the DOI promptly notifies FHC in writing of a third party claim against the DOI and/or Delaware that any of the Services or the Deliverables infringe on a copyright or a trade secret of any third party, FHC will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the DOI and/or Delaware. FHC will not indemnify Delaware or the DOI, however, if the claim of infringement is caused by the DOI and/or Delaware's misuse or modification of the Services or Deliverables.

13.5. FHC's total liability to the DOI for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including, but not limited to contract liability or FHC's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate exceed the amount of FHC's professional liability insurance.

13.6. FHC's obligations to indemnify Delaware and the DOI as set forth in this Section 6 shall survive the completion or termination of this Agreement.

#### **14. EMPLOYEES**

14.1. FHC shall not have the right to subcontract without the prior written consent of the DOI, which can be withheld in DOI's sole discretion.

14.2. Except as the other Party expressly authorizes in writing in advance, neither FHC nor the DOI shall solicit, offer work to, employ or contract with, whether as a partner, employee or

independent contractor, directly or indirectly, any of the other Party's Personnel (as defined below) during performance of the Services or during the twelve (12) months thereafter. For purposes of this Section 7.2, "Personnel" includes any individual or company a Party employs as a partner, member, employee or independent contractor and with which a Party comes into direct contact in the course of performing the Services. The provisions of this subsection 7.2 do not restrict the right of either Party to solicit or recruit generally in the media and do not prohibit either Party from hiring Personnel of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by the hiring Party.

## 15. **INDEPENDENT CONTRACTOR**

15.1. It is understood that in performance of the Services, FHC shall be, and is, an independent contractor, and is not an agent or employee of the DOI and shall furnish such Services in its own manner except as required by this Agreement. FHC shall be solely responsible for, and shall indemnify, defend and hold the DOI harmless from all matters relating to payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions and regulations of any nature whatsoever.

15.2. FHC acknowledges that it and any of its subcontractors, agents or employees employed by FHC shall not, under any circumstances be considered employees of the DOI and that FHC, and any of its subcontractors, agents or employees shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. The DOI will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of FHC or any of its officers, employees or other agents.

15.3. As an independent contractor, FHC has no authority to bind or commit the DOI. Nothing herein shall be deemed or construed to create a joint venture, partnership, or agency relationship between the Parties for any purpose.

## 9. **TERMINATION**

9.1 Termination for Cause: If, for any reason, or through any cause, FHC fails to fulfill in timely and proper manner its obligations under this Agreement, or if FHC violates any of the covenants, agreements, or stipulations in this Agreement, the DOI shall thereupon have the right to terminate this Agreement by giving written notice to FHC of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by FHC pursuant to this Agreement shall, at the option of the DOI, become its property, and FHC shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which are usable to the DOI.

9.2 On receipt of a cancellation notice from the DOI, FHC shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A response shall not affect or prevent cancellation of this Agreement unless the DOI provides a written acceptance of the response. If the DOI accepts FHC's method and/or action plan to correct the identified deficiencies, the DOI will define the time by which FHC must fulfill its corrective obligations. Final retraction of the DOI's termination for cause will only occur after FHC successfully rectifies the original violation(s). At its discretion, the DOI may reject in writing FHC's proposed action plan and proceed with the contract cancellation timeline set forth in the notice.

- 9.3 Termination Without Cause: The DOI may terminate this Agreement in whole or in part without cause, but only after FHC is given: (i) not less than thirty (30) days written notice of intent to terminate; and (ii) an opportunity for consultation with the DOI prior to termination.
- 9.4 Termination for Convenience: The DOI may terminate this Agreement at any time by giving written notice of such termination to FHC and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the DOI, become its property and FHC shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which are usable to the DOI.
- 9.5 Termination for Non-Appropriations: In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue this Agreement, in whole or part, the Agreement shall be terminated as to any obligation of the DOI or Delaware requiring expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.
- 9.6 Termination for Default of Express Provisions of the Agreement: If termination for default of any express provision of this Agreement is effected by the DOI, the DOI will pay FHC that portion of the compensation which has been earned as of the effective date of termination, but no amount shall be allowed for anticipated profit on performed, partially performed or unperformed services or other work. Any payment due to FHC at the time of termination may be adjusted to the extent of any additional costs occasioned to the DOI by reason of FHC's default.
- 9.7 Upon termination for any reason or if FHC ceases to conduct business with the DOI, the DOI may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event FHC shall cease conducting business with the DOI, other than pursuant to the terms of this Agreement, the DOI shall have the right to make an unsolicited offer of employment to any employees of FHC assigned to the performance of the Agreement, notwithstanding the provisions of subparagraph 7.2.
- 9.8 If after termination for default, it is determined that FHC has not so defaulted, the termination shall be deemed to have been effected for the convenience of the DOI.
- 9.9 The rights and remedies of the DOI and FHC provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

## 10. NON-DISCRIMINATION

In performing the Services, FHC, as set forth in 19 *Del.C.* §711, agrees that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. FHC shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

## 11. GRATUITIES

- 11.1. The DOI may, by written notice to FHC, terminate this Agreement if it is found after notice and hearing by the DOI that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by FHC or any agent or representative of FHC to any officer or employee of the DOI with a view towards securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determination with respect to the performance of this Agreement.
- 11.2. If this Agreement is terminated, the DOI shall be entitled to pursue the same remedies against FHC it could pursue in the event of a breach of this Agreement by FHC.
- 11.3. The rights and remedies of the DOI provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **12. SEVERABILITY**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest extent the intent and agreements of the parties herein set forth.

## **13. ASSIGNMENT; SUBCONTRACTS**

- 13.1. Any attempt by a Party to assign or otherwise transfer its rights in this Agreement without the prior written consent of the other Party shall be void. Such consent shall not be unreasonably withheld.
- 13.2. The Services specified by this Agreement shall not be subcontracted by FHC without prior written approval of the DOI. DOI shall have the exclusive authority to approve or disapprove subcontractors and sub-subcontractors in its sole discretion.
- 13.3. Approval by the DOI of FHC's request to subcontract or acceptance of or payment for subcontracted work by the DOI shall not in any way relieve FHC of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.
- 13.4. FHC shall be and remain liable for all damages to Delaware and the DOI caused by negligent performance or non-performance of work under this Agreement by FHC or any sub-subcontractor in accordance with the terms of this Agreement.
- 13.5. Any compensation due to FHC shall not be affected by the DOI's approval of FHC's request to subcontract.

## **14. FORCE MAJEURE**

Occurrence of force majeure does not fully remove liability of the Parties for obligations under this Agreement. It merely suspends the Parties' or Party's obligation to perform for the duration of the delay.

## **15. STATE OF DELAWARE BUSINESS LICENSE**

In performance of this Agreement, FHC will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of this Agreement shall be borne by FHC. FHC and all subcontractors working in Delaware represent that they are properly licensed and authorized to transact business in Delaware as

provided in 30 *Del. C. § 2502* or have written authorization from the Delaware Department of Revenue that a Delaware license is not required. FHC shall either furnish the DOI with proof of a Delaware business license or initiate the process of application where required.

## 16. COMPLETE AGREEMENT

- 16.1. This Agreement shall constitute the entire agreement between the DOI and FHC with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the Parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by both Parties. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the Parties with respect to the subject matter of this Agreement.
- 16.2. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the Parties consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

## 17. MISCELLANEOUS PROVISIONS

- 17.1. In performance of this Agreement, FHC shall comply with all applicable federal, state and local laws, ordinance, codes and regulations. FHC shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- 17.2. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 17.3. FHC covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services required under this Agreement. FHC further covenants, to its knowledge and ability, that in the performance of the Services no person having any such interest shall be employed.
- 17.4. FHC acknowledges that Delaware and the DOI have an obligation to ensure that public funds are not used to subsidize private discrimination. FHC recognizes that if it refuses to hire or do business with an individual or company due to reasons or race, color, gender, ethnicity, disability, national origin, age, or any other protected status, the DOI may declare FHC in breach of the Agreement, terminate the Agreement and designate FHC as non-responsible.
- 17.5. FHC warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the DOI shall have the right to annul this Agreement without liability, or at its discretion deduce from the contract or price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 17.6. This Agreement was drafted with the joint participation of both Parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.
- 17.7. FHC shall maintain all public records, as defined by 29 *Del. C. § 502(8)*, relating to this Agreement and the Services for the time and in the manner specified by the Delaware Division of Archives,

pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of the DOI may inspect or audit FHC's performance and records pertaining to this Agreement at FHC's office at a mutually agreeable time during normal business hours.

- 17.8. FHC shall not use the DOI's name, either express or implied, in any of its advertising or sales materials without the DOI's express written consent.
- 17.9. The rights and remedies of the DOI provided for in this Agreement are in addition to any other rights and remedies provided by law.
- 17.10. This Agreement may be executed in counterparts, and each such counterpart shall be deemed an original as against the party signing the same.

## 18. INSURANCE

- 18.1. FHC recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of FHC's negligent performance under this Agreement, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of FHC in their negligent performance under this Agreement.
- 18.2. FHC shall carry insurance, at its own expense, with the following insurance minimum limits during the term of this Agreement and shall provide the DOI with copies of certificates of insurance within ten (10) days of execution of this Agreement:
  - 18.2.1. Worker's Compensation and Employer's Liability insurance in accordance with applicable law; and
  - 18.2.2. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, and at least one of the following, depending on the type of service or product being delivered:
    - Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
    - Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000.00 per occurrence; andIf the contractual service requires the transportation of departmental clients or staff, FHC shall, in addition to the above coverage's, secure at its own expense Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
- 18.3. FHC shall provide forty-five (45) days written notice of cancellation or material change of any insurance policies after Certificates of Insurance have been submitted to the DOI pursuant to this Agreement.
- 18.4. In no event shall Delaware or the DOI be named as an additional insured on any policy required under this Agreement.

## **19. ASSIGNMENT OF ANTITRUST CLAIMS**

As consideration for the execution of this Agreement by the DOI, FHC hereby grants, conveys, sells, assigns and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and Delaware, relating to the Deliverables provided to the DOI or the Services performed by FHC pursuant to this Agreement.

## **20. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of Delaware, except where federal law has precedence. FHC consents to jurisdiction and venue in Delaware.

## **21. NOTICE**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:  
TO THE DOI:

Commissioner  
Delaware Department of Insurance  
1351 West North Street, Ste. 101  
Dover, DE 19904

With a copy to:

Controller  
Delaware Department of Insurance  
1351 West North Street, Ste. 101  
Dover, DE 19904  
TO FHC:

Mary Jo Condon, Project Director  
Freedman HealthCare, LLC  
29 Crafts Street, Suite 470  
Newton, MA 02458