

**MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF ALABAMA DEPARTMENT OF FINANCE
AND
THE ALABAMA NURSING HOME ASSOCIATION EDUCATION FOUNDATION
FOR THE DISTRIBUTION OF CORONAVIRUS STATE FISCAL RECOVERY FUNDS**

This Memorandum of Agreement (the "Agreement") is made by and between the State of Alabama Department of Finance, at 600 Dexter Avenue, Montgomery, Alabama 36130 (hereinafter referred to as "DOF"), and the Alabama Nursing Home Association Education Foundation, an Alabama nonprofit corporation (qualified as a public charity under section 501(c)(3), Section 509(a), and Section 170(c) of the Internal Revenue Code of 1986, as amended), at 4156 Carmichael Road, Montgomery, Alabama 36106, (hereinafter referred to as the "Foundation"). DOF and the Foundation may be referred to herein individually as a "party" and collectively as the "parties." This Agreement becomes effective on the approval of the parties and the Governor of the State of Alabama.

I. PURPOSE

The federal American Rescue Plan Act of 2021, Public Law No. 117-2, 135 Stat. 4, ("ARPA") was signed into law on March 11, 2021. The Act amended the federal Social Security Act to add Section 602 to the Social Security Act, and by doing so, created the Coronavirus State Fiscal Recovery Fund (hereinafter referred to as "the State Recovery Fund"). The Act appropriated funds from the State Recovery Fund to the State of Alabama and other states to support their response to the impact of COVID-19 on their communities, residents, and businesses; and to aid in efforts to contain COVID-19. Under Section 602 of the Social Security Act, the State Recovery Fund funds may be used to cover costs incurred by the State on or before December 31, 2024, for one of four broad purposes:

- A. To respond to the COVID-19 public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits; or for aid to impacted industries;
- B. To respond to workers performing essential work during the COVID-19 public health emergency, by providing premium pay to eligible workers who are performing essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
- C. For the provision of government services to the extent of the reduction in revenue of the State due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
- D. To make necessary investments in water, sewer, or broadband infrastructure.

The Secretary of the Treasury promulgated regulations for purposes of implementing the State Recovery Fund, published in the January 27, 2022 , Federal Register, at 87 Fed. Reg. 4338 (the "Final Rule"). The Final Rule took effect on April 1, 2022.

The Final Rule clarifies that the State Recovery Fund is intended to build upon and expand the support provided to states and other governments over the last year, including through the Coronavirus Relief Fund ("CRF"). The Final Rule further provide a non-exclusive list of examples of costs that qualify for payment from the State Recovery Fund under one of the four broad categories specified in Section 602 of the Social Security Act, as specified above.

The State of Alabama was allocated \$2,120,279,417 from the State Recovery Fund. Alabama Act No. 2023-1 appropriates \$200,000,000 of such funds to DOF to be used to support the delivery of health care and related services to citizens of Alabama related to the pandemic by and through reimbursement of eligible expenses. The Act further provides that such funds may be delegated through memoranda of agreement to the Alabama Health Research and Education Foundation, Inc and the Alabama Nursing Home Association Education Foundation. Such funds may generally only be used to cover costs for qualifying purposes as described herein that are, were, or will be incurred during the period from March 11, 2021 through December 31, 2024 (sometimes referred to as the "Applicable Period").

The DOF desires to allocate up to \$100,000,000 to Alabama nursing homes to establish a reimbursement program for the benefit of Alabama's nursing homes (the "2023-ARPA Funds"). Specifically, DOF will provide the 2023-ARPA Funds to the Foundation to be distributed on a reimbursement basis to and for the benefit of all Alabama qualifying nursing homes for the purpose of responding to or mitigating the COVID-19 pandemic and public health emergency and the economic impact thereof. DOF desires to collaborate with the Foundation to create and implement this program, as the Foundation possesses information necessary to facilitate the application by nursing homes for Funds and the distribution of Funds for qualifying purposes.

The "Nursing Home COVID-19 Recovery Fund Program" (the "Program") is more thoroughly detailed in Appendix A, attached hereto and incorporated herein by reference, which describes the procedure and guidelines for nursing homes to follow in applying for an allocation of the 2023-ARPA Funds related to costs incurred by each nursing home that is eligible under Section 602 of the Social Security Act and the Final Rule. The Foundation will ensure a fair and equitable distribution of 2023-ARPA Funds through the Program among all nursing homes, urban and rural, and regardless of whether such nursing homes are members of the Alabama Nursing Home Association. Among the central tenets of the Program will be a certification by the applying nursing home that: (i) the submitted request is for an eligible cost, expense, or purpose under Section 602 of the Social Security Act and the Interim Final Rule or the Final Rule, as the case may be, incurred by the nursing home between March 11, 2021 and December 31, 2024; (ii) the received 2023-ARPA Funds will be applied solely for the stated purpose; (iii) the requested 2023-ARPA Funds will not duplicate any other funds, including funds received from the federal government (including, but not limited to ARPA and Coronavirus Relief Funds), cost based Medicaid, Medicare, or private insurance; and (iv) the applying nursing home shall be responsible for any recoupment, overpayment, or other return of Funds to the extent of any determination that

such Funds were not applied for an eligible purpose under Section 602 of the Social Security Act, the Final Rule , or the terms of this Agreement or the Program. As will be more particularly described herein, the Foundation may divide the 2023-ARPA Funds into two separate allocations for distribution (respectively referred to as the “Distribution One Allocation Funds” and the “Distribution Two Allocation Funds”)¹. Each nursing home’s request for Distribution One Allocation Funds will be accompanied by an attestation to the Foundation certifying that the Foundation may rely on the previously submitted documentation filed in support the prior such request (including, without limitation, invoices, purchase orders, worksheets, or such other evidence as may be appropriate to support the request for 2023-ARPA Funds for eligible qualifying purposes incurred on or before November 30, 2021, and that the qualifying purpose need established through the said documentation remains unmet. Each nursing home’s request for Distribution Two Allocation Funds will be accompanied by an attestation certifying to the Foundation that the applying nursing home has incurred, since March 11, 2021 or will incur prior to December 31, 2024, unmet needs for qualifying purposes in an amount equal to not less than \$2200 for each of that nursing home’s licensed beds. In making the Distribution Two Allocation Funds attestation in respect to the unmet need for qualifying purposes, the applying nursing home shall make such determination after applying any Distribution One Allocation Funds it may be entitled to receive. It is understood by the parties that, except as otherwise provided in this Agreement, the Foundation will rely solely upon the attestation and supporting documentation submitted by qualified nursing homes, without further inquiry, in administering the Funds allocated for this use.

The Parties agree and acknowledge that in making distributions to a nursing home, the Foundation is relying solely on attestations from the respective requesting nursing home and the invoices, worksheets, or other documentation submitted therewith (the “Attestation”). Notwithstanding any other provision of this Agreement, the Parties acknowledge and agree that the Foundation is a “Subrecipient” as that term is defined in Code of Federal Regulations, Title 2, § 200.1. As such, Foundation is responsible for complying with all federal requirements for Subrecipients, including the Single Audit Act and Code of Federal Regulations, Title 2, Part 200, subpart F regarding audit requirements.

This Program has been presented to DOF by the Foundation, and DOF has concluded that implementation of the Program is necessary to continue to respond to and mitigate the effects of the COVID-19 pandemic and public health emergency in Alabama and the economic impacts thereof. Further, DOF concludes that funding this project using the Funds is an appropriate use of the 2023-ARPA Funds under both federal and state law. DOF fully supports the Foundation in its effort to support and protect the citizens of Alabama.

II. PARTIES’ RESPONSIBILITY

A. Foundation agrees to the following:

¹ The scope of Distribution Allocation One Funds and Distribution Allocation Two Funds is more particularly described in Appendix A to this Agreement.

1. To develop and implement the "Nursing Home COVID-19 Recovery Fund Program";
2. To administer the Funds provided to it by this Agreement fairly and impartially on behalf of all nursing homes across the state, regardless of Alabama Nursing Home Association membership;
3. To include in the certification filed by each nursing home applying for Funds an acknowledgment that such nursing home has, as required by law, reported to appropriate healthcare officials;
4. To comply with all federal requirements applicable to Subrecipients, including the Single Audit Act and Code of Federal Regulations, Title 2, Part 200, subpart F regarding audit requirements.
5. To provide to the State Finance Director's Office by September 30, 2023, a final report detailing the progress made on the development and implementation of the Program and an itemized list of reimbursement applications received and expenditures for the Program for the respective Applicable Periods, and further provide such further interim reports as the State Finance Director's Office may determine necessary.
6. To use the 2023-ARPA Funds provided by DOF under this Agreement in accordance with Section 602 of the Social Security Act, the Interim Final Rule or Final Rule, as the case may be, other federal and state law, and for the purposes set forth in this Agreement, and for no other purpose; and
7. To return any 2023-ARPA Funds provided by DOF under this Agreement that are unspent as of September 30, 2023, except the Foundation may retain an amount of the 2023-ARPA Funds it estimates is sufficient to pay for the required single audit(s) under the Single Audit Act and other such out of pocket costs of administering the Program.

B. DOF agrees to provide \$100,000,000 to Foundation from the State's Funds appropriated pursuant to Act No. 2023-1 to fund the Program described herein and for no other purpose.

III. FINANCIAL ARRANGEMENTS

The parties agree that within fourteen (14) days of the effective date of this Agreement, DOF will provide and advance \$100,000,000 to the Foundation under this Agreement to be disbursed to nursing homes for described herein reimbursements. Foundation acknowledges that all Funds provided under this Agreement must be distributed to qualified nursing homes for qualified purposes or returned to DOF by September 30, 2023, except the Foundation may retain an amount of the Funds it estimates is sufficient to pay for the required single audit(s) under the Single Audit Act and other such out of pocket costs of administering the Program. Reimbursements or invoice payments may not occur after that date. Foundation may employ outside accounting, legal, or other consultants to assist with the administration of these Funds;

however, such accounting, legal, or other consultants must meet and comply with audit requirements for use of Funds under the Act.

IV. TERMINATION OF AGREEMENT

Except as set forth in this section, this Agreement may be terminated only in a writing signed by each party or representative of each party. If Foundation determines that it will not pursue the Program for whatever reason, it may terminate this Agreement upon written notice to the State Finance Director and return of any unspent 2023-ARPA Funds. If DOF concludes, after a reasonable investigation and in its sole discretion as administrator of the 2023-ARPA Funds, that the 2023-ARPA Funds provided hereunder have been used in a manner inconsistent with federal or state law, DOF may terminate this Agreement immediately upon written notice to Foundation.

V. MISCELLANEOUS PROVISIONS

A. The terms and commitments contained herein shall not constitute a debt of the State of Alabama, which is prohibited by Section 213 of the Official Recompilation of the Constitution of Alabama, 1901, as amended by Amendment No. 26.

B. By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. A contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

C. In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, the sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this Agreement which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing, where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

D. In order to comply with federal notice requirements relating to the administration of grants and other federal assistance funds, DOF provides the following information to the Foundation: this subaward is provided to the Foundation through a grant to the State of Alabama in the amount of \$2,120,279,417 from the United States Treasury via Section 602 of the Social Security Act, as added by Public Law No. 117-2, known as the American Rescue Plan Act of 2021 ("ARPA"), which established the Coronavirus State Fiscal Recovery Fund. This subaward is provided in accordance with the requirements set forth in ARPA and other applicable federal and state law and policy, and the Foundation affirms that all information it has provided to DOF relating to this subaward is true and accurate. This subaward does not include research and

development. The parties acknowledge and understand that each subrecipient of the Funds will be evaluated in accordance with Code of Federal Regulations, Title 2, § 200.331(b) for risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward. Further, each subrecipient's activities will be monitored as necessary to ensure that the subaward is used for authorized purposes, in compliance with law, and that subaward performance goals are achieved. Other monitoring tools may be implemented on the level of risk imposed by the subrecipient.

E. Code of Federal Regulations, Title 2, § 200.332(f) requires DOF to verify that each subrecipient that is expected to expend \$750,000 or more in Federal awards during a fiscal year have a single or program-specific audit conducted for that year in accordance with the provisions of Code of Federal Regulations, Title 2, § 200.501. The parties acknowledge that DOF has provided notice to Foundation of the audit requirements applicable to the award made by this Agreement and Foundation agrees to comply therewith.

F. The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement.

VI. AMENDMENTS

This Agreement may only be amended by a writing signed by each party of representatives of each party.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by those officers, officials duly authorized to execute such agreements.

State of Alabama
Department of Finance

Bill Poole 5/30/23

Bill Poole
Director of Finance

Alabama Nursing Home
Education Foundation

Sal. Lee Sasser-Williams

Sal. Lee Sasser Williams
Secretary and Authorized Signatory

APPROVED:

Kay Ivey 5/30/2023

Kay Ivey
Governor of Alabama

APPENDIX A

Coronavirus State Fiscal Recovery Fund

Nursing Home COVID-19 Recovery Fund Program Details

A. Background: This is to supplement that certain Memorandum of Agreement (“MOA”) between the State of Alabama Department of Finance (“DOF”) and the Alabama Nursing Home Education Foundation (“Foundation”), the Foundation’s administration of the “Nursing Home COVID-19 Recovery Fund Program” (the “Program”) for purposes of distribution for reimbursement of eligible expenses to Alabama nursing homes of funds allocated to the State of Alabama from the State Fiscal Recovery Fund created under Section 602 of the Social Security Act, as added by the American Rescue Plan Act of 2021, and as allocated by the State of Alabama for use by nursing homes (the “Funds”). Due to the unpredictable nature of the pandemic as it relates to nursing homes, the information in this Appendix is subject to change. Except as otherwise explicitly provided herein, all capitalized or defined terms in this Appendix A shall have the same meaning as set forth in the MOA.

B. Process: Nursing Homes seeking reimbursement of eligible expenses under the Program will file an application for reimbursement (for the period March 11, 2021 through December 31, 2024 the “Applicable Period”) with the Foundation. The submittal must contain the following:

1. Amount of the request, unless the request is governed by a formula as described under Allocation Process as contained in paragraph C. of this Appendix A.
2. Certification subject to the laws of perjury averring that: (i) the submitted request is for reimbursement of an eligible cost, expense, or purpose under Section 602 of the Social Security Act and the Final Rule; (ii) the received 2023-ARPA Funds will be applied solely for the stated purpose; (iii) the requested 2023-ARPA Funds will not duplicate any other funds, including funds received from the federal government (including, but not limited to ARPA and Coronavirus Relief Funds), cost based Medicaid, Medicare, or private insurance available to that nursing home; and (iv) the applying nursing home shall be responsible for any recoupment, overpayment, or other return of Funds to the extent of any determination that such 2023-ARPA Funds were not applied for an eligible purpose under Section 602 of the Social Security Act, the Final Rule, or the terms of this Agreement or the Program.
3. Documentation supporting the request (including, without limitation, invoices, purchase orders, or such other evidence as may be appropriate to support the request for 2023-ARPA Funds).
4. The Foundation will determine the aggregate amount of eligible reimbursement requests submitted for 2023-ARPA Funds under the Program and will, if necessary, effect a pro rata reimbursement to each qualifying nursing home based on the amount of eligible expenditures submitted by such nursing home.

It is acknowledged and agreed by all parties that, except as otherwise provided in this Agreement, Foundation will rely solely upon the certification and supporting documentation, without further inquiry, in administering the 2023-ARPA Funds allocated to nursing homes under this agreement.

C. Allocation Process: The Foundation shall divide the 2023-ARPA Funds received for distribution under Alabama Act 2023-1 into two separate distribution allocations to be distributed as follows:

- **Distribution One Allocation:** An aggregate of approximately \$104 million in qualifying purposes filed for by over 180 nursing homes that applied for ARPA Funds allocated pursuant to Alabama Act 2022-1, were not funded to those applying nursing homes due to a lack of available ARPA funds (the “Prior Unmet Nursing Home Need”). Up to 54% of the 2023-ARPA Funds authorized for distribution to nursing homes under Alabama Act 2023-1 (after allowing for the Foundation’s reasonable out of pocket costs for administering the distribution, the “Total Available Distribution One Allocation”) may be allocated to those nursing homes with a Prior Unmet Nursing Home Need, on a prorata basis calculated for each applying nursing Home in accordance with a ratio resulting from dividing the applying nursing home’s Prior Unmet Nursing Home Need by the aggregate Prior Unmet Nursing Home Need for all nursing homes applying for a Distribution One Allocation, and applying that ratio to Total Available Distribution One Allocation. Each nursing home applying for a Distribution One Allocation must have a Prior Unmet Nursing Home Need and shall submit an attestation to the Foundation certifying that the Prior Unmet Nursing Home Need for that nursing home remains unmet (the “Distribution One Nursing Home Attestation”). In making the Distribution One Allocation for a Prior Unmet Nursing Home Need, the Foundation may rely solely on the worksheet and supporting documentation submitted by that nursing home in 2022 for ARPA funds allocated under Alabama Act 2021-1 and the Distribution One Nursing Home Attestation.
- **Distribution Two Allocation:** Up to 46% of the APRA funds authorized under Alabama Act 2023-1(after allowing for the Foundation’s reasonable out of pocket costs for administering the distribution, the “Total Available Distribution Two Allocation”) may be allocated to those nursing homes that submit an attestation to the Foundation certifying that the nursing home has since March 11, 2021, or will incur prior to December 31, 2024, sufficient unmet needs for qualifying purposes (after taking into account the receipt of a Distribution One Allocation, if any, it may receive), that are equal to or exceed \$2200 for each of that applying nursing home’s licensed beds (the “Distribution Two Nursing Home Attestation”). A nursing home applying for a Distribution Two Allocation shall be entitled to receive an amount equal to the product of the herein describe Distribution Two Per Bed Allocation multiplied times the number of the applying nursing home’s licensed beds. The Distribution Two Per Bed Allocation shall be determined by dividing the aggregate number of licensed beds of all of the nursing homes submitting qualified applications for a Distribution Two Allocation into the Total Available Distribution Two Allocation. In making the Distribution Two Allocation to a qualifying nursing

home, the Foundation may rely solely on the Distribution Two Nursing Home Attestation.

D. Eligible Uses: Expenditures eligible for reimbursement are limited to tangible medical supplies and services necessary to respond to the COVID-19 public health emergency or those uses permitted by Health Services and Resource Administration, Department of Health and Human Services (“HRSA”) as qualifying uses for Provider Relief Funds or Rural Funds as described in the CARES Act and distributed to nursing homes by HRSA, including, but not limited to the following:

Direct reimbursable costs incurred would include, without limit,

- Increase in direct COVID expenses that would be permitted as allowable expenses on a Medicare or Medicaid cost report (if nursing home does not participate in such programs it is deemed to have filed the same for the purpose of this provision) such as, without limit, direct patient care, cleaning supplies, and medical supplies)
 - Personal Protection equipment
 - Vaccination programs
 - Medical care related to COVID
 - COVID-19 testing
 - Contact Tracing
 - Support for individuals in isolation or quarantine
 - Support for vulnerable populations to access medical or public health services (e.g., telehealth, transportation assistance, care coordination, and other supports)
 - Purchases of personal protective equipment (“PPE”)
 - Ventilation improvements (e.g., negative pressure rooms, general ventilation and air circulation improvements to nursing home air handling systems)
 - Enhancement of public health data systems
 - Capital investments to meet pandemic operational needs, such as physical plan improvements to public nursing homes and health clinics (but excluding construction costs)
- *Medical Expenses*
 - Individuals with “long COVID”
 - Near-term and long-term needs for care and services (e.g., monoclonal antibody treatments, ventilator support, oxygen machines and DME, prescription medications used to treat COVID-19, etc.)
 - *HRSA Approved Uses*
 - Those uses permitted by the HRSA as qualifying uses for Provider Relief Funds or Rural Funds as described in the CARES Act and distributed to nursing homes by HRSA. Notwithstanding anything to the contrary contained herein, the premium paid to a staffing agency for a worker shall not be considered a qualified purpose for the application of the 2023-ARPA Funds. The premium to a staffing agency

shall be the amount over what the nursing home would have paid if the worker was an employee.

C. Cost to Administer: The Foundation may engage accounting, legal, consulting, or other firms to assist in the implementation of the program. The Foundation anticipates the fee range for this accounting, legal, and other consulting work to be in the range of \$235,000.00 to \$285,000.00 through 2024, with similar annual expenditures for these services each year thereafter, to the extent necessary. These expenses will be reimbursed to the Foundation from the Funds. In addition, the Foundation will be reimbursed from the Funds for the costs of completing an audit in accordance with the requirements of the Single Audit Act and Code of Federal Regulations, Title 2, part 200, Subpart F.