

**MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF ALABAMA DEPARTMENT OF FINANCE
AND
THE ALABAMA HEALTH RESEARCH AND EDUCATION FOUNDATION, INC.
FOR THE DISTRIBUTION OF CORONAVIRUS STATE FISCAL RECOVERY FUNDS**

This Memorandum of Agreement (the “Agreement” or “MOA” or “MOU”) 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 Health Research and Education Foundation, Inc., 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 500 North East Boulevard, 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 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 provides a non-exclusive list of examples of costs that qualify for payment from the State Recovery Fund funds under one of the four broad categories specified in Section 602 of the Social Security Act, as specified above.

The State of Alabama received \$2,120,279,417 from the State Recovery Fund. Alabama Act No. 2023-1 appropriates \$200,000,000 of such funds to DOF for the benefit of Alabama hospitals and nursing homes, with half of the amount (\$100,000,000, referred to hereinafter as the "Funds") appropriated for Alabama hospitals for use in the delivery of healthcare and related services to the citizens of Alabama related to the COVID-19 pandemic and public health emergency, all in accordance with the requirements of Section 602 of the Social Security Act and the Final Rule. The Funds may generally only be used to cover costs for qualifying purposes as described herein that are or were incurred during the period from March 11, 2021, to December 31, 2022.

The DOF desires to utilize Funds allocated to Alabama hospitals under Alabama Act No. 2023-1 to establish a reimbursement program for the benefit of Alabama's hospitals. Specifically, DOF will provide up to \$100,000,000 in Funds to the Foundation to be distributed on a reimbursement basis to and for the benefit of all Alabama qualifying hospitals, 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 hospitals for Funds and the distribution of Funds to hospitals for qualifying uses.

The "Hospital 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 hospitals to follow in applying for Funds related to costs incurred by each hospital that are eligible under Section 602 of the Social Security Act and the Final Rule. The Foundation will ensure a fair and equitable distribution of Funds through the Program among all hospitals, urban and rural, and regardless of whether such hospitals are members of the Alabama Hospital Association. Among the central tenets of the Program will be a certification by the applying hospital that: (i) the submitted request is for an eligible cost, expense, or purpose under Section 602 of the Social Security Act and the Final Rule incurred by the hospital between March 11, 2021 and December 31, 2022; (ii) the received Funds will be applied solely for the stated purpose; (iii) the requested Funds will not duplicate any other funds, including funds received from the federal government, Medicaid, Medicare, or private insurance; (iv) the applying hospital 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; and (v) that the hospital receiving funds under this program will comply with the audit requirements applicable to this award, to the extent applicable to such hospital. Each hospital's request will also be accompanied by the documentation to support such request (including, without limitation, invoices, purchase orders, payroll records, or such other evidence as may be appropriate to support

the request for Funds). It is understood by the parties that, except as otherwise provided in this Agreement, the Foundation will rely solely upon the certification and supporting documentation submitted by qualified hospitals, without further inquiry, in administering the Funds allocated for this use

The Parties agree and acknowledge that in making distributions to a Hospital, the Foundation is relying solely on attestations from the respective requesting hospital and the invoices, worksheets, or other documentation submitted therewith (the "Attestation"). The Foundation is neither assuming responsibility for any distribution made based on the Attestation, nor is DOF holding the Foundation responsible for any such distribution, provided the Foundation has received the appropriate attestation and has processed the application for funding in accordance with its procedures. Each of the Foundation and DOF further agrees that the beneficiary Hospital shall be ultimately responsible for applying Funds received for eligible expenses described hereunder.

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. The Parties further acknowledge and agree that each recipient Hospital is considered a "Beneficiary" for purposes of the Program and the Funds received by such recipient Hospital.

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 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 these 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' RESPONSIBILITIES

A. Foundation agrees to the following:

1. To develop and implement the Program as detailed in Appendix A attached;
2. To expend all Funds provided under this Agreement by December 31, 2023;
3. To administer the Funds provided to it by this Agreement fairly and impartially on behalf of all hospitals across the state, regardless of Alabama Hospital Association membership;
4. To include in the certification filed by each hospital applying for Funds an acknowledgment that such hospital has, as required by law, reported to appropriate healthcare officials;
5. To comply with all federal requirements applicable to Subrecipients set forth in Code of Federal Regulations, Title 2, Part 200.

6. Beginning on July 10, 2023 and continuing until the Program concludes, to provide to the State Finance Director's Office quarterly project and expenditure reports on the progress made on the development and implementation of the Program and an itemized list of reimbursement applications received and expenditures for the preceding quarter;
7. By January 31, 2024 or ninety (90) days following expenditure of all Funds provided under this MOA, whichever occurs first, to provide 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 period March 11, 2021, through December 31, 2022.
8. To use the Funds provided by DOF under this Agreement in accordance with Section 602 of the Social Security Act, the Final Rule, other federal and state law, and for the purposes set forth in this Agreement, and for no other purpose; and
9. To return any Funds provided by DOF under this Agreement that are unspent as of December 31, 2023 by January 31, 2024.

B. DOF agrees to the following:

1. 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; and
2. Upon Foundation's request, to reimburse Foundation in a timely manner for reasonable expenditures made in furtherance of this project, including the expenses of any accounting, legal, or other consultants necessary for implementing the Program.

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 towards the reimbursements to hospitals described herein. Foundation acknowledges that all Funds provided under this Agreement must be spent or returned to DOF by December 31, 2024. 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 shall terminate this Agreement upon written notice to the State Finance Director and return of any unspent Funds. If DOF concludes, after a reasonable investigation and in its sole discretion as administrator of the Funds, that the 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 Ala. Const. of 2022, Art XI, Sec. 213.

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, § 200.331(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 Parties agree that the funds provided under this Agreement will not be used to purchase, hire, or otherwise provide temporary medical professionals to staff Alabama hospitals.

VI. AMENDMENTS

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

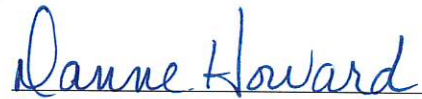
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials duly authorized to execute such agreements.

**State of Alabama
Department of Finance**



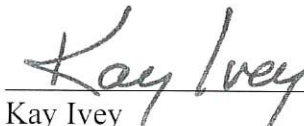
Bill Poole
Director of Finance

**Alabama Health and Research
Education Foundation, Inc.**



Danne Howard
Deputy Director

APPROVED:

 6/6/2023

Kay Ivey
Governor of Alabama

APPENDIX A
Coronavirus State Fiscal Recovery Fund
Hospital COVID-19 Recovery Fund Program Details

A. Background: This is to supplement that certain Memorandum of Understanding (“MOU”) between the State of Alabama Department of Finance (“DOF”) and the Alabama Health Research and Education Foundation, Inc. (“Foundation”), the Foundation’s administration of the “Hospital COVID-19 Recovery Fund Program” (the “Program”) for purposes of distribution to Alabama hospitals 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 hospitals. Due to the unpredictable nature of the pandemic as it relates to hospitals, 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 MOU.

B. Process: Hospitals seeking grants under the Program will file an application for reimbursement of expenses incurred between March 11, 2021 and December 31, 2022 through the Foundation’s secure portal. The application must contain the following:

1. Amount of the request.
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 (hereinafter an “Eligible Expense”); (ii) the received Funds will be applied solely for the stated purpose; (iii) the requested Funds will not duplicate any other funds available to that hospital including funds received from the federal government (including, but not limited to ARPA and Coronavirus Relief Funds), Medicaid, Medicare, or private insurance; and (iv) the applying hospital 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.
3. Documentation supporting the request (including, without limitation, invoices, purchase orders, summary payroll records, or such other evidence as may be appropriate to support the request for Funds).
4. The Foundation will distribute Funds based on the submitted requests for Funds and in accordance with the allocation methodology outlined below.

It is acknowledged and agreed by all parties that Foundation will rely solely upon the certification and supporting documentation, without further inquiry, in administering the Funds allocated to hospitals under this agreement.

C. Eligible Uses: The Funds may be used to reimburse any increase in direct COVID-19 expenses not otherwise reimbursed that would be permitted as allowable expenses on a Medicare or Medicaid cost report and eligible under Section 602 of the Social Security Act and the Final Rule. Notwithstanding the forgoing, the Funds may not be used for premium pay or for capital improvements or construction.

D. Allocation of Funds: In order to ensure a fair and equitable allocation of the Funds among all Alabama hospitals, the Foundation will use the following methodology to determine the maximum allocation for each hospital for reimbursement of Eligible Expenses submitted by such hospital:

1. One-third (1/3) of the Funds will be allocated based on each hospital's percentage of the total inpatient bed days for patients diagnosed with COVID-19 for all Alabama hospitals from March 11, 2021 to December 31, 2022, according to hospital daily reports submitted to the Alabama Incident Management System maintained by the Alabama Department of Public Health ("ADPH"); and
2. One-third (1/3) of the Funds will be allocated based on each hospital's percentage of the total amount of monoclonal antibodies and vaccinations ordered by all Alabama hospitals from March 11, 2021 to December 31, 2022, according to information maintained in ADPH's database; and
3. One-third (1/3) of the Funds will be allocated based on each hospital's percentage of the total number of inpatient hospital beds for all Alabama hospitals according to the Alabama Department of Public Health Licensure and Certification database as of December 31, 2022.

Each hospital shall be eligible to receive Funds in the amount of the lesser of (a) the hospital's submitted request for reimbursement of Eligible Expenses, or (b) the maximum allocation of Funds for such hospital as determined using the allocation methodology above. Each hospital shall be responsible for providing a certification and supporting documentation of Eligible Expenses up to the total amount of its submitted request for Eligible Expenses. No hospital shall be awarded more than the amount of certified and documented Eligible Expenses for such hospital, notwithstanding that the hospital may have a maximum allocation of Eligible Expenses which exceeds such hospital's submitted request. After the initial round of allocation and distributions, any hospital's unused allocation shall be re-allocated to hospitals with additional Eligible Expenses using the allocation methodology above.

E. Cost to Administer: The Foundation has engaged a third-party accounting firm to administer the program and has engaged or may engage additional 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 \$425,000 to \$475,000 through 2023, 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.