MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE OF ALABAMA DEPARTMENT OF FINANCE AND THE ALABAMA NURSING HOME ASSOCIATION FOR THE DISTRIBUTION OF CARES ACT CORONAVIRUS RELIEF FUNDS

This Memorandum of Understanding 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 (that is qualified as a public charity under Section 501(c)(3), Section 509(a), and Section 170(c)(2) of the Internal Revenue Code of 1986, as amended), at 4156 Carmichael Road, Montgomery Alabama 36106, hereinafter referred to as the "Foundation." This agreement becomes effective upon approval of the Governor. DOF and Foundation are hereinafter collectively referred to as the "parties."

I. PURPOSE

The federal Coronavirus Aid, Relief, and Economic Security Act, hereinafter referred to as the CARES Act, established the Coronavirus Relief Fund, hereinafter referred to as CRF. The CARES Act appropriated $150,000,000,000 to the CRF to make payments to State, local, and tribal governments for the purposes enumerated in the CARES Act, namely to respond to and mitigate the coronavirus pandemic. The State of Alabama received approximately $1,900,000,000 from the CRF. CRF funds may only be used to cover costs that 1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19); 2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and 3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Alabama Act 2020-199 divided the State of Alabama's share of CRF funds into ten categories and charged DOF with the responsibility of administering the funds on behalf of the

people of Alabama. One such category provides, "Up to $250,000,000 to be used to support the delivery of health care and related services to citizens of Alabama related to the coronavirus pandemic." Foundation is requesting, and DOF is agreeing to provide, $18,270,000, from this category of CRF funds to support Foundation's proposed "Skilled Nursing Facility COVID-19 Testing Strategy" as described in the proposal and budget attached hereto as Appendix A.

In sum, Foundation's testing strategy will provide baseline testing for coronavirus and proactive surveillance of the virus for health care personnel and residents of nursing facilities across Alabama. Such testing will be consistent with the recommendations of the Centers for Medicare and Medicaid, the Centers for Disease Control and Prevention, and state and local public health authorities. While the testing will not replace infection prevention practices, it should lead screening protocols to rapidly detect cases of coronavirus and prevent transmission of the virus.

As the project has been presented to DOF by Foundation, DOF has concluded the "Skilled Nursing Facility COVID-19 Testing Strategy" project is necessary to respond to and mitigate the coronavirus pandemic in Alabama. Further, DOF concludes that funding said projects using the State's CRF funds is an appropriate use of said funds under both Federal and State law. DOF fully supports Foundation in its efforts to support and protect the citizens of Alabama in respect to the public health emergency related to COVID-19.

II. PARTIES' RESPONSIBILITIES

A. Foundation agrees to the following:

1. To develop and implement its "Skilled Nursing Facility COVID-19 Testing Strategy" project as described in Appendix A;

2. To administer the funds provided to it by this agreement fairly and impartially on behalf of all nursing facilities across the State, regardless of Alabama Nursing Home Association membership;

3. To include in the certification filed by each nursing facility applying for reimbursement an acknowledgement that such nursing facility has, as required by law, reported testing results to appropriate health care officials;

4. To provide to the State Finance Director's Office, on or upon the fifth day of every month, beginning August 5, 2020 (or if the 5th day of any month shall fall on a weekend or state holiday, then on the next day that is not a weekend or state holiday) until conclusion of the project by either completion or termination, a report detailing the progress made on the project and an itemized list of expenditures for the project for the preceding month;

5. To request reimbursement monthly for expenses incurred for the preceding month;

6. To use the funds provided by DOF under this agreement in accordance with Federal and State law and for the purposes set forth in this agreement and for no other purpose; and

7. To return any funds provided by DOF under this agreement that are unspent as of December 30, 2020.

B. DOF agrees to the following:

1. To provide $18,270,000 to Foundation from the State's CRF funds to fund this project 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.

III. FINANCIAL ARRANGEMENTS

The parties agree that within fourteen days of the effective date of this agreement, DOF will provide an advance of $2,000,000 of the $18,270,000 owed under this agreement towards the commencement of the projects described herein. The balance of $16,120,000 will be provided to Foundation upon Foundation's request on a reimbursement basis at least once per month. Foundation acknowledges that all funds provided under this agreement must be spent or returned to DOF by December 30, 2020. Reimbursements or invoice payments may not occur after that date. Foundation may employ outside accountants to assist with the administration of these funds, however, such accountants must meet and comply with audit requirements for use of funds under the CARES Act.

IV. TERMINATION OF AGREEMENT

Except as set forth in this section, this agreement may be terminated only by a writing signed by each party or representatives of each party. If Foundation determines that it will not pursue this project for whatever reason, it may terminate this agreement upon written notice to the State Finance Director and upon 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

In witness whereof, the parties hereto have caused this agreement to be executed by those officers, officials, and persons thereunto duly authorized.

State of Alabama
Department of Finance

Kelly Butler
Finance Director

Alabama Nursing Home Association
Education Foundation

R. Frank Brown, Jr.
Chairman

APPROVED:

Kay Ivey
Governor of Alabama

Proposed Skilled Nursing Facility COVID-19
Testing Strategy and Related Funding

Goal:
To develop (i) a flexible, tiered COVID-19 baseline testing protocol for existing licensed skilled nursing facility residents, and all staff and caregivers (referred to hereafter as Health Care Personnel or HCP)[1] that is consistent with the recommendations of the Centers for Medicare & Medicaid (CMS), the Centers for Disease Control and Prevention (CDC) and state and local public health authorities; and (ii) a method for proactive surveillance testing of HCP and residents following the results of the baseline testing.

Methods of Testing:
At this time, the most widely available diagnostic method for COVID-19 is RT-PCR (reverse-transcriptase polymerase chain reaction) assay for SARS-CoV-2, performed on a respiratory sample obtained by nasopharyngeal swab. This test causes significant discomfort for the individual being tested. However, tests using specimens obtained by nasal or oropharyngeal swabs are becoming more widely available and are less intrusive. These tests detect particles of viral genetic material but do not determine if live virus is present. There is currently no role for the use of antibody testing to detect SARS-CoV2 infection.

The Purpose of Testing:
Testing will not replace appropriate infection prevention practices, but should lead to specific actions, i.e. screening HCPs and residents to rapidly detect cases of COVID-19 and prevent disease transmission.

Baseline Testing:

- All residents and HCPs of licensed skilled nursing facilities will be tested within the next 30-45 days to establish a baseline of the prevalence of COVID-19 and to identify HCPs and residents that may be pre- or asymptomatic. Nucleic acid testing is the preferred method at this time, but we request the State consider alternate methods of testing as those methods gain additional support as an accurate and efficient strategy.
- HCPs or residents who are asymptomatic and who have previously tested positive for COVID-19 and have fully recovered and returned to work (HCPs) or to the general population of the facility (residents) are exempt from baseline testing.
- Facilities that have performed baseline testing as of May 19, 2020, followed by screening per CDC guidelines, would also be exempt from performing additional baseline testing.

[1] Healthcare Personnel (HCP): HCP include, but are not limited to, emergency medical service personnel, nurses, nursing assistants, physicians, technicians, therapists, phlebotomists, pharmacists, students and trainees, contractual HCP not employed by the healthcare facility, and persons not directly involved in patient care, but who could be exposed to infectious agents that can be transmitted in the healthcare setting (e.g., clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, and volunteer personnel).

- To avoid overwhelming laboratories conducting the testing, it may be necessary to prioritize testing as follows:
  - Tier 1: All HCPs and residents of any licensed skilled nursing facility in which a case of confirmed or suspected COVID-19 has been identified in the previous 14 days. Asymptomatic HCPs or residents who have previously tested positive for COVID-19 and have fully recovered and returned to work (HCPs) or to the general population of the facility (residents) would be exempt from baseline testing.
  - Tier 2: Test all residents and HCPs of all remaining licensed skilled nursing facilities, prioritizing testing in counties/regions where the prevalence of COVID-19 is highest (a determination to be made by the Alabama Department of Public Health in conjunction with ANHA).

Routine Diagnostic Testing:

All symptomatic persons will be tested as indicated, including HCPs and residents previously diagnosed with COVID-19.

Proactive Surveillance Testing:

The guidance from the Centers for Disease Control, the Centers for Medicare and Medicaid Services and President Trump's Administration continues to evolve and change as testing strategies and testing practices change and develop. Following the baseline testing described above, we recommend that any proactive surveillance testing recommended or ordered by the State be conducted pursuant to then applicable CDC/FDA/CMS guidelines for such testing in the least restrictive manner possible, including the least intrusive testing format and platform.

[See, Appendix 1 for estimated Testing budgets through 12/31/2020]

APPENDIX 1
Proposed Skilled Nursing Facility COVID-19
Testing Strategy and Related Funding

Estimated Budget:

Baseline Testing	$ 2,760,000[1]
Surveillance Testing	$ 15,360,000[2]
Estimated Fees to CPA Firm	$ 150,000[3]
Total	$ 18,270,000

Brief Explanation:

1. $2,760,000 - For one-time baseline testing for 1,000 residents and 32,000 HCP [33,000 tests at $80 per test plus $120,000 for uncovered co-pays]

2. $15,360,000 – For proactive surveillance testing [assumes some level of testing twice monthly through December 2020 for at least 50% of HCPs]

[1] 1,000 residents are those residents who are neither covered by Medicare or Medicaid. The other 24,000 residents would have either Part B Medicare, Medicaid, or private insurance to pay for testing. The cost of co-pays for approximately 35% to 40% of these residents is subsumed into the above budget.

[2] Assumes that surveillance testing would be more intensive for first month or two and then taper-off. Changes in guidelines or more widespread outbreaks could materially affect these projections.

[3] Estimated fees for engaging third party CPA firm to develop and administer claims processing. Reimbursement will follow same process as will be used to process testing claims.