

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**CLINICAL EDUCATIONAL EXPERIENCE
AFFILIATION AGREEMENT**

THIS AGREEMENT, effective the 2 day of December, 2021, is between Union Institute & University (the “**University**”), and the Hidalgo County-WIC: Lactation Care Center RGV (the “**Facility**”), having its principal office at 3105 W. University Drive in Edinburg, State of Texas, for the purpose of providing supervised clinical education experiences for the Maternal Child Health: Human Lactation student(s) of the **University**.

Recitals

- A. **Facility** operates at Lactation Care Center RGV McAllen, State of Texas, and therein provides community lactation in support services.
- B. **University** operates a school at 2090 Florence Ave. in Cincinnati, OH, which offers a Bachelor of Science with a concentration in Maternal and Child Health, and provides academic courses with respect to, and periodically desires to, provide students in such courses with supervised clinical educational experience(s) for the Maternal Child Health: Human Lactation student(s) by utilizing appropriate facilities and personnel of third parties as a supplement to the academic curriculum (the “**Program**”).
- C. **Facility and University** desire to advance the Bachelor of Science with a concentration in Maternal and Child Health education and aid in meeting the ever increasing demand in the County, State, and Nation for trained health professionals, and to make available better health service to constituents.
- D. **Facility and University** desire to cooperate for the implementation and continuation of a supervised clinical affiliation **Program(s)** involving the students and personnel of **University** and the facilities and personnel of **Facility**.

Agreement

NOW, THEREFORE, in consideration of the mutual promises herein, **University** and **Facility** agree that the **Program** established and implemented by **Facility** and **University** during the term of this **Agreement** shall be covered by and subject to the following terms and conditions.

1. **PROGRAM AGREEMENT.** To become effective, all agreements with respect to an affiliation **Program** shall be reduced to writing, executed by authorized representatives of both **Facility** and **University**.
2. **WAGES.** Students participating in an affiliation **Program** at **Facility** are participating for an academic purpose and a non-paid position. Upon completion of the participation period, Students are not automatically entitled to a paid position within the County, the Lactation Care Center RGV, and/or the **University**.
3. **AMENDMENT OF PROGRAM AGREEMENT.** No amendment to this **Program Agreement** shall be effective unless reduced to writing, executed by the authorized representatives of both **Facility** and **University**.
4. **RESPONSIBILITY OF FACILITY.** Except for acts to be performed by **University** pursuant to the provisions of this **Agreement**, **Facility** will furnish the premises, personnel, services, and all other items necessary for the educational experience and training specified in the **Program**. In connection with such **Program**, **Facility** will:
 - a. comply with all applicable federal, state, and municipal laws, ordinances, rules, and regulations; comply with all applicable requirements of any accreditation authority; and certify such compliance upon request by **University**;
 - b. provide each student with a licensed **Clinical Supervisor**, who is on staff at the **Facility**, to whom he/she will be responsible to during the clinical education period;
 - c. evaluate their students' performance under this **Program Agreement** and discuss their progress with the **University**;
 - d. make sure that students are not allowed to replace **Facility** staff members and shall not allow students to be utilized for clerical, secretarial, or personal assistant duties;
 - e. appoint a person to serve as the liaison for the **Facility** (the "**Facility Liaison**"); and
 - f. be entitled to remove a student from the affiliation when continuance would interfere with its primary responsibility of patient care.

5. **RESPONSIBILITIES OF UNIVERSITY.** **University** will:

- a. Furnish **Facility** with the names of the student(s) assigned by **University** to participate in the **Program(s)**;
- b. The faculty of the **University**'s program in Maternal Child Health: Human Lactation will have the responsibility for academically preparing the students prior to their participation in the clinical affiliation **Program**;
- c. Maintain the authority and responsibility for education programs for its students which may be conducted within **Facility**;
- d. Inform its faculty and students of the requirement to comply with **Facility** policies and ~~rules~~ when in attendance at **Facility**.
- e. Designate a member of the **University** faculty to coordinate the educational experience of students participating in the **Program** with the **Facility**. **University** shall give **Facility** written notice of the name of the **University** faculty representative;
- f. Provide **Facility** with notice of any changes in faculty and curriculum;
- g. Provide **Facility** with forms and guidance for student education and evaluation;
- h. The Director of Clinical Training will contact **Facility** during the affiliation period to coordinate the student's progress.
- i. **INSURANCE.** **University** shall carry sufficient insurance to provide sufficient and adequate protection to the **Facility** under the **Indemnity** provision, for any potential liabilities that accrue arising from or related to this **Agreement**; **University** shall provide: (a) coverage against all claims based on violations of the Civil Rights Act arising from the Services performed under this **Agreement**; (b) coverage to protect the **Facility** and Hidalgo County against all claims arising from the Services performed hereunder; and (c) coverage to protect the **Facility** and Hidalgo County from actions by a third party against **University** as a result of this **Agreement**. The insurance policy required by this section shall be for not less than any limits of liability specified herein, or required by law, whichever is greater, and shall include coverage for liabilities assumed by this **Agreement**, as applicable to the obligations of **University** hereunder. **University** shall continuously maintain such accident, general liability, worker's compensation, and automobile insurance, as required by law, to include protecting

University, its officers, employees, and agents from and against any and all liability caused by or arising out of any aspect of the operation of the facility and the furnishing of services to the **Facility** and the Hidalgo County, including the payment of damages and attorney's fees. **University** shall provide proof of insurance coverage to the **Facility** upon request. **University** shall carry insurance acceptable to **Facility**, but in no event less than insurance coverages required by law, and include Hidalgo County and WIC: Lactation Care Center RGV as additional named insured.

- j. Inform all students that they must purchase professional liability insurance and show proof of such insurance upon request;
- k. Inform all students that they are not employees of CENTER and have no claim against CENTER for any employment benefits; and

l. **Ensure that STUDENTS/INTERNS** will:

- (1) Follow the rules and regulations established by the **Facility** during their clinical affiliation period at **Facility**;
- (2) Provide their own health insurance coverage for the period of the clinical education experience;
- (3) purchase professional liability insurance and show proof of such insurance upon request; and
- (4) Agree to accept the assigned clinical affiliation, following consultation with the **University's** Director of Clinical Training.
- (5) Acknowledge that they are not employees of **Facility** and have no claim against **Facility** for any employment benefits.

6. **NOTICES.** All notices under this **Agreement** shall be in writing and delivered either by personal delivery or by United States certified mail, return receipt requested to the addresses listed below. Such notices shall be deemed given when received by such party's designated representative.

If to UNIVERSITY:

Union Institute and University
Attn: Alicia C. Simpson MS, RD, IBCLC
2090 Florence Ave
Cincinnati, OH 45026

If to FACILITY:

Lactation Care Center RGV
3001 N. 23rd St. Ste 2, McAllen, TX 78501
N/A

7. **ORAL REPRESENTATIONS.** No oral representations of any officer, agent, or employee of **Facility** or **University** shall affect or modify any obligations of either party under this **Agreement**.
8. **ASSIGNMENT.** Neither party shall have the right to assign or transfer their rights to any third parties under this agreement without the prior written consent of the other party.
9. **PERFORMANCE.** A delay in or failure of performance of either party that is caused by occurrences beyond the control of either party shall not constitute default hereunder, or give rise to any claim for damages.
10. **TERM AND EFFECTIVE DATE.** This **Agreement** shall be effective **November 16, 2021** and expire on **November 15, 2022** (the “**Term**”). After such initial **Term**, this **Agreement** shall continue from year-to-year unless one party shall give the other thirty (30) days prior written notice of intention to terminate. If such notice is given, this **Agreement** shall terminate: (a) At the end of such 30 days; or (b) When all students enrolled in the **Program** (at the time such notice is given) complete their respective courses of study under the **Agreement**, whichever event occurs last.
11. **APPLICABLE LAW.** The validity, interpretation, performance, and enforcement of this **Agreement** shall be governed by the laws of the State of Texas and shall be performable in Hidalgo County. Proper venue for any litigation arising from this contract shall be in Hidalgo County, Texas. The **University** hereby consent to personal jurisdiction in Hidalgo County, Texas.
12. **INDEPENDENT CONTRACTOR.** Nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship between the Parties. It is expressly agreed that this Agreement and the performance by the Parties hereunder does not create any agency relationship or master-servant relationship. That University is an independent contractor under this Agreement.
13. **CONFLICT WITH APPLICABLE LAW/SEVERABILITY.** Nothing in this Contract shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Contract and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Contract shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity,

illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

14. **NONDISCRIMINATION.** **Facility** and **University** shall not discriminate against any person, employee, **student**, and/or child on account of race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, sexual orientation, or any basis prohibited by law.
15. **FERPA.** For purposes of this **Agreement**, pursuant to the Family Educational Rights and Privacy Act of 1974 (“**FERPA**”), the **University** hereby designates the **Facility** as a school official with a legitimate educational interest in the educational records of the Students who participate in the **Program** to the extent that access to the records are required by the **Facility** to carry out the **Program**. **Facility** agrees to maintain the confidentiality of the educational records in accordance with the provisions of **FERPA**.
16. **TEXAS MEDICAL RECORDS PRIVACY ACT.** The Parties shall comply with the Texas Medical Privacy Act and the related regulations regarding confidentiality, as may be amended from time to time.
17. **INDEMNIFICATION.** TO THE EXTENT AUTHORIZED UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, **UNIVERSITY** SHALL INDEMNIFY AND HOLD **FACILITY** HARMLESS FROM ANY AND ALL CLAIMS , ACTIONS, LIABILITY, AND EXPENSES (INCLUDING COSTS OF JUDGMENTS, SETTLEMENTS, COURT COSTS, AND ATTORNEYS' FEES, REGARDLESS OF THE OUTCOME OF SUCH CLAIM OR ACTION) CAUSED BY, RESULTING FROM, OR ALLEGING NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OR ANY FAILURE TO PERFORM ANY OBLIGATION UNDERTAKEN OR ANY COVENANT IN THIS **AGREEMENT**, WHETHER SUCH ACT, OMISSION, OR FAILURE WAS THE **UNIVERSITY'S** OR THAT OF ANY PERSON PROVIDING SERVICES HEREUNDER THROUGH OR FOR THE **UNIVERSITY**. UPON WRITTEN NOTICE FROM **FACILITY**, **UNIVERSITY** WILL RESIST AND DEFEND AT ITS OWN EXPENSE, AND BY COUNSEL REASONABLY SATISFACTORY TO **FACILITY**, ANY SUCH CLAIM OR ACTION. **UNIVERSITY** WILL CARRY INSURANCE ACCEPTABLE TO **FACILITY** WITH MINIMUM LIMITS REQUIRED BY LAW AND WITH **HIDALGO COUNTY AND WIC: LACTATION CARE CENTER RGV** AS ADDITIONAL NAMED INSURED. THIS CLAUSE SHALL SURVIVE THE TERMINATION OF THIS **AGREEMENT**.
18. **AUTHORITY TO EXECUTE.** The execution and performance of this **Agreement** by the **Parties** has been duly authorized by all necessary laws, resolutions or corporate action, and this **Agreement** constitutes the valid and enforceable obligations of the **Participating Law Enforcement Agency** and **Districts** in accordance with its terms.
19. **HIPAA.** The **Parties** agree that:

- a. the **Facility** is a covered entity for purposes of the Health Insurance Portability and Accountability Act of 1996, of 1996 as amended by the Health Information Technology for Economic and Clinical Health (“**HITECH**”) Act and the Privacy, Security and Breach Notification Regulations at 45 CFR §§ 160 and 164 (hereinafter collectively, “**HIPAA**”) and subject to 45 CFR Parts 160 and 164 (the **HIPAA** Administrative Simplification Regulations);
- b. to the extent that **University** students are participating in the **Program** [and **University** faculty members are providing supervision at the **Facility** as part of the **Program**], such students [and faculty members] shall:
 - (1) be considered part of the **Facility**’s workforce for **HIPAA** compliance purposes in accordance with 45 CFR §160.103, but shall not be construed to be employees of the **Facility**;
 - (2) receive training by the **Facility** on, and subject to compliance with, all of **Facility**’s privacy policies adopted pursuant to the **HIPAA** Privacy Regulations; and
 - (3) not disclose any Protected Health Information, as that term is defined by 45 CFR §160.103, to **University** which a student accessed through **Program** participation [or a faculty member accessed through the provision of supervision at the **Facility**] that has not first been de-identified as provided in 45 CFR §164.514(a);
- c. **University** will never access or request to access any Protected Health Information held or collected by or on behalf of the **Facility**, from a student [or faculty member] who is acting as a part of the **Facility**’s workforce as set forth in paragraph 16.b. of this **Agreement** or any other source, that has not first been de-identified as provided in 45 CFR §164.514(a); and
- d. no services are being provided to the **Facility** by the **University** pursuant to this **Agreement** and therefore this **Agreement** does not create a “business associate” relationship as that term is defined in 45 CFR §160.103.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.


COUNTY OF HIDALGO

Richard F. Cortez, County Judge

ATTEST:

Arturo Guajardo Jr., County Clerk

UNIVERSITY

DocuSigned by:

DE26ECE622434E3

Nelson E. Soto, PhD
Provost/VP of Academic Affairs

Approved By Commissioners Court On: _____

APPROVED AS TO FORM
Office of the Criminal District Attorney,
Ricardo Rodriguez, Jr.

By: _____
Amanda D. Austin, Assistant District Attorney