

# Keith & Associates, Inc.

## Providing Medical Nutrition Therapy

---

### CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement") is made and entered into as of the 21<sup>st</sup> day of September, 2023, between Keith & Associates, Inc., having a principal place of business at 115 W 3<sup>rd</sup> St, Tulsa, OK 74103 ("Keith") and Clinton Regional Hospital, having a principal place of business at 100 North 30<sup>th</sup> Clinton, OK 73601.

#### **RECITALS**

WHEREAS, Keith provides dietary consultation services to facilities and individuals, such services include, but are not limited to, assessment of nutritional needs and development of nutritional care plans for its clients:

WHEREAS, Client desires certain dietary consultation services;

WHEREAS, the parties desire to enter into an agreement whereby Keith will provide dietary consultation services to Client as an independent contractor subject to the terms of the Agreement below.

NOW, THEREFORE, for and in consideration of the recitals above, and the mutual covenants and conditions herein contained, the parties agree as follows

#### **1. APPOINTMENT AND TERM**

Client hereby engages and retains Keith as its consultant with respect to the matters set forth in Section 2, and Keith hereby accepts such engagement and retention as a consultant to Client, beginning on the date hereof and ending upon termination of this Agreement as provided for in Section 6.

#### **2. DUTIES OF KEITH**

Keith shall provide "Dietary Consultation Services" as defined in "Dietary Consultation Services." "Dietary Consultation Services" may include the duties and responsibilities set forth on Exhibit A and those duties and responsibilities otherwise agreed to between Keith and Client, subject to the limitations imposed upon Keith due to Client, Client's agents or employees or those in active concert with them, or Client's organization, policies and/or procedures.

Keith represents and warrants that each of its employees or agents providing services to the Client under this agreement are duly qualified and appropriately licensed or registered in the State of Oklahoma. Keith will provide Client with documentary evidence of such license or registration, as the case may be. Keith further represents and warrants that all Dietary Consultant contractors (other than client and its employees) have received and have passed all testing for communicable diseases as required by applicable law, rule or regulation.

# Keith & Associates, Inc.

## Providing Medical Nutrition Therapy

---

### 3. DUTIES OF CLIENT

Client agrees to cooperate fully with Keith in Keith's compliance with Section 2 herein. To enable Keith to comply with Section 2 herein, Client agrees (a) that certain of Client's personnel as designated by Keith, including, but not limited to, Client's administrators and staff, will personally confer with Keith or the Registered Dietitian performing services under this Agreement at Keith's or the Registered Dietitian's reasonable request, (b) to provide adequate working space for Keith or the Registered Dietitian performing services pursuant to this Agreement, and (c) to provide to Keith for Keith's review any and all records, books, and surveyors' reports pertinent to diet, meals or nutrition or Keith's performance of services under this Agreement.

### 4. CONSULTING FEE

In consideration of Keith entering into this Agreement and Keith's performance of Consulting Services hereunder, Client hereby covenants and agrees to pay Keith a consulting fee of **\$550.00** per full day of consultation requested, plus mileage paid at the current IRS rate, payable upon receipt of an invoice for such Consulting Services. For purposes of this Agreement, "Consultation" is defined as one physical visit by a Registered Dietitian. Client agrees to utilize or alternatively pay for a minimum of five (5) consultations per week. Any additional visits by a Registered Dietitian will be billed and invoiced at the consulting rate as provided for herein. Any invoice not paid within thirty (30) days from the date of the invoice will be deemed overdue. If any payment is overdue, Client shall pay to Keith, in addition to the overdue amount, daily interest on the overdue amount from the date it became overdue until paid, at the rate of one and one-half (1.5%) per month or the maximum rate permitted by law, whichever is less. If the account is placed with an attorney, whether a lawsuit is filed or otherwise, or if services of an attorney are required to protect our interest, Client agrees to pay all costs and attorney fees. The foregoing remedy is in addition to any other remedies Keith may have. Keith shall be solely liable for any taxes, withholdings, deductions, and/or penalties relating to any fees paid to Keith pursuant to this Agreement, and Client shall make no withholdings or deductions for taxes or other purposes from such fees.

### 5. INDEPENDENT CONTRACTOR STATUS

It is mutually agreed that Keith and those performing services on behalf of Keith are independent contractors and not employees of Client. It is further agreed and understood that Keith may seek or obtain other employment and/or engage in other income-generating activities during the term of this Agreement. To the extent consistent with the results specified by Client, the methodology and timing of the services to be provided hereunder will be left to Keith's discretion. Client hereby acknowledges and agrees the Keith has invested considerable amounts of time and money in recruiting and training its independent contractors and employed dietetic service personnel, including the acclimation of such personnel to Keith systems, procedures, reports and other confidential information that is proprietary to Keith. As a material provision of this Agreement, Client agrees that it and/or any affiliates of Client will hire no

# Keith & Associates, Inc.

## Providing Medical Nutrition Therapy

---

dietetic service personnel of Keith during the term of this Agreement and for a period of three (3) years thereafter. For the purpose of this prohibition, "dietetic service personnel" shall be defined as those persons, assigned by Keith, who have directly or indirectly performed management, consulting or professional services at any facility owned or operated by Client or any affiliate of Client during the three (3) year period immediately preceding termination or cancellation of this Agreement.

In addition, Client agrees that if the conditions set forth in the immediately preceding paragraph are violated, then Client shall pay to Keith, and Keith shall accept as liquidated damages and not as a penalty for such breach, an amount equal to the full annual salary of the Keith dietetic service personnel hired by Client or its affiliate in violation of the terms of this Agreement, regardless of the actual duration of such unlawful hire. The full annual salary shall be determined as the proceeding twelve (12) month wages or average RD salary of Keith whichever is greater. This remedy shall be in addition to any other right or remedy of Keith.

### 6. TERM, RENEWAL, BREACH AND TERMINATION

**6.1** Term and Renewal. This Agreement shall be effective as of **10/01/23** and shall remain in effect until **9/30/24** subject to early termination as set forth in this Section 6. This Agreement shall automatically renew for additional 1-year terms unless one party gives written notice to the other party at least thirty (30) days prior to the renewal date of its desire to terminate the Agreement.

### 6.2 Termination with Cause

**6.2.1** Termination by Keith In the event Client breaches its obligations under this Agreement, Keith shall give Client thirty (30) days written notice to cure the alleged breach. Such notice shall specify the obligations, which Client is failing to meet. If at the end of the thirty (30) day period following the giving of such notice, such defect has not been corrected, this Agreement shall automatically terminate without further notice to Client.

**6.2.2** Termination by Client In the event Keith breaches its obligations under this Agreement, Client shall give Keith thirty (30) days written notice to cure the alleged breach. Such notice shall specify the obligations, which Keith is failing to meet. If at the end of the thirty (30) day period following the giving of such notice, such defect has not been corrected, this Agreement shall automatically terminate without further notice to Keith.

**6.3** Automatic Termination Where permitted by law, this Agreement shall terminate automatically without prior notice to Client in the event that Client makes an assignment for the benefit of creditors; makes a general admission of its inability to pay its debts or obligations as they become due; files a voluntary petition in bankruptcy; has an order or relief entered for or against Client as the debtor in bankruptcy proceedings; files any petition or other pleading seeking any

# Keith & Associates, Inc.

## Providing Medical Nutrition Therapy

---

reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, or admitting or failing to contest the material allegations of a petition or other pleading filed against Client in any such proceeding; or seeks, consents to or acquiesces in the appointment of any trustee, receiver, or liquidator.

**6.4** Mutual Consent This Agreement may be terminated no less than 30-45 days upon mutual agreement and written notice to the parties.

**6.5** Termination Without Cause Either Party may terminate this Agreement at any time without cause upon thirty (30) days prior written notice. However, if either Party elects to terminate this Agreement before the natural expiration of the Initial Term, the Parties shall not enter into another agreement with each other for the provision of similar services until after the natural expiration of the Initial Term.

### **7. INDEMNIFICATION**

Keith agrees to defend, indemnify and hold Client and its affiliates harmless from and against any occurrence, liability, judgment, claim, award, cost of defense (including attorney's fees) expense or other responsibility or cost of any nature whatsoever arising out of the negligence, willful misconduct or malpractice of Keith or the Registered Dietitian performing services pursuant to this Agreement. Client agrees to defend, indemnify and hold Keith harmless from and against any occurrence, liability, judgment, claim, award, cost or other responsibility or cost of any nature whatsoever arising out of any negligence, willful misconduct or malpractice of Client or any of its employees or agents in connection with the fulfillment of Client's obligations under this Agreement.

### **8. ACCESS TO BOOKS AND RECORDS**

**8.1** Both parties agree to provide reasonable access to their books and records to the other party. This access will be limited to records and books related to dietary consulting services. All other information obtained by either party in the performance of this Agreement relating to the other party's costs, pricing methods, concepts and practices or delivering services shall be deemed confidential information and neither party shall disclose such information to any other persons or entity without the express written consent of the other. The mutual covenants contained in this section 8 shall survive the termination of this Agreement.

**8.2** As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, Keith shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing the Services. Such inspection shall be available for up to four (4) years after the rendering of such services. If Keith carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, Keith

# Keith & Associates, Inc.

## Providing Medical Nutrition Therapy

---

agrees to include this requirement in any such subcontract. This Section is included pursuant to and is governed by the requirements of 42 U.S.C. Section 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by Client, Keith or Keith's Representative by virtue of this Agreement.

### **9. ENTIRE AGREEMENT**

This writing constitutes the entire Agreement between Keith and Client, and supersedes any prior agreements or understandings between Keith and the Client. Client acknowledges and agrees that no representations, statement or other agreements have been made regarding the subject of this Agreement, and that all terms and conditions of the relationship between Keith and Client are specified herein. The parties further acknowledge and agree that no amendment or modification of this Agreement or any provision hereof may be made or effective unless in writing and signed by both parties hereto.

### **10. BUSINESS ASSOCIATE/HIPAA REQUIREMENTS**

Keith and Client understand that during the term of this Agreement and while Keith is providing the Dietary Consultation Services at the Facility contemplated under this Agreement, Keith will be required to receive individual patient healthcare information ("PHI") as defined in the HIPAA Privacy Regulations promulgated by the United States Department of Health and Human Services. It is, therefore, agreed as follows:

- a. Keith shall be permitted to use and disclose PHI provided by Client as follows:
  1. To the following persons: Keith, Keith's professional staff including, without limitation, Registered Dietitians, Nurses, and billing and collection personnel.
  2. For the following purposes: To enable Keith to provide the Dietary Consultation Services at the Nursing Facility as contemplated in this Agreement.
- b. Keith shall not use or disclose PHI provided by Client except as provided by Client except as provided in this Agreement or as required by law. In this connection, Keith shall implement and maintain appropriate safeguards to prevent the use or disclosure of PHI, other than as provided in this Agreement.
- c. Keith shall report to Client within five (5) days of discovery, any use or disclosure of PHI made in violation of this Agreement or any law.
- d. Keith shall ensure that any agents and subcontractors to whom it provides PHI received from Client (or created or received by Keith on behalf of Client) agree in writing to the same restrictions, terms, and conditions related to PHI that apply to Keith in this Agreement.
- e. Keith shall make an individual's PHI available to Client within ten (10) days of an individual's request for such information as notified by Client.

# Keith & Associates, Inc.

## Providing Medical Nutrition Therapy

---

- f. Keith shall make PHI available for amendment and correction and shall incorporate any amendments or corrections to PHI within ten (10) days of notification from Client.
- g. Keith shall maintain an ongoing log of the details relating to any disclosures of PHI it makes (including, without limitation, the date made, the name of the person or organization receiving the PHI, the recipient's address is known, a description of the PHI disclosed, and the reason for the disclosure). Keith shall, within ten (10) days of the Client's request, make such log available to Client, as needed for Client to provide proper accounting of disclosures to its patients.
- h. Keith shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Client (or created or received by Keith on behalf of Client) available to the Secretary of the Department of Health and Human Services ("HHS") or its designee for purposes of determining Client's compliance with HIPAA and with the Privacy Regulations issued pursuant thereto.
- i. Within two (2) days of expiration or earlier termination of this Agreement, Keith shall return or destroy all PHI received from Client (or created or received by Keith on behalf of Client) that Keith still maintains in any form and retain no copies of such PHI. In this connection, Keith shall provide a written certification that all such PHI has been returned or destroyed. If such destruction or return is infeasible or prohibited by applicable state or federal law, Keith shall use such PHI only for purposes that make such return or destruction infeasible or prohibited by applicable state or federal law and the provisions of this Agreement shall survive with respect to such PHI.

### **11. INSURANCE**

Keith shall maintain at its sole cost and expense at all times during the term of this Agreement general and professional liability insurance for itself and the Dietitians issued upon such format containing such terms and limitations as may be reasonably acceptable to Client, in an amount no less than \$1,000,000 per occurrence and \$3,000,000 for aggregate claims. A certificate of insurance to that effect is attached hereto and will be provided to Client upon request throughout the term of this Agreement. Any breach of this Section shall give Client the right to terminate this Agreement immediate for cause.

### **12. NO EXCLUSION**

Keith represents and warrants to Client that neither Keith nor any of the Dietitians (i) are currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 USC § 1320a-7b(f) (the "Federal health care programs"); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) under investigation or otherwise aware of any circumstances which may result in Keith or any of the Dietitians being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty during the term of this Agreement and Keith shall immediately notify Client of any change in the status

# Keith & Associates, Inc.

## Providing Medical Nutrition Therapy

---

of the representation and warranty set forth in this Section. Any breach of this Section shall give Client the right to terminate this Agreement immediately for cause.

### **13. NOTICE**

Notices. All notices hereunder by either party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail or with the overnight courier, postage prepaid, addressed as follows:

If to Keith: Attention: General Counsel  
Keith & Associates, Inc.  
115 West 3rd Street, Ste. 800  
Tulsa, Oklahoma 74103

If to Client: Clinton Regional Hospital  
100 North 30 Street  
Clinton, OK 73601

or to such other persons or places as either party may from time to time designate by written notice to the other.

### **14. THIRD PARTY BENEFICIARIES**

This Agreement is entered into for the sole benefit of Client and Keith. Nothing contained herein or in the parties' course of dealings shall be construed as conferring any third party beneficiary status on any person or entity not a party to this Agreement.

### **15. WAIVER AND SECURITY**

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing to be effective, and shall apply solely to the specific instance expressly stated.

Client hereby grants to Keith a lien and security interest in and on all property, bank, accounts, account receivable Client now has, or hereafter, may place in or upon the Premises or have in their possession, and the property shall be, and remain, subject to such lien and security interest of Keith for payment of all Consulting Fees and other sums agreed to be paid by Client. The provisions of this paragraph relating to the lien and security interest shall constitute a Security Agreement under the Uniform Commercial Code, so that Keith shall have, and may enforce, a security interest on all property of Client now, or hereafter, placed in or on the Premises, including, but not limited to, real property, all fixtures, machinery, equipment, furnishings, and other articles of personal property now, or hereafter, placed in or upon the Premises by Client. Keith may, at its election at any time, file a copy or memorandum of this Agreement as a financing statement. Keith, as a secured party, shall be entitled to all rights

# Keith & Associates, Inc.

## Providing Medical Nutrition Therapy

---

and remedies afforded a secured party under the Uniform Commercial Code, which rights and remedies shall be in addition to and cumulative of Keith's rights provided by law, or by the other terms and provisions of this Agreement.

### 16. GOVERNING LAW

This Agreement shall be governed and determined in accordance with the laws of the State of Oklahoma, not including any choice-of-law rule of the State of Oklahoma which may direct or refer any such determination to the laws of any other state or country.

INWITNESS WHEREOF, the parties have agreed to the terms listed herein and on the attached exhibit "A" and have executed this Agreement as of the date first above written.

**"KEITH"**

**For: Keith & Associates, Inc., an Oklahoma corporation**

By: \_\_\_\_\_

**For: Clinton Integris Regional Hospital**

**"CLIENT"**

By: \_\_\_\_\_

**The obligations of Keith pursuant to Section 2 herein may include the following:**

1. To communicate efficiently with the Administrator and other key personnel in the facility in coordinating effective food service to general management and total care.
2. To participate in conferences with the Administrator, Director of Nurses, or other staff as requested.
3. To have monthly conferences with the Dietary Manager.
4. To write, date and sign a report of each visit to the facility.

# Keith & Associates, Inc.

## Providing Medical Nutrition Therapy

---

5. To provide material and planning for in-service for the dietary staff in nutrition, therapeutic diets, food preparation, sanitation, safety and personal hygiene.
6. To evaluate job description, work and time schedules.
7. To review and recommend changes if needed in the policy and procedure manual.
8. To recommend implementation of RDI's for appropriate age groups.
9. To review menus and make changes needed to meet doctors orders.
10. To approve all menus for general and therapeutic diets.
11. To insure a method of recording menu substitutions and filing them
12. To assist food service personnel in adjusting recipes for desired yield and quality.
13. To check food for method of storage, preparation, acceptability, appearance, serving temperature and portion size.
14. To assist in arranging a plan for filing of menus, purchase invoices, diet rosters and menu substitutions.
15. To review the food budget and food inventories with the Administrator and Food Service Supervisor.
16. To review the cost of major food products from various suppliers to determine best values.
17. To assist food managers to stay within their budgets.
18. To assist in implementing a pattern and specification for ordering food in sufficient amounts for the yield required.
19. To observe sanitation and food handling procedures.
20. To assist in developing, coordinating and initiating safety procedures.
21. To examine the adequacy and use of equipment for providing the service required.
22. To observe the psychological needs (social needs) and the cultural background of the residents as these effect food consumption.
23. To discuss with residents:
  - a. Appetite;
  - b. Food habits;
  - c. Enjoyment of meals; and
  - d. Therapeutic diet, if physician has prescribed.
24. To assist in counseling with family members about food served the residents and food gifts brought to them.
25. To assist developing a control system for the purpose of consideration of the resident's likes and dislikes and serving of the therapeutic diets as ordered by the physician.
26. To assist in determining the need for self-help devices.
27. To assist in assessment of nutritional needs for residents and documenting in the medical records.
28. To assist in the supervision of the preparation and service of therapeutic diets as they are prescribed by the physician.
29. To approve and implement the use of a diet manual not more than five (5) years old.
30. To submit current copies of dietetic registration, state licensure and medical malpractice insurance.
31. To submit to the corporate office prior to such implementation at the facilities, any items of change in operation, policies and/or procedures for review and approval.

# Keith & Associates, Inc.

## Providing Medical Nutrition Therapy

---

32. To participate in any Surveys or specific investigations of complaints that relate to the dietary departments.