

**Fill in this information to identify the case:**

Debtor 1 Amory Regional Medical Center, Inc. (DBA Gilmore Memorial Hospital)

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: Middle District of Tennessee

Case number 18-05675

**Official Form 410****Proof of Claim**

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. Who is the current creditor?	<u>HHS Culinary &amp; Nutritional Solutions, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor <u>Hospital Housekeeping Systems, LLC and HHS, LLC</u>	
2. Has this claim been acquired from someone else?	<input type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>  <u>Jason L. Boland - Norton Rose Fulbright</u> Name <u>1301 McKinney St., Suite 5100</u> Number Street <u>Houston TX 77010</u> City State ZIP Code  Contact phone <u>713-651-3769</u> Contact email <u>jason.boland@nortonrosefulbright.com</u>	<b>Where should payments to the creditor be sent? (if different)</b>  <u>Hospital Housekeeping Systems, LLC</u> Name <u>216 E. 4th Street</u> Number Street <u>Austin TX 78701</u> City State ZIP Code  Contact phone <u>512-478-1888</u> Contact email <u>jefft@hhs1.com</u>
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____	
	Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor? ☒ No  
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ 179,900.47. Does this amount include interest or other charges?  
☒ No  
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
  
Services provided; see attached Exhibits A-E.

9. Is all or part of the claim secured? ☒ No  
☐ Yes. The claim is secured by a lien on property.

**Nature of property:**

☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: \_\_\_\_\_

**Basis for perfection:** \_\_\_\_\_

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

**Value of property:** \$ \_\_\_\_\_

**Amount of the claim that is secured:** \$ \_\_\_\_\_

**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_

**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %

☐ Fixed

☐ Variable

10. Is this claim based on a lease? ☒ No  
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff? ☒ No  
☐ Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check one:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ \_\_\_\_\_

☐ Up to \$2,850\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$12,850\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

### Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date

12/14/18  
MM / DD / YYYY

Signature



Print the name of the person who is completing and signing this claim:

Name Jeff Totten

First name

Middle name

Last name

Title

President, Risk & Compliance

Company

Hospital Housekeeping Systems, LLC

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

216 E. 4th Street

Number

Street

Austin

TX

78701

City

State

ZIP Code

Contact phone

512-478-1888

Email

jefft@hhs1.com



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

In re:	)	
	)	Chapter 11
	)	
CURAE HEALTH, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 18-05665
	)	Judge Walker
1721 Midpark Road, Suite B200	)	
Knoxville, TN 37921	)	(Jointly Administered)
	)	
Debtors.	)	
	)	

**EXHIBIT A TO PROOF OF CLAIM OF HHS CULINARY & NUTRITIONAL  
SOLUTIONS, LLC**

1. This Exhibit A supplements the information stated in the accompanying Proof of Claim (the “Claim”) filed by HHS Culinary & Nutritional Solutions, LLC (together with its affiliated entities, “HHS”) and is incorporated as part of the Claim for all purposes.

**BASIS FOR CLAIM**

2. On or around November 1, 2017, Amory Regional Medical Center, Inc. d/b/a Gilmore Memorial Hospital (“Gilmore” or “Debtor”) and HHS entered into that certain Food and Nutritional Services Management Agreement (the “Agreement”). A true and correct copy of the Agreement is attached hereto as **Exhibit B** and is incorporated herein by reference for all purposes.

3. By letter of January 26, 2018, HHS gave notice of material breach of the Agreement (the “Notice of Breach”), with the necessary steps for Gilmore to cure the breach set forth therein. The material breach by Gilmore was the failure to pay HHS for services rendered

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).



pursuant to the Agreement in the total amount of \$205,134.96. A true and correct copy of the Notice of Breach is attached hereto as **Exhibit C** and is incorporated herein by reference for all purposes.

4. Gilmore failed to cure the material breach within ten days of the Notice of Breach. By letter of February 9, 2018, HHS notified Gilmore that it was exercising its right to terminate the Agreement pursuant to the terms thereof. A true and correct copy of this letter is attached hereto as **Exhibit D** and is incorporated herein by reference for all purposes.

5. Thereafter, on May 11, 2018, HHS filed a complaint (the “Complaint”) against Gilmore for breach of the Agreement, styled *HHS Culinary and Nutrition Solutions, LLC v. Amory Regional Medical Center, Inc. d/b/a Gilmore Memorial Hospital*, Case No. 18-CV-84, pending in the United States District Court for the Northern District of Mississippi (the “Mississippi District Court”). A true and correct copy of the Complaint is attached hereto as **Exhibit E** and is incorporated herein by reference for all purposes.

6. Before any action was taken in the Mississippi District Court, Gilmore filed its chapter 11 petition.<sup>2</sup>

7. The total pre-petition past due amount owed by Gilmore to HHS is no less than \$179,900.47, plus applicable interest pursuant to the Agreement, as shown in the chart below:

Transaction Type	Date	Document Number	Due Date	Open Balance
Invoice	11/29/2017	CNS83334INV	12/15/2017	\$48,362.01
Invoice	11/29/2017	CNS83335INV	12/15/2017	\$48,362.01
Invoice	12/1/2017	CNS83339INV	1/15/2018	\$48,362.01
Credit Memo	12/15/2017	CNS00458CRM	12/15/2017	(\$19.57)
Invoice	12/19/2017	CNS83528INV	1/3/2018	\$20.19
Invoice	1/16/2018	CNS83669INV	1/31/2018	\$5,302.85
Invoice	1/24/2018	CNS83702INV	2/8/2018	\$539.41
Invoice	1/25/2018	CNS83727INV	2/9/2018	\$5,844.04
Invoice	2/7/2018	CNS83806INV	2/15/2018	\$17,272.15
Invoice	2/16/2018	CNS83874INV	3/3/2018	\$5,035.79
Invoice	2/26/2018	CNS83889INV	3/13/2018	\$513.96
Invoice	3/19/2018	CNS84047INV	3/28/2018	\$305.62
<b>TOTAL</b>				<b>\$179,900.47</b>

<sup>2</sup> On October 4, 2018, the Mississippi District Court entered an order dismissing the Complaint without prejudice to the Gilmore’s bankruptcy filing.

8. HHS reserves, without limitation, all setoff, recoupment, netting and similar rights under any applicable contract, statute, common law or equitable principle. HHS reserves, without limitation, the right to amend or supplement this Claim to add such information in the future.

9. HHS and the Debtor may also be parties to other contracts and/or agreements not specifically described herein. HHS hereby expressly reserves its rights to assert any and all claims under such contracts or agreements.

10. HHS may also have additional pre- and post-petition claims that are unliquidated as of the date hereof.

### **RESERVATION OF RIGHTS**

11. HHS reserves, without limitation and to the fullest extent allowed by applicable law, the right to amend, modify, renew, extend, restate and/or supplement, for any reason, this Claim. HHS also reserves, without limitation and to the fullest extent allowed by applicable law, the right to file all other Proofs of Claim.

12. This Claim is also being submitted without prejudice to the rights of HHS to assert that any portion of its claim constitutes an administrative expense claim.

13. HHS reserves the right in the future to assert any and all claims that it might have against the Debtor, including, without limitation, imposition of constructive trust, equitable liens, security interests, subrogation, marshaling, or other legal or equitable remedies to which it may be entitled.

14. Furthermore, the filing of this Claim is not and shall not be deemed or construed as:

- a. A waiver of HHS's rights to: (i) file or otherwise assert a claim for rejection damages under Section 502 of the Bankruptcy Code; (ii) file or otherwise assert an administrative claim under Section 503 of the Bankruptcy Code; or (iii) file or otherwise assert a claim under Section 365(b) of the Bankruptcy Code;
- b. A waiver or release of HHS's rights against any person, entity, or property, or a waiver of the right to compel the Debtor to return property of HHS currently in the possession of the Debtor;
- c. A consent by HHS to the jurisdiction of this Court or any other court with respect to proceedings, if any, commenced in any case against or otherwise involving HHS;
- d. A waiver or release of HHS's right to trial by jury in this Court or any other court in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal or private rights or in any case, controversy, or proceeding related hereto, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution;
- e. A consent by HHS to a jury trial in this Court or any other court in any proceeding as to any and all matters so triable herein or in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157 or otherwise;
- f. A waiver or release of HHS's right to have any and all final orders in any and all non-core matters or proceedings entered only after de novo review by a United States District Court Judge;
- g. A waiver of HHS's rights to move to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection thereto or other proceeding that may be commenced in these cases against or otherwise involving HHS; or
- h. An election of remedies.



## FOOD AND NUTRITION SERVICES MANAGEMENT AGREEMENT

THIS AGREEMENT is made this 1<sup>st</sup> day of November, 2017 (the "Effective Date"), by and between **Gilmore Memorial Hospital** (Hospital) and its assigns and **HHS Culinary and Nutrition Solutions, LLC** (HHS) and its assigns, and shall be governed in accordance with the laws of the state of Mississippi. Hospital and HHS agree as follows:

### I. TERM

This Agreement shall run for an initial term ("Initial Term") of three (3) years from effective date and thereafter will be automatically renewed for individual terms of three (3) years each ("Renewal Term").

### II. MANAGEMENT PERSONNEL

- A. HHS management personnel, consisting of one (1) department director, will oversee the management of the FNS Department. An HHS Area Vice President will ensure that management personnel fulfill the obligations of this Agreement and will visit the Hospital at a frequency necessary to achieve and maintain the desired results.
- B. HHS will pay all wages, payroll taxes, insurance and benefits for all HHS department management personnel.
- C. During the term of this Agreement, and for two (2) years thereafter, Hospital agrees not to employ, directly or indirectly, management personnel employed by HHS at any time during the HHS / Hospital agreement. Management personnel employed by Hospital prior to the Effective Date of this Agreement are exempt from this provision.
- D. HHS management personnel are expected to adhere to Hospital and HHS, policies, procedures and documented codes of conduct. HHS will remove management personnel at the request of the Hospital provided such removal and replacement is for cause.

### III. LABOR FORCE

- A. The FNS Department hourly labor force ("team members") will be employed by HHS. HHS will retain all team member department records and pay all wages, payroll taxes, insurance and benefits. HHS agrees to comply with the Affordable Care Act by offering its team members access to health benefits.
- B. Current Hospital FNS department employees will be offered employment with HHS if they are able to comply with HHS physical requirements.
- C. HHS team members are expected to adhere to Hospital and HHS policies, procedures and

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documented codes of conduct. HHS will remove a team member at the request of the Hospital provided such removal and replacement is for cause.

- D. Hospital agrees not to recruit and/or offer employment to HHS hourly team members with less than ninety (90) days tenure with HHS.
- E. HHS team members will wear the appropriate uniform and security identification, as determined by the Hospital, at all times.
- F. HHS agrees to assume financial responsibility for any and all expenses (initial assessment and ongoing treatment) incurred as the result of needle stick incidents, bio-hazardous sharps and incidents caused by an occupational exposure to HHS employees, due to the negligence of Hospital employees, which may be encountered while working at the Hospital, except in the case of negligence on the part of the Hospital, its employees or representatives.
- G. HHS will administer a comprehensive pre, post and annual employment physical, screening, testing and preventative treatment process, adhering to the specifications and requirements described in the HHS Policy (attached hereto as Exhibit B.1). HHS's policy is designed to be compliant with said requirements as deemed reasonable and necessary by the appropriate local, state or Federal governing authority. Any additional screening/testing outside of HHS's Policy as listed in Exhibit B.1, subsequently required by the Hospital, will be performed by the Hospital, at the Hospital's expense.
- H. HHS will administer a comprehensive, ongoing training program for the FNS Department in compliance with industry standards and applicable state and federal law. The Hospital shall provide appropriate space, audio and visual equipment for team member training, which will consist of both on-the-job and classroom training supplemented with interactive training videos (English and Spanish).
- I. HHS will provide an on-site Chef-Director to provide services at the Hospital. This team member will perform duties as mutually agreed upon by HHS and the Hospital.

#### IV. DUTIES TO BE PERFORMED

- A. Hospital activity levels are described in **Exhibit A** attached to and incorporated in this Agreement. HHS has based its' staffing recommendation and fee structure on this information. Should there be a change in these statistics, Hospital and HHS agree that labor staffing (permanent or temporary) and an associated fee adjustment will be necessary. HHS will present the Hospital with data to support any recommended adjustment.
- B. Based on the guidelines established by the Hospital and in conjunction with the onsite

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management team, HHS will determine the specifications for and will order the food to be used in the FNS Department at the Facility.

## V. SUPPLIES AND EQUIPMENT

- A. **Exhibit B** will specify which departmental supplies, services and equipment will be provided by HHS and which by the Hospital.
- B. The Hospital and HHS acknowledge that unrestricted internet connectivity is relied upon and required for HHS management personnel to perform daily job responsibilities, such as securing labor force payroll (time clock, Team Member Kiosk) and other job related online content. The Hospital agrees to provide HHS with unrestricted internet access, adhering to the IT specifications and requirements described in the HHS Network Access Requirements Policy (attached hereto), at no cost to HHS. The Hospital will provide HHS with a 3<sup>rd</sup> party internet connection, at the Hospital's expense, in the event that the above requirements are not met.
- C. The Hospital agrees to provide office space, office furniture and storage space for the FNS Department and to pay the cost of utilities, local telephone service, internal department communication devices and management cell phones (if required). The Hospital will allow HHS to requisition office supplies from the Hospital.
- D. The Hospital will ensure that the Facility is equipped and furnished to the reasonable satisfaction of HHS and the Hospital. The Hospital will ensure that the Facility (including the kitchen) is in good, clean, sanitary, working condition, as of the beginning of HHS's services. The Hospital will maintain the Facility and all items furnished by the Hospital (the "Property") in accordance with Applicable Law, and make all repairs or replacements to the Facility and Property at its expense.
- E. HHS will purchase equipment for the department when requested by the Hospital up to a maximum of \$15,000 per calendar year. HHS will invoice the Hospital for the final cost of the equipment (including shipping, handling, tax and any other associated expense) with payment in full and due within 30 days of receipt of invoice. All unpaid balances will be due upon termination of this Agreement and a 10% late payment fee will be assessed on any payments not received within the noted 30 day period. Hospital will reimburse HHS for any expenses incurred to collect unpaid balances due.

## VI. FOOD SERVICE OPERATION INVENTORIES

- A. Hospital will provide and maintain a fully adequate initial inventory and supply of Tablewares and Smallwares for satisfactory operating requirements, in HHS's reasonable opinion, at the Hospital's expense. HHS will be responsible for replacing lost or damaged

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Tablewares and Smallwares. HHS will charge the Hospital for the cost of the Tablewares and Smallwares that are furnished by HHS.

- B. Each party will retain ownership of the items they provide, until full reimbursement/payment of all amounts under this Agreement.
- C. The parties will also jointly prepare an inventory of food and dietary supplies of the Hospital with a dollar value based upon then current purchase prices (the "Beginning Inventory"). Upon termination of this Agreement, the parties will jointly prepare an ending inventory of such food and dietary supplies with a dollar value based upon then current purchase prices (the "Ending Inventory"). If the aggregate value of the Ending Inventory is less than the Beginning Inventory, HHS shall credit the Hospital for the difference. HHS will review and maintain a monthly inventory.
- D. All computer hardware and software furnished by or through HHS, as well as any of HHS's Proprietary Information, shall remain the property of HHS (even if fully depreciated).

#### VII. PAYMENT FOR SERVICES PROVIDED BY HHS

- A. The Hospital agrees to pay HHS a Monthly Contract Price of \$48,362.01 for Services provided in this Agreement. This Monthly Contract Price will be invoiced by HHS and provided to the Hospital by the 15<sup>th</sup> of the previous month and payments are due on the 1<sup>st</sup> of the month for which services are rendered. HHS shall initiate "Breach for non-payment" in the event the Hospital is unable to make timely payments for consecutive months or more than three (3) months in a calendar year. Payments shall be sent to:

ACH (Wire Transfer):

Frost Bank  
401 Congress Avenue  
Austin, Texas 78701  
Routing: 114000093  
Account: 591147609  
Remittance info to be sent to:  
remit@hhs1.com

- B. The Hospital agrees to pay HHS \$0 in the first month of this Agreement to offset account start-up expenses such as temporary living, management relocation, regional start-up expenses, computer equipment and start-up engineering/implementation expenses.
- C. The Hospital agrees to pay any applicable local, state or federal sales taxes due on the service fee. These fees are in addition to; and are not included in the Monthly Contract

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Price stated in section VI.A.

- D. The Hospital agrees to an additional interest charge of 15% per annum on any past due amounts or service fees at the termination of this Agreement.
- E. Included in the Monthly Contract Price are budgeted allotments as indicated in the applicable food and supply categories, in the table below. In the event that Hospital exceeds these allotments, Hospital will be charged separately for these overages, at actual cost, to be reconciled quarterly. HHS Management personnel will be responsible for inventory and monthly reporting, to be provided to Hospital quarterly. These reports will be reviewed and reset annually.

Supply Cost Allocation		
	<u>Annual</u>	<u>Monthly</u>
Laundry / Linen	\$2,037	\$169.75
Kitchen Smallwares	\$5,217	\$434.75
Kitchen/Dining Paper & Plastics	\$36,507	\$3,042.25
Menu and Patient Education Materials	\$991	\$82.58
Chemicals / Supplies	\$4,879	\$406.58

Food Cost Allocation		
	<u>Annual</u>	<u>Monthly</u>
Floorstocks Nourishments & Supplements	\$15,374	\$1,281.17
Observation, Outpatient & ER Meals	\$2,809	\$234.08
Catering/Special Functions/Dept Requisitions	\$30,915	\$2,576.25
All Cafeteria Free Meals	\$64,695	\$5,391.25

- F. A variable rate of \$8.26 will be charged for each patient day above the baseline (9,490) or credited for each patient day below the baseline. Charges or credits will be reconciled according to invoice period. If patient days exceed 10% of the baseline for ninety (90) consecutive days, the Hospital and HHS agree the Monthly Contract Price as stated in Section VI. A. will be renegotiated.
- G. Cash sales received from the Food Service Program will be collected by HHS, delivered to the Hospital's business office, and retained by HHS. HHS will invoice Hospital for cash monthly. All retail sales over the annual baseline (\$144,136.00) will be split 50/50 after the cost of goods.
- H. The Monthly Contract Price set forth in this Agreement will be adjusted to reflect any additional / unforeseen costs incurred by HHS (i) in connection with the implementation of





legislation or other legal requirements, including, but not limited to, the implementation of the Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act of 2010, which comprise the health care reform of 2010, or other health care rules and regulations, or any modifications thereto or (ii) increases in benefit costs paid by HHS on behalf of covered employees. The adjustment to the Monthly Contract Price will be effective from the date the events of (i) and/or (ii) occur.

- I. The Hospital agrees to an increase in the Monthly Contract Price for services on each annual anniversary date of this Agreement to offset increased management and team member wages, supply costs and other operating expenses. This annual increase will be equal to 1.5% or the greater of the annual percentage increase provided to Hospital staff, and will be applied to the then current Monthly Contract Price.
- J. The Hospital agrees that, should the state or federal government enact an increase in the minimum wage, the Hospital agrees to increase the Monthly Contract Price paid to HHS to offset the full impact of wage increases for team members including the effect of wage adjustments above minimum wage to maintain competitive wages in the local labor market.
- K. The Hospital agrees that should the state or federal government mandate any additional taxes, insurances, employer benefit subsidies, or should an organized labor effort impact HHS' operating costs at the Hospital after the effective date of this Agreement, a Monthly Contract Price adjustment would be necessary. The Hospital agrees to pay HHS any applicable state service or sales tax in addition to the Monthly Contract Price. In the event that the Hospital and HHS cannot agree on an appropriate Monthly Contract Price adjustment to defray these unanticipated operating costs, HHS may terminate this Agreement by providing the Hospital 30 days advance written notice to the Hospital.
- L. For each leap year during which this Agreement is in effect, the Hospital will pay an additional fee equal to 1/365th of the annual Monthly Contract Price. This fee is due on the 15th day of February of such years.
- M. For additional work outside the scope of this Agreement, not included in **Exhibit A**, attached hereto, the Hospital will be charged at an agreed upon rate per labor hour of \$12.51, which will include employer taxes and other related costs.
- N. Breach for non-payment as described in VI.A - consecutive late payments or three late payments in a calendar year. If breach complaints relating to the unpaid Monthly Contract Price or applicable service fees are not reasonably addressed and remedied within ten (10) days, HHS may at its' discretion, give notice to the Hospital that at the end of an additional five (5) day period, the Agreement will be terminated.

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#### VIII. TERMINATION

- A. This Agreement may be terminated by either party after the first year of the initial Term by providing ninety (90) days written notice to the other party.
- B. This Agreement may be cancelled by either party if a material breach of the Agreement is not promptly addressed as prescribed below. If either party believes the other is in material breach of any provision in this Agreement, that (offended) party shall deliver written notice to the other detailing specific breach complaints and the results necessary to restore pre-breach status. If breach issues (not including breach for non-payment issues) are not reasonably addressed and remedied within sixty (60) days, the offended party may at its' discretion, give notice to the other party that at the end of an additional thirty (30) day period, that the Agreement will be terminated.
- C. In order to provide HHS the opportunity to prove it's value to new leadership, the Hospital agrees that this Agreement will remain in effect no less than one hundred eighty (180) days after the date of a Hospital ownership or Executive Management change.

#### IX. NOTIFICATION

All notices (excluding payments) shall be sent to either party at the following addresses:

**Hospital**  
Gilmore Memorial Hospital  
1105 Earl Frye Blvd.  
Amory, Mississippi 38821  
Attn: Chief Executive Officer

**HHS**  
HHS Culinary and Nutrition Solutions, LLC  
216 E. 4<sup>th</sup> Street  
Austin, Texas 78701  
Attn: Chief Executive Officer

#### X. INSURANCE

- A. HHS agrees to maintain general liability insurance in the amount of not less than One Million Dollars (\$1,000,000) per occurrence, with excess coverage in an amount not less than Three Million Dollars (\$3,000,000) to cover claims in the aggregate. The Hospital shall obtain and maintain insurance, with replacement cost coverage, for the Hospital's Facility covered by standard forms of fire, theft, and extended coverage and shall maintain general liability insurance in such amounts under such policies as appropriate, but not less than One Million Dollars (\$1,000,000) per occurrence, with excess coverage in an amount not less than Three Million Dollars (\$3,000,000) to cover claims in the aggregate. Both parties will furnish and maintain workers' compensation insurance as prescribed by law and employer's liability insurance in the amount of \$100,000 for all of their respective employees, or either party may provide such coverage through a self-insurance program in accordance with Applicable Law. Evidence of such insurance will be provided upon request.

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**XI. OTHER**

- A. Unless specifically stated otherwise within this Agreement, both parties agree to hold each other and their affiliates, directors, officers, employees, agents and insurers harmless from and against any and all litigation, losses, expenses, damages, liabilities imposed by law, costs (including interest, penalties, and attorneys' fees) and judgments arising out of either party's negligence, willful misconduct, or breach of this Agreement. Both parties agree that all claims for indemnification must be submitted within one (1) year of receiving written notice of a suit being filed and acknowledged.
- B. **Equal Employment Opportunity**  
It is the policy of HHS to provide equal employment opportunities to all qualified employees and applicants without regard to race color, sex, age, religion, handicap, veteran status or national origin. Positive action shall be taken to ensure the fulfillment of this policy including:
- Hiring, placement, upgrading, transfer, or other personnel action
  - Recruitment, advertising or solicitation for employment
  - Treatment during employment
  - Rates of pay or other forms of compensation
  - Selection for training
  - Layoff or termination
- C. Both parties agree to respect and protect the proprietary assets of the other party. These assets include, but are not limited to, knowledge of business operations, trade name, work product, promotional materials and this Agreement.
- D. HHS agrees that in all aspects its' relationship to the Hospital will be that of an independent contractor, and that it will not act or represent that it is acting as an agent of the Hospital.
- E. Neither HHS nor the Hospital shall have any liability for failing to perform this Agreement when performance is prevented by force majeure. The term "force majeure" shall mean any government requirement or request, war, public disorders, acts of enemies, sabotage, strikes, lockouts, picketing, labor or employment difficulties, fires, floods, acts of God, natural disasters, accidents or breakdowns (whether or not preventable), or any other cause beyond the reasonable control of either party. The Hospital and HHS understand and agree that events such as hurricanes, tornadoes, fires, floods, concerted employee, union or related activity, or similar severe weather, natural disasters, or labor unrest may interfere with the efficient performance and contemplated operations under this Agreement, and will result in direct and indirect costs not related in the above rates and charges. The parties agree that under such conditions, HHS will work together with the Hospital in good faith to



provide services and develop appropriate responses and courses of action, as is practical and reasonable under the circumstances. If Hospital requests that HHS provide the Services during a force majeure event, any financial or performance guarantees or incentive penalties to HHS will not apply under these conditions and instead the Hospital will be responsible for, and hold HHS harmless from, all costs and expenses associated with the services, responses, courses of action, and operations, whether directly or by reimbursement to HHS, along with the fees and charges referenced above.

- F. The Hospital acknowledges that some vendors may extend to HHS certain company-side credits, fees, or discounts, including, without limitation, early payment discounts, administrative fees or volume discounts and HHS will be entitled to retain such credits, fees or discounts.
- G. Medicare - HHS agrees to insert (by addendum or otherwise) standard Medicare/Medicaid language as requested by the Hospital.
- H. HIPAA - HHS agrees to insert (by addendum or otherwise) standard HIPAA language as requested by the Hospital.
- I. This Agreement embodies the entire agreement and understanding between the parties. There are no other agreements or understandings, oral or written, between the parties with respect to the subject matter, and this Agreement supersedes all previous negotiations, commitments, and writings regarding this relationship. In case any part of this Agreement is held invalid, illegal or unenforceable, it shall not affect any other provision.

## XII. DEFINITIONS

- A. **"Food Service Operation"**: the Hospital's food service program (the "Food Service Program") and Food and Nutrition Service Department (the "FNS Department").
- B. **"Applicable Law"**: statutes, regulations, ordinances and other legal requirements, to the extent applicable to HHS and the Hospital.
- C. **"At Cost" or "Cost"**: the charge by HHS to Hospital for items or services that will include all applicable supply, labor (with Percentage Rate), insurance, equipment and other related operational costs required for the item or service, but will not include any separate, additional fee by HHS that is not otherwise provided for in this Agreement.
- D. **"Facility"**: the areas, improvements, real and personal property and facilities of the Hospital, and in particular those related to or used in providing the Services.
- E. **"Proprietary Information"**: all trade secrets and/or confidential or proprietary information

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related to the business of HHS or its affiliates, in any physical, electronic, computerized or other form, including but not limited to: technical and nontechnical data related to operations; computer programs; software; diet manuals; videotapes; methods; techniques; processes; finances; actual or potential customers and suppliers; existing and future products; recipes; production sheets; policy, procedure and/or personnel manuals; employees of HHS and its affiliates; and any information which has been disclosed to HHS by a third party which HHS is obligated to treat as confidential.

- F. **"Services"**: the supervision of the food services at the Facility and catered events as exclusively provided to Hospital by HHS under this Agreement.
- G. **"Smallwares"**: non-powered kitchen related items used to prepare and serve food, such as pots, pans, scoops, chef knives, cutting boards, bowls, cooking and kitchen utensils and similar loose items, etc.
- H. **"Tablewares"**: items used by individuals in consuming food, such as china, dishware, silverware, flatware, table utensils, glassware, etc.

As an authorized representative of either the Hospital or HHS my signature below acknowledges that I have read, understand and agree that the organization I represent, HHS or the Hospital, will comply with ALL of the terms and conditions contained within this Agreement and its exhibits.

This Agreement is effective November 1<sup>st</sup>, 2017.

**Gilmore Memorial Hospital**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

7-31-17 rcm 9-7-17 rcm 9-20-17 rcm

**HHS Culinary and Nutrition Solutions, LLC**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## EXHIBIT A

### HOSPITAL FACILITY AND ACTIVITY STATISTICS –

Patient Days:	<u>Statistics</u>
	9,490
FNS Department Hours of Coverage:	24 hours a day /
	7 days per week

### FOOD PROGRAM CLEANING RESPONSIBILITIES:

#### KITCHEN

	<u>HHS</u>	<u>Hospital</u>	<u>N/A</u>
Floors	X		
Walls	X		
Equipment	X		
Refrigerators and freezers	X		
Vents	X		
Ceiling		X	
Duct Work		X	
Light Replacement		X	

#### CAFETERIA

Serving Line/equipment	X		
Serving Line walls	X		
Serving Line floors (customer side)	X		
Serving Line floors (kitchen side)	X		
Ceiling		X	

#### FLOOR STATIONS

Equipment		X	
Floors		X	

	<u>HHS</u>	<u>Hospital</u>	<u>N/A</u>
Walls/ceilings	_____	X _____	_____
<b><u>DINING AREA</u></b>			
Furniture	X _____	_____	_____
Equipment	X _____	_____	_____
Floors/carpets	_____	X _____	_____
Windows/walls	_____	X _____	_____
Ceiling	_____	X _____	_____
Drapery	_____	X _____	_____
<b><u>STORAGE AREAS FOR PROGRAM</u></b>			
Floors	X _____	_____	_____
Walls	X _____	_____	_____
Ceiling	_____	X _____	_____
Shelving	X _____	_____	_____
<b><u>RECEIVING AREA FOR PROGRAM</u></b>			
Pick-up/spot mop	X _____	_____	_____
Daily general cleaning	_____	X _____	_____

**Clarification Notes:**


**EXHIBIT B**  
**Schedule of Purchasing Responsibility**

<b>FOOD PROGRAM SUPPLIES &amp; EQUIPMENT</b>	<b>HHS</b>	<b>Hospital</b>	<b>N/A</b>
Food & Dietary Supplies	X		
Kitchen Paper & Plastic	X		
Equipment			
Equipment Repair & Replacement		X	
Smallware		X	
Smallware Repair & Replacement		X	
Utilities	X		
Office Supplies/Stationery/Office Equipment		X	
Telephone Service (including long distance)		X	
Menu Materials		X	
Hospital Computer Hardware	X		
Hospital Computer Software		X	
Hospital Computer Technical Assistance Charges		X	
Postage		X	
Garbage / Trash Removal		X	
Other Misc. Culinary Equipment (as required)		X	
<b>MISCELLANEOUS</b>		X	
Business Licenses and Permits	<b>HHS</b>	<b>Hospital</b>	<b>N/A</b>
Service Contracts (On-going)		X	
Repairs – Purchased Services (as occurs)		X	
Rented/Leased Equipment		X	
Uniforms		X	
Armored Car Service	X		
Parking		X	
		X	



## EXHIBIT B.1

HHS will administer and adhere to providing its Team Members the pre-employment or post-employment physicals, screenings and preventative treatments listed herein:

### Team Member Criminal Background Check:

- County Criminal
- Criminal Database National Alias Search
- FACIS Level 1
- Federal Criminal
- National Sex Offender Registry Search
- OIG Excluded List Check (Annual)

### Team Member Drug Screening

- Non-DOT 10 Panel Urine Drug Test

### Team Member Health Screen:

- TB/PPD Test

### Additional Hospital required screenings at Hospital's expense:

## HHS Network Access Requirements Policy

1. HHS Payroll Computer
  - Data Drop (Ethernet/Cat 5/Cat 6 Connection)
  - Access to Gmail
    - Unblock Access to:
    - [Home.hhs1.com](http://Home.hhs1.com)
    - <http://Google.com/m/hhs1.com>
  - Access to Salesforce
    - Unblock Access to:
    - <https://ssl.salesforce.com/>
2. HHS Kiosk
  - Data Drop (Ethernet/Cat 5/Cat 6 Connection)
  - Unblock Access to the following sites:
    - <https://hhs.secure.force.com/kioskhomepage?id=> (ID is account specific)
    - <https://ssl.salesforce.com/>
    - <https://s3.amazonaws.com>
3. PI Mobile Device (iPod Touches/iPads)
  - Wireless Access (Guest Network or Production)
  - Unblock Access to the following site:
    - <https://ssl.salesforce.com>
    - Unblock Port 4309
4. Time Clocks
  - Data Drop (Ethernet/Cat 5/Cat 6 Connection)
  - Power Drop
  - Access to 158.228.145.3
  - Unblock Ports 80, 443, 445
5. Electronic Message Boards
  - Wifi or Ethernet connection
  - Power Drop
  - Access to 69.16.232.180
  - Unblock Ports 80 and 21



Bobby Floyd  
COO



January 26, 2018

Gilmore Memorial Hospital  
1105 Earl Frye Blvd  
Amory, Mississippi 38821  
Attn:  
Allen Tyra, CEO  
Carol Upton, ACEO  
Marc Nakagawa, CFO

*Via Certified Mail*

Dear Mr. Tyra, Ms. Upton and Mr. Nakagawa:

This letter is to inform you that Gilmore Memorial Hospital is in material breach of our Food and Nutrition Services Management Agreement, dated November 1<sup>st</sup>, 2017, as specifically defined in Section VII.N. Our basis for claiming material breach is as follows:

Section VII.A clearly states that our fee for services is due on the 1<sup>st</sup> of each month for which services are rendered. As of today, Gilmore Memorial Hospital owes HHS Culinary and Nutrition Solutions, LLC a total of \$205,134.96 in past due fees.

To restore pre-breach status, a total payment of \$205,134.96 must be postmarked by February 5<sup>th</sup>, 2018 to pay in full the past due invoices, #CNS833334INV, CNS833335INV, CNS833339INV, CNS83528INV, CNS83543INV, CNS83669INV, CNS83702INV, CNS83727INV. As this specific breach complaint is related to unpaid service fees, if payment has not been received by February 5<sup>th</sup>, 2018 (10 day period), this letter is provided to inform you that HHS Culinary and Nutrition Solutions, LLC will be exercising its' right to terminate the Agreement between Gilmore Memorial Hospital and HHS Culinary and Nutrition Solutions, LLC dated November 1<sup>st</sup>, 2017, effective midnight on February 10<sup>th</sup>, 2018 (5 days later). Per Section VII. D, an additional interest charge of 15% per annum will be applied to all past due amounts at termination of the Agreement. Please understand that we have continued to provide services in good faith while your account balance has grown to an unacceptable level, but we must take available legal action to protect our company's best interests and simply cannot accept non-payment.

Please contact me to discuss this matter as soon as possible.

Sincerely,

Bobby Floyd  
COO, HHS

cc: Chris Nines, CFO, HHS  
Steve Clapp, Curae Health, CEO, PO Box 358 Clinton, TN 37717 via regular mail

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Bobby Floyd  
COO

February 9, 2018

Gilmore Memorial Hospital  
1105 Earl Frye Blvd  
Amory, Mississippi 38821  
Attn:  
Allen Tyra, CEO  
Carol Upton, ACEO  
Marc Nakagawa, CFO

*Via Certified Mail*

Dear Mr. Tyra, Ms. Upton and Mr. Nakagawa:

This letter is to inform you that HHS Culinary and Nutrition Solutions, LLC is exercising its right to terminate our Food and Nutrition Services Management Agreement, dated November 1<sup>st</sup>, 2017, pursuant to Section VII.N.

You were notified of the material breach in a letter dated, January 26<sup>th</sup>, 2018, whereby the steps to cure the material breach were outlined therein. As of today, the material breach has not been cured and Gilmore Memorial Hospital still owes HHS Culinary and Nutrition Solutions, LLC a total of \$205,134.96 in past due service fees.

As the specific breach complaint was related to unpaid service fees, and the breach was not cured within ten days of notice, effective midnight, February 10<sup>th</sup>, 2018, HHS Culinary and Nutrition Solutions, LLC is no longer contracted to continue providing services to Gilmore Memorial Hospital. Per Section VII. D, an additional interest charge of 15% per annum will be applied to all past due amounts at termination of the Agreement, and we will be pursuing all unpaid fees through legal means.

Hereafter, with exception of any terms to the contrary, HHS Culinary and Nutrition Solutions, LLC will no longer be bound or obligated to fulfill any terms and conditions contained within the Agreement.

If you have any further questions or concerns regarding this notice, you may contact me at [bobbyf@hhs1.com](mailto:bobbyf@hhs1.com).

Sincerely,

Bobby Floyd  
COO, HHS

cc: Chris Nines, CFO, HHS  
Steve Clapp, Curae Health, CEO, PO Box 358 Clinton, TN 37717 via regular mail

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION**

**HHS CULINARY AND NUTRITION SOLUTIONS, LLC**

**PLAINTIFF**

**V.**

**CAUSE NO: 1:18cv84-SA-DAS**

**AMORY REGIONAL MEDICAL CENTER, INC.  
D/B/A GILMORE MEMORIAL HOSPITAL,**

**DEFENDANT**

**COMPLAINT**

COMES NOW the Plaintiff, HHS Culinary and Nutrition Solutions, LLC, (“HHS Culinary”) by and through its attorneys, and files this its Complaint against Amory Regional Medical Center, Inc. D/B/A Gilmore Memorial Hospital (“Gilmore Memorial”) and for cause thereof would show unto the Court as follows:

1. HHS Culinary is a limited liability company organized and existing under the laws of the State of Texas. HHS Culinary’s corporate office is located at 216 E. 4<sup>th</sup> Street Austin, Texas 78701. HHS Culinary is properly registered with the Mississippi Secretary of State and is qualified to conduct business in the State of Mississippi.

2. Defendant, Amory Regional Medical Center, Inc. is a nonprofit corporation organized and existing under the laws of the State of Tennessee. It does business in the State of Mississippi under the registered fictitious business name of Gilmore Memorial Hospital. It can be served through its registered agent, Corporation Service Company, located at 5760 I-55 North, Suite 150, Jackson, MS 39211.

**JURISDICTION AND VENUE**

3. As required by 28 U.S.C. Section 1332 there is complete diversity between HHS Culinary and Gilmore Memorial, and the amount in controversy exceeds \$75,000.00.



4. Venue is proper in this district under 28 U.S.C. Section 1391(a) because Gilmore Memorial does business within the Aberdeen Division of the United States District Court for the Northern District of Mississippi.

**FACTS**

5. On or about November 1, 2017, HHS Culinary and Gilmore Memorial entered into and executed a written agreement (“Agreement”) the terms of which required HHS Culinary to provide Gilmore Memorial’s food and nutritional services in exchange for Gilmore Memorial paying HHS compensation as described by the terms of the Agreement. The Agreement is attached as Exhibit A to the Complaint and is incorporated herein by reference.

6. The Agreement was entered into by Gilmore Memorial Chief Executive Officer J. Allen Tyra and HHS Culinary Chief Operating Officer Bobby Floyd, who each signed a document memorializing its terms and agreed to its effective date of November 1, 2017.

7. The Agreement detailed the responsibilities of each party as they related to food and nutritional services, payment for services, and payment of employee salaries, benefits, and other related costs associated with food and nutritional services labor.

8. Gilmore Memorial and HHS Culinary agreed that the Agreement was to run for three years, until November 1, 2020, though either party could terminate the contract with 90 days’ written notice.

9. HHS Culinary fully preformed its obligations as defined by both the Agreement.

10. Gilmore Memorial has failed to perform its contractual obligations. Gilmore Memorial’s failure to perform includes, but is not limited to, failure to pay for the food and nutritional services provided by HHS Culinary.

11. By letter of January 26, 2018, HHS Culinary gave notice of material breach of the Agreement, with the necessary steps to cure the breach set forth therein. The material breach by Gilmore Memorial was the failure to pay HHS Environmental Services for services rendered pursuant to the Agreement in the total amount of \$205,134.96. A copy of this letter is attached as Exhibit B to the Complaint and is incorporated herein by reference.

12. Gilmore Memorial failed to cure the material breach within ten days of the January 26, 2018, notice of material breach.

13. By letter of February 9, 2018, HHS Culinary notified Gilmore Memorial that it was exercising its right to terminate the Agreement pursuant to the terms thereof. A copy of this letter is attached as Exhibit C to the Complaint and is incorporated herein by reference.

**COUNT ONE - BREACH OF CONTRACT**

14. HHS Culinary adopts and herein incorporates by reference each and every allegation as set forth above.

31. By failing to adhere to any other terms of the Agreement, Gilmore Memorial has breached the terms of the Agreement.

32. As a result of Gilmore Memorial's breach of the November 1, 2017 Agreement, HHS Culinary has suffered monetary damages of \$205,134.96.

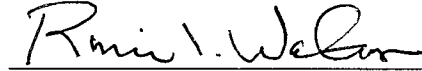
**PRAYER FOR RELIEF**

WHEREFORE PREMISES CONSIDERED, HHS Culinary requests a trial by jury of this matter and demands damages including actual, compensatory, consequential, and incidental damages resulting from Gilmore Memorial's actions. Further, HHS requests attorneys' fees, interest as provided by the Agreement, costs of suit, and any other damages this Court may deem

appropriate.

Respectfully submitted this the 10<sup>th</sup> day of May, 2018.

HHS CULINARY AND NUTRITION  
SOLUTIONS, LLC



\_\_\_\_\_  
RONNIE L. WALTON, Its Attorney

RONNIE L. WALTON (MSB #6933)  
MEAGAN O. LINTON (MSB #104704)  
Glover, Young, Hammack, Walton & Simmons, PLLC  
1724-A 23<sup>rd</sup> Avenue (39301)  
Post Office Drawer 5514  
Meridian, Mississippi 39302-5514  
Telephone: 601-693-1301  
Telecopier: 601-693-1363  
[ronnie@gloveryoung.com](mailto:ronnie@gloveryoung.com)  
[meagan@gloveryoung.com](mailto:meagan@gloveryoung.com)





## FOOD AND NUTRITION SERVICES MANAGEMENT AGREEMENT

THIS AGREEMENT is made this 1<sup>st</sup> day of November, 2017 (the "Effective Date"), by and between **Gilmore Memorial Hospital** (Hospital) and its assigns and **HHS Culinary and Nutrition Solutions, LLC** (HHS) and its assigns, and shall be governed in accordance with the laws of the state of Mississippi. Hospital and HHS agree as follows:

### I. TERM

This Agreement shall run for an initial term ("Initial Term") of three (3) years from effective date and thereafter will be automatically renewed for individual terms of three (3) years each ("Renewal Term").

### II. MANAGEMENT PERSONNEL

- A. HHS management personnel, consisting of one (1) department director, will oversee the management of the FNS Department. An HHS Area Vice President will ensure that management personnel fulfill the obligations of this Agreement and will visit the Hospital at a frequency necessary to achieve and maintain the desired results.
- B. HHS will pay all wages, payroll taxes, insurance and benefits for all HHS department management personnel.
- C. During the term of this Agreement, and for two (2) years thereafter, Hospital agrees not to employ, directly or indirectly, management personnel employed by HHS at any time during the HHS / Hospital agreement. Management personnel employed by Hospital prior to the Effective Date of this Agreement are exempt from this provision.
- D. HHS management personnel are expected to adhere to Hospital and HHS, policies, procedures and documented codes of conduct. HHS will remove management personnel at the request of the Hospital provided such removal and replacement is for cause.

### III. LABOR FORCE

- A. The FNS Department hourly labor force ("team members") will be employed by HHS. HHS will retain all team member department records and pay all wages, payroll taxes, insurance and benefits. HHS agrees to comply with the Affordable Care Act by offering its team members access to health benefits.
- B. Current Hospital FNS department employees will be offered employment with HHS if they are able to comply with HHS physical requirements.
- C. HHS team members are expected to adhere to Hospital and HHS policies, procedures and



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documented codes of conduct. HHS will remove a team member at the request of the Hospital provided such removal and replacement is for cause.

- D. Hospital agrees not to recruit and/or offer employment to HHS hourly team members with less than ninety (90) days tenure with HHS.
- E. HHS team members will wear the appropriate uniform and security identification, as determined by the Hospital, at all times.
- F. HHS agrees to assume financial responsibility for any and all expenses (initial assessment and ongoing treatment) incurred as the result of needle stick incidents, bio-hazardous sharps and incidents caused by an occupational exposure to HHS employees, due to the negligence of Hospital employees, which may be encountered while working at the Hospital, except in the case of negligence on the part of the Hospital, its employees or representatives.
- G. HHS will administer a comprehensive pre, post and annual employment physical, screening, testing and preventative treatment process, adhering to the specifications and requirements described in the HHS Policy (attached hereto as Exhibit B.1). HHS's policy is designed to be compliant with said requirements as deemed reasonable and necessary by the appropriate local, state or Federal governing authority. Any additional screening/testing outside of HHS's Policy as listed in Exhibit B.1, subsequently required by the Hospital, will be performed by the Hospital, at the Hospital's expense.
- H. HHS will administer a comprehensive, ongoing training program for the FNS Department in compliance with industry standards and applicable state and federal law. The Hospital shall provide appropriate space, audio and visual equipment for team member training, which will consist of both on-the-job and classroom training supplemented with interactive training videos (English and Spanish).
- I. HHS will provide an on-site Chef-Director to provide services at the Hospital. This team member will perform duties as mutually agreed upon by HHS and the Hospital.

#### IV. DUTIES TO BE PERFORMED

- A. Hospital activity levels are described in **Exhibit A** attached to and incorporated in this Agreement. HHS has based its' staffing recommendation and fee structure on this information. Should there be a change in these statistics, Hospital and HHS agree that labor staffing (permanent or temporary) and an associated fee adjustment will be necessary. HHS will present the Hospital with data to support any recommended adjustment.
- B. Based on the guidelines established by the Hospital and in conjunction with the onsite

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management team, HHS will determine the specifications for and will order the food to be used in the FNS Department at the Facility.

#### V. SUPPLIES AND EQUIPMENT

- A. **Exhibit B** will specify which departmental supplies, services and equipment will be provided by HHS and which by the Hospital.
- B. The Hospital and HHS acknowledge that unrestricted internet connectivity is relied upon and required for HHS management personnel to perform daily job responsibilities, such as securing labor force payroll (time clock, Team Member Kiosk) and other job related online content. The Hospital agrees to provide HHS with unrestricted internet access, adhering to the IT specifications and requirements described in the HHS Network Access Requirements Policy (attached hereto), at no cost to HHS. The Hospital will provide HHS with a 3<sup>rd</sup> party internet connection, at the Hospital's expense, in the event that the above requirements are not met.
- C. The Hospital agrees to provide office space, office furniture and storage space for the FNS Department and to pay the cost of utilities, local telephone service, internal department communication devices and management cell phones (if required). The Hospital will allow HHS to requisition office supplies from the Hospital.
- D. The Hospital will ensure that the Facility is equipped and furnished to the reasonable satisfaction of HHS and the Hospital. The Hospital will ensure that the Facility (including the kitchen) is in good, clean, sanitary, working condition, as of the beginning of HHS's services. The Hospital will maintain the Facility and all items furnished by the Hospital (the "Property") in accordance with Applicable Law, and make all repairs or replacements to the Facility and Property at its expense.
- E. HHS will purchase equipment for the department when requested by the Hospital up to a maximum of \$15,000 per calendar year. HHS will invoice the Hospital for the final cost of the equipment (including shipping, handling, tax and any other associated expense) with payment in full and due within 30 days of receipt of invoice. All unpaid balances will be due upon termination of this Agreement and a 10% late payment fee will be assessed on any payments not received within the noted 30 day period. Hospital will reimburse HHS for any expenses incurred to collect unpaid balances due.

#### VI. FOOD SERVICE OPERATION INVENTORIES

- A. Hospital will provide and maintain a fully adequate initial inventory and supply of Tablewares and Smallwares for satisfactory operating requirements, in HHS's reasonable opinion, at the Hospital's expense. HHS will be responsible for replacing lost or damaged

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Tablewares and Smallwares. HHS will charge the Hospital for the cost of the Tablewares and Smallwares that are furnished by HHS.

- B. Each party will retain ownership of the items they provide, until full reimbursement/payment of all amounts under this Agreement.
- C. The parties will also jointly prepare an inventory of food and dietary supplies of the Hospital with a dollar value based upon then current purchase prices (the "Beginning Inventory"). Upon termination of this Agreement, the parties will jointly prepare an ending inventory of such food and dietary supplies with a dollar value based upon then current purchase prices (the "Ending Inventory"). If the aggregate value of the Ending Inventory is less than the Beginning Inventory, HHS shall credit the Hospital for the difference. HHS will review and maintain a monthly inventory.
- D. All computer hardware and software furnished by or through HHS, as well as any of HHS's Proprietary Information, shall remain the property of HHS (even if fully depreciated).

#### VII. PAYMENT FOR SERVICES PROVIDED BY HHS

- A. The Hospital agrees to pay HHS a Monthly Contract Price of \$48,362.01 for Services provided in this Agreement. This Monthly Contract Price will be invoiced by HHS and provided to the Hospital by the 15<sup>th</sup> of the previous month and payments are due on the 1<sup>st</sup> of the month for which services are rendered. HHS shall initiate "Breach for non-payment" in the event the Hospital is unable to make timely payments for consecutive months or more than three (3) months in a calendar year. Payments shall be sent to:

ACH (Wire Transfer):

Frost Bank  
401 Congress Avenue  
Austin, Texas 78701  
Routing: 114000093  
Account: 591147609  
Remittance info to be sent to:  
[remit@hhs1.com](mailto:remit@hhs1.com)

- B. The Hospital agrees to pay HHS \$0 in the first month of this Agreement to offset account start-up expenses such as temporary living, management relocation, regional start-up expenses, computer equipment and start-up engineering/implementation expenses.
- C. The Hospital agrees to pay any applicable local, state or federal sales taxes due on the service fee. These fees are in addition to; and are not included in the Monthly Contract

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Price stated in section VI.A.

- D. The Hospital agrees to an additional interest charge of 15% per annum on any past due amounts or service fees at the termination of this Agreement.
- E. Included in the Monthly Contract Price are budgeted allotments as indicated in the applicable food and supply categories, in the table below. In the event that Hospital exceeds these allotments, Hospital will be charged separately for these overages, at actual cost, to be reconciled quarterly. HHS Management personnel will be responsible for inventory and monthly reporting, to be provided to Hospital quarterly. These reports will be reviewed and reset annually.

Supply Cost Allocation		
	<u>Annual</u>	<u>Monthly</u>
Laundry / Linen	\$2,037	\$169.75
Kitchen Smallwares	\$5,217	\$434.75
Kitchen/Dining Paper & Plastics	\$36,507	\$3,042.25
Menu and Patient Education Materials	\$991	\$82.58
Chemicals / Supplies	\$4,879	\$406.58

Food Cost Allocation		
	<u>Annual</u>	<u>Monthly</u>
Floorstocks Nourishments & Supplements	\$15,374	\$1,281.17
Observation, Outpatient & ER Meals	\$2,809	\$234.08
Catering/Special Functions/Dept Requisitions	\$30,915	\$2,576.25
All Cafeteria Free Meals	\$64,695	\$5,391.25

- F. A variable rate of \$8.26 will be charged for each patient day above the baseline (9,490) or credited for each patient day below the baseline. Charges or credits will be reconciled according to invoice period. If patient days exceed 10% of the baseline for ninety (90) consecutive days, the Hospital and HHS agree the Monthly Contract Price as stated in Section VI. A. will be renegotiated.
- G. Cash sales received from the Food Service Program will be collected by HHS, delivered to the Hospital's business office, and retained by HHS. HHS will invoice Hospital for cash monthly. All retail sales over the annual baseline (\$144,136.00) will be split 50/50 after the cost of goods.
- H. The Monthly Contract Price set forth in this Agreement will be adjusted to reflect any additional / unforeseen costs incurred by HHS (i) in connection with the implementation of

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legislation or other legal requirements, including, but not limited to, the implementation of the Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act of 2010, which comprise the health care reform of 2010, or other health care rules and regulations, or any modifications thereto or (ii) increases in benefit costs paid by HHS on behalf of covered employees. The adjustment to the Monthly Contract Price will be effective from the date the events of (i) and/or (ii) occur.

- I. The Hospital agrees to an increase in the Monthly Contract Price for services on each annual anniversary date of this Agreement to offset increased management and team member wages, supply costs and other operating expenses. This annual increase will be equal to 1.5% or the greater of the annual percentage increase provided to Hospital staff, and will be applied to the then current Monthly Contract Price.
- J. The Hospital agrees that, should the state or federal government enact an increase in the minimum wage, the Hospital agrees to increase the Monthly Contract Price paid to HHS to offset the full impact of wage increases for team members including the effect of wage adjustments above minimum wage to maintain competitive wages in the local labor market.
- K. The Hospital agrees that should the state or federal government mandate any additional taxes, insurances, employer benefit subsidies, or should an organized labor effort impact HHS' operating costs at the Hospital after the effective date of this Agreement, a Monthly Contract Price adjustment would be necessary. The Hospital agrees to pay HHS any applicable state service or sales tax in addition to the Monthly Contract Price. In the event that the Hospital and HHS cannot agree on an appropriate Monthly Contract Price adjustment to defray these unanticipated operating costs, HHS may terminate this Agreement by providing the Hospital 30 days advance written notice to the Hospital.
- L. For each leap year during which this Agreement is in effect, the Hospital will pay an additional fee equal to 1/365th of the annual Monthly Contract Price. This fee is due on the 15th day of February of such years.
- M. For additional work outside the scope of this Agreement, not included in **Exhibit A**, attached hereto, the Hospital will be charged at an agreed upon rate per labor hour of \$12.51, which will include employer taxes and other related costs.
- N. Breach for non-payment as described in VI.A - consecutive late payments or three late payments in a calendar year. If breach complaints relating to the unpaid Monthly Contract Price or applicable service fees are not reasonably addressed and remedied within ten (10) days, HHS may at its' discretion, give notice to the Hospital that at the end of an additional five (5) day period, the Agreement will be terminated.

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**VIII. TERMINATION**

- A. This Agreement may be terminated by either party after the first year of the initial Term by providing ninety (90) days written notice to the other party.
- B. This Agreement may be cancelled by either party if a material breach of the Agreement is not promptly addressed as prescribed below. If either party believes the other is in material breach of any provision in this Agreement, that (offended) party shall deliver written notice to the other detailing specific breach complaints and the results necessary to restore pre-breach status. If breach issues (not including breach for non-payment issues) are not reasonably addressed and remedied within sixty (60) days, the offended party may at its' discretion, give notice to the other party that at the end of an additional thirty (30) day period, that the Agreement will be terminated.
- C. In order to provide HHS the opportunity to prove it's value to new leadership, the Hospital agrees that this Agreement will remain in effect no less than one hundred eighty (180) days after the date of a Hospital ownership or Executive Management change.

**IX. NOTIFICATION**

All notices (excluding payments) shall be sent to either party at the following addresses:

**Hospital**  
Gilmore Memorial Hospital  
1105 Earl Frye Blvd.  
Amory, Mississippi 38821  
Attn: Chief Executive Officer

**HHS**  
HHS Culinary and Nutrition Solutions, LLC  
216 E. 4<sup>th</sup> Street  
Austin, Texas 78701  
Attn: Chief Executive Officer

**X. INSURANCE**

- A. HHS agrees to maintain general liability insurance in the amount of not less than One Million Dollars (\$1,000,000) per occurrence, with excess coverage in an amount not less than Three Million Dollars (\$3,000,000) to cover claims in the aggregate. The Hospital shall obtain and maintain insurance, with replacement cost coverage, for the Hospital's Facility covered by standard forms of fire, theft, and extended coverage and shall maintain general liability insurance in such amounts under such policies as appropriate, but not less than One Million Dollars (\$1,000,000) per occurrence, with excess coverage in an amount not less than Three Million Dollars (\$3,000,000) to cover claims in the aggregate. Both parties will furnish and maintain workers' compensation insurance as prescribed by law and employer's liability insurance in the amount of \$100,000 for all of their respective employees, or either party may provide such coverage through a self-insurance program in accordance with Applicable Law. Evidence of such insurance will be provided upon request.

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**XI. OTHER**

- A. Unless specifically stated otherwise within this Agreement, both parties agree to hold each other and their affiliates, directors, officers, employees, agents and insurers harmless from and against any and all litigation, losses, expenses, damages, liabilities imposed by law, costs (including interest, penalties, and attorneys' fees) and judgments arising out of either party's negligence, willful misconduct, or breach of this Agreement. Both parties agree that all claims for indemnification must be submitted within one (1) year of receiving written notice of a suit being filed and acknowledged.
- B. **Equal Employment Opportunity**  
It is the policy of HHS to provide equal employment opportunities to all qualified employees and applicants without regard to race color, sex, age, religion, handicap, veteran status or national origin. Positive action shall be taken to ensure the fulfillment of this policy including:
- Hiring, placement, upgrading, transfer, or other personnel action
  - Recruitment, advertising or solicitation for employment
  - Treatment during employment
  - Rates of pay or other forms of compensation
  - Selection for training
  - Layoff or termination
- C. Both parties agree to respect and protect the proprietary assets of the other party. These assets include, but are not limited to, knowledge of business operations, trade name, work product, promotional materials and this Agreement.
- D. HHS agrees that in all aspects its' relationship to the Hospital will be that of an independent contractor, and that it will not act or represent that it is acting as an agent of the Hospital.
- E. Neither HHS nor the Hospital shall have any liability for failing to perform this Agreement when performance is prevented by force majeure. The term "force majeure" shall mean any government requirement or request, war, public disorders, acts of enemies, sabotage, strikes, lockouts, picketing, labor or employment difficulties, fires, floods, acts of God, natural disasters, accidents or breakdowns (whether or not preventable), or any other cause beyond the reasonable control of either party. The Hospital and HHS understand and agree that events such as hurricanes, tornadoes, fires, floods, concerted employee, union or related activity, or similar severe weather, natural disasters, or labor unrest may interfere with the efficient performance and contemplated operations under this Agreement, and will result in direct and indirect costs not related in the above rates and charges. The parties agree that under such conditions, HHS will work together with the Hospital in good faith to

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provide services and develop appropriate responses and courses of action, as is practical and reasonable under the circumstances. If Hospital requests that HHS provide the Services during a force majeure event, any financial or performance guarantees or incentive penalties to HHS will not apply under these conditions and instead the Hospital will be responsible for, and hold HHS harmless from, all costs and expenses associated with the services, responses, courses of action, and operations, whether directly or by reimbursement to HHS, along with the fees and charges referenced above.

- F. The Hospital acknowledges that some vendors may extend to HHS certain company-side credits, fees, or discounts, including, without limitation, early payment discounts, administrative fees or volume discounts and HHS will be entitled to retain such credits, fees or discounts.
- G. Medicare - HHS agrees to insert (by addendum or otherwise) standard Medicare/Medicaid language as requested by the Hospital.
- H. HIPAA - HHS agrees to insert (by addendum or otherwise) standard HIPAA language as requested by the Hospital.
- I. This Agreement embodies the entire agreement and understanding between the parties. There are no other agreements or understandings, oral or written, between the parties with respect to the subject matter, and this Agreement supersedes all previous negotiations, commitments, and writings regarding this relationship. In case any part of this Agreement is held invalid, illegal or unenforceable, it shall not affect any other provision.

## XII. DEFINITIONS

- A. **"Food Service Operation"**: the Hospital's food service program (the "Food Service Program") and Food and Nutrition Service Department (the "FNS Department").
- B. **"Applicable Law"**: statutes, regulations, ordinances and other legal requirements, to the extent applicable to HHS and the Hospital.
- C. **"At Cost" or "Cost"**: the charge by HHS to Hospital for items or services that will include all applicable supply, labor (with Percentage Rate), insurance, equipment and other related operational costs required for the item or service, but will not include any separate, additional fee by HHS that is not otherwise provided for in this Agreement.
- D. **"Facility"**: the areas, improvements, real and personal property and facilities of the Hospital, and in particular those related to or used in providing the Services.
- E. **"Proprietary Information"**: all trade secrets and/or confidential or proprietary information

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related to the business of HHS or its affiliates, in any physical, electronic, computerized or other form, including but not limited to: technical and nontechnical data related to operations; computer programs; software; diet manuals; videotapes; methods; techniques; processes; finances; actual or potential customers and suppliers; existing and future products; recipes; production sheets; policy, procedure and/or personnel manuals; employees of HHS and its affiliates; and any information which has been disclosed to HHS by a third party which HHS is obligated to treat as confidential.

- F. **"Services"**: the supervision of the food services at the Facility and catered events as exclusively provided to Hospital by HHS under this Agreement.
- G. **"Smallwares"**: non-powered kitchen related items used to prepare and serve food, such as pots, pans, scoops, chef knives, cutting boards, bowls, cooking and kitchen utensils and similar loose items, etc.
- H. **"Tablewares"**: items used by individuals in consuming food, such as china, dishware, silverware, flatware, table utensils, glassware, etc.

As an authorized representative of either the Hospital or HHS my signature below acknowledges that I have read, understand and agree that the organization I represent, HHS or the Hospital, will comply with ALL of the terms and conditions contained within this Agreement and its exhibits.

This Agreement is effective November 1<sup>st</sup>, 2017.

**Gilmore Memorial Hospital**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

7-31-17 rcm 9-7-17 rcm 9-20-17 rcm

**HHS Culinary and Nutrition Solutions, LLC**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**EXHIBIT A****HOSPITAL FACILITY AND ACTIVITY STATISTICS –**

	<b><u>Statistics</u></b>		
Patient Days:	9,490		
FNS Department Hours of Coverage:	24 hours a day / 7 days per week		
<b><u>FOOD PROGRAM CLEANING RESPONSIBILITIES:</u></b>	<b><u>HHS</u></b>	<b><u>Hospital</u></b>	<b><u>N/A</u></b>
<b><u>KITCHEN</u></b>			
Floors	X		
Walls	X		
Equipment	X		
Refrigerators and freezers	X		
Vents	X		
Ceiling		X	
Duct Work		X	
Light Replacement		X	
<b><u>CAFETERIA</u></b>			
Serving Line/equipment	X		
Serving Line walls	X		
Serving Line floors (customer side)	X		
Serving Line floors (kitchen side)	X		
Ceiling		X	
<b><u>FLOOR STATIONS</u></b>			
Equipment		X	
Floors		X	

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	<u>HHS</u>	<u>Hospital</u>	<u>N/A</u>
Walls/ceilings		X	
<b><u>DINING AREA</u></b>			
Furniture	X		
Equipment	X		
Floors/carpet		X	
Windows/walls		X	
Ceiling		X	
Draperies		X	
<b><u>STORAGE AREAS FOR PROGRAM</u></b>			
Floors	X		
Walls	X		
Ceiling		X	
Shelving	X		
<b><u>RECEIVING AREA FOR PROGRAM</u></b>			
Pick-up/spot mop	X		
Daily general cleaning		X	

**Clarification Notes:**


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**EXHIBIT B****Schedule of Purchasing Responsibility****FOOD PROGRAM SUPPLIES & EQUIPMENT**

Food &amp; Dietary Supplies

HHSHospitalN/AX

Kitchen Paper &amp; Plastic

X

Equipment

X

Equipment Repair &amp; Replacement

X

Smallware

X

Smallware Repair &amp; Replacement

X

Utilities

X

Office Supplies/Stationery/Office Equipment

X

Telephone Service (including long distance)

X

Menu Materials

X

Hospital Computer Hardware

X

Hospital Computer Software

X

Hospital Computer Technical Assistance Charges

X

Postage

X

Garbage / Trash Removal

X

Other Misc. Culinary Equipment (as required)

X**MISCELLANEOUS**HHSHospitalN/A

Business Licenses and Permits

X

Service Contracts (On-going)

X

Repairs – Purchased Services (as occurs)

X

Rented/Leased Equipment

X

Uniforms

X

Armored Car Service

X

Parking

X





## EXHIBIT B.1

HHS will administer and adhere to providing its Team Members the pre-employment or post-employment physicals, screenings and preventative treatments listed herein:

**Team Member Criminal Background Check:**

- County Criminal
- Criminal Database National Alias Search
- FACIS Level 1
- Federal Criminal
- National Sex Offender Registry Search
- OIG Excluded List Check (Annual)

### Team Member Drug Screening

- Non-DOT 10 Panel Urine Drug Test

Team Member Health Screen:

- TB/PPD Test

**Additional Hospital required screenings at Hospital's expense:**



## HHS Network Access Requirements Policy

1. HHS Payroll Computer
  - Data Drop (Ethernet/Cat 5/Cat 6 Connection)
  - Access to Gmail
    - Unblock Access to:
    - [Home.hhs1.com](http://Home.hhs1.com)
    - <http://Google.com/m/hhs1.com>
  - Access to Salesforce
    - Unblock Access to:
    - <https://ssl.salesforce.com/>
2. HHS Kiosk
  - Data Drop (Ethernet/Cat 5/Cat 6 Connection)
  - Unblock Access to the following sites:
    - <https://hhs.secure.force.com/kioskhomepage?id=> (ID is account specific)
    - <https://ssl.salesforce.com/>
    - <https://s3.amazonaws.com>
3. PI Mobile Device (iPod Touches/iPads)
  - Wireless Access (Guest Network or Production)
  - Unblock Access to the following site:
    - <https://ssl.salesforce.com>
    - Unblock Port 4309
4. Time Clocks
  - Data Drop (Ethernet/Cat 5/Cat 6 Connection)
  - Power Drop
  - Access to 158.228.145.3
  - Unblock Ports 80, 443, 445
5. Electronic Message Boards
  - Wifi or Ethernet connection
  - Power Drop
  - Access to 69.16.232.180
  - Unblock Ports 80 and 21

Bobby Floyd  
COO



January 26, 2018

Gilmore Memorial Hospital  
1105 Earl Frye Blvd  
Amory, Mississippi 38821  
Attn:  
Allen Tyra, CEO  
Carol Upton, ACEO  
Marc Nakagawa, CFO

*Via Certified Mail*

Dear Mr. Tyra, Ms. Upton and Mr. Nakagawa:

This letter is to inform you that Gilmore Memorial Hospital is in material breach of our Food and Nutrition Services Management Agreement, dated November 1<sup>st</sup>, 2017, as specifically defined in Section VII.N. Our basis for claiming material breach is as follows:

Section VII.A clearly states that our fee for services is due on the 1<sup>st</sup> of each month for which services are rendered. As of today, Gilmore Memorial Hospital owes HHS Culinary and Nutrition Solutions, LLC a total of \$205,134.96 in past due fees.

To restore pre-breach status, a total payment of \$205,134.96 must be postmarked by February 5<sup>th</sup>, 2018 to pay in full the past due invoices, #CNS833334INV, CNS833335INV, CNS833339INV, CNS83528INV, CNS83543INV, CNS83669INV, CNS83702INV, CNS83727INV. As this specific breach complaint is related to unpaid service fees, if payment has not been received by February 5<sup>th</sup>, 2018 (10 day period), this letter is provided to inform you that HHS Culinary and Nutrition Solutions, LLC will be exercising its' right to terminate the Agreement between Gilmore Memorial Hospital and HHS Culinary and Nutrition Solutions, LLC dated November 1<sup>st</sup>, 2017, effective midnight on February 10<sup>th</sup>, 2018 (5 days later). Per Section VII. D, an additional interest charge of 15% per annum will be applied to all past due amounts at termination of the Agreement. Please understand that we have continued to provide services in good faith while your account balance has grown to an unacceptable level, but we must take available legal action to protect our company's best interests and simply cannot accept non-payment.

Please contact me to discuss this matter as soon as possible.

Sincerely,

Bobby Floyd  
COO, HHS

cc: Chris Nines, CFO, HHS  
Steve Clapp, Curae Health, CEO, PO Box 358 Clinton, TN 37717 via regular mail



Bobby Floyd  
COO



February 9, 2018

Gilmore Memorial Hospital  
1105 Earl Frye Blvd  
Amory, Mississippi 38821  
Attn:  
Allen Tyra, CEO  
Carol Upton, ACEO  
Marc Nakagawa, CFO

***Via Certified Mail***

Dear Mr. Tyra, Ms. Upton and Mr. Nakagawa:

This letter is to inform you that HHS Culinary and Nutrition Solutions, LLC is exercising its right to terminate our Food and Nutrition Services Management Agreement, dated November 1<sup>st</sup>, 2017, pursuant to Section VII.N.

You were notified of the material breach in a letter dated, January 26<sup>th</sup>, 2018, whereby the steps to cure the material breach were outlined therein. As of today, the material breach has not been cured and Gilmore Memorial Hospital still owes HHS Culinary and Nutrition Solutions, LLC a total of \$205,134.96 in past due service fees.

As the specific breach complaint was related to unpaid service fees, and the breach was not cured within ten days of notice, effective midnight, February 10<sup>th</sup>, 2018, HHS Culinary and Nutrition Solutions, LLC is no longer contracted to continue providing services to Gilmore Memorial Hospital. Per Section VII. D, an additional interest charge of 15% per annum will be applied to all past due amounts at termination of the Agreement, and we will be pursuing all unpaid fees through legal means.

Hereafter, with exception of any terms to the contrary, HHS Culinary and Nutrition Solutions, LLC will no longer be bound or obligated to fulfill any terms and conditions contained within the Agreement.

If you have any further questions or concerns regarding this notice, you may contact me at [bobbyf@hhs1.com](mailto:bobbyf@hhs1.com).

Sincerely,

A handwritten signature in black ink that reads 'Bobby Floyd'. The signature is written in a cursive, flowing style.

Bobby Floyd  
COO, HHS

cc: Chris Nines, CFO, HHS  
Steve Clapp, Curae Health, CEO, PO Box 358 Clinton, TN 37717 via regular mail

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JS 44 (Rev. 06/17)

**CIVIL COVER SHEET** 1:18cv84-SA-DAS

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS** HHS Culinary and Nutrition Solutions, LLC**DEFENDANTS** Amory Regional Medical Center, Inc. D/B/A Gilmore Memorial Hospital**(b)** County of Residence of First Listed Plaintiff Travis County, Texas  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c)** Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Ronnie L. Walton (MSB# 6933), Glover, Young, Hammack, Walton, &amp; Simmons, PLLC, P.O. Box 5514, Meridian, MS 39302, (601) 693-1301

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input checked="" type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify):
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC Section 1332

Brief description of cause:

Breach of Contract

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**  
 75,001.00

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No
**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/10/2018

SIGNATURE OF ATTORNEY OF RECORD

*Ronnie L. Walton*

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

\$400

APPLYING IFP

JUDGE

SA

MAG. JUDGE

DAS

Case 3:18-bk-05675 Claim 12-1 Filed 12/21/18 Desc Main Document Page 46 of



# MIDDLE DISTRICT OF TENNESSEE

## Claims Register

[3:18-bk-05675 Amory Regional Medical Center, Inc.](#)

**Judge:** Charles M Walker

**Chapter:** 11

**Office:** Nashville

**Last Date to file claims:**

**Trustee:**

**Last Date to file (Govt):**

*Creditor:* (6809160)  
HHS Culinary & Nutritional  
Solutions, LLC  
216 E. 4th Street  
Austin, TX 78701

**Claim No:** 12  
*Original Filed*  
*Date:* 12/21/2018  
*Original Entered*  
*Date:* 12/21/2018

*Status:*  
*Filed by:* CR  
*Entered by:* THOMAS W  
TUCKER, III  
*Modified:*

Amount claimed: \$179900.47

*History:*

[Details](#) [12-1](#) 12/21/2018 Claim #12 filed by HHS Culinary & Nutritional Solutions, LLC, Amount claimed: \$179900.47 (TUCKER, THOMAS )

*Description:* (12-1) Service provided - see attached Exhibits A-E

*Remarks:*

### Claims Register Summary

**Case Name:** Amory Regional Medical Center, Inc.

**Case Number:** 3:18-bk-05675

**Chapter:** 11

**Date Filed:** 08/24/2018

**Total Number Of Claims:** 1

<b>Total Amount Claimed*</b>	\$179900.47
<b>Total Amount Allowed*</b>	

\*Includes general unsecured claims

**The values are reflective of the data entered. Always refer to claim documents for actual amounts.**

	<b>Claimed</b>	<b>Allowed</b>
<b>Secured</b>		
<b>Priority</b>		
<b>Administrative</b>		