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SUBJECT TO PROTECTIVE ORDER

REDACTED

BROILER AGREEMENT

Federal ID # **Grower ID # 2052**

This Broiler Agreement is entered into between the BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS ACTING FOR AND ON BEHALF OF THE UNIVERSITY OF ARKANSAS, DIVISION OF AGRICULTURE ("Grower"), and SIMMONS FOODS, INC., and Arkansas Corporation, ("Simmons"), for the purpose of growing broilers for marketable meat. Grower and Simmons agree to the following terms.

1. DISCLOSURES: In accordance with Title XI of the Food and Energy Security Act of 2008, the following disclosures are hereby made:

   a. **GROWER MAY CANCEL THIS AGREEMENT BY MAILING A CANCELLATION NOTICE TO SIMMONS NOT LATER THAN 3 BUSINESS DAYS AFTER THE DATE ON WHICH THIS AGREEMENT IS SIGNED BY GROWER.**

   b. **ADDITIONAL CAPTIAL INVESTMENTS DISCLOSURE STATEMENT – ADDITIONAL LARGE CAPTIAL INVESTMENTS MAY BE REQUIRED OF GROWER DURING THE TERM OF THIS AGREEMENT.**

   c. **GROWER MAY DECLINE TO BE BOUND BY THE ARBITRATION PROVISION OF PARAGRAPH 11 OF THIS AGREEMENT BY PROVIDING WRITTEN NOTICE TO SIMMONS PRIOR TO ENTERING INTO THIS AGREEMENT THAT GROWER DECLINES TO BE BOUND BY THE ARBITRATION PROVISION.**

2. SIMMONS' OBLIGATIONS – Simmons shall:

   a. provide Grower with chicks at no cost to Grower. Grower understands that the number of chicks provided to Grower and the timing of the placement of the chicks may vary and that Simmons will retain title to them.

   b. provide and deliver to the Grower all feed needed to grow birds to marketable age and weight. Grower is entitled to observe the weighing of the feed. Simmons will retain title to all feed not consumed by the flock.

   c. provide all veterinary and technical services and medication as needed for the care and treatment of the flock.

   d. install, maintain and operate scales used in weighing poultry and feed to insure accurate weights. Simmons will employ qualified persons to operate all scales in accordance with applicable regulations.

   e. provide Grower with true and accurate copies of chick delivery tickets, feed delivery tickets, scale tickets, condemnation reports or grading certificates, and settlement sheets.

3. GROWER'S OBLIGATIONS – Grower shall:

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a. have the house(s) prepared as prescribed by Simmons before the chicks are delivered and to care for the flock until Simmons determines that the birds are to be moved. If all the birds cannot be moved at the same time, Grower will care for the flock until the remaining birds can be moved; and

b. furnish all labor, housing, water, approved bedding material, fuel, spraying, utilities, and equipment as specified by Simmons for the proper care of the birds; and

c. comply with the management instructions given by Simmons in service reports, memoranda, management tips and other communications, as may be supplied from time to time; and

d. maintain records as Simmons may request; such as litter disposal records, mortality charts, etc.; and

e. report promptly to Simmons any disease, sicknesses, and unusual conditions that may be encountered; and

f. provide properly maintained and adequate all-weather roads to Grower's property and around the chicken houses; and

g. follow all applicable laws and regulations, including the Federal Insecticide, Fungicide and Rodenticide Act of 1947, as well as applicable FDA, USDA, State, and EPA Regulations; and

h. assist in the unloading of baby chicks. There should be enough assistance to assure each house is unloaded in approximately 20 minutes, not to exceed 30 minutes; and

i. keep no other poultry, game birds, or fowl of any kind on the premises; and

j. dispose of dead birds by sanitary and legal means; and

k. administer no feed, vaccine or medication to the birds and use no insecticide, disinfectant, pesticide, rodenticide or chemical drug unless they are delivered or approved by Simmons; and

l. permit only those persons authorized by Simmons to enter poultry houses; and

m. allow Simmons at any reasonable time to enter upon the Grower's premises to inspect the birds, premises, and records; and

n. vaccinate the birds according to Simmons' instructions; and

o. use litter in accordance with Best Management Practices as detailed by the nutrient management plan for Grower's farm developed with appropriate governmental agencies, and follow all applicable regulations pertaining to litter use; and

p. provide to Simmons accurate information concerning the status of the Grower's Nutrient Management Plan, the date of the latest soil samples, the total number of birds raised annually, and the amount of litter generated annually along with the use of the litter, as more specifically set forth in Simmons' Nutrient Management Grower Checklist as provided; and

q. maintain a satisfactory Performance Index ("PI") as detailed in Paragraph 14. The method of calculating the PI is contained on Schedule 1.

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4. CATCHING AND LOADING: Simmons requests that Grower be present for catching and loading of the birds and shall provide Grower with advance notification of the loading date and the approximate loading time. However, if Grower chooses not to be present, Grower agrees to accept the number smothered without contest.

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5. SIMMONS' OBLIGATIONS IN COMPUTING PAYMENTS – Simmons agrees to compute Grower's payments for each flock by a prime cost comparison as described below:

   a. Simmons shall calculate the Average Live Weight as well as the Prime Cost per Good Pound for each Flock.

      1) "Prime Cost per good Pound" means the result of (a) the sum of (i) the number pounds of feed consumed multiplied by per pound, plus (ii) the number of chicks placed multiplied by per chick, plus (iii) the amount of non-programmed medication used multiplied by the Standard Cost of the medication as listed on Schedule 2, divided by (b) Good Pounds produced.

      2) "Good Pounds" means the total live weight of the flock on Simmons' scale, minus the Pounds Condemned due to field causes as determined from the inspection report, plus the Estimated Weight of Transport Fuel.

      3) "Pounds Condemned" means the result of (a) the number of whole carcass condemnations multiplied by the Average Live Weight of the flock, plus (b) one-half of the number of pounds of parts condemned multiplied by .

      4) "Average Live Weight" means the gross live weight of the flock divided by the head count from grower mortality sheets.

      5) "Estimated Weight of Transport Fuel" for each load is equal to two pounds for each mile between Grower's farm and Simmons' scale.

   b. If the Average Live Weight of the Flock is less the 5 pound, Simmons shall settle flock in the small bird prime cost comparison. If the Average Live Weight of the Flock is 5 pounds or greater, Simmons shall settle the flock in the large bird prime cost comparison. Simmons shall settle flocks weekly. Each such weekly period is referred to as the "Settlement Period."

   c. Simmons shall rank the Flock, along with the other flocks in the applicable size category that have completed movement during the Settlement Period, in order from the flock with the lowest Prime Cost per Good Pound to the flock with the highest Prime Cost per Good Pound. From these lists, Simmons shall determine the Median Prime Cost per Good Pound of the flocks. If there are an odd number of flocks, the Median Prime Cost per Good Pound will be the Prime Cost per Good Pound of the middle flock. If there are even numbers of flocks, the Median Prime Cost per Good Pound will be the sum of the Prime Cost per Good Pound of the two middle flocks divided by two. The grower with the Median Prime Cost per Good Pound is commonly referred to as the "Middle Grower."

      1) Flocks grown at company-operated farms, or by growers who are members of the board of directors, are administrative or management or field service employees at Simmons ("Affiliated

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Growers") will be ranked with all flocks for purposes of determining pay for those flocks, then removed and a new ranking established to determine the pay for all other flocks.

2) If Simmons becomes aware that a grower is the spouse, parent, child, or sibling of a person in one of those positions, the related grower's flocks will also be removed for settlement of the other flocks. In effect, rankings are calculated twice. The first ranking includes all flocks, then the flocks grown by Affiliated Growers are removed and anew ranking is established to determine the pay for the rest of the flocks for the Settlement Period.

d. *Base contract pay*: Simmons shall compute Grower's base contract pay on a per flock basis as follows:

1) If the Prime Cost per Good Pound of the Flock is equal to the Median Prime Cost per Good Pound, the base contract pay for the Flock will be per Good Pound.

2) If the Prime Cost per Good Pound of the Flock is less than the Median Prime Cost per Good Pound, the base contract pay for the Flock will be plus the difference between the Prime Cost per Good Pound of the Flock and the Median Prime Cost per Good Pound.

3) If the Prime Cost per Good Pound of the Flock is more than the Median Prime Cost per Good Pound, the base contract pay will be less the difference between the Prime Cost per Good Pound of the Flock and the Median Prime Cost per Good Pound. In any event, the base contract pay will not be less than per Good Pound.

e. *Additional Incentives*:

1) *New House Incentives*: Subject to the conditions and time limitations described below, Simmons shall pay Grower the following incentives on each Flock grown in houses identified as "New Houses" on Schedule 3 attached hereto. These New House Incentives expire on the date stated in Schedule 3 and shall not be paid on any flock which settles after that date.

a) Simmons shall pay Grower per Good Pound in addition to the base contract pay for Flocks grown in New Houses built prior to July 1, 2008. Simmons shall pay Grower per Good Pound in addition to the base contract pay for Flocks grown in New Houses built after July 1, 2008.

b) *Minimum Payment*: If Grower meets the minimum performance requirements set forth in this subparagraph, Simmons shall pay Grower a total payment, including base contract pay and incentives, of not less than per Good Pound for flocks grown in New Houses built prior to July 1, 2008 and Simmons shall pay Grower a total payment, including base contract pay and incentives, of not less than per Good Pound for flocks grown in New Houses built after to July 1, 2008.

i. To qualify for this minimum payment, Grower must maintain an average Performance Index ("PI") of 16 or lower on a rolling three-flock basis (based upon the current flock plus the previous two flocks). Schedule 1 contains a detail of the PI calculation.

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in The minimum payment will not apply to any flock in which Grower has not maintained a 16 PI average or lower on a rolling three-flock basis. Simmons shall reinstate the minimum payment after Grower's PI improves to an average 16 PI or lower on a rolling three-flock basis.

2) *Retrofit Incentives*: Simmons shall pay Grower per Good Pound in addition to the base contract pay on flocks grown in houses identified as "Retrofit Houses" on Schedule 3 attached hereto.

3) *Level I Upgrade Incentives*: Simmons shall pay Grower per Good Pound in addition to the base contract pay on flocks grown in houses identified as "Level 1 Upgraded Houses" on Schedule 3 attached hereto.

4) *Level 2 Upgrade Incentives*: Simmons shall pay Grower per Good Pound in addition to the base contract pay on flocks grown in houses identified as "Level 2 Upgraded Houses" on Schedule 3 attached hereto.

f. Simmons will make the settlement payment to Grower before the close of the fifteenth day following the week in which the flock is slaughtered.

6. REMOVAL OF BIRDS AND OTHER PRODUCTS: Right of removal of all birds, feed, medication and supplies furnished Grower by Simmons remains with Simmons. Grower agrees that no birds, feed, medication, or supplies will be removed from the premises or otherwise disposed of except as provided in this Agreement.

7. OWNERSHIP OF LITTER: All poultry litter covered by this Agreement shall be the exclusive property of Grower, and Grower shall be responsible for and receive all of the economic benefits from the use and disposal of said litter, to the extent such responsibilities and benefits exist.

8. REPOSSESSION BY SIMMONS: Simmons will be entitled to take immediate possession of the birds if at any time during the term of this Agreement the Grower becomes disabled, dies, or fails to follow and abide by Simmons' instructions with respect to the care and feeding of the birds. Simmons will have the right to deduct from payments due Grower under this Agreement all labor and other costs which Simmons may incur in caring for the birds until they are moved.

9. EXCUSE FROM PERFORMANCE: Failure of Simmons to furnish the chicks, materials, or products which Simmons is obligated to supply by this Agreement, or Grower to furnish the service and facilities which Grower is obligated to supply or maintain, if the failure is due to Acts of God, strikes, fire explosions, floods, or storms shall not subject the party so failing to any liability to the other party.

10. INDEPENDENT CONTRACTOR: The parties to this Agreement are independent contractors, one with the other. Grower is not an employee or agent of Simmons and Simmons is not an employer or principal of Grower and nothing in this agreement is to be construed to the contrary. Grower shall be solely responsible for all applicable premiums, payments, taxes and claims imposed for Workers' Compensation Insurance, Unemployment Compensation Insurance and Social Security benefits on behalf of Grower and any other person engaged in Grower's performance of this Agreement.

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11. ARBITRATION: DECLINED AND DELETED.

12. DURATION: Unless an Addendum labeled Addendum A expressly modifies this paragraph 12, this Agreement is a "flock to flock" agreement, and its duration begins when the first flock is placed after the execution of this Agreement and ends when that flock is completed. However, if Simmons chooses to place, and Grower chooses to accept, any addition flock(s), the parties will be deemed to have renewed this Agreement and the terms of this Agreement, including this duration paragraph providing that the duration is for one flock of birds.

13. CONDITIONS FOR TERMINATION:

    a. Without cause. Either party may terminate this Agreement for any reason by giving written notice to the other delivered to the party's address listed below. The notice will be effective when the broilers being cared for are picked up, or if broilers are not currently being cared for, the notice will be effective when given.

    b. With cause.

        1) Either party may terminate this Agreement if the other party breaches any of the terms or conditions contained in it;

        2) Simmons may terminate this Agreement if the health of safety of the flock is in jeopardy due to improper housing, feeding, watering, medicating, vaccinating or other care of the flock;

        3) Simmons may terminate this Agreement if Grower, Grower's agent or employee commits acts or threats of violence against Simmons' representatives, or

        4) Simmons may terminate this Agreement if Grower fails to maintain the premises or equipment, including but not limited to electrical transmission lines, ladders, bins, and housing, in a manner that protects the safety of Simmons' representatives.

        5) Simmons may terminate this Agreement if Grower fails to meet the PI requirements described in Paragraph 14 of this Agreement.

14. GAP PROGRAM: Simmons shall compute Grower's PI pursuant to Schedule 1. Grower shall maintain an average PI of 16 or lower computed on a rolling three-flock basis (based upon the current flock plus the previous two flocks).

    a. If Grower's PI average is above 16, Simmons shall place Grower on Phase I of the Grower Assistance Program ("GAP"). Grower shall remain on the GAP program for a minimum of two flocks. If, in Simmons' sole discretion, Grower does not sufficiently improve Grower's average PI by the end of the second flock, Grower shall continue on the GAP program for two additional flocks. If, in Simmons' sole discretion, Grower does not sufficiently improve Grower's average PI by the end of the fourth flock, Simmons may terminate this Agreement.

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b. If Grower's PI average is above 16 within 2 years from the date Grower was placed on Phase I of the GAP program, Grower shall be placed on Phase II of the GAP program. During Phase II of the GAP program, Grower shall be required to settle above average on at least two of three flocks. If Grower fails to settle above average on the first two flocks, Simmons may terminate this Agreement. If Grower fails to settle above average on two of three flocks, Simmons may terminate this Agreement.

c. If Grower does not fully cooperate in trying to improve Grower's PI at any time during the GAP program, Simmons may terminate this Agreement. A copy of the Standard Operating Procedure for the GAP program may be obtained by Grower from Simmons.

d. Simmons continues to reserve its right to terminate this Agreement pursuant to Paragraph 13, even if Grower is participating in the GAP program at the time of termination. Moreover, the duration provision contained in this Agreement and any Addendum A attached hereto continues to apply to this Agreement even if Grower is participating in the GAP program.

15. ASSIGNMENT: Grower will not assign this Agreement or in any way encumber the birds or supplies covered by this Agreement without the express written consent of Simmons Foods.

16. FARM SALE: If Grower chooses to sell the farm where birds are placed under this Agreement, Simmons' obligations will cease after Grower's last flock has settled. Simmons has no duty to place birds with a purchaser of Grower's farm or houses. If a purchaser desires to grow broilers with Simmons, a new contract may then be arranged with the purchaser for future placements, contingent upon Simmons' approval of conditions of the houses, equipment and proof of possession of the farm.

17. BINDING EFFECT: This Agreement inures to the benefit of and binds the parties, as well as their heirs, executors, administrators, and successors.

18. NON-WAIVER: Failure to terminate this Agreement when any of the conditions contained in Paragraph 13 exist shall not constitute a waiver by either party of the right to subsequently terminate this Agreement.

19. SEVERABILITY: If any part of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remaining provisions will continue to full force and effect.

20. GOVERNING LAW: The laws of the State of Arkansas govern all matters arising out of and relating to this Agreement.

21. ***Entire Agreement: This agreement, along with any schedules or addenda, constitutes the entire agreement between the parties and supersedes any previous agreements. No representation or statement made by either party not contained in this agreement shall be binding on the other. Grower agrees that statements made by Simmons' field service technicians or other representatives contrary to this agreement are not enforceable and this agreement can only be modified by a written instrument signed by grower and an authorized representative of Simmons. Grower understands that no representative of Simmons has the authority to make an oral agreement for successive flocks or any other oral modification of this Agreement***

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GROWER MAY DECLINE TO BE BOUND BY THE ARBITRATION PROVISION OF PARAGRAPH 11 OF THIS AGREEMENT BY PROVIDING WRITTEN NOTICE TO SIMMONS PRIOR TO ENTERING INTO THIS AGREEMENT THAT GROWER DECLINES TO BE BOUND BY THE ARBITRATION PROVISIONS.

The parties are signing this agreement on this 16 day of October, 2008.

SIMMONS FOODS, INC.
P.O. Box 430
Siloam Springs, AR 72761

By: _____

Name: _____

Title: _____

BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS
0 114 POULTRY SCIENCE CENTER
FAYETTEVILLE, AR 72701

By: _____

Name: Mark Cochran

Title: Assoc VP of Agriculture

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DISCLOSURE STATEMENT

Nature of

MATERIAL RISKS

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In accordance with Arkansas Act 1253 of 2005 (codified as Arkansas code Annotated §2-32-201), this Disclosure Statement accompanies the Broiler Agreement which you and Simmons propose to enter into.

If you enter into the Broiler Agreement with Simmons, you will face MATERIAL RISKS, the nature of which include, but are not limited to:

1. The DURATION of the Broiler Agreement is for the time period described in Addendum A of the Broiler Agreement.

2. The Broiler Agreement may be terminated prior to the designated expiration date, if you breach the terms of the Broiler Agreement. The CONDITIONS FOR TERMINATION of the Broiler Agreement are set forth in the Broiler Agreement and include, as explained in Paragraph 13:

(1) Either party may terminate this Agreement if the other party breaches any of the terms or conditions contained in it;

(2) Simmons may terminate this Agreement if the health or safety of the flock is in jeopardy due to improper housing, feeding, watering, medicating, vaccinating or other care of the flock;

(3) Simmons may terminate this Agreement if Grower, Grower's agent or employee commits acts or threats of violence against Simmons' representatives, or

(4) Simmons may terminate this Agreement if Grower fails to maintain the premises or equipment, including but not limited to electrical transmission lines, ladders, bins, and housing, in a manner that protects the safety of Simmons' representatives.

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(5) Simmons may terminate this Agreement if Grower fails to meet the PI requirements described in Paragraph 13 of this Agreement.

3. The TERMS RELATING TO PAYMENT are contained in Paragraph 5 Broiler Agreement. The Broiler Agreement describes:

- **The party liable for condemnations**
- **The method used to convert condemnations to live weight.**
- **The charges per unit for feed and chicks.**
- **The factors used when ranking you and other producers to determine your relative performance.**

I hereby acknowledge my receipt of, and that I understand, the NATURE OF THE MATERIAL RISKS faced by me, if I choose to enter into the Broiler Agreement with Simmons Foods.

Executed this_____day of _____, 20__.

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Please see Excel files -- Schedules 1, 2, 3.

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AMENDMENT NO.1 TO BROILER AGREEMENT

The Grower and Simmons wish to amend the Broiler Agreement dated 4/11/2006 to provide for an additional Retrofit Incentive. Therefore, Paragraph 5 of the Broiler Agreement is hereby amended as follows:

1. Amendment to Paragraph 5, Section e, Subsection (2) – Paragraph 5, Section e, Subsection (2) of the Broiler Agreement is hereby amended and restated to a new subparagraph (b) which states

   (b) Simmons shall pay Grower an additional per flock per Retrofit House for the first 30 flocks settled after the date this Amendment is executed by the parties. This incentive shall not be paid on any flocks settled thereafter.

UNIVERSITY OF ARKANSAS

10/6/08

DATE

SIMMONS FOODS

By:

10-16-08

DATE

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