

# TYSON FOODS INC

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 02/22/13

Address	2200 DON TYSON PARKWAY SPRINGDALE, AR 72762-6999
Telephone	479-290-4000
CIK	0000100493
Symbol	TSN
SIC Code	2015 - Poultry Slaughtering and Processing
Industry	Food Processing
Sector	Consumer/Non-Cyclical
Fiscal Year	09/30

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM S-8  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

**TYSON FOODS, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**71-0225165**  
(I.R.S. Employer Identification No.)

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**2200 Don Tyson Parkway**  
**Springdale, Arkansas 72762-6999**  
(Address of Principal Executive Offices) (Zip Code)

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**TYSON FOODS, INC. 2000 STOCK INCENTIVE PLAN**  
**TYSON FOODS, INC. EMPLOYEE STOCK PURCHASE PLAN**  
(Full title of the plan)

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**Dennis Leatherby**  
**Executive Vice President and Chief Financial Officer**  
**Tyson Foods, Inc.**  
**2200 Don Tyson Parkway**  
**Springdale, Arkansas 72762-6999**  
**Tel. (479) 290-4000**  
(Name, address, and telephone number, including area code, of agent for service)

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With a copy to:

**Daniel L. Heard**  
**Kutak Rock LLP**  
**124 West Capitol Avenue, Suite 2000**  
**Little Rock, Arkansas 72201-3706**  
**(501) 975-3000**

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Securities Exchange Act of 1934.

Large accelerated filer [  ]

Non-accelerated filer [ ] (Do not check if a smaller reporting company)

Accelerated filer [ ]

Smaller reporting company [ ]

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## CALCULATION OF REGISTRATION FEE

<b>Title of securities to be registered</b>	<b>Amount to be registered <sup>(1)(2)</sup></b>	<b>Proposed Maximum Offering Price Per Share <sup>(3)</sup></b>	<b>Proposed maximum aggregate offering price <sup>(3)</sup></b>	<b>Amount of registration fee</b>
Class A Common Stock, \$0.10 par value	56,840,000 shares	\$23.33	\$1,326,077,200	\$180,877

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933 (the "Securities Act"), the number of shares of Class A Common Stock registered hereunder includes such indeterminate number of additional shares of Class A Common Stock as may be offered or issued in the future to prevent dilution resulting from stock splits, stock dividends or similar transactions. Pursuant to Instruction F of Form S-8 and Rule 416(c) under the Securities Act, this Registration Statement also covers an indeterminate amount of plan interests being offered or sold pursuant to the plans. In accordance with Rule 457(h)(2), no registration fee is payable with respect to such interests.
  - (2) Of the 56,840,000 shares of Class A Common Stock being registered hereby, 29,340,000 shares are being registered pursuant to the Tyson Foods, Inc. 2000 Stock Incentive Plan and 27,500,000 shares are being registered pursuant to the Tyson Foods, Inc. Employee Stock Purchase Plan.
  - (3) Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(h) and Rule 457(c) under the Securities Act, based upon the average of the high and low sales prices of the shares of the registrant's Class A Common Stock as reported on the New York Stock Exchange on February 21, 2013.
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## PART I

### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information required in Part I of Form S-8 will be sent or given to employees participating in the Tyson Foods, Inc. 2000 Stock Incentive Plan and/or the Tyson Foods, Inc. Employee Stock Purchase Plan (as applicable), as specified by Rule 428(b) (1) promulgated under the Securities Act of 1933, as amended (the “Securities Act”). In accordance with Rule 428 and the requirements of Part I of Form S-8, such documents are not being filed with the Securities and Exchange Commission (the “Commission”) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 promulgated under the Securities Act. These documents and the documents incorporated herein by reference pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute the prospectus as required by Section 10(a) of the Securities Act.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The following documents previously filed by Tyson Foods, Inc. (the “Company”) with the Commission are incorporated by reference herein:

- (a) The Company’s annual report on Form 10-K for the fiscal year ended September 29, 2012, filed with the Commission on November 19, 2012;
- (b) The Company’s quarterly report on Form 10-Q for the quarter ended December 29, 2012, filed with the Commission on February 1, 2013;
- (c) The Company’s current reports on Form 8-K filed on November 19, 2012, and February 5, 2013; and
- (d) The description of the Company’s Class A Common Stock contained in the Registration Statement on Form 8-A filed with the Commission on October 14, 1997, including any amendment or report filed with the Commission for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. Any statement in a document incorporated or deemed to be incorporated by reference in this Registration Statement will be deemed to be modified or superseded to the extent that a statement contained in this Registration Statement or in any other later filed document that also is or is deemed to be incorporated by reference modifies or supersedes such statement. Any statement modified or superseded will not be deemed, except as so modified or superseded, to be a part of this Registration Statement.

#### Item 4. Description of Securities.

Not applicable.

#### Item 5. Interests of Named Experts and Counsel.

Not applicable.

## **Item 6. Indemnification of Directors and Officers.**

The Company is a corporation incorporated under the Delaware General Corporation Law (the “DGCL”). Section 102(b)(7) of the DGCL enables a corporation to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of the director’s fiduciary duty, except:

- for any breach of the director’s duty of loyalty to the corporation or its stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions); or
- for any transaction from which the director derived an improper personal benefit.

In accordance with Section 102(b)(7) of the DGCL, the Restated Certificate of Incorporation of the Company includes a provision eliminating, to the fullest extent permitted by the DGCL, the liability of the Company’s directors to the Company or its stockholders for monetary damages for breach of fiduciary duty as director.

Section 145(a) of the DGCL empowers a corporation to indemnify any present or former director, officer, employee or agent of the corporation, or any individual serving at the corporation’s request as a director, officer, employee or agent of another organization, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding provided that such director, officer, employee or agent acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, provided further that such director, officer, employee or agent had no reasonable cause to believe his or her conduct was unlawful.

The DGCL provides that the indemnification described above shall not be deemed exclusive of any other indemnification that may be granted by a corporation pursuant to its by-laws, disinterested directors’ vote, stockholders’ vote, agreement or otherwise.

The DGCL also provides corporations with the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation in a similar capacity for another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability as described above.

In accordance with Section 145(a) of the DGCL, the Company’s Fourth Amended and Restated By-Laws provide that every person who was or is a party or is threatened to be made a party to or is involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was serving as a director or officer of the Company or is or was serving at the request of the Company as a director or officer of another corporation, or as its representative in a joint venture, trust or other enterprise, shall be indemnified and held harmless to the fullest extent legally permissible under the DGCL against all expenses, liabilities and losses (including attorneys’ fees, judgments, fines and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith. Expenses incurred by a director or officer in defending such an action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay any amount if it is ultimately determined that such director or officer is not entitled to indemnification by the Company as authorized by the relevant sections of the DGCL.

Pursuant to the Company’s Fourth Amended and Restated By-Laws, the Company may maintain a directors’ and officers’ insurance policy which insures the directors or officers of the Company and those serving at the request of the Company as a director, officer, employee or agent of another enterprise, against liability asserted against such persons in such capacity whether or not such directors or officers have the right to indemnification pursuant to Delaware law. The Company currently has a policy providing directors and officers liability insurance in certain circumstances.

In addition, the Company has entered into separate indemnification agreements with certain of its current and former directors and executive officers. The indemnification agreements provide generally that the Company will indemnify and advance expenses to the fullest extent permitted by applicable law. Each director and executive officer party to an indemnification agreement is entitled to be indemnified against all expenses, judgments, penalties and amounts paid in settlement actually and reasonably incurred.



**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

See attached Exhibit Index following the signature page, which is incorporated herein by reference.

**Item 9. Undertakings.**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Springdale, State of Arkansas, this 22nd day of February, 2013.

### TYSON FOODS, INC.

By: /s/ Dennis Leatherby  
Name: Dennis Leatherby  
Title: Executive Vice President and Chief Financial Officer

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature to this registration statement appears below hereby constitutes and appoints Dennis Leatherby, R. Read Hudson and Nathan A. Hodne, or any one or more of them, as such person's true and lawful attorney-in-fact and agent with full power of substitution for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments and post-effective amendments to this registration statement, together with all necessary exhibits and any and all other documents filed in connection with such filings, to be filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended, with respect to the issuance and sale of shares of the Class A Common Stock of Tyson Foods, Inc., \$0.10 par value per share, to be issued and delivered in accordance with the Tyson Foods, Inc. 2000 Stock Incentive Plan and the Tyson Foods, Inc. Employee Stock Purchase Plan, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that each said attorney-in-fact and agent, or any substitute therefor, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

<b>SIGNATURE</b>	<b>TITLE</b>	<b>DATE</b>
<u>/s/ Donnie Smith</u> Donnie Smith	President and Chief Executive Officer (Principal Executive Officer)	February 22, 2013
<u>/s/ Dennis Leatherby</u> Dennis Leatherby	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	February 22, 2013
<u>/s/ Curt T. Calaway</u> Curt T. Calaway	Senior Vice President, Controller and Chief Accounting Officer (Principal Accounting Officer)	February 22, 2013
<u>/s/ John Tyson</u> John Tyson	Chairman of the Board of Directors	February 22, 2013
<u>/s/ Kathleen M. Bader</u> Kathleen M. Bader	Director	February 22, 2013
<u>/s/ Gaurdie E. Banister Jr.</u> Gaurdie E. Banister Jr.	Director	February 22, 2013
<u>/s/ Jim Keever</u> Jim Keever	Director	February 22, 2013
<u>/s/ Kevin M. McNamara</u> Kevin M. McNamara	Director	February 22, 2013
<u>/s/ Brad T. Sauer</u> Brad T. Sauer	Director	February 22, 2013
<u>/s/ Robert C. Thurber</u> Robert C. Thurber	Director	February 22, 2013
<u>Barbara A. Tyson</u>	Director	February __, 2013
<u>/s/ Albert C. Zapanta</u> Albert C. Zapanta	Director	February 22, 2013



## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
5.1	Opinion of Kutak Rock LLP
23.1	Consent of Kutak Rock LLP (included in the opinion filed as Exhibit 5.1)
23.2	Consent of PricewaterhouseCoopers, LLP
24.1	Power of Attorney (included on signature page of the Registration Statement)
99.1	Tyson Foods, Inc. 2000 Stock Incentive Plan
99.2	Tyson Foods, Inc. Employee Stock Purchase Plan

February 22, 2013

Tyson Foods, Inc.  
2200 Don Tyson Parkway  
Springdale, Arkansas 72762-6999

Re: REGISTRATION ON FORM S-8 OF SHARES OF CLASS A COMMON STOCK PAR VALUE \$.10 PER SHARE, OF TYSON FOODS, INC.

Ladies and Gentlemen:

We have acted as counsel to Tyson Foods, Inc., a Delaware corporation (the "Company") in connection with the preparation of a Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), to register an aggregate of 56,840,000 shares of Class A Common Stock, par value \$.10 per share, of the Company, of which 29,340,000 shares are issuable under the Tyson Foods, Inc. 2000 Stock Incentive Plan and 27,500,000 shares are issuable under the Tyson Foods, Inc. Employee Stock Purchase Plan (collectively the "Plans").

We have examined such documents, records, and matters of law as we have deemed necessary for purposes of this opinion. Based on such examination and on the assumptions set forth below, we are of the opinion that the Shares to be offered and sold, when issued and delivered in accordance with the terms and provisions of the Plans, against receipt of the consideration provided for therein, will be validly issued, fully paid, and nonassessable.

In rendering this opinion, we have (i) assumed and have not independently verified (a) the due authorization, execution and delivery of the Plans, (b) that all signatures on all certificates and other documents examined by us are genuine, and that, where any such signature purports to have been made in a corporate, governmental or other capacity, the person who affixed such signature to such certificate or other document had authority to do so, and (c) the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies and (ii) as to certain factual matters, relied upon certificates of public officials and of the Company and its officers and have not independently checked or verified the accuracy of the factual statements contained therein. In addition, our examination of matters of law has been limited to the General Corporation Law of the State of Delaware and all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting such laws and the federal laws of the United States of America and reported judicial decisions interpreting such laws, in each case as in effect on the date hereof.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

This opinion is limited to the specific issues addressed herein, and no opinion may be inferred or implied beyond that expressly stated herein. This opinion is furnished to you in connection with the filing of the Registration Statement.

Very truly yours,

/s/ Kutak Rock LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated November 19, 2012 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in Tyson Foods, Inc.'s Annual Report on Form 10-K for the year ended September 29, 2012.

/s/ PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP  
Fayetteville, AR  
February 22, 2013

**TYSON FOODS, INC.**  
**2000 STOCK INCENTIVE PLAN**  
**(As Amended and Restated as of February 1, 2013)**

**SECTION 1—DEFINITIONS**

1.1 Definitions. Whenever used herein, the masculine pronoun will be deemed to include the feminine, and the singular to include the plural, unless the context clearly indicates otherwise, and the following capitalized words and phrases are used herein with the meaning thereafter ascribed:

(a) “Affiliate” means (i) any Subsidiary; (ii) an entity that directly or through one or more intermediaries controls, is controlled by, or is under common control with the Company, as determined by the Company; or (3) any entity in which the Company has such a significant interest that the Company determines it should be deemed an “Affiliate”, as determined in the sole discretion of the Company.

(b) “Board of Directors” means the board of directors of the Company.

(c) “Change in Control” except as may otherwise be explicitly specified in a Stock Incentive Agreement or Stock Incentive Program, means any one of the following events which may occur after the date hereof:

(1) the acquisition by any individual, entity or “group,” within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act (a “Person”), of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of voting securities of the Company where such acquisition causes any such Person to own twenty-five percent (25%) or more of the combined voting power of the then outstanding voting securities then entitled to vote generally in the election of directors (the “Outstanding Voting Securities”); provided, however, that for purposes of this Section, the following shall not be deemed to result in a Change in Control, (i) any acquisition directly from the Company, unless such a Person subsequently acquires additional shares of Outstanding Voting Securities other than from the Company, in which case any such subsequent acquisition shall be deemed to be a Change in Control; or (ii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(2) a merger, consolidation, share exchange, combination, reorganization or like transaction involving the Company in which the stockholders of the Company immediately prior to such transaction do not own at least fifty percent (50%) of the value or voting power of the issued and outstanding capital stock of the Company or its successor immediately after such transaction;

(3) the sale or transfer (other than as security for the Company’s obligations) of more than fifty percent (50%) of the assets of the Company in any one transaction or a series of related transactions occurring within a one (1) year period in which the Company, any corporation controlled by the Company or the stockholders of the Company immediately prior to the transaction do not own at least fifty percent (50%) of the value or voting power of the issued and outstanding equity securities of the acquiror immediately after the transaction;

(4) the sale or transfer of more than fifty percent (50%) of the value or voting power of the issued and outstanding capital stock of the Company by the holders thereof in any one transaction or a series of related transactions occurring within a one (1) year period in which the Company, any corporation controlled by the Company or the stockholders of the Company immediately prior to the transaction do not own at least fifty percent (50%) of the value or voting power of the issued and outstanding equity securities of the acquiror immediately after the transaction;

(5) within any twelve-month period the persons who were directors of the Company immediately before the beginning of such twelve-month period (the “Incumbent Directors”) shall cease to constitute at least a majority of the Board of Directors; provided that no director whose initial assumption of office is in connection with an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) relating to the election of directors of the Company shall be deemed to be an Incumbent Director; or

(6) the dissolution or liquidation of the Company;

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provided, however, that with respect to any Stock Incentive subject to the time and form of payment rules Code Section 409A and which provides for payment due to a Change in Control, “Change in Control” shall mean “a change in ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of a corporation” as defined in Code Section 409A (as may be modified under the Stock Incentive Agreement or Stock Incentive Program and as permitted by Code Section 409A).

(d) “Code” means the Internal Revenue Code of 1986, as amended.

(e) “Committee” means the committee appointed by the Board of Directors to administer the Plan. The Board of Directors shall consider the advisability of whether the members of the Committee shall consist solely of at least two members of the Board of Directors who are both “outside directors” as defined in Treas. Reg. § 1.162-27(e) as promulgated by the Internal Revenue Service, “non-employee directors” as defined in Rule 16b-3(b)(3) as promulgated under the Exchange Act, and if applicable, who satisfy the independence requirements of the national securities exchange or nationally recognized quotation or market system on which the Stock is then traded. Notwithstanding the foregoing, with respect to Stock Incentives granted by an officer or officers of the Company and/or the Chairperson of the Committee pursuant to Section 2.3(b), the “Committee” as used in the Plan shall mean such officer or officers and/or such Chairperson, unless the context would clearly indicate otherwise.

(f) “Company” means Tyson Foods, Inc., a Delaware corporation.

(g) “Disability” unless otherwise defined by the Committee in the applicable Stock Incentive Agreement or Stock Incentive Program, has the same meaning as provided in the long-term disability plan or policy maintained or, if applicable, most recently maintained, by the Company or, if applicable, any Affiliate of the Company for the Participant. If no long-term disability plan or policy was ever maintained on behalf of the Participant or, if the determination of Disability relates to an Incentive Stock Option, Disability means that condition described in Code Section 22(e)(3), as amended from time to time. In the event of a dispute, the determination of Disability will be made by the Committee and will be supported by advice of a physician competent in the area to which such Disability relates. Notwithstanding the foregoing, with respect to any Stock Incentive subject to the time and form of payment rules Code Section 409A and which provides for payment due to a Disability, “Disability” shall mean “disability” as defined in Code Section 409A (as may be modified under the Stock Incentive Agreement or Stock Incentive Program and as permitted by Code Section 409A).

(h) “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.

(i) “Exercise Price” has the meaning ascribed to it in Section 3.2(a).

(j) “Fair Market Value” with regard to a date means the closing price at which Stock shall have been sold on that date or the last trading date prior to that date as reported by the New York Stock Exchange and published in The Wall Street Journal.

(k) “Incentive Stock Option” means an incentive stock option contemplated by the provisions of Code Section 422 or any successor thereto.

(l) “Nonqualified Stock Option” means an option that is not designated as, or otherwise intended to be, an Incentive Stock Option.

(m) “Option” means a Nonqualified Stock Option or an Incentive Stock Option.

(n) “Other Stock-Based Award” means a Stock Incentive described in Section 3.4 that has a value that is derivative of the value of, determined by reference to a number of shares of, or determined by reference to dividends payable on, Stock and may be settled in cash or in Stock. Other Stock-Based Awards may include, but not be limited to, grants of Stock, grants of rights to receive Stock in the future, or dividend equivalent rights.

(o) “Over 10% Owner” means an individual who at the time an Incentive Stock Option is granted owns Company stock possessing more than 10% of the total combined voting power of the Company or one of its Subsidiaries, determined by applying the attribution rules of Code Section 424(d).

(p) “Participant” means an individual who receives a Stock Incentive hereunder; provided, however, that for purposes of delivering Stock Incentives to persons located in the United Kingdom, only an employee who is on the payroll and performs duties as a bona fide employee of a United Kingdom-registered Affiliate shall be eligible to be a Participant hereunder.

(q) “Performance Goals” means the measurable performance objectives, if any, established by the Committee for a Performance Period that are to be achieved with respect to a Stock Incentive granted to a Participant under the Plan. Performance Goals may be described in terms of Company-wide objectives or in terms of objectives that are related to performance of the division, Affiliate, department or function within the Company or an Affiliate in which the Participant receiving the Stock Incentive

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is employed or on which the Participant's efforts have the most influence. The achievement of the Performance Goals established by the Committee for any Performance Period will be determined without regard to the effect on such Performance Goals of any acquisition or disposition by the Company of a trade or business, or of substantially all of the assets of a trade or business, during the Performance Period and without regard to any change in accounting standards by the Financial Accounting Standards Board or any successor entity. The Performance Goals established by the Committee for any Performance Period under the Plan will consist of one or more of the following:

- (1) earnings per share and/or growth in earnings per share in relation to target objectives, excluding the effect of extraordinary or nonrecurring items;
- (2) operating cash flow and/or growth in operating cash flow in relation to target objectives;
- (3) cash available in relation to target objectives;
- (4) net income and/or growth in net income in relation to target objectives, excluding the effect of extraordinary or nonrecurring items;
- (5) revenue and/or growth in revenue in relation to target objectives;
- (6) total shareholder return (measured as the total of the appreciation of, and dividends declared on, the Stock) in relation to target objectives;
- (7) return on invested capital in relation to target objectives;
- (8) return on shareholder equity in relation to target objectives;
- (9) return on assets in relation to target objectives;
- (10) return on common book equity in relation to target objectives;
- (11) operating income in relation to target objectives;
- (12) EBIT, EBITDA or EBITDAR in relation to target objectives; or
- (13) Company stock price performance as compared against a peer group of companies selected by the Committee; or
- (14) any combination of the foregoing.

If the Committee determines that, as a result of a change in the business, operations, corporate structure or capital structure of the Company, or the manner in which the Company conducts its business, or any other events or circumstances, the Performance Goals are no longer suitable, the Committee may in its discretion modify such Performance Goals or the related minimum acceptable level of achievement, in whole or in part, with respect to a period as the Committee deems appropriate and equitable, except where such action would result in the loss of the otherwise available exemption of the Stock Incentive under Section 162(m) of the Code. In such case, the Committee will not make any modification of the Performance Goals or minimum acceptable level of achievement.

(r) "Performance Period" means, with respect to a Stock Incentive, a period of time within which the Performance Goals relating to such Stock Incentive are to be measured. The Performance Period will be established by the Committee at the time the Stock Incentive is granted.

(s) "Plan" means the Tyson Foods, Inc. 2000 Stock Incentive Plan.

(t) "Separation from Service" shall mean a termination of a Participant's employment or other service relationship with the Company, subject to the following requirements:

(1) in the case of a Participant who is an employee of the Company, a termination of the Participant's employment where either (i) the Participant has ceased to perform any services for the Company and all affiliated companies that, together with the Company, constitute the "service recipient" within the meaning of Code Section 409A (collectively, the "Service Recipient") or (ii) the level of bona fide services the Participant performs for the Service Recipient after a given date (whether as an employee or as an independent contractor) permanently decreases (excluding a decrease as a result of military leave, sick leave, or other bona fide leave of absence if the period of such leave does not exceed six months, or if longer, so long as the Participant retains a right to reemployment with the Service Recipient under an applicable statute or by contract) to no more than twenty percent (20%) of the average level of bona fide services performed for the Service Recipient (whether

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as an employee or an independent contractor) over the immediately preceding 36-month period (or the full period of service if the Participant has been providing services to the Service Recipient for less than 36 months); or

(2) in the case of a Participant who is an independent contractor engaged by the Service Recipient, a termination of the Participant's service relationship with the Service Recipient where (i) the contract (or in the case of more than one contract, all contracts) under which services are performed for the Service Recipient expires, if the expiration constitutes a good-faith and complete termination of the contractual relationship; or (ii) with respect to amounts payable to the Participant under a Stock Incentive upon the termination of the independent contractor's relationship with the Service Recipient, no amount will be paid to the Participant before a date that is at least twelve (12) months after the day on which the contract expires under which the Participant performs services for the Service Recipient (or, in the case of more than one contract, all such contracts expire) and no amount payable to the Participant on that date will actually be paid to the Participant if, after the expiration of the contract (or contracts) and before that date, the Participant performs services for the Service Recipient as an independent contractor or an employee; or

(3) in any case, as may otherwise be permitted under Code Section 409A.

(u) “Stock” means the Company's Class A \$.10 par value common stock.

(v) “Stock Appreciation Right” means a stock appreciation right described in Section 3.3.

(w) “Stock Incentive Agreement” means an agreement between the Company and a Participant or other documentation evidencing an award of a Stock Incentive.

(x) “ Stock Incentive Program ” means a written program established by the Committee, pursuant to which Stock Incentives are awarded under the Plan under uniform terms, conditions and restrictions set forth in such written program.

(y) “ Stock Incentives ” means, collectively, Options, Stock Appreciation Rights, and Other Stock-Based Awards.

(z) “ Subsidiary ” means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if, with respect to Incentive Stock Options, at the time of the granting of the Option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in the chain.

(aa) “ Termination of Employment ” means the termination of the employee-employer relationship between a Participant and the Company and its Affiliates, regardless of whether severance or similar payments are made to the Participant for any reason, including, but not by way of limitation, a termination by resignation, discharge, death, Disability or retirement. The Committee will, in its absolute discretion, determine the effect of all matters and questions relating to a Termination of Employment, including, but not by way of limitation, the question of whether a leave of absence constitutes a Termination of Employment.

## SECTION 2—THE STOCK INCENTIVE PLAN

2.1 Purpose of the Plan . The Plan is intended to (a) provide incentive to officers, employees, directors, consultants and other service providers of the Company and its Affiliates to stimulate their efforts toward the continued success of the Company and to operate and manage the business in a manner that will provide for the long-term growth and profitability of the Company; (b) encourage stock ownership by officers, employees, directors, consultants and other service providers by providing them with a means to acquire a proprietary interest in the Company, acquire shares of Stock, or to receive compensation which is based upon appreciation in the value of Stock; and (c) provide a means of obtaining, rewarding and retaining such key personnel.

2.2 Stock Subject to the Plan . Subject to adjustment in accordance with Section 5.2, 90,000,000 shares of Stock (the “Maximum Plan Shares”) are hereby reserved exclusively for issuance pursuant to Stock Incentives, all or any of which may be pursuant to any one or more Stock Incentives, including without limitation, Incentive Stock Options. At no time may the Company have outstanding Stock Incentives and shares of Stock issued in respect of Stock Incentives under the Plan in excess of the Maximum Plan Shares. Shares of Stock shall not be deemed to have been issued pursuant to the Plan with respect to any portion of an award that is settled in cash. The shares of Stock attributable to the nonvested, unpaid, unexercised, unconverted or otherwise unsettled portion of any Stock Incentive that is forfeited or cancelled or expires or terminates for any reason without becoming vested, paid, exercised, converted or otherwise settled in full will again be available for purposes of the Plan. For purposes of determining the number of shares of Stock issued upon the exercise, settlement or grant of a Stock Incentive under this Section, any shares of Stock withheld to satisfy tax withholding obligations or the Exercise Price shall be considered issued under the Plan.

### 2.3 Administration of the Plan .

(a) The Plan is administered by the Committee. The Committee has full authority in its discretion to determine the officers, employees, directors, consultants and service providers of the Company or its Affiliates to whom Stock Incentives will be granted and the terms and provisions of Stock Incentives, subject to the Plan. Subject to the provisions of the Plan, the Committee has full and conclusive authority to interpret the Plan; to prescribe, amend and rescind rules and regulations relating to the Plan; to determine the terms and provisions of the respective Stock Incentive Agreements and to make all other determinations necessary or advisable for the proper administration of the Plan. The Committee’s determinations under the Plan need not be uniform and may be made by it selectively among persons who receive, or are eligible to receive, awards under the Plan (whether or not such persons are similarly situated). The Committee’s decisions are final and binding on all Participants.

(b) Notwithstanding any other provision of this Plan, the Board of Directors may by resolution authorize one or more officers of the Company and/or the Chairman of the Committee to do one or more of the following: (1) designate individuals (other than officers or directors of the Company or any Affiliate who are subject to Section 16 of the Exchange Act) to receive Stock Incentives under the Plan; (2) determine the number of shares of Stock subject to such Stock Incentives; provided however, that the resolution shall specify the total number of shares of Stock that may be granted subject to such Stock Incentives; (3) interpret the provisions of a Stock Incentive Agreement or Stock Incentive Program; and / or (4) determine the treatment of Stock Incentives upon a Termination of Employment or Separation from Service.

2.4 Eligibility and Limits . Stock Incentives may be granted only to officers, employees, directors, consultants and other service providers of the Company or any Affiliate of the Company; provided, however, that an Incentive Stock Option may only be granted to



an employee of the Company or any Subsidiary. In the case of Incentive Stock Options, the aggregate Fair Market Value (determined as at the date an Incentive Stock Option is granted) of Stock with respect to which stock options intended to meet the requirements of Code Section 422 become exercisable for the first time by an individual during any calendar year under all plans of the Company and its Subsidiaries may not exceed \$100,000; provided further, that if the limitation is exceeded, the Incentive Stock Option(s) which cause the limitation to be exceeded will be treated as Nonqualified Stock Option(s). Notwithstanding any of the foregoing to the contrary, for purposes of delivering Stock Incentives to persons located in the United Kingdom, only an employee who is on the payroll and performs duties as a bona fide employee of a United Kingdom-registered Affiliate shall be eligible to be a Participant hereunder.

### **SECTION 3—TERMS OF STOCK INCENTIVES**

#### **3.1 Terms and Conditions of All Stock Incentives.**

(a) The number of shares of Stock as to which a Stock Incentive may be granted will be determined by the Committee in its sole discretion, subject to the provisions of Section 2.2 as to the total number of shares available for grants under the Plan and subject to the limits on Options, Stock Appreciation Rights and other Stock Incentives as described in the following sentence. To the extent required under Section 162(m) of the Code and the regulations thereunder for compensation to be treated as qualified performance-based compensation, the maximum number of shares of Stock with respect to which (1) Options, (2) Stock Appreciation Rights and (3) Other Stock-Based Awards that are not settled in cash (to the extent they are granted with the intent that they qualify as performance-based compensation under Section 162(m) of the Code) may be granted during any calendar year to any employee may not exceed 1,000,000, subject to adjustment in accordance with Section 5.2 and the maximum aggregate dollar amount that may be paid in any calendar year to any employee with respect to Other Stock-Based Awards that are payable in cash may not exceed Five Million Dollars (\$5,000,000). In applying this limitation, if an Option or Stock Appreciation Right, or any portion thereof, granted to an employee is cancelled or repriced for any reason, then the shares of Stock attributable to such cancellation or repricing either shall continue to be counted as an outstanding grant or shall be counted as a new grant of shares of Stock, as the case may be, against the affected employee's 1,000,000 share limit for the appropriate calendar year.

(b) Each Stock Incentive will either be evidenced by a Stock Incentive Agreement in such form and containing such terms, conditions and restrictions as the Committee may determine to be appropriate, including without limitation, Performance Goals or other performance criteria, if any, that must be achieved as a condition to vesting or settlement of the Stock Incentive, or be made subject to the terms of a Stock Incentive Program, containing such terms, conditions and restrictions as the Committee may determine to be appropriate, including without limitation, Performance Goals or other performance criteria, if any, that must be achieved as a condition to vesting or payment of the Stock Incentive. Each Stock Incentive Agreement or Stock Incentive Program is subject to the terms of the Plan and any provisions contained in the Stock Incentive Agreement or Stock Incentive Program that are inconsistent with the Plan are null and void. Performance Goals, if any, shall be established before twenty-five percent (25%) of the Performance Period has elapsed, but in no event later than within ninety (90) days after the first day of a Performance Period. At the time any Performance Goals are established, the outcome as to whether the Performance Goals will be met must be substantially uncertain. If any Performance Goals are established as a condition to vesting or settlement of a Stock Incentive and such Performance Goal is not based solely on the increase in the Fair Market Value of the Stock, the Committee shall certify in writing that the applicable Performance Goals were in fact satisfied before such Stock Incentive is vested or settled, as applicable. Each Stock Incentive Agreement or Stock Incentive Program is subject to the terms of the Plan and any provisions contained in the Stock Incentive Agreement or Stock Incentive Program that are inconsistent with the Plan are null and void. To the extent a Stock Incentive is subject to Performance Goals with the intent that the Stock Incentive constitute performance-based compensation under Code Section 162(m), the Committee shall comply with all applicable requirements under Code Section 162(m) and the rules and regulations promulgated thereunder in granting, modifying, and settling such Stock Incentive. The Committee may, but is not required to, structure any Stock Incentive so as to qualify as performance-based compensation under Code Section 162(m).

(c) The date a Stock Incentive is granted will be the date on which the Committee has approved the terms and conditions of the Stock Incentive and has determined the recipient of the Stock Incentive and the number of shares covered by the Stock Incentive, and has taken all such other actions necessary to complete the grant of the Stock Incentive.

(d) Any Stock Incentive may be granted in connection with all or any portion of a previously or contemporaneously granted Stock Incentive. Exercise or vesting of a Stock Incentive granted in connection with another Stock Incentive may result in a pro rata surrender or cancellation of any related Stock Incentive, as specified in the applicable Stock Incentive Agreement or Stock Incentive Program.

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(e) Unless otherwise permitted by the Committee, Stock Incentives are not transferable or assignable except as provided in this Section. Following a Participant's death, Stock Incentives shall be transferred or assigned to the Designated Beneficiary; or if the Participant does not have a Designated Beneficiary, to the Participant's surviving spouse; or if the Participant is unmarried, to the Participant's estate. Notwithstanding the foregoing, the Committee shall not permit Incentive Stock Options to be transferred or assigned except by will or by the laws of descent and distribution governing the State in which the Participant was domiciled at the time of the Participant's death. Stock Incentives are exercisable, during the Participant's lifetime, only by the Participant or by the legal representative of the Participant. In the event of the death of the Participant, Stock Incentives are only exercisable by the Designated Beneficiary; or if the Participant does not have a Designated Beneficiary, by the Participant's surviving spouse; or if the Participant is unmarried, by the legal representative of the Participant's estate if one is appointed within ninety (90) days of the Participant's death; or if no such legal representative is appointed, by the person(s) taking under the laws of descent and distribution governing the State in which the Participant was domiciled at the time of the Participant's death. For purposes of this Section, the Participant's 'Designated Beneficiary' is the beneficiary of the Participant designated in writing in the manner and within the time frame provided by the Committee.

(f) After the date of grant of a Stock Incentive, the Committee may, in its sole discretion, modify the terms and conditions of a Stock Incentive, except to the extent that such modification would be inconsistent with other provisions of the Plan or would adversely affect the rights of a Participant under the Stock Incentive (except as otherwise permitted under the Plan or Stock Incentive) or would be inconsistent with other provisions of the Plan.

3.2 Terms and Conditions of Options. Each Option granted under the Plan must be evidenced by a Stock Incentive Agreement. At the time any Option is granted, the Committee will determine whether the Option is to be an Incentive Stock Option described in Code Section 422 or a Nonqualified Stock Option, and the Option must be clearly identified as to its status as an Incentive Stock Option or a Nonqualified Stock Option. Incentive Stock Options may only be granted to employees of the Company or any Subsidiary. At the time any Incentive Stock Option granted under the Plan is exercised, the Company will be entitled to legend the certificates representing the shares of Stock purchased pursuant to the Option to clearly identify them as representing the shares purchased upon the exercise of an Incentive Stock Option. An Incentive Stock Option may only be granted within ten (10) years from the earlier of the date the Plan is adopted or approved by the Company's stockholders.

(a) Option Price. Subject to adjustment in accordance with Section 5.2 and the other provisions of this Section 3.2, the exercise price (the "Exercise Price") per share of Stock purchasable under any Option must be as set forth in the applicable Stock Incentive Agreement, but in no event may it be less than the Fair Market Value on the date the Option is granted with respect to an Incentive Stock Option. With respect to each grant of an Incentive Stock Option to a Participant who is an Over 10% Owner, the Exercise Price may not be less than 110% of the Fair Market Value on the date the Option is granted.

(b) Option Term. Any Incentive Stock Option granted to a Participant who is not an Over 10% Owner is not exercisable after the expiration of ten (10) years after the date the Option is granted. Any Incentive Stock Option granted to an Over 10% Owner is not exercisable after the expiration of five (5) years after the date the Option is granted. The term of any Nonqualified Stock Option must be as specified in the applicable Stock Incentive Agreement.

(c) Payment. Payment for all shares of Stock purchased pursuant to the exercise of an Option will be made in any form or manner authorized by the Committee in the Stock Incentive Agreement or by amendment thereto, including, but not limited to, cash or, if the Stock Incentive Agreement provides, but in any case subject to such procedures or restrictions as the Committee may impose:

(1) by delivery to the Company of a number of shares of Stock owned by the holder having an aggregate Fair Market Value of not less than the product of the Exercise Price multiplied by the number of shares the Participant intends to purchase upon exercise of the Option on the date of delivery;

(2) in a cashless exercise through a broker; or

(3) by having a number of shares of Stock withheld, the Fair Market Value of which as of the date of exercise is sufficient to satisfy the Exercise Price.

In its discretion, the Committee also may authorize (at the time an Option is granted or thereafter) Company financing to assist the Participant as to payment of the Exercise Price on such terms as may be offered by the Committee in its discretion. Payment must be made at the time that the Option or any part thereof is exercised, and no shares may be issued or delivered upon exercise of an option until full payment has been made by the Participant. The holder of an Option, as such, has none of the rights of a stockholder.

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(d) Conditions to the Exercise of an Option. Each Option granted under the Plan is exercisable by whom, at such time or times, or upon the occurrence of such event or events, and in such amounts, as the Committee specifies in the Stock Incentive Agreement; provided, however, that subsequent to the grant of an Option, the Committee, at any time before complete termination of such Option, may accelerate the time or times at which such Option may be exercised in whole or in part, including, without limitation, upon a Change in Control and may permit the Participant or any other designated person to exercise the Option, or any portion thereof, for all or part of the remaining Option term, notwithstanding any provision of the Stock Incentive Agreement to the contrary.

(e) Termination of Incentive Stock Option. With respect to an Incentive Stock Option, in the event of Termination of Employment of a Participant, the Option or portion thereof held by the Participant which is unexercised will expire, terminate, and become unexercisable no later than the expiration of three (3) months after the date of Termination of Employment; provided, however, that in the case of a holder whose Termination of Employment is due to death or Disability, one (1) year will be substituted for such three (3) month period; provided, further that such time limits may be exceeded by the Committee under the terms of the grant, in which case, the Incentive Stock Option will be a Nonqualified Stock Option if it is exercised after the time limits that would otherwise apply. For purposes of this Subsection (e), Termination of Employment of the Participant will not be deemed to have occurred if the Participant is employed by another corporation (or a parent or subsidiary corporation of such other corporation) which has assumed the Incentive Stock Option of the Participant in a transaction to which Code Section 424(a) is applicable.

(f) Special Provisions for Certain Substitute Options. Notwithstanding anything to the contrary in this Section 3.2, any Option issued in substitution for an option previously issued by another entity, which substitution occurs in connection with a transaction to which Code Section 424(a) is applicable, may provide for an exercise price computed in accordance with such Code Section and the regulations thereunder and may contain such other terms and conditions as the Committee may prescribe to cause such substitute Option to contain as nearly as possible the same terms and conditions (including the applicable vesting and termination provisions) as those contained in the previously issued option being replaced thereby.

(g) No Reload Grants. Options shall not be granted under the Plan in consideration for and shall not be conditioned upon the delivery of shares of Stock to the Company in payment of the exercise price and/or tax withholding obligation under any other option held by a Participant.

(h) No Repricing. Except as provided in Section 5.2, without the approval of the Company's stockholders the Exercise Price of an Option may not be reduced, directly or indirectly, after the grant of the Option, including any surrender of the Option in consideration of, or in exchange for: (1) the grant of a new Option having an Exercise Price below that of the Option that was surrendered; (2) Stock; (3) cash; or (4) any other Stock Incentive.

3.3 Terms and Conditions of Stock Appreciation Rights. Each Stock Appreciation Right granted under the Plan must be evidenced by a Stock Incentive Agreement. A Stock Appreciation Right entitles the Participant to receive the excess of (1) the Fair Market Value of a specified or determinable number of shares of the Stock at the time of payment or exercise over (2) a specified or determinable price which, in the case of a Stock Appreciation Right granted in connection with an Option, may not be less than the Exercise Price for that number of shares subject to that Option. A Stock Appreciation Right granted in connection with a Stock Incentive may only be exercised to the extent that the related Stock Incentive has not been exercised, paid or otherwise settled.

(a) Settlement. Upon settlement of a Stock Appreciation Right, the Company must pay to the Participant the appreciation in cash or shares of Stock (valued at the aggregate Fair Market Value on the date of payment or exercise) as provided in the Stock Incentive Agreement or, in the absence of such provision, as the Committee may determine.

(b) Conditions to Exercise. Each Stock Appreciation Right granted under the Plan is exercisable or payable at such time or times, or upon the occurrence of such event or events, and in such amounts, as the Committee specifies in the Stock Incentive Agreement; provided, however, that subsequent to the grant of a Stock Appreciation Right, the Committee, at any time before complete termination of such Stock Appreciation Right, may accelerate the time or times at which such Stock Appreciation Right may be exercised or paid in whole or in part.

(c) No Repricing or Buyouts. Except as provided in Section 5.2, without the approval of the Company's stockholders, the price of a Stock Appreciation Right may not be reduced, directly or indirectly, after the grant of the Stock Appreciation Right, including any surrender of the Stock Appreciation Right in consideration of, or in exchange for: (1) the grant of a new Stock Appreciation Right having a price below that of the Stock Appreciation Right that was surrendered; (2) Stock; (3) cash, or (4) any other Stock Incentive.

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3.4 Terms and Conditions of Other Stock-Based Awards . An Other Stock-Based Award shall entitle the Participant to receive, at a specified future date, payment of an amount equal to all or a portion of any of the following: (i) a number of, or the value of, a specified or determinable number of shares of Stock granted by the Committee, (ii) a percentage or multiple of the value of a specified number of shares of Stock determined by the Committee, or (iii) dividend equivalents on a specified, or a determinable number, or a percentage or multiple of a specified number, of shares of Stock determined by the Committee. At the time of the grant, the Committee must determine the specified number of shares of Stock or the percentage or multiple of the specified number of shares of Stock, as may be applicable; and the Performance Goals or other performance criteria, if any, applicable to the determination of the ultimate payment value of the Other Stock-Based Award. The Committee may provide for an alternate percentage or multiple under certain specified conditions.

(a) Payment . Payment in respect of Other Stock-Based Awards may be made by the Company in cash or shares of Stock (valued at Fair Market Value as of the date payment is owed) as provided in the applicable Stock Incentive Agreement or Stock Incentive Program or, in the absence of such provision, as the Committee may determine.

(b) Conditions to Payment . Each Other Stock-Based Award granted under the Plan shall be payable at such time or times, or upon the occurrence of such event or events, and in such amounts, as the Committee may specify in the applicable Stock Incentive Agreement or Stock Incentive Program; provided, however, that subsequent to the grant of an Other Stock-Based Award, the Committee, at any time before complete termination of such Other Stock-Based Award, may accelerate the time or times at which such Other Stock-Based Award may be paid in whole or in part.

3.5 Treatment of Awards Upon Termination of Service . Except as otherwise provided by Plan Section 3.2(e), any award under this Plan to a Participant who has experienced a Termination of Employment, Separation from Service, or termination of some other service relationship with the Company and its Affiliates may be cancelled, accelerated, paid or continued, as provided in the applicable Stock Incentive Agreement or Stock Incentive Program, or, in the absence of such provision, as the Committee may determine. The portion of any award exercisable in the event of continuation or the amount of any payment due under a continued award may be adjusted by the Committee to reflect the Participant's period of service from the date of grant through the date of the Participant's Termination of Employment, Separation from Service, or termination of some other service relationship or such other factors as the Committee determines are relevant to its decision to continue the award.

#### **SECTION 4—RESTRICTIONS ON STOCK**

4.1 Escrow of Shares . Any certificates representing the shares of Stock issued under the Plan will be issued in the Participant's name, but, if the applicable Stock Incentive Agreement or Stock Incentive Program so provides, the shares of Stock will be held by a custodian designated by the Committee (the "Custodian"). Each applicable Stock Incentive Agreement or Stock Incentive Program providing for transfer of shares of Stock to the Custodian may require a Participant to complete an irrevocable stock power appointing the Custodian or the Custodian's designee as the attorney-in-fact for the Participant for the term specified in the applicable Stock Incentive Agreement or Stock Incentive Program, with full power and authority in the Participant's name, place and stead to transfer, assign and convey to the Company any shares of Stock held by the Custodian for such Participant, if the Participant forfeits the shares under the terms of the applicable Stock Incentive Agreement or Stock Incentive Program. During the period that the Custodian holds the shares subject to this Section, the Participant is entitled to all rights, except as provided in the applicable Stock Incentive Agreement or Stock Incentive Program, applicable to shares of Stock not so held. Any dividends declared on shares of Stock held by the Custodian must as provided in the applicable Stock Incentive Agreement or Stock Incentive Program, be paid directly to the Participant or, in the alternative, be retained by the Custodian or by the Company until the expiration of the term specified in the applicable Stock Incentive Agreement or Stock Incentive Program and shall then be delivered, together with any proceeds, with the shares of Stock to the Participant or to the Company, as applicable.

4.2 Restrictions on Transfer . The Participant does not have the right to make or permit to exist any disposition of the shares of Stock issued pursuant to the Plan except as provided in the Plan or the applicable Stock Incentive Agreement or Stock Incentive Program. Any disposition of the shares of Stock issued under the Plan by the Participant not made in accordance with the Plan or the applicable Stock Incentive Agreement or Stock Incentive Program will be void. The Company will not recognize, or have the duty to recognize, any disposition not made in accordance with the Plan and the applicable Stock Incentive Agreement or Stock Incentive Program, and the shares so transferred will continue to be bound by the Plan and the applicable Stock Incentive Agreement or Stock Incentive Program.

## SECTION 5—GENERAL PROVISIONS

5.1 Withholding. The Company must deduct from all cash distributions under the Plan any taxes required to be withheld by federal, state or local government. Whenever the Company proposes or is required to issue or transfer shares of Stock under the Plan or upon the vesting of any Stock Incentive, the Company has the right to require the recipient to remit to the Company an amount sufficient to satisfy any federal, state and local withholding tax requirements prior to the delivery of any certificate or certificates for such shares or the vesting of such Stock Incentive pursuant to such procedures as the Committee may establish. A Participant may satisfy the withholding tax in cash, cash equivalents, or, if and to the extent the applicable Stock Incentive Agreement, Stock Incentive Program, or Committee procedure so provides, a Participant may elect to have the number of shares of Stock he is to receive reduced by, or tender back to the Company, the smallest number of whole shares of Stock which, when multiplied by the Fair Market Value of the shares of Stock, is sufficient to satisfy federal, state and local, if any, tax withholding obligation arising from exercise or payment of a Stock Incentive.

### 5.2 Changes in Capitalization; Merger; Liquidation.

(a) The number and kind of shares of Stock reserved for the grant of Options, Stock Appreciation Rights and Other Stock-Based Awards; the number and kind of shares of Stock reserved for issuance upon the exercise, settlement, vesting, grant, or payment as applicable, of each outstanding Option, Stock Appreciation Right, and Other Stock-Based Award; the Exercise Price of each outstanding Option; the specified number and kind of shares of Stock to which each outstanding Stock Appreciation Right and Other Stock-Based Award pertains; the total number of shares of Stock that may be subject to Stock Incentives granted by one or more officers of the Company and/or the Chairperson of the Committee; the maximum number of shares as to which Options, Stock Appreciation Rights, and other Stock Incentives may be granted to an employee during any calendar year; and the threshold price of each Stock Appreciation Right, shall be proportionately adjusted for any nonreciprocal transaction between the Company and the holders of capital stock of the Company that causes the per share value of the shares of Stock underlying a Stock Incentive to change, such as a stock dividend, stock split, spinoff, rights offering, or recapitalization through a large, nonrecurring cash dividend (each, an “Equity Restructuring”).

(b) In the event of a merger, consolidation, reorganization, extraordinary dividend, sale of substantially all of the Company’s assets, other change in capital structure of the Company, tender offer for shares of Stock, or a Change in Control, that in each case does not constitute an Equity Restructuring, the Committee may make such adjustments with respect to Stock Incentives and take such other action as it deems necessary or appropriate, including, without limitation, the substitution of new stock incentives by the Company or by a third party, the settlement of any Stock Incentive in cash or cash equivalents, the acceleration of Stock Incentives, the removal of restrictions on outstanding Stock Incentives, other adjustments to outstanding Stock Incentives or the termination of outstanding Stock Incentives in exchange for the cash value, if any, determined in good faith by the Committee of the vested and/or unvested portion of the Stock Incentives, all as may be provided in the applicable Stock Incentive Agreement or Stock Incentive Program or, if not expressly addressed therein, as the Committee subsequently may determine in its sole discretion. The Committee may also use the Plan to assume stock incentives not originally granted under the Plan. Any adjustment pursuant to this Section 5.2 may provide, in the Committee’s discretion, for the elimination without payment therefor of any fractional shares that might otherwise become subject to any Stock Incentive, but except as set forth in this Section may not otherwise diminish the then value of the Stock Incentive.

(c) Notwithstanding any other provision of this Plan to the contrary, in taking any action pursuant to Subsection (a) or (b) with respect to a Nonqualified Stock Option or a Stock Appreciation Right, the Committee shall consider any provisions of Code Section 409A and the regulations thereunder that are required to be followed as a condition of the Nonqualified Stock Option and the Stock Appreciation Right not being treated as the grant of a new Option or Stock Appreciation Right or a change in the form of payment. Any adjustment described in the preceding sentence may include a substitution in whole or in part of other equity securities of the issuer in lieu of the shares of Stock that are subject to the Stock Incentive.

(d) The existence of the Plan and the Stock Incentives granted pursuant to the Plan shall not affect in any way the right or power of the Company to make or authorize any adjustment, reclassification, reorganization or other change in its capital or business structure, any merger or consolidation of the Company, any issue of debt or equity securities having preferences or priorities as to the Stock or the rights thereof, the dissolution or liquidation of the Company, any sale or transfer of all or any part of its business or assets, or any other corporate act or proceeding.

5.3 Stock Incentives to Non-U.S. Employees. The Committee shall have the power and authority to determine which Affiliates shall be covered by this Plan and which employees outside the United States of America shall be eligible to participate in the Plan. The Committee may adopt, amend or rescind rules, procedures or sub-plans relating to the operation and administration of the Plan to



accommodate the specific requirements of local laws, procedures, and practices. Without limiting the generality of the foregoing, the Committee is specifically authorized to adopt rules, procedures and sub-plans with provisions that limit or modify rights on death, disability or retirement or on Separation from Service or Termination of Employment; available methods of exercise or settlement of a Stock Incentive; payment of income, social insurance contributions and payroll taxes; the withholding procedures and handling of any stock certificates or other indicia of ownership which vary with local requirements. The Committee may also adopt rules, procedures or sub-plans applicable to particular Affiliates or locations.

5.4 Cash Awards. The Committee may, at any time and in its discretion, grant to any holder of a Stock Incentive the right to receive, at such times and in such amounts as determined by the Committee in its discretion, a cash amount which is intended to reimburse such person for all or a portion of the federal, state and local income taxes imposed upon such person as a consequence of the receipt of the Stock Incentive or the exercise of rights thereunder.

5.5 Compliance with Code.

(a) Code Section 422. All Incentive Stock Options to be granted hereunder are intended to comply with Code Section 422, and all provisions of the Plan and all Incentive Stock Options granted hereunder must be construed in such manner as to effectuate that intent.

(b) Code Section 409A. Except to the extent provided otherwise by the Committee, Stock Incentives under the Plan are intended to satisfy the requirements of Section 409A of the Code (and the Treasury Department guidance and regulations issued thereunder) so as to avoid the imposition of any additional taxes or penalties under Code Section 409A. If the Committee determines that a Stock Incentive, Stock Incentive Agreement, Stock Incentive Program, payment, distribution, deferral election, transaction or any other action or arrangement contemplated by the provisions of the Plan would, if undertaken, cause a Participant to become subject to any additional taxes or other penalties under Code Section 409A, then unless the Committee provides otherwise, such Stock Incentive, Stock Incentive Agreement, Stock Incentive Program, payment, distribution, deferral election, transaction or other action or arrangement shall not be given effect to the extent it causes such result and the related provisions of the Plan, Stock Incentive Agreement, and / or Stock Incentive Program will be deemed modified, or, if necessary, suspended in order to comply with the requirements of Code Section 409A to the extent determined appropriate by the Committee, in each case without the consent of or notice to the Participant.

5.6 Right to Terminate Employment or Service Relationship. Nothing in the Plan or in any Stock Incentive Agreement confers upon any Participant the right to continue as an officer, employee, director or service provider of the Company or any of its Affiliates or affect the right of the Company or any of its Affiliates to terminate the Participant's employment or service relationship at any time.

5.7 Non-alienation of Benefits. Other than as specifically provided with regard to the death of a Participant, no benefit under the Plan may be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge; and any attempt to do so shall be void. No such benefit may, prior to receipt by the Participant, be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the Participant.

5.8 Restrictions on Delivery and Sale of Shares; Legends. Each Stock Incentive is subject to the condition that if at any time the Committee, in its discretion, shall determine that the listing, registration or qualification of the shares covered by such Stock Incentive upon any securities exchange or under any state or federal law is necessary or desirable as a condition of or in connection with the granting of such Stock Incentive or the purchase or delivery of shares thereunder, the delivery of any or all shares pursuant to such Stock Incentive may be withheld unless and until such listing, registration or qualification shall have been effected. If a registration statement is not in effect under the Securities Act of 1933 or any applicable state securities laws with respect to the shares of Stock purchasable or otherwise deliverable under Stock Incentives then outstanding, the Committee may require, as a condition of exercise of any Option or as a condition to any other delivery of Stock pursuant to a Stock Incentive, that the Participant or other recipient of a Stock Incentive represent, in writing, that the shares received pursuant to the Stock Incentive are being acquired for investment and not with a view to distribution and agree that the shares will not be disposed of except pursuant to an effective registration statement, unless the Company shall have received an opinion of counsel that such disposition is exempt from such requirement under the Securities Act of 1933 and any applicable state securities laws. The Company may include on certificates representing shares delivered pursuant to a Stock Incentive such legends referring to the foregoing representations or restrictions or any other applicable restrictions on resale as the Company, in its discretion, shall deem appropriate.

5.9 Listing and Legal Compliance. The Committee may suspend the exercise or payment of any Stock Incentive so long as it determines that securities exchange listing or registration or qualification under any securities laws is required in connection therewith and has not been completed on terms acceptable to the Committee.

5.10 Termination and Amendment of the Plan. The Board of Directors at any time may amend or terminate the Plan without stockholder approval; provided, however, that the Board of Directors may condition any amendment on the approval of stockholders of the Company if such approval is necessary or advisable with respect to tax, securities or other applicable laws. No such termination or amendment without the consent of the holder of a Stock Incentive may adversely affect the rights of the Participant under such Stock Incentive.

5.11 Stockholder Approval. The Plan must be submitted to the stockholders of the Company for their approval within twelve (12) months before or after the adoption of the Plan by the Board of Directors of the Company. If such approval is not obtained, any Stock Incentive granted hereunder will be void.

5.12 Choice of Law. The laws of the State of Delaware govern the Plan, to the extent not preempted by federal law, without reference to the principles of conflict of laws.

IN WITNESS WHEREOF, the Company has executed this Plan on this 1st day of February, 2013.

**TYSON FOODS, INC.**

By: /s/ Kenneth Kimbro  
Title: EVP and Chief HR Officer

**TYSON FOODS, INC.**  
**EMPLOYEE STOCK PURCHASE PLAN**  
**(As Amended and Restated as of February 1, 2013)**

**PURPOSE OF THE PLAN**

The purpose of the Tyson Foods, Inc. Employee Stock Purchase Plan (the “Plan”) is to provide the employees of Tyson Foods, Inc. (“Tyson”) and its Participating Affiliates a convenient way to acquire shares of Tyson’s Class A Common Stock through periodic investment and thus maintain and stimulate employee interest in the growth and profitability of Tyson by means of an opportunity to share in a proprietary interest in Tyson. The purpose of this amendment and restatement of the Plan is to incorporate all prior amendments to the Plan since it was last amended and restated as effective October 1, 2008. This amendment and restatement is effective as of February 1, 2013, subject to the approval by the shareholders of Tyson at the meeting scheduled on the same date. In the event this restatement is not approved by the shareholders of Tyson at such meeting, the Plan will continue in effect as prior to this restatement.

**ARTICLE I**

**Definitions**

1.1 Affiliate. “Affiliate” shall include all wholly-owned subsidiaries of Tyson and any other entity which may be designated from time to time as such by the Board of Directors of Tyson.

1.2 Base Earnings. “Base Earnings” means the amount of regular salary or wages, including overtime payments and commission payments, but does not include discretionary and non-discretionary performance incentive payments or other irregular payments made by an Employer to a Participant.

1.3 Committee. “Committee” shall mean the administrative committee appointed by the Board of Directors of Tyson to carry out the purposes of the Plan as set forth in Section 5.1 below.

1.4 Effective Date. The “Effective Date” of this Plan, as amended and restated, is February 1, 2013.

1.5 Eligible Employee. “Eligible Employee” means any person (including a corporate officer) who is employed as a common law employee and classified as working in the regular service of Tyson or a Participating Affiliate; provided, however, such term shall not include any person who is a member of a collective bargaining unit and who is covered by a collective bargaining agreement which does not provide for coverage of such person under this Plan.

1.6 Employer. “Employer” means Tyson and all Participating Affiliates.

1.7 Leave of Absence. “Leave of Absence” means absence from the active service with Tyson or an Affiliate, with the permission of the Employer, by reason of illness, military service, or for any other reason as approved or allowed by the Employer’s personnel policies. Such Leave of Absence will not terminate an Eligible Employee’s Service, provided he returns to active employment at the expiration of his leave in accordance with his Employer’s policy with respect to permitted absences. An Eligible Employee whose Service is terminated and who is subsequently re-employed by Tyson or an Affiliate will, for all purposes of the Plan, be considered a new employee as of the effective date of his reemployment.

1.8 Pay Period, Payday. “Pay Period” means the interval of a time for which an Eligible Employee regularly receives his compensation, and “Payday” means the day on which the Eligible Employee regularly receives his compensation for the Pay Period.

1.9 Participant. “Participant” means an Eligible Employee who has elected to participate in the Plan in accordance with Article II until the Participant withdraws from the Plan and receives a complete distribution of Stock and cash credited to his Plan account.

1.10 Participating Affiliate. “Participating Affiliate” means an Affiliate that has adopted the Plan with the consent of the Board of Directors of Tyson. If an organization which is or has become an Affiliate ceases to be an Affiliate, such organization shall be deemed to have withdrawn from participation in the Plan.



1.11 Payroll Deduction Authorization. The “Payroll Deduction Authorization” shall be in a form specified by the Plan Administrator and shall direct the Employer to withhold from a Participant’s paycheck a specified dollar amount or a specified percentage of his Base Earnings to be used for the purchase of Stock under this Plan.

1.12 Plan Administrator. The “Plan Administrator” shall be responsible for the administration of the Plan and, in lieu of any designation by the Board of Directors of Tyson to the contrary, Tyson shall serve as the Plan Administrator and shall act through the Committee as its representative.

1.13 Prevailing Market Price. The term “Prevailing Market Price” shall mean:

(a) the actual purchase price if purchased in the open market; or

(b) if treasury shares are purchased:

(i) if the Stock is not at the time listed or admitted to trading on a stock exchange or in the over-the-counter market under the National Association of Securities Dealers, Inc. Automated Quotation System (“NASDAQ”), the Prevailing Market Price shall be the mean between the lowest reported bid price and highest reported asked price of the Stock on the date in question in the over-the-counter market, as such prices are reported in a publication of general circulation selected by Tyson and regularly reporting the market price of the Stock in such market; or

(ii) if the Stock is at the time listed or admitted to trading in the over-the-counter market under NASDAQ or on any stock exchange, then the Prevailing Market Price shall be the reported closing sale price of the Stock on the date in question on the principal exchange on which the Stock is then listed or admitted to trading. If no reported sale of Stock takes place on the date in question, then the reported closing asked price of the Stock on such date shall be determinative of Prevailing Market Price; or

(c) if a combination of treasury shares and shares purchased in the open market are utilized, then the Prevailing Market Price shall be determined by the actual purchase(s).

1.14 Service. “Service” means that period of continuous uninterrupted employment with Tyson or any one or more of its Affiliates from an Eligible Employee’s first day of employment until his date of termination of employment with all Affiliates. However, in the case of an Affiliate which has been acquired by Tyson through the acquisition of substantially all of the assets or all of the stock of the Affiliate, Service shall include employment prior to the date on which such Affiliate is designated as a Participating Affiliate on such terms as the Board of Directors of Tyson may expressly provide. Service with two or more Affiliates during consecutive periods shall be considered continuous service with one Affiliate.

1.15 Stock. All references herein to “Stock” shall mean shares of Class A Common Stock of Tyson.

1.16 Termination of Service. “Termination of Service” means any absence from the employment of Tyson or any Affiliate (including, but not limited to, absences by reason of discharge or resignation) which is not deemed a Leave of Absence as defined herein.

## **ARTICLE II**

### **Eligibility to Participate**

Except as provided below, each Eligible Employee of Tyson or of a Participating Affiliate who has completed three full calendar months of Service shall be eligible to participate in the Plan commencing on the first Payday that falls on or after the first day of the immediately succeeding month.

## **ARTICLE III**

### **Employee Participation and Contributions**

3.1 Voluntary, Non-Discriminatory Plan. Participation in this Plan shall be voluntary and all Participants shall have the same rights and privileges under the Plan, except to the extent the terms of the Plan otherwise provide.

3.2 How an Employee Elects to Participate. Except as provided in Sections 3.9 and 4.2 below, an Eligible Employee may elect to participate in the Plan by executing or otherwise authorizing a “Payroll Deduction Authorization” (within the time period prescribed by the Plan Administrator) prior to the Payday on which the Eligible Employee will begin participation. By confirming a Payroll Deduction Authorization, an Eligible Employee also affirms his acceptance of the terms of this Plan.



3.3 Limits on Contribution. The minimum payroll deduction shall be one dollar (\$1.00) per week and the maximum shall be twenty-five dollars (\$25.00) per week, as the Participant shall elect, or, in the alternative, the minimum payroll deduction shall be one percent (1%) of Base Earnings and the maximum shall be twenty percent (20%) of Base Earnings. At such times as permitted by the Plan Administrator, a Participant may increase or decrease his contribution under the Plan by any multiple of one dollar (\$1.00) or one percent (1%); however, no Eligible Employee may contribute, in any one year, more than twenty percent (20%) of his Base Earnings or, if he elects a payroll deduction of a specific dollar amount, twenty-five dollars (\$25.00) per week.

3.4 Voluntary Withdrawal from the Plan. A Participant who remains employed by an Employer may withdraw from the Plan by submitting a notice of cancellation of his Payroll Deduction Authorization in the manner and to the person determined by the Plan Administrator from time to time, but no later than prior to the Payday for which the cancellation is to be effective. Any Participant who so withdraws from the Plan may renew his participation in the Plan as soon as administratively practicable and will be entitled to withdraw his Stock from the Plan only in accordance with Section 6.2.

3.5 Termination of Service Means Withdrawal from Plan. Upon a Participant's Termination of Service, the Participant will be deemed to have withdrawn from the Plan as of his last regular Payday.

3.6 Effect of Participant's Withdrawal from Plan. On and after the effective date of a Participant's withdrawal from the Plan, no further contribution under the Plan shall be permitted by or made for the Participant, except as may be provided pursuant to this Section 3 and Section 4.2 below.

3.7 Bookkeeping Accounts. All payroll deductions made for a Participant shall be credited to the Participant's Plan account. Such payroll deductions shall be commingled with the general assets of Tyson and no separate fund shall be established. Participant accounts are kept solely for bookkeeping purposes.

3.8 Distributions from Plan Upon Termination of Service. Upon a Participant's Termination of Service for any reason other than death, the Committee shall obtain a share certificate representing the number of shares of Stock to which the Participant is entitled and shall send the share certificate and a check for the sum of uninvested funds held to the credit of such Participant, by ordinary mail or other mode of delivery deemed appropriate by the Committee, to the Participant's mailing address last known to the Employer. Upon the death of a Participant and upon receipt by the Employer of proof of identity and existence at the Participant's death of a validly designated beneficiary under the Plan, the Committee shall obtain and forward the share certificate and check for uninvested funds in the manner provided above to such beneficiary. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such death, any Stock and cash credited to the Participant under the Plan shall be payable to the spouse to whom the Participant was legally married at the time of his or her death and, if the deceased Participant is not survived by a spouse to whom he or she was legally married at the time of the Participant's death, any such Stock and cash shall be payable to the executor or administrator of the estate of the Participant. No beneficiary shall, prior to the death of the Participant by whom he or she has been designated, acquire any interest in the Stock or cash credited to the Participant under the Plan. Following a Termination of Service, a Participant (or beneficiary) shall have the continuing obligation of keeping the Plan Administrator apprised of his or her current mailing address.

3.9 Repurchases. Prior to the date that a Participant experiences a Termination of Service and for a limited period of time following a Termination of Service, as established by the Plan Administrator from time to time pursuant to procedures uniformly applied, a Participant may sell shares of Stock purchased under the Plan to Tyson at the Prevailing Market Price pursuant to such further procedures and conditions as may be established by the Plan Administrator from time to time

3.10 Liquidation of Participant Accounts. The Committee may liquidate the account of a Participant who has not made contributions pursuant to Article III for an extended period of time as determined pursuant to such administrative procedures as may be adopted from time to time and applied consistently.

**ARTICLE IV**  
**Employer Contributions**

**4.1 Employer Matching Contributions** .

(a) Each Participant who has completed at least one year of Service (as defined above) with Tyson or a Participating Affiliate shall be entitled to Employer matching contributions on that Participant's contributions, if any, made following completion of the first year of Service in the amount and manner as determined in Subsections (b) and (d) of this Section.

(b) Contributions made pursuant to this Section 4.1 shall match only a portion of the Participant contributions made pursuant to Section 3.2 above. Such matching contributions shall be equal to a percentage, not to exceed fifty percent (50%), of the first ten percent (10%) of Base Earnings deferred by an eligible Participant under Section 3.2 of the Plan. The Board of Directors of Tyson (or any committee of the Board of Directors) shall determine from time to time on a prospective basis the level of contributions to be made pursuant to this Section 4.1(b), consistent with the general parameters set forth in the immediately preceding sentence. The Committee shall advise eligible Participants of any change in the level of matching contributions as soon as administratively practicable.

(c) Matching contributions generally will be made at or about the same time as the payroll deductions for the Participant contributions to which they relate.

(d) Notwithstanding any other provisions of the Plan to the contrary, matching contributions shall be allocated to otherwise eligible Participants in accordance with the following provisions:

(i) Participants who otherwise are entitled to matching contributions under this Plan shall have such contributions made to a matching account under the Plan.

(ii) Tyson retains the discretion to suspend for any specific or indefinite periods of time the making of matching contributions hereunder to otherwise eligible Participants as may from time to time be determined to be in the best interests of Tyson by its Board of Directors (or any committee thereof). Any such suspension of matching contributions may be applied to all eligible Participants or to one or more identifiable classes of employees and may be implemented at any time. Participants affected by any such suspension shall be notified of the implementation, and lifting, of the suspension, in each case as soon as administratively practicable. Any affected Participant shall not be entitled to matching contributions for the Pay Periods (or other periods of time) during which the suspension is effective, as determined by the Board of Directors of Tyson (or any committee thereof).

**4.2 Employer Discretionary Non-matching Contributions** . In addition to Employer matching contributions made pursuant to Section 4.1, Tyson, in the sole discretion of its Board of Directors, or any other Employer may from time to time make non-matching contributions of cash or shares of Stock to the Plan for allocation to certain Participants in the Plan or to certain other Eligible Employees who are not enrolled in the Plan. Such contributed shares shall be held for the account of the Participant (or combined with any existing account of the Participant) and administered pursuant to all provisions of the Plan. If directed by the Plan Administrator, the Committee shall cause shares of Stock purchased with such discretionary contributions to bear appropriate legends referring to the terms, conditions and restrictions, if any, applicable to such contributions or necessary to permit the Employer to comply with all applicable securities laws. All of such contributed shares at all times shall remain the property of the Participant and shall remain subject to any legal or contractual restrictions to which the shares may have been subject at the time of the contribution

**ARTICLE V**  
**Administration of the Plan**

**5.1 Administrative Committee** . To carry out the purposes of the Plan, the Plan Administrator exercises its authority through the Committee, which shall consist of not less than three members who may be officers and/or directors of Tyson. The Plan Administrator may remove members from or add members to the Committee at any time, within its discretion, and may fill vacancies on the Committee. An individual member of the Committee may not participate in any decision exclusively affecting his own participation in the Plan. The Committee shall select one of its members as Chairman, and shall hold meetings at such times and places as it may determine. Acts of a majority of the Committee at which a quorum is present, or acts reduced to or approved in writing by a majority of the members of the Committee, shall be valid acts of the Committee. The Committee shall have the sole authority, in its absolute discretion, to adopt, amend and rescind such rules and regulations as, in its opinion, may be advisable in the administration of the Plan; to construe and interpret the Plan, the rules and regulations; and to make all other determinations deemed necessary or advisable for the administration of the Plan.



All decisions, determinations, and interpretations of the Committee shall be binding on all Participants. The Committee may employ such legal counsel, consultants and agents as it may deem desirable for the administration of the Plan and may rely upon any opinion received from any such counsel or consultant and any computation received for any such consultant or agent. Expenses incurred by the Plan Administrator or the Committee in the engagement of such counsel, consultant or agent shall be paid by Tyson. No member or former member of the Committee or of the Board of Directors of Tyson shall be liable for any action or determination made in good faith with respect to the Plan or any awards granted hereunder. The Committee, in its sole discretion, may delegate all or any portion of its duties hereunder to other individuals or entities.

5.2 Employer Contributions of Cash and Dividends. Each Employer shall remit the funds deducted from payrolls under this Plan, plus any Employer contributions of cash and dividends received on Stock held by the Plan, to the brokerage firm or firms designated by the Committee.

5.3 Investment in Tyson Stock.

(a) As soon as practicable after receipt of funds remitted under the Plan, the Committee or its designated representative shall purchase, on behalf of Participants, shares of Stock either directly from Tyson or in the open market at Prevailing Market Prices. The Committee shall purchase the maximum number of shares purchasable with such funds. Such shares shall be purchased on an aggregate basis rather than on a per Participant basis. The number of shares to be purchased is to be determined by the aggregate amount of funds available to buy a whole share or multiple thereof.

(b) The shares of Stock to be sold to Participants under the Plan shall not exceed Fifty Million (50,000,000) shares, subject to adjustment as provided in Article VIII. If the total number of shares of Stock to be purchased for any payroll period exceeds the number of shares of Stock then available under the Plan, the Committee shall make a pro rata allocation of the shares available in as nearly a uniform manner as shall be practicable and as it shall determine to be equitable.

(c) While no fractional shares will be acquired or distributed under the Plan under any circumstance, a Participant's interest in the Plan will be accounted for to include, and will reflect, the fractional share, if any, which could have been acquired with the funds allocable to him if fractional shares were purchased.

5.4 No Interest to be Paid. No interest shall be credited to Plan accounts for any reason.

5.5 Dividends to be Used to Purchase Additional Shares. All cash dividends received with respect to shares of Stock registered in the name of the brokerage firm shall be used by it to purchase additional shares for Participants in proportion to their specified interest in the shares upon which the dividends were paid. Stock dividends, warrants and rights of any kind received with respect to such shares shall be held and distributed in the manner provided in Sections 3.8 or 6.2, herein, as applicable; provided, however, that the Committee, in its sole discretion, may elect to pay dividends received which are attributable to Stock allocable to Participants who have withdrawn from the Plan (pursuant to Section 3.4 above) directly to such Participants on an annual basis.

5.6 Not Transferable. Neither payroll deductions credited to a Participant's Plan account nor a Participant's rights to acquire shares of Stock or his undivided interest in the shares of Stock registered in the name of the broker may be assigned, sold, pledged, or alienated except by testate or intestate succession, and any attempt to do so shall be void. In addition, such credits, rights and undivided interests may not be encumbered by lien or security interest of any kind and shall not be liable for the debts of a Participant or subject to attachment, or to any judgment rendered against the Participant or to the process of any court in aid or execution of any judgment so rendered.

5.7 Voting Rights. Unless the Committee determines otherwise from time to time, Participants shall have the power to vote all shares held in the name of the broker in any and all matters which shall be the subject of a vote by the shareholders.

5.8 Costs of the Plan. The costs of maintaining records and executing transfers under the Plan shall be paid by Tyson or allocated to and paid by Participating Affiliates, as the Board of Directors of Tyson may direct.

5.9 Brokerage Costs. Brokerage expenses incurred in the purchase of shares shall be included as part of the cost of shares of Stock to Participants.

5.10 Indemnification. Neither Tyson, the Committee and its delegates, nor any broker through whom purchase orders are executed pursuant to this Plan shall have any responsibility or liability for any action or determination in good faith including, without limiting the generality of the foregoing, any action with respect to price, time, quantity or other conditions and circumstances of the purchase of



shares of Stock under the terms of the Plan. Tyson shall indemnify and hold harmless any officer, employee, agent, delegee or representative who incurs damage or loss, including the expense of defense thereof, in connection with the performance of the duties specified herein.

## ARTICLE VI

### Reports and Delivery of Share Certificates

6.1 Quarterly Reports. The Committee shall make quarterly reports to each Participant, specifying the status of his interest in the Plan through the last day of each calendar quarter.

#### 6.2 Delivery of Share Certificates.

All shares of Stock purchased under the Plan from contributions made by Participants, contributions made by an Employer or dividends received by the Plan, will be issued to Participants pursuant to the following rules:

(a) [Reserved.]

(b) Only upon receipt by the Committee of a request from the Participant setting forth the amount of shares requested to be issued.

(c) Distributions of Stock will be limited to twice monthly and will be made as soon as administratively feasible following the date the request was made.

(d) Distributions of Stock purchased from contributions made by Participants may not exceed the amount of such Stock set forth on their last quarterly statement.

(e) Distributions of Stock purchased from Employer contributions may not exceed the amount of such Stock set forth on their last report from the immediately preceding calendar year.

(f) Distributions of dividends shall be available on the same basis as the contributions to which they relate, except to the extent the Plan Administrator determines otherwise.

(g) The order in which shares of Stock are withdrawn from a Participant's accounts shall be determined pursuant to rules and regulations to be adopted by the Committee.

## **ARTICLE VII**

### **Amendment and Termination of the Plan**

The Board of Directors of Tyson or its delegate may, at any time and in its discretion, alter, amend, suspend or terminate the Plan or any part thereof. The cash balances and shares of Stock credited to Participants' accounts shall be delivered to Participants as soon as administratively practicable after the Plan's termination, except to the extent the Board of Directors of Tyson expressly determines otherwise. Notice of any material amendment, suspension or termination of the Plan, in whole or in part, shall be given to each Participant as soon as practicable after such action is taken.

## **ARTICLE VIII**

### **Adjustments Upon Changes in Stock**

The number of shares of Stock reserved for issuance under the Plan pursuant to Section 5.3(b) shall be proportionately adjusted for any nonreciprocal transaction between Tyson and the holders of Stock that causes the share value of the shares of Stock to change, such as a stock dividend, stock split, spin-off, rights offering, or recapitalization through a large, nonrecurring cash dividend. No fractional shares shall be issued or optioned in making any such adjustments. All adjustments made by the Committee under this paragraph shall be conclusive.

In the event of (1) a dissolution or liquidation of Tyson, (2) a merger or a consolidation in which Tyson is not the surviving corporation, or a reverse merger in which Tyson is the surviving corporation but the shares of Stock by virtue of the merger are converted into other property, whether in the form of securities, cash or otherwise, or (3) any other capital reorganization in which more than fifty percent (50%) of the shares of Tyson entitled to vote are exchanged, the Plan shall terminate, unless another corporation assumes the responsibility of continuing the operation of the Plan or the Plan Administrator determines in its discretion that the Plan shall nevertheless continue in full force and effect. If the Plan Administrator elects to terminate the Plan, the Committee shall send to each Participant a stock certificate representing the number of whole shares of Stock to which the Participant is entitled. In addition, the Committee shall send checks drawn on the Plan's account to each Participant in an amount equal to the sum of the uninvested funds held to the credit of each Participant in the manner provided in Section 3.8 above.

Any issue by Tyson of any class of preferred stock, or securities convertible into shares of common stock or preferred stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to the number or price of shares of Stock subject to any grant except as specifically provided otherwise in this Article VIII.

The grant of any right to a person pursuant to the Plan shall not affect in any way the right or power of Tyson to make adjustments, reclassifications, reorganizations or changes of its capital or business structure or to merge or to consolidate or to dissolve, liquidate or sell, or transfer all or any part of its business or assets.

## **ARTICLE IX**

### **Miscellaneous Provisions**

9.1 **No Contract of Employment Intended**. The granting of any right to a person pursuant to this Plan shall not constitute an agreement or understanding, express or implied, on the part of Tyson or any Affiliate to employ such person for any specified period.

9.2 **Information Available**. If required by law, the offered shares of Tyson shall be registered under the Securities Act of 1933 on Form S-8, or such other form as shall be specified by the Securities and Exchange Commission, and Tyson shall deliver to each Participant a copy of the prospectus or such other information as may be required from time to time as required.

9.3 **Securities Laws Restrictions**. The Plan Administrator reserves the right to place an appropriate legend on any certificate representing shares of Stock issuable under the Plan with any such legend reflecting restrictions on the transfer of the shares as may be necessary to assure the availability of any applicable exemptions under federal and state securities laws to which Tyson or the Plan Administrator deem appropriate.

9.4 **Waiver**. No liability whatever shall attach to or be incurred by Tyson or any Affiliates, or by any of their past, present or future shareholders, officers, employees or directors, under or by reason of any of the terms, conditions or agreements contained in this Plan or implied therefrom, and any and all liabilities of, and any and all rights and claims against, Tyson or any Affiliate, or any such shareholder, officer, employee or director, whether arising at common law or in equity or created by statute or constitution or otherwise, pertaining



to this Plan, are hereby expressly waived and released by each Participant as a part of the consideration for any benefits provided by an Employer under this Plan.

9.5 Notices. All notices or other communications by a Participant to the Plan Administrator under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Benefits Department c/o Tyson Foods, Inc., 2200 Don Tyson Parkway, Springdale, Arkansas 72762-6999 or at such other location as may be expressly designated by the Plan Administrator for the receipt of one or more categories of Plan communications.

9.6 Severability. Each of the Sections included in the Plan is separate, distinct and severable from the other and remaining Sections of the Plan, and the invalidity or unenforceability of any Section shall not affect the validity and enforceability of any other Section or Sections of the Plan. Further, if any Section of this Plan is ruled invalid or unenforceable by a court of competent jurisdiction because of a conflict between such Section and any applicable law or public policy, such Section shall be valid and enforceable to the extent such Section is consistent with such law or public policy.

9.7 Governing Law. The construction, validity and operation of this Plan shall be governed by the laws of the State of Delaware.

9.8 Rules of Construction. Throughout this Plan, the masculine includes the feminine, and the singular includes the plural, and vice versa, where applicable.

9.9 Plan Year. The Plan's plan year and the fiscal year shall end on December 31 of each year.

9.10 Designation of Beneficiary. A Participant may file a written designation of a beneficiary who is to receive any Stock and/or cash. Such designation of a beneficiary may be changed by the Participant at any time in writing delivered to his Employer.

9.11 Lost Participants. In the event the Committee or its designee, after reasonable inquiry, determines that it is unable to locate a Participant or beneficiary whose account is otherwise payable, the Committee (or such designee) may direct that such account shall be removed from the Plan's active records; provided, however, that the Participant's account shall be reinstated as an active account if and in the event the Participant or beneficiary thereafter shall make a valid claim therefor upon presentation of proper identification. Notwithstanding the foregoing, if, upon the expiration of any applicable dormancy period, the whereabouts of a Participant or beneficiary remains unknown because of a failure to keep the Plan Administrator apprised of his or her current mailing address in accordance with Section 3.8, the Plan Administrator may turn over the property attributable to any such Participant's account to the unclaimed property unit of the state of the Participant's (or beneficiary's) last known mailing address pursuant to that state's escheat laws. In such event, if a Participant (or beneficiary) subsequently makes himself or herself known to the Plan Administrator or the Committee, the sole recourse of such Participant (or beneficiary) shall be against the state to whom the property was distributed and there shall be no reinstatement of the Participant's account under the Plan.

IN WITNESS WHEREOF, Tyson has caused this indenture to be made as of the 1st day of February, 2013.

**TYSON FOODS, INC.**

By: /s/ Kenneth Kimbro  
Title: EVP and Chief HR Officer