
Merger Implementation Agreement

**Tatura Milk Industries Limited
Bega Cheese Limited**



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DETAILS

Date: 4 October 2011

Parties

(1) Tatura Milk Industries Limited (Tatura Milk)

ABN 66 006 603 970

Address 236 Hogan Street, Tatura Vic 3616

(2) Bega Cheese Limited (Bega Cheese)

ABN 81 008 358 503

Address 23 - 45 Ridge Street, North Bega NSW 2550

Recitals

- A. The issued Tatura Milk securities as of the date of this agreement are:
 - (a) 28,413,511 ordinary shares; and
 - (b) 12,009,508 Tatura Milk RP Shares.
- B. Bega Cheese holds all of the ordinary shares in Tatura Milk.
- C. Tatura Milk and Bega Cheese have agreed that Bega Cheese will acquire all of the Tatura Milk RP Shares under the Scheme, subject to the approval of the Tatura Milk RP Shareholders and the Court.
- D. At the request of Bega Cheese, Tatura Milk intends to propose the Scheme and issue the Scheme Booklet.
- E. Tatura Milk and Bega Cheese have agreed to do the things required by this agreement in order to enable the Scheme to be proposed, approved and implemented.

Operative Parts

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Accounting Standards has the meaning given in section 9 of the Corporations Act.

All Ordinaries Index means the ASX share market index known as the All Ordinaries Index.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ACN 008 624 691 or, where appropriate, the market operated by it.

Bega Cheese Employee Right means a right granted to a senior executive of Bega Cheese or a Subsidiary of Bega Cheese to acquire a Bega Cheese Share for no monetary payment under offer terms for the retention award pursuant to an employee share plan established by the board of directors of Bega Cheese called the 'Incremental Plan'.

Bega Cheese Group means Bega Cheese and its Subsidiaries other than a member of the Tatura Milk Group.

Bega Cheese Indemnified Parties means Bega Cheese and its Representatives.

Bega Cheese Information means all information in relation to the Bega Cheese Group or a member of the Bega Cheese Group that is included in the Scheme Booklet.

Bega Cheese Prescribed Occurrence means the occurrence of any of the following without the prior approval of Tatura Milk:

- (a) Bega Cheese converts all or any of its securities into a larger or smaller number of securities;
- (b) a member of the Bega Cheese Group resolves to reduce its capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its securities;
- (c) a member of the Bega Cheese Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the Bega Cheese Group declares or pays a dividend or makes any other distribution to its shareholders, other than:
 - (i) a distribution from a member of the Bega Cheese Group to another member of the Bega Cheese Group where the member making the distribution is a wholly-owned subsidiary of the recipient member; or
 - (ii) a dividend declared by Bega Cheese in accordance with clause 5.8;
- (e) a member of the Bega Cheese Group issues securities or other instruments convertible into securities, or grants an option over its securities, or agrees to make such an issue or grant such an option, other than:

- (i) the issue of securities or other instruments convertible into securities or the grant of options in or of Bega Cheese to employees of Bega Cheese or its Subsidiaries of the type and up to the number and on the terms specified in the Bega Cheese Prospectus (including any additional rights granted to holders of Bega Cheese Employee Rights in accordance with the terms of those Bega Cheese Employee Rights);
 - (ii) the issue of securities or other instruments convertible into securities or the grant of option in or of Bega Cheese to employees of Tatura Milk pursuant to an offer to those employees similar to the offer made to employees of Bega Cheese pursuant to the Bega Cheese Prospectus so long as the total market value of all of the securities (or underlying securities) to be issued or agreed to be issued does not exceed \$500,000 as at the date on which they were issued or agreed to be issued; and
 - (iii) the issue of Bega Cheese Shares pursuant to the Scheme;
- (f) a member of the Bega Cheese Group makes any change or amendment to its constitution; or
- (g) an Insolvency Event occurs in relation to a member of the Bega Cheese Group.

Bega Cheese Prospectus means the prospectus dated 18 July 2011 issued by Bega Cheese for its initial public offering of Bega Cheese Shares preparatory to its listing on ASX.

Bega Cheese Share means a fully paid ordinary share in the capital of Bega Cheese.

Bega Cheese Statements of Intention means the statements of intentions of Bega Cheese to be included in the Bega Cheese Information, as set out in **Schedule 2**.

Business Day means a day which is not a Saturday, Sunday, bank holiday or public holiday:

- (a) for the purpose of sending or receiving a notice, in the city where the notice is received; and
- (b) for all other purposes, in Melbourne or Sydney.

Change in Law means:

- (a) the adoption, enactment or application to Bega Cheese or Tatura Milk of a Law that does not exist as at the date of this agreement;
- (b) a change to a Law after the date of this agreement; or
- (c) a change after the date of this agreement to a Regulatory Approval held or required to be held by Bega Cheese or Tatura Milk for the normal operation of their businesses.

Claim means any obligation, debt, cause of action, disability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

Conditions Precedent means the conditions precedent set out in clause 3.1 of this agreement.

Control has the meaning given in section 50AA of the Corporations Act.

Corporations Act means the *Corporations Act* 2001 (Cth).

Court means a court of competent jurisdiction under the Corporations Act.

Effective means the order of the Court made under section 411(4)(b) in relation to the Scheme coming into effect on the Effective Date.

Effective Date means the date an office copy of the Court order approving the Scheme under section 411(4)(b) of the Corporations Act is lodged with ASIC under section 411(10) or such other effective date of the Scheme as Tatura Milk and Bega Cheese may, with the consent of the Court, agree.

EGM Resolution means a special resolution to modify the current constitution of Tatura Milk in the manner set out in **Annexure 3** (or in such other manner as agreed between Tatura Milk and Bega Cheese).

Explanatory Statement means the statement pursuant to section 412 of the Corporations Act, which will be registered by ASIC in relation to the Scheme, a copy of which will be included in the Scheme Booklet.

Extraordinary General Meeting means a general meeting of the Tatura Milk Shareholders to consider, and if thought fit, to pass the EGM Resolution.

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent) in respect of moneys borrowed or raised or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee;
- (d) finance or capital lease;
- (e) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service; or
- (f) obligation to deliver goods or provide services paid in advance by any financier, other than in the ordinary course of business.

GST means a goods and services tax or similar value added tax levied or imposed under the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Implementation Date means the 4th Business Day after the Effective Date.

Independent Expert means a person to be appointed by Tatura Milk pursuant to clause 5.1(c) as independent expert to prepare a report to be provided to Tatura Milk and Tatura Milk RP Shareholders as to whether the Scheme is in the best interests of Tatura Milk RP Shareholders.

Insolvency Event means any of the following events in relation to a person:

- (a) the person is or becomes unable to pay its debts as and when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act, or would be presumed to be insolvent if that Act applied;
- (b) the person suspends or threatens to suspend payment of its debts generally;
- (c) the appointment of a provisional liquidator, liquidator, receiver or a receiver and manager or other insolvency official (whether under Australian law or foreign law) to the person or to the whole or a substantial part of the property or assets of the person;
- (d) the appointment of an administrator to the person; or
- (e) the entry by a person into any compromise or arrangement with creditors.

Law means any act, ordinance, regulation, by-law, order or requirement of a Regulatory Authority.

Listing Rules means the official listing rules of ASX.

Material Adverse Change Event means:

- (a) any one or more events or circumstances which individually, or when aggregated, will result in, or be reasonably likely to result in, the earnings before interest, tax, depreciation and amortisation (**EBITDA**) of Bega Cheese or Tatura Milk for the financial year ended on 30 June 2010 or any later financial year being \$10 million or more less than the EBITDA of that entity disclosed (or based on the results disclosed) in its annual audited financial statements for the financial year ended 30 June 2010 lodged with ASIC;
- (b) the arithmetic average of the daily volume weighted average price at which Bega Cheese Shares are sold in the ordinary course of trading on ASX over any 5 consecutive trading days falls below \$1.55; or
- (c) a Change in Law occurs which prohibits or materially restricts the Merger.

Merger means merger between Tatura Milk and Bega Cheese as contemplated under the Scheme whereby the Tatura Milk RP Shareholders become shareholders of Bega Cheese and Tatura Milk becomes a wholly-owned subsidiary of Bega Cheese, in accordance with the terms of this agreement.

Notice of Meeting means the notice convening the Scheme Meeting together with the proxy forms for that meeting.

Public Announcements means the public announcements to be made by Tatura Milk and Bega Cheese in the form of **Annexure 1**.

Regulator's Draft means the draft of the Scheme Booklet, in a form acceptable to both parties, which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

Regulatory Approval means any approval, clearance, consent, authorisation, registration, filing, lodgement, permit, licence, authority or exemption from, by or with a Regulatory Authority in connection with the Merger that is mandatory or otherwise identified by Bega Cheese or the Tatura Milk Supplier Directors, acting reasonably, as necessary in order to ensure that implementation of the Merger does not contravene any law.

Regulatory Authority includes:

- (a) a government or governmental, semi-governmental, administrative, fiscal or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, tribunal, agency, board, authority or organisation of any government;
- (c) any regulatory organisation established under statute; and
- (d) in particular, ASX, ASIC and the Australian Competition and Consumer Commission.

RG 60 means Regulatory Guide 60 issued by ASIC on 11 December 2009.

Regulatory Review Period means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

Related Entity means in relation to a party, any entity that is related to that party within the meaning of section 50 of the Corporations Act or which is an economic entity (as defined in any approved Australian accounting standard) that is Controlled by that party **provided that** for the purposes of this definition only, a member of the Tatura Milk Group and a member of the Bega Cheese Group are deemed not to be related to each other.

Representative means, in relation to an entity, each of its directors, officers, employees, contractors, advisers (including legal, financial and other expert advisers) and agents, but excluding the Independent Expert.

Required Consultation Period means the shorter of:

- (a) 5 Business Days after both parties becoming aware that clause 3.8(a)(i) or 3.8(a)(ii), as the case may be, is triggered; and
- (b) the period commencing at the time both parties become aware that clause 3.8(a)(i) or 3.8(a)(ii), as the case may be, is triggered and ending at 8.00am on the Second Court Date.

Scheme means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Tatura Milk and the Tatura Milk RP Shareholders, the terms of which are set out in the Scheme Deed.

Scheme Booklet means the information to be despatched to Tatura Milk RP Shareholders and approved by the Court in connection with the Scheme which must include the Scheme, the Explanatory Statement, an independent expert's report prepared by the Independent Expert, the Notice of Meeting and the notice of meeting for the Extraordinary General Meeting.

Scheme Consideration means 2 Bega Cheese Shares for each 1 Tatura Milk RP Share.

Scheme Deed means the scheme of arrangement deed substantially in the form of **Annexure 2** (or in such other form as agreed between Tatura Milk and Bega Cheese).

Scheme Meeting means the meeting of the Tatura Milk RP Shareholders convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act. It includes any adjournment of that meeting.

Scheme Shareholder means a person who is a Tatura Milk RP Shareholder as at 9:00 am on the Implementation Date, other than Bega Cheese or a Subsidiary of Bega Cheese.

Second Court Date means the first day on which an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned or appealed application is heard.

Subsidiary has the meaning given in section 9 of the Corporations Act.

Sunset Date means 29 February 2012 or such other date agreed in writing between Bega Cheese and Tatura Milk.

Superior Proposal means an Alternative Proposal that satisfies the criteria in clause 5.5(c) and a determination in respect of which has been notified by the Tatura Milk Supplier Directors to Bega Cheese in compliance with the requirements of that clause.

Tatura Milk Group means Tatura Milk and its Subsidiaries.

Tatura Milk Indemnified Parties means each member of the Tatura Milk Group and each of their respective Representatives.

Tatura Milk Information means all information contained in the Scheme Booklet, but does not include the Bega Cheese Information or the Independent Expert's report that is included in or accompanies the Scheme Booklet.

Tatura Milk Nominated Directors means 2 Tatura Milk Supplier Directors who are in office as at the Effective Date and who are selected by or in accordance with an agreement between the Tatura Milk Supplier Directors that is subsisting at the Effective Date, to be appointed as directors of Bega Cheese.

Tatura Milk Prescribed Occurrence means the occurrence of any of the following without the approval of Bega Cheese:

- (a) Tatura Milk converts all or any of its securities into a larger or smaller number of securities;
- (b) a member of the Tatura Milk Group resolves to reduce its capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its securities other than a redemption of Tatura Milk RP Shares in accordance with clause 5.10;
- (c) a member of the Tatura Milk Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the Tatura Milk Group declares or pays a dividend or makes any other distribution to its shareholders, other than a distribution from a member of the Tatura Milk Group to another member of the Tatura Milk Group where the member making the distribution is a wholly-owned subsidiary of the recipient member;
- (e) a member of the Tatura Milk Group issues securities or other instruments convertible into securities, or grants an option over its securities, or agrees to make such an issue or grant such an option other than the issue of Tatura Milk RP Shares in accordance with clause 5.10;
- (f) a member of the Tatura Milk Group makes any change or amendment to its constitution other than a change contemplated by the EGM Resolution; or
- (g) an Insolvency Event occurs in relation to a member of the Tatura Milk Group,

provided that a Tatura Milk Prescribed Occurrence will not include any of these occurrences if they are required or permitted to be done or procured by Tatura Milk pursuant to this agreement or the Scheme. An occurrence referred to in this definition

will be deemed to have been approved by Bega Cheese if Bega Cheese votes in favour of it at the relevant general meeting of Tatura Milk Shareholders or the directors of Tatura Milk appointed by Bega Cheese vote in favour of it at the relevant meeting of the board of directors of Tatura Milk.

Tatura Milk RP Share means an A class redeemable preference share in the capital of Tatura Milk.

Tatura Milk RP Shareholder means each person who is registered in the Tatura Milk Share Register as the holder of Tatura Milk RP Shares.

Tatura Milk Share Register means the share register of Tatura Milk kept pursuant to the Corporations Act.

Tatura Milk Shareholder means each person who is registered in the Tatura Milk Share Register as the holder of ordinary shares or A Class Shares.

Tatura Milk Supplier means a person who conducts a dairy farming business and supplies milk to Tatura Milk or any of its related bodies corporate that is collected from the farm and delivered directly to the milk processing facility of Tatura Milk (or its related bodies corporate) located at Tatura, Victoria including a person who supplies milk in partnership with others or as a sharefarmer.

Tatura Milk Supplier Director means a Dairy Farmer Director of Tatura Milk, as defined in the constitution of Tatura Milk, who has not been appointed by Bega Cheese or a Subsidiary of Bega Cheese pursuant to its rights as the 'Majority Shareholder' under the Tatura Milk constitution.

Timetable means the indicative timetable for the implementation of the Merger set out in **Schedule 1**.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure, to this agreement, and a reference to this agreement includes any schedule and annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Melbourne, Australia time;

- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Exercise of rights or powers of Tatura Milk and Tatura Milk Supplier Directors

The parties acknowledge and agree that any right or power exercisable by, or any consent or approval to be given under this agreement by:

- (a) the Tatura Milk Supplier Directors collectively can only be exercised or given by all or a majority of the Tatura Milk Supplier Directors. A written statement as to a decision of the Tatura Milk Supplier Directors signed by at least 3 Tatura Milk Supplier Directors will be prima facie evidence of that stated decision, and Bega Cheese may assume that the decision stated to be given in such a signed statement has been made;
- (b) Tatura Milk can only be exercised by the sub-committee of the board of Tatura Milk comprising the Tatura Milk Supplier Directors, which has been

established pursuant to clause 85(1) of the constitution of Tatura Milk for the purpose of considering and implementing the Scheme.

2. Agreement to propose Scheme

2.1 Proposal of the Scheme

- (a) Tatura Milk agrees to propose the Scheme to all Tatura Milk RP Shareholders upon and subject to the terms of this agreement.
- (b) Bega Cheese agrees to assist Tatura Milk to propose and give effect to the Scheme on and subject to the terms of this agreement.

2.2 Compliance with obligations

The parties' obligations under this agreement relating to proposing the Scheme are subject to their compliance with their respective obligations, functions, powers and duties under this agreement, their respective constitutions, at law and, in the case of Bega Cheese, under the Listing Rules.

3. Conditions

3.1 Conditions Precedent to implementation of the Scheme

The Scheme, the obligations of Tatura Milk under clause 5.1(s) and the obligations of Bega Cheese under clause 4.2 are subject to the satisfaction of the following Conditions Precedent (unless waived by the relevant party or parties in accordance with clause 3.2) on or prior to the Second Court Date (or such other date as specified in the relevant Condition Precedent):

- (a) **Regulatory Authorities:**
 - (i) ASIC and ASX issue or provide such consents or approvals or do other acts which the parties agree are necessary or desirable to implement the Merger. If such consents, approvals or doing of other acts are subject to conditions those conditions must be acceptable to both parties;
 - (ii) all other mandatory approvals of Regulatory Authorities to the Merger are obtained, including those approvals that relate to the existing activities of the Tatura Milk Group that must be obtained as a result of, or to allow, completion of the Merger;
- (b) **Tatura Milk RP Shareholder approval:** before 8.00am on the Second Court Date, the Tatura Milk RP Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under the Corporations Act;
- (c) **EGM Resolution:** before 8.00am on the Second Court Date, the EGM Resolution is approved at a Extraordinary General Meeting by the requisite majority of Tatura Milk Shareholders;

- (d) **Restraining orders:** as at 8.00am on the Second Court Date, no temporary restraining order, preliminary or permanent injunction or other order or decision has been issued or made by any court of competent jurisdiction or any Regulatory Authority which prevents the Merger from proceeding and there is no other legal restraint or prohibition preventing the consummation of any aspect of the Merger on the Implementation Date;
- (e) **No Material Adverse Change Event:** no Material Adverse Change Event occurs between the date of this agreement and 9:00 am on the Implementation Date;
- (f) **No Tatura Milk Prescribed Occurrence:** no Tatura Milk Prescribed Occurrence occurs between the date of this agreement and 9:00 am on the Implementation Date;
- (g) **No Bega Cheese Prescribed Occurrence:** no Bega Cheese Prescribed Occurrence occurs between the date of this agreement and 9:00 am on the Implementation Date;
- (h) **Tatura Milk representations and warranties:** the representations and warranties given by Tatura Milk under clause 6.1 are true and correct in all material respects, in each case at the times set out in clause 6.3; and
- (i) **Bega Cheese representations and warranties:** the representations and warranties given by Bega Cheese under clause 6.1 are true and correct in all material respects, in each case at the times set out in clause 6.3.

3.2 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(b) and 3.1(c) are for the benefit of Tatura Milk and Bega Cheese, and cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(a) and 3.1(d) are for the benefit of, and any breach or non-fulfilment of those Conditions Precedent may only be waived with the written consent of, Tatura Milk and Bega Cheese.
- (c) The Condition Precedent in clause 3.1(e):
 - (i) is for the sole benefit of Bega Cheese to the extent that it relates to an event or circumstance described in paragraph (a) of the definition of Material Adverse Change Event affecting Tatura Milk, and a breach or non-fulfilment of the Condition Precedent due to such an event or circumstance may only be waived with the written consent of Bega Cheese;
 - (ii) is for the sole benefit of Tatura Milk to the extent that it relates to an event or circumstance described in paragraph (a) of the definition of Material Adverse Change Event affecting Bega Cheese, and a breach or non-fulfilment of the Condition Precedent due to such an event or

circumstance may only be waived with the written consent of Tatura Milk; or

- (iii) is for the benefit of Bega Cheese and Tatura Milk to the extent that it relates to an event or circumstance described in paragraph (b) of the definition of Material Adverse Change Event or a Change in Law described in paragraph (c) of the definition of Material Adverse Change Event, and a breach or non-fulfilment of the Condition Precedent due to such an event or circumstance may only be waived with the written consent of Bega Cheese and Tatura Milk.
- (d) The Conditions Precedent in clauses 3.1(f) and 3.1(h) are for the sole benefit of, and any breach or non-fulfilment of those Conditions Precedent may only be waived with the written consent of, Bega Cheese.
- (e) The Condition Precedent in clauses 3.1(g) and 3.1(i) are for the sole benefit of, and any breach or non-fulfilment of that Condition Precedent may only be waived with the written consent of, Tatura Milk.
- (f) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 3.2 may do so in its absolute discretion.

3.3 Best endeavours to satisfy Conditions Precedent

Each of Tatura Milk and Bega Cheese will use its best endeavours to procure that:

- (a) each of the Conditions Precedent is satisfied as soon as reasonably practicable after the date of this agreement or continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence within the control of Tatura Milk, or Bega Cheese (as the context requires) or their Related Entities that would prevent the Conditions Precedent being satisfied.

Without limitation, Tatura Milk must ensure that no event or circumstance described in any of paragraphs (a) to (f) of the definition of Tatura Milk Prescribed Occurrence occurs, and Bega Cheese must ensure that no event or circumstance described in any of paragraphs (a) to (f) of the definition of Bega Cheese Prescribed Occurrence occurs, on or before the Implementation Date.

3.4 Regulatory Approvals

- (a) Without limiting the generality of clause 3.3:
 - (i) each party must as soon as reasonably practicable apply for all relevant Regulatory Approvals and take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information at the earliest practicable time;
 - (ii) each of Tatura Milk and Bega Cheese must consult with the other in advance in relation to all communications (whether written or oral, and

whether direct or via agents or advisers) with any Regulatory Authority relating to any Regulatory Approval (**Communications**) and, without limiting the generality of the foregoing, must:

- (A) provide the other party with drafts of any material written Communications to be sent to a Regulatory Authority and make such amendments thereto as the other party reasonably requires; and
- (B) provide copies of any written Communications sent to or received from a Regulatory Authority to the other party as soon as reasonably practicable upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so; and

- (iii) each party will have the right to be represented and make submissions at any proposed meeting with any Regulatory Authority relating to any Regulatory Approval.
- (b) Notwithstanding anything in this agreement to the contrary, in obtaining any Regulatory Approval, Bega Cheese will not be required to agree to conditions:
- (i) requiring any member of the Bega Cheese Group or Tatura Milk Group to agree to or proffer to:
 - (A) divest, operate separately or hold separately any of the material business or assets of the Tatura Milk Group;
 - (B) cease to conduct or materially reduce the scope of any material business or operations in any jurisdiction in which the Tatura Milk Group conducts business or operations; or
 - (C) limit the type of scope of any proposed or potential business or operations in any jurisdiction; or
 - (ii) that do not merely impose procedural or other non-material requirements incidental to the Regulatory Approval.

3.5 Assistance of Representatives

Each party must procure that its Representatives work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to satisfy the Conditions Precedent.

3.6 Notice of failure to satisfy Condition Precedent

- (a) Tatura Milk and Bega Cheese must as soon as reasonably practicable give the other notice of a failure to satisfy a Condition Precedent or of any event that will prevent a Condition Precedent being satisfied.

- (b) Tatura Milk or Bega Cheese (as the case may be) must give written notice to the other party as soon as reasonably practicable (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.
- (c) A waiver of such breach or non fulfilment in respect of one Condition Precedent of this agreement will not constitute:
 - (i) a waiver of breach or non fulfilment of any other Condition Precedent of this agreement resulting from the same event; or
 - (ii) a waiver of breach or non fulfilment of that Condition Precedent resulting from any other event.

3.7 Other notices

- (a) Each party must as soon as reasonably practicable after becoming aware of the satisfaction of any Condition Precedent give the other party written notice of the satisfaction of that Condition Precedent and provide reasonable evidence the Condition Precedent has been satisfied.
- (b) If, before the time specified for satisfaction of a Condition Precedent, a party becomes aware of an event that will prevent a Condition Precedent being satisfied by the date specified in clause 3.1 for its satisfaction, the party with knowledge of that event must as soon as reasonably practicable give the other party written notice of that event.

3.8 Conditions Precedent not met

- (a) If:
 - (i) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this agreement; or
 - (ii) there is an act, failure to act, event or occurrence which will prevent a Condition Precedent being satisfied by the date specified in clause 3.1 for its satisfaction (and the breach or non-fulfilment of the Condition Precedent which would otherwise occur has not already been waived in accordance with this agreement),

Tatura Milk and Bega Cheese must consult in good faith with a view to:

- (iii) determining whether the Scheme or a transaction that results in Bega Cheese having beneficial ownership of all of the Tatura Milk RP Shares may proceed by way of alternative means or methods;
- (iv) extending the time or date for satisfaction of the relevant Condition Precedent or Sunset Date; or

- (v) changing the date of application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by Tatura Milk and Bega Cheese (being a date no later than five Business Days before the Sunset Date).
- (b) If Tatura Milk and Bega Cheese are unable to reach agreement under clause 3.8(a) within the Required Consultation Period (if applicable) or if a party becomes aware that clause 3.8(a)(i) or (ii), as the case may be, is triggered after the Required Consultation Period, either Tatura Milk or Bega Cheese may, provided that Condition Precedent is for the benefit of that party, terminate this agreement by notice in writing to the other, subject to clauses 7.4 and 7.5.

3.9 Certificates

On the Second Court Date:

- (a) Bega Cheese and Tatura Milk must provide a joint certificate to the Court confirming whether or not the Conditions Precedent set out in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d) and 3.1(e) have been satisfied or waived in accordance with the terms of this agreement;
- (b) Bega Cheese must provide a certificate to the Court confirming whether or not the Conditions Precedent set out in clauses 3.1(f) and 3.1(h) have been satisfied or waived in accordance with the terms of this agreement; and
- (c) Tatura Milk must provide a certificate to the Court confirming whether or not the Conditions Precedent set out in clauses 3.1(g) and 3.1(i) have been satisfied or waived in accordance with the terms of this agreement,

to the extent known as at the Second Court Date.

4. The transaction steps

4.1 Scheme

Tatura Milk must propose the Scheme to Tatura Milk RP Shareholders.

4.2 Scheme Consideration

Bega Cheese undertakes to Tatura Milk (in its own right and as trustee on behalf of the Scheme Shareholders) that, if the Scheme becomes Effective, in consideration for the transfer to Bega Cheese of each Tatura Milk RP Share held by a Scheme Shareholder under the terms of the Scheme, Bega Cheese will accept that transfer and issue the Bega Cheese Shares comprising the Scheme Consideration for all Scheme Shareholders, with effect on the Implementation Date in accordance with the terms of the Scheme.

4.3 Timetable

The parties acknowledge the Timetable as an indicative timetable and will consult with each other regularly in relation to:

- (a) performing their respective obligations within the framework established by the Timetable; and
- (b) the need to modify the Timetable.

4.4 Access

- (a) Each party must use its best endeavours to ensure that the books, records and other documents of the party and the party's officers and employees are made available (including the provision of copies) to the extent necessary for the purposes of allowing the other party to make informed decisions regarding the satisfaction of any of the Conditions Precedent or to ascertain information in relation to the party that is relevant to implementation of the Merger to the extent required by the other party.
- (b) Each party must also deal with and respond to the enquiries of the other party under paragraph (a) in the utmost good faith and in an expeditious and timely way, having regard to the Timetable.

5. The Scheme

5.1 Tatura Milk's obligations in relation to the Scheme

Tatura Milk must execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme on a basis consistent with this agreement and substantially in accordance with the Timetable and, in particular, Tatura Milk must:

- (a) **promote merits of Merger:** participate in, and use its best endeavours to ensure the Tatura Milk Supplier Directors participate in, efforts reasonably requested by Bega Cheese to promote the merits of the Merger, including meeting with key stakeholders of Tatura Milk at the reasonable request of Bega Cheese;
- (b) **draft Scheme Booklet:** prepare the Scheme Booklet in respect of the Scheme and use its best endeavours to ensure that it is in accordance with all applicable laws and in particular with the Corporations Act, RG 60 and the Listing Rules and including information relevant to the Extraordinary General Meeting and EGM Resolution;
- (c) **commission Independent Expert's Report:** as soon as reasonably practicable use its best endeavours to appoint an Independent Expert to provide a report for inclusion in the Scheme Booklet stating whether in its opinion the Scheme is in the best interest of Tatura Milk RP Shareholders and

Tatura Milk must provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report;

- (d) **amend Scheme Booklet:** implement such changes to those parts of the Scheme Booklet relating to Bega Cheese which are provided to Tatura Milk by Bega Cheese in accordance with clause 5.2(a) as reasonably requested by Bega Cheese prior to finalising the Regulator's Draft;
- (e) **consultation with Bega Cheese:**
 - (i) as soon as reasonably practicable after the date of this agreement provide to Bega Cheese a first draft of the Scheme Booklet for the purpose of enabling Bega Cheese to review and comment on that draft document;
 - (ii) take the comments made by Bega Cheese into account in good faith when producing revised drafts of the Scheme Booklet; and
 - (iii) provide Bega Cheese with revised drafts of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Bega Cheese to review the Regulator's Draft at least 2 Business Days before its submission;
- (f) **liaise with ASIC:** provide copies of the Regulator's Draft to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and use its best endeavours to liaise with ASIC throughout the Regulatory Review Period;
- (g) **keep Bega Cheese informed:** during the Regulatory Review Period:
 - (i) as soon as reasonably practicable provide to Bega Cheese and use its best endeavours to include in revised drafts of the Scheme Booklet any new information in relation to the Tatura Milk Group not included in the Regulator's Draft which is required by the Corporations Act or RG 60 to be included in the Scheme Booklet; and
 - (ii) as soon as reasonably practicable inform and consult with Bega Cheese in relation to any matters raised by ASIC in connection with the Scheme Booklet or the Scheme including in relation to any presentation and/or the making of any submission in writing or at any proposed meeting with ASIC, and co-operate with Bega Cheese to resolve any such matters;
- (h) **approval of Scheme Booklet:** as soon as reasonably practicable after the end of the Regulatory Review Period, procure that a meeting of the Tatura Milk Supplier Directors is convened to consider approving the Scheme Booklet for dispatch to the Tatura Milk RP Shareholders, subject to approval of the Court;
- (i) **Court direction and advice:** as soon as reasonably practicable after, and provided that the approvals in clauses 5.1(h) and 5.2(e) have been obtained,

apply to the Court for orders under section 411(1) of the Corporations Act directing Tatura Milk to convene the Scheme Meeting to consider the Scheme and take all reasonable steps necessary to comply with the orders of the Court;

- (j) **registration of Scheme Booklet:** request ASIC to register the Explanatory Statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (k) **Scheme Deed:** prior to the despatch of the Scheme Booklet to Tatura Milk RP Shareholders, execute the Scheme Deed and deliver the executed document to Bega Cheese;
- (l) **section 411(17)(b) Statement:** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (m) **Scheme Meeting:** as soon as reasonably practicable convene the Scheme Meeting in accordance with any orders which are made by the Court pursuant to section 411(1) of the Corporations Act;
- (n) **Extraordinary General Meeting:** take all steps necessary to convene the Extraordinary General Meeting to be held on the same day as, and prior to, the Scheme Meeting;
- (o) **Court documents:** consult with Bega Cheese in relation to the content of the documents required for the purpose of each Court hearing held, including for the purposes of section 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, comments from Bega Cheese and its Representatives on those documents;
- (p) **Court approval of Scheme:** as soon as reasonably practicable after the Tatura Milk RP Shareholders approve the Scheme at the Scheme Meeting, apply (and to the extent required under this agreement, re-apply) to the Court for orders approving the Scheme under section 411(4) of the Corporations Act substantially in accordance with the Timetable;
- (q) **Tatura Milk Share Register:** if the Court makes orders under section 411(4) of the Corporations Act approving the Scheme, subject to clause 3.5 of the Scheme Deed:
 - (i) Tatura Milk must close the Tatura Milk Register in accordance with the constitution of Tatura Milk by 5 pm on the Effective Date; and
 - (ii) Tatura Milk must provide to Bega Cheese within 1 Business Day after the Effective Date all information (in a format reasonably requested by Bega Cheese and having regard to the requirements of the share registry of Bega Cheese) about the Tatura Milk RP Shareholders as at 5 pm on the Effective Date that Bega Cheese reasonably requires in order for

Bega Cheese to provide the Scheme Consideration to the Scheme Shareholders in accordance with the Scheme;

- (r) **lodge copy of Court orders:** if the Court makes orders under section 411(4) of the Corporations Act approving the Scheme, lodge with ASIC an office copy of the order of the Court approving the Scheme under section 411(10) of the Corporations Act on the next Business Day after the day such office copy is received or such later date as agreed in writing by Bega Cheese;
- (s) **registration:** if the Court makes orders under section 411(4) of the Corporations Act approving the Scheme:
 - (i) effect and register the transfer of the Tatura Milk RP Shares in accordance with the Scheme; and
 - (ii) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court; and
- (t) **compliance with law:** do everything reasonably within its power to ensure that the Merger is effected in accordance with all applicable laws.

5.2 Bega Cheese's obligations in relation to the Scheme

Bega Cheese must execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme on a basis consistent with this agreement and substantially in accordance with the Timetable, and in particular Bega Cheese must:

- (a) **Bega Cheese Information:** prepare and provide to Tatura Milk the Bega Cheese Information which must include statements to the effect of the Bega Cheese Statements of Intention, make available to Tatura Milk drafts of that information, consult with Tatura Milk in relation to the content of those drafts and consider in good faith, for the purpose of amending those drafts, comments from Tatura Milk and its Representatives on that information;
- (b) **assist Independent Expert:** subject to the Independent Expert entering into arrangements with Tatura Milk including in relation to confidentiality in a form reasonably acceptable to Bega Cheese, provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report to be sent together with the Scheme Booklet;
- (c) **review drafts of Scheme Booklet:** as soon as reasonably practicable after delivery, review drafts of the Scheme Booklet prepared by Tatura Milk and provide comments on those drafts in good faith;
- (d) **approval of Regulator's Draft:** as soon as reasonably practicable after finalisation of an advanced draft of the Regulator's Draft suitable for review by ASIC, approve those sections of the Regulator's Draft that relate to any Bega Cheese Indemnified Parties as being in a form appropriate for provision to ASIC for review;

- (e) **approval of Scheme Booklet:** as soon as reasonably practicable after the end of the Regulatory Review Period, approve those sections of the Scheme Booklet that relate to any Bega Cheese Indemnified Parties as being appropriate for dispatch to the Tatura Milk RP Shareholders, subject to the approval of the Court;
- (f) **Scheme Deed:** prior to the despatch of the Scheme Booklet to Tatura Milk RP Shareholders, execute the Scheme Deed and deliver the executed document to Tatura Milk;
- (g) **vote in favour of EGM Resolution:** ensure that all votes attached to the ordinary shares in Tatura Milk and any Tatura Milk RP Shares held by Bega Cheese or a Subsidiary of Bega Cheese are exercised in favour of the EGM Resolution at the Extraordinary General Meeting;
- (h) **representation:** procure that it has separate representation by counsel at the Court hearings convened for the purposes of section 411(1) and 411(4)(b) of the Corporations Act, at which, through its counsel, Bega Cheese will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme;
- (i) **Quotation:** use its reasonable endeavours to procure that the Bega Cheese Shares issued as Scheme Consideration will be listed for quotation on the official list of the ASX on an ordinary settlement basis on and from the Business Day after the Implementation Date; and
- (j) **compliance with law:** do everything reasonably within its power to ensure that the Merger is effected in accordance with all applicable laws.

5.3 Scheme Booklet

- (a) Tatura Milk must consult with Bega Cheese as to the content of the Scheme Booklet (other than the Bega Cheese Information).
- (b) Bega Cheese must consult with Tatura Milk as to the content of the Bega Cheese Information.
- (c) The parties agree that:
 - (i) the efficient preparation of the Scheme Booklet is in the interests of the parties and Tatura Milk RP Shareholders; and
 - (ii) they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to produce the Scheme Booklet as soon as reasonably practicable and in accordance with the Timetable.
- (d) Bega Cheese's obligations under clauses 5.2(c), 5.2(d) and 5.2(e) relate only to the factual accuracy of the Bega Cheese Information and Bega Cheese takes no responsibility for information in the Scheme Booklet other than the Bega

Cheese Information. Tatura Milk's obligations under clause 5.1 in relation to the drafting, preparation and despatch of the Scheme Booklet relate only to the factual accuracy of the Tatura Milk Information and Tatura Milk takes no responsibility for information in the Scheme Booklet other than the Tatura Milk Information. To that end, the Scheme Booklet will include a statement:

- (i) by Tatura Milk that Bega Cheese Indemnified Parties are not responsible for any information contained in the Scheme Booklet other than the Bega Cheese Information; and
 - (ii) by Bega Cheese that the Tatura Milk Indemnified Parties are not responsible for any Bega Cheese Information contained in the Scheme Booklet.
- (e) Tatura Milk must undertake appropriate verification processes for the purposes of complying with clause 5.1(h) and will make such verification material available to Bega Cheese on request by it.
- (f) Bega Cheese must undertake appropriate verification processes for the purposes of complying with clause 5.2(e) and will make such verification material available to Tatura Milk on request by it.
- (g) The parties must as soon as reasonably practicable inform the other if they have any reason to believe that any information in the Scheme Booklet is misleading or deceptive in any material respect (whether by omission or otherwise).
- (h) If there is a dispute as to the content of any part of the Scheme Booklet, the parties must consult in good faith and use their reasonable endeavours to resolve the dispute within 2 Business Days. If the parties fail to agree on the form or content of the Scheme Booklet:
- (i) Tatura Milk will have the final decision on the form or content of any Tatura Milk Information and any other part of the Scheme Booklet except for the Bega Cheese Information; and
 - (ii) Bega Cheese will have the final decision on the form or content of any Bega Cheese Information provided that Tatura Milk may exclude from the Scheme Booklet any Bega Cheese Information that is not required to be included in order to comply with any applicable law.

Even if there is a dispute as to the form or content of the Scheme Booklet and the parties use this procedure, the parties will continue to perform their obligations under this agreement.

5.4 Good faith co-operation

Each party must procure that its Representatives work (including by attending meetings and by providing information) in good faith and in a timely and co-operative

fashion with the other parties to implement the Scheme and to prepare all documents required relating to the Scheme.

5.5 Recommendation of the Tatura Milk Supplier Directors

- (a) Subject to this clause 5.5, Tatura Milk represents and warrants, as at the date of this agreement, to Bega Cheese that it has been advised by each Tatura Milk Supplier Director in office as at the date of this agreement that as at the date of this agreement he intends to:
 - (i) recommend that the Scheme is in the best interests of Tatura Milk RP Shareholders;
 - (ii) recommend that Tatura Milk RP Shareholders vote in favour of all resolutions to be proposed at the Scheme Meeting in relation to the Scheme and approve the Scheme;
 - (iii) indicate that if he is an Tatura Milk RP Shareholder at the time of the Scheme Meeting he intends to vote in favour of the Scheme;
 - (iv) authorise the inclusion in the Scheme Booklet of a statement to the effect of clauses 5.5(a)(i), 5.5(a)(ii) and 5.5(a)(iii); and
 - (v) not make any public statement or take any other action that contradicts the recommendation of or the statement of the intention to vote in favour of the Scheme by the Tatura Milk Supplier Directors,

in the absence of a Superior Proposal.
- (b) Subject to this clause 5.5, Tatura Milk represents and warrants to Bega Cheese that it has been advised by each Tatura Milk Supplier Director in office as at the date of this agreement that as at the date of this agreement he does not intend to change, withdraw or modify his recommendation or statement of intention in respect of the Scheme in the absence of a Superior Proposal.
- (c) Nothing in this agreement restricts Tatura Milk or the Tatura Milk Supplier Directors from responding to or undertaking another act with respect to a proposed bona fide takeover bid, scheme of arrangement, amalgamation, merger, share or convertible security issue, capital reconstruction, consolidation, acquisition of main undertaking or other business combination involving any member of the Tatura Milk Group and one or more other persons (**Alternative Proposal**) in circumstances where the Tatura Milk Supplier Directors have determined in good faith and acting reasonably that:
 - (i) the Alternative Proposal, if recommended by the directors of Tatura Milk and completed substantially as proposed, would result in a transaction materially more favourable to Tatura Milk and its shareholders as a whole than the Merger, after receiving written advice from Tatura Milk's financial adviser in relation to the matter; and

- (ii) failing to respond in any way to the Alternative Proposal would be likely to cause the Tatura Milk Supplier Directors (or the directors of Tatura Milk) to breach their fiduciary or other legal duties, after receiving written advice from Tatura Milk's external lawyers in relation to the matter,

and Tatura Milk notifies Bega Cheese of this determination in writing (including providing to Bega Cheese the advice from Tatura Milk's financial adviser and external lawyers **provided that** Bega Cheese first undertakes in writing to ensure that the advice is not disclosed to any person other than a director or legal adviser of Bega Cheese on a strictly confidential basis).

(d) If:

- (i) clause 3.8(a)(i) or (ii) applies;
- (ii) the Independent Expert opines that the Scheme is not in the best interests of Tatura Milk RP Shareholders; or
- (iii) the Tatura Milk Supplier Directors make a determination under clause 5.5(c),

a Tatura Milk Supplier Director may change, withdraw or modify his recommendation or statement of intention in respect of the Scheme.

5.6 Court refuses to make orders

If the Court refuses to make any orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting to consider or approve the Scheme, then Bega Cheese and Tatura Milk must consult with each other in good faith in order to determine whether to appeal the Court's decision. If in the opinion of senior counsel, obtained by either party within 10 days of the Court's decision, there are reasonable prospects of successfully appealing the Court's decision then, unless the parties agree otherwise, Tatura Milk must appeal the Court's decision to the fullest extent possible (with costs to be borne equally by Tatura Milk and Bega Cheese).

5.7 Appointment of Tatura Milk Supplier Directors to Bega Cheese board

If Bega Cheese is notified of the Tatura Milk Nominated Directors by the Effective Date, Bega Cheese represents and warrants to Tatura Milk that, subject to obtaining the necessary consents to act, it will appoint, by resolution of the Bega Cheese board or Bega Cheese shareholders, the Tatura Milk Nominated Directors to the board of Bega Cheese in accordance with rule 9.1(a)(ii) of the Bega Cheese constitution.

5.8 Dividends

- (a) Bega Cheese may declare and pay any dividend on the Bega Cheese Shares after 31 January 2012 in respect of the financial performance of Bega Cheese for the 6 months ending 31 December 2011, provided that the total amount of the dividend does not represent more than 60% of the net profit after tax and non-controlling interests of Bega Cheese for that period and provided further

that the record date for determining entitlements to the dividend occurs after 31 January 2012.

- (b) For the avoidance of doubt, if the Bega Cheese Shares comprising the Scheme Consideration have not been issued by the record date applicable to a dividend declared or paid in accordance with clause 5.8(a), Scheme Shareholders will have no rights to participate in the dividend.

5.9 Bega Cheese Statements of Intention

Bega Cheese warrants and represents to Tatura Milk that each of the Bega Cheese Statements of Intention is an accurate and not misleading statement of the belief, commitment or intention (**Stated Intention**) of Bega Cheese and its directors in office at the date of this agreement, and Bega Cheese undertakes to use its best endeavours to implement or comply with each Stated Intention.

5.10 Issue and redemption of Tatura Milk RP Shares

Tatura Milk may, in accordance with its constitution, issue Tatura Milk RP Shares to Tatura Milk Suppliers and redeem Tatura Milk RP Shares if that issue or redemption has been approved on a case by case basis by the Tatura Milk board of directors (including the directors appointed by Bega Cheese).

6. Representations, warranties and undertakings

6.1 Tatura Milk representations and warranties

Tatura Milk represents and warrants to Bega Cheese (on Bega Cheese's own behalf and separately as trustee or nominee for each Bega Cheese Indemnified Party) that:

- (a) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation and each member of the Tatura Milk Group is a corporation validly existing under the laws of its place of incorporation;
- (b) **corporate power:** it has the corporate power to enter into and perform or cause to be performed its obligations under this agreement;
- (c) **corporate authorisations:** it has taken or will take all necessary corporate action to authorise its entry into of this agreement and the Scheme Deed and, subject to Tatura Milk RP Shareholders approving the Scheme and the fulfilment or waiver of all other Conditions Precedent and the fulfilment of the conditions set out in clause 2 of the Scheme Deed, has taken or will take all necessary corporate action to authorise the performance of its obligations under this agreement and the Scheme Deed;
- (d) **binding obligations:** (subject to laws generally affecting creditors' rights and principles of equity) this agreement is valid and binding upon it;
- (e) **solvency:** as at the date of this agreement each member of the Tatura Milk Group is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its

winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets;

- (f) **regulatory action:** so far as it is aware as at the date of this agreement no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement;
- (g) **no default:** this agreement does not conflict with or result in the breach of or default under any provision of Tatura Milk' constitution, any material term or provision of any material agreement, or as at the date of this agreement any writ, order or injunction, judgement, law, rule, regulation or instrument to which Tatura Milk is party or subject or of which it or any member of the Tatura Milk Group is bound;
- (h) **issued securities:** the issued Tatura Milk securities as of the date of this agreement are:
 - (i) 28,413,511 ordinary shares; and
 - (ii) 12,009,508 Tatura Milk RP Shares,

and, subject to clause 5.10, there is not on issue, nor is there any subsisting agreement to issue, any other securities or instruments which may convert into Tatura Milk RP Shares or any other securities in Tatura Milk, except as required or permitted pursuant to this agreement or the Scheme;

- (i) **Tatura Milk Information:** as at the date of the Scheme Booklet, the Tatura Milk Information will:
 - (i) be prepared and/or provided in good faith with a view to ensuring that the Scheme Booklet will comply in all material respects with the applicable requirements of the Corporations Act and RG 60 and on the understanding that Bega Cheese and its directors will rely on that information for the purposes of considering the Scheme Booklet and approving the Bega Cheese Information in the Scheme Booklet before it is despatched to Tatura Milk RP Shareholders and for the purposes of implementing the Merger; and
 - (ii) be accurate in all material respects and will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements;
- (j) **updating information:** it will, as a continuing obligation, ensure that the Scheme Booklet will be updated by all further or new information which may arise after the date of the Scheme Booklet until the Scheme Meeting which is necessary to ensure there would be no breach of clause 6.1(i) if it applied as at the date upon which that information arose; and

- (k) **provision of information to Independent Expert:** all information provided by or on behalf of Tatura Milk to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's report for inclusion in the Scheme Booklet.

6.2 Bega Cheese representations and warranties

Bega Cheese represents and warrants to Tatura Milk (on its own behalf and separately as trustee or nominee for each Tatura Milk Indemnified Party) that:

- (a) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation and each member of the Bega Cheese Group is a corporation validly existing under the laws of its place of incorporation;
- (b) **corporate power:** it has the corporate power to enter into and perform or cause to be performed its obligations under this agreement;
- (c) **corporate authorisations:** it has taken or will take all necessary corporate action to authorise its entry into of this agreement and the Scheme Deed and, subject to Tatura Milk RP Shareholders approving the Scheme and the fulfilment or waiver of all other Conditions Precedent and the fulfilment of the conditions set out in clause 2 of the Scheme Deed, has taken or will take all necessary corporate action to authorise the performance of its obligations under this agreement and the Scheme Deed;
- (d) **binding obligations:** (subject to laws generally affecting creditors' rights and principles or equity) this agreement is valid and binding upon it;
- (e) **solvency:** as at the date of this agreement each member of the Bega Cheese Group is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets;
- (f) **regulatory action:** so far as it is aware as at the date of this agreement no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement;
- (g) **no default:** this agreement does not conflict with or result in the breach of or default under any provision of Bega Cheese's constitution, any material term or provision of any material agreement or as at the date of this agreement any writ, order or injunction, judgement, law, rule, regulation or instrument to which a member of the Bega Cheese Group is party or subject or of which it is bound;
- (h) **issued securities:** the issued Bega Cheese securities as of the date of this agreement are 126,709,903 Bega Cheese Shares and 362,500 Bega Cheese Employee Rights and there is not on issue, nor is there any subsisting

agreement to issue, any other securities or instruments which may convert into Bega Cheese Shares or any other securities in Bega Cheese other than the issue of securities or grants of options to employees of Bega Cheese or its Subsidiaries of the type and up to the number and on the terms specified in the Bega Cheese Prospectus (including any additional rights granted to holders of Bega Cheese Employee Rights in accordance with the terms of those Bega Cheese Employee Rights) and other than the issue of Bega Cheese Shares pursuant to the Scheme;

- (i) **Bega Cheese Information:** the Bega Cheese Information included in the Scheme Booklet, as at the date of the Scheme Booklet, will:

- (i) be prepared and/or provided in good faith with a view to ensuring that the Scheme Booklet will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60 and on the understanding that Tatura Milk and the Tatura Milk Supplier Directors will rely on that information for the purposes of preparing and approving the Scheme Booklet for despatch to Tatura Milk RP Shareholders and proposing and implementing the Scheme and Merger; and
- (ii) be accurate in all material respects and will not contain any material statement which is misleading or deceptive, nor contain any material omission, having regard to applicable disclosure requirements,

and all other information that is provided by or on behalf of a member of the Bega Cheese Group in connection with the Scheme or preparation of the Scheme Booklet is materially accurate and not misleading or deceptive when provided;

- (j) **updating information:** it will, as a continuing obligation, provide to Tatura Milk all such further or new information which may arise after the date of the Scheme Booklet until the Scheme Meeting which may be necessary to ensure there would be no breach of clause 6.2(i) if it applied on the date on which the information arose;
- (k) **provision of information to the Independent Expert:** all information provided by or on behalf of Bega Cheese to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on the information for the purpose of preparing the Independent Expert's report for inclusion in the Scheme Booklet; and
- (l) **ASX listed:** it is admitted to the official list of ASX, all issued Bega Cheese Shares have been granted quotation on ASX and Bega Cheese is in compliance in all material respects with its continuous disclosure and other obligations under the Listing Rules.

6.3 Timing of representations and warranties

Each representation and warranty made or given under clause 6.1 and clause 6.2 is given:

- (a) at the date of the agreement and continuously through to 9:00 am on the Implementation Date; or
- (b) where expressed, at the time at which the representation or warranty is expressed to be given.

6.4 Survival of representations and warranties

Each representation and warranty in clauses 6.1 and 6.2:

- (a) is severable; and
- (b) will survive the termination of this agreement.

7. Termination rights

7.1 Automatic termination

Without limiting any other provision of this agreement, this agreement will terminate automatically if:

- (a) the Scheme is not approved by the necessary majorities at the Scheme Meeting; or
- (b) the EGM Resolution is not approved by the necessary majority at the Extraordinary General Meeting.

7.2 Termination by notice

Without limiting any other provision of this agreement:

- (a) either party (**non-defaulting party**) may terminate this agreement by notice in writing to the other party if:
 - (i) an order of the Court approving the Scheme is not made under section 411(4)(b) of the Corporations Act on or before the Sunset Date;
 - (ii) each of the following has occurred:
 - (A) the other party (**defaulting party**) is in material breach of a provision of this agreement (other than for breach of a representation or warranty in clause 6.1 or clause 6.2) at any time prior to 9:00 am on the Implementation Date;

- (B) the non-defaulting party has given notice to the defaulting party setting out the relevant circumstances of the breach and stating an intention to terminate the agreement; and
- (C) the breach cannot be remedied or is not remedied prior to 9:00 am on the Implementation Date and within 5 Business Days from the time the notice in clause 7.2(a)(ii)(B) is given;
- (iii) a Court or other Regulatory Authority has issued an order, decree or ruling or taken other action that permanently restrains or prohibits the Merger and that order, decree, ruling or other action has become final and cannot be appealed;
- (iv) in accordance with clause 3.8(b);
- (v) the Independent Expert opines that the Scheme is not in the best interests of RP Holders; or
- (vi) the Tatura Milk Supplier Directors make a determination under clause 5.5(c); and
- (b) Bega Cheese may terminate this agreement by notice in writing to Tatura Milk if, at any time a Tatura Milk Supplier Director fails to recommend the Scheme or the Merger or withdraws his recommendation that Tatura Milk Shareholders vote in favour of, or his statement of intention to vote in favour of, the Scheme or makes a public statement indicating that he no longer supports the Scheme.

7.3 Notice of breach

Each party must give notice to the other as soon as reasonably practicable after it becomes aware of a breach by it of this agreement (including in respect of any representation or warranty).

7.4 Termination right

Any right to terminate this agreement ceases at 9:00 am on the Implementation Date.

7.5 Effect of termination

- (a) If a party terminates this agreement, each party will be released from all further obligations under this agreement other than under clauses 1, 8, 9, 10 and 11.
- (b) Termination of this agreement does not affect any accrued rights or remedies of a party (including in respect of any past breach of this agreement by the other party).

8. Public announcements

8.1 Announcement of transaction

Promptly after the execution of this agreement, the parties will make the Public Announcements.

8.2 Other public announcements

- (a) Subject to clauses 8.2(b) and (c), Tatura Milk must not make any other public announcement or disclosure in relation to the Merger (including any staff or client announcements or presentations) other than in a form approved by Bega Cheese (acting reasonably).
- (b) If Tatura Milk is required by law to make any announcement or make any disclosure in relation to the Merger, it may do so only after it has given as much notice as possible to, and has consulted (to the fullest extent reasonable in the circumstances) with Bega Cheese.
- (c) Clause 8.2(a) does not apply to announcements, disclosures, submissions and other communications by Tatura Milk to the Court, a Regulatory Authority, shareholders of Tatura Milk and others to the extent necessary for an application to be made to the Court for an order to convene the Scheme Meeting or for an order approving the Scheme or to the extent necessary to convene the Scheme Meeting or Extraordinary General Meeting, implement the Scheme or for Tatura Milk to perform its obligations under this agreement or the Scheme Deed or to take any other step required or permitted under this agreement or the Scheme Deed.

8.3 Statements on termination

The parties must act in good faith and use all reasonable endeavours to issue agreed statements in respect of any termination of this agreement and, to that end but without limitation, clause 8.2 applies to any such statements or disclosures.

9. GST

9.1 Interpretation

In this clause 9 and the rest of this agreement, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

9.2 GST exclusive

- (a) Any consideration or amount payable under this agreement, including any non-monetary consideration (as reduced in accordance with clause 9.2(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this agreement, an additional amount (**Additional Amount**) is payable by the

party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.

- (c) The additional amount payable under clause 9.2(b) is payable at the same time and in the same manner as the consideration for the supply, subject to the provision of a valid Tax Invoice at or before that time. If a valid Tax Invoice is not provided at or before that time then the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including, without limitation, the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 9.2(b):
 - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this agreement:
 - (i) if an amount payable under or in connection with this agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred; and
 - (ii) no Additional Amount is payable under clause 9.2(b) in respect of a Supply to which section 84-5 of the GST Act applies.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party and to which the Representative Member of a GST Group of which the party is a member is entitled.

10. Notices

10.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing and in English directed to the recipient's address for notices specified in the Details, as varied by any Notice; and
- (b) hand delivered or sent by prepaid post or facsimile to that address.

10.2 Effective on receipt

A Notice given in accordance with clause 10.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, the second Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from outside Australia); or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery or transmission under clause 10.2(a) or 10.2(c) is not on a Business Day or after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the Business Day after that delivery, receipt or transmission.

11. General

11.1 Alterations

This agreement may be altered only in writing signed by each party.

11.2 Approvals and consents

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

11.3 Assignment

A party may only assign this agreement or a right under this agreement with the prior written consent of each other party.

11.4 Entire agreement

This agreement constitutes the entire agreement between the parties as at the date of this agreement with respect to its subject matter. Any prior agreement arrangement, understanding or representation relating to that subject matter, including the Merger Principles Agreement between the parties dated 9 March 2011, is replaced by this agreement and is of no further force or effect.

11.5 Survival and indemnities

- (a) Any indemnity or obligation of confidentiality under this agreement is independent and survives termination of this agreement. Any other term which by its nature is intended to survive termination of this agreement survives termination of this agreement.
- (b) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

11.6 Costs and stamp duty

- (a) Except as otherwise provided in this agreement, each party must pay its own costs of negotiating, preparing, executing and performing this agreement and the Scheme Booklet and the proposed, attempted or actual implementation of this agreement and the Scheme.
- (b) Any stamp duty payable on the transfer of Tatura Milk RP Shares to Bega Cheese under the Scheme must be paid by Bega Cheese.

11.7 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

11.8 No merger

The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

11.9 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or part of a term of this agreement continue in force.

11.10 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

11.11 Relationship

Except where this agreement expressly states otherwise, this agreement does not create a relationship of employment, trust, agency or partnership between the parties.

11.12 No representation or reliance

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representations or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;
- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and
- (c) clauses 11.12(a) and 11.12(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

11.13 Governing law and jurisdiction

This agreement is governed by the law of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

11.14 Specific performance

The parties acknowledge that monetary damages alone would not be adequate compensation for a breach by any party of an obligation under this agreement and that specific performance of that obligation is an appropriate remedy.

11.15 Mutual further assurances

Each party must do all things necessary or expedient to be done by it in connection with the matters referred to in this agreement.

Schedule 1 – Timetable

Event	Target Completion
Appoint Independent Expert	By Friday 30 September 2011
Lodge Scheme Booklet with ASIC	Monday 24 October 2011
First Court Hearing	Friday 18 November 2011
Dispatch Scheme Booklet	Monday 21 November 2011
EGM	Wednesday 14 December 2011
Scheme Meeting	Wednesday 14 December 2011
Second Court Hearing	Friday 16 December 2011
Effective Date	Monday 19 December 2011
Implementation Date	Friday 23 December 2011

Schedule 2 – Bega Cheese Statements of Intention

1. Milk pricing

Bega Cheese recognises that the Tatura Milk business requires a substantial and reliable supply of milk and, accordingly, is committed to maintaining a base of dairy farmer milk suppliers to Tatura Milk in Northern Victoria. Bega Cheese recognises that, in order to ensure that this milk supply base remains in place following the Merger, Tatura Milk will have to continue to pay a leading manufacturing price for milk supplied to it by dairy farmers in Northern Victoria.

2. Tatura Milk Business

Following the Merger, Bega Cheese intends to continue the key business operations of Tatura Milk from the company's facilities at Tatura, Victoria. Bega Cheese also intends to continue to support and foster the success of the Tatura Milk business and the use of the Tatura brand in that business.

3. Sale facility for Bega Cheese Shares

Bega Cheese will use its best endeavours to establish an arrangement with a stock broker to enable the Scheme Shareholders to sell the Bega Cheese Shares issued under the Scheme within a period of 3 months after the Implementation Date.

Executed as an agreement

Executed by Tatura Milk Industries)
Limited (ABN 66 006 603 970) in)
accordance with Section 127 of the)
Corporations Act 2001 (Cth)

.....
Signature of authorised person

.....
Signature of authorised person

.....
Office held

.....
Office held

.....
Name of authorised person
(BLOCK LETTERS)

.....
Name of authorised person
(BLOCK LETTERS)

Executed by Bega Cheese Limited)
(ABN 81 008 358 503) in accordance with)
Section 127 of the Corporations Act 2001)
(Cth)

.....
Signature of authorised person

.....
Signature of authorised person

.....
Office held

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Office held

.....
Name of authorised person
(BLOCK LETTERS)

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Name of authorised person
(BLOCK LETTERS)

Annexure 1 – Public Announcements

See attached.

4 October 2011

Dear Shareholder

Proposed merger with Bega Cheese

In March this year I wrote to shareholders and advised that Bega Cheese Ltd ("Bega Cheese") had committed to a process to enable Tatura Milk Industries redeemable preference shareholders ("Tatura Milk RP Shareholders") to participate directly in the ownership of Bega Cheese as soon as possible after the Bega Cheese IPO. At that time, Tatura Milk signed a Merger Principles Agreement with Bega Cheese to provide a pathway for the full merger of Tatura Milk and Bega Cheese.

It is with great pleasure that, on behalf of the supplier directors, I announce that a Merger Implementation Agreement has been now signed with Bega Cheese to finalise the basis for a proposed merger of Bega Cheese with Tatura Milk. The proposed merger will result in Tatura Milk RP Shareholders receiving **two (2)** ASX listed Bega Cheese shares in exchange for **each** Tatura Milk redeemable preference share they hold.

The merger, which is to be implemented by way of a scheme of arrangement, is still subject to approval by Tatura Milk RP Shareholders at a formal meeting to be held later this year as well as court approval. Changes to Tatura Milk's constitution will also need to be approved by shareholders in order to enable the merger to proceed.

Subject to the necessary shareholder and court approvals being obtained, we expect that the merger should be completed by the end of this calendar year.

A committee of the Tatura Milk Board chaired by me and comprising only your supplier directors has negotiated the Merger Implementation Agreement. The supplier directors have been assisted in the negotiations by Vince Fayad from Lawler Corporate Finance Pty Limited and Hugh Scales from Norton Gledhill Commercial Lawyers, who are independent of Bega Cheese. In addition, as part of the documentation to be provided to Tatura Milk RP Shareholders, an independent expert's report will be provided in which the expert will assess whether or not the Bega Cheese merger proposal is in the best interests of the Tatura Milk RP Shareholders.

The next step will be the production of a Scheme Booklet to be distributed to all shareholders that will explain all aspects of the scheme and will include the independent expert's report. It is hoped that this document will be sent to shareholders in mid-November for a meeting to be held in mid-December 2011.

We will schedule shareholder information meetings in the coming weeks to update you on the process and timetable for this important and historic transaction.

If you have any immediate questions please do not hesitate to talk to me or any of the supplier directors.

Yours sincerely

Rick Cross
Deputy Chairman

ASX Announcement

Proposed merger with Tatura Milk Industries

Earlier this year we announced that Bega Cheese and 70 percent owned Tatura Milk Industries, had signed a Merger Principles Agreement which provided a pathway for a full merger of Tatura Milk and Bega Cheese. It was proposed the merger would proceed shortly after Bega Cheese had listed on the ASX. This intention and the detail of the MPA was included in the July 2011 Bega Cheese IPO Prospectus.

I am now pleased to announce that a Merger Implementation Agreement has been signed, and subject to the approval of Tatura Milk Industries Redeemable Preference Shareholders ("Tatura Milk RP Shareholders") and the court, the merger should be completed by the end of this year.

The merger will involve the issue of two (2) Bega Cheese shares in exchange for each Tatura Milk redeemable preference share.

This will result in the issue of 24.1 million new Bega Cheese shares (representing 16.0 percent of the expanded issued capital base of the Bega Cheese Group) to approximately 320 current Tatura Milk RP Shareholders (who are also milk suppliers to Tatura Milk). Once issued, these shares will rank equally with existing Bega Cheese shares including entitlements to dividends.

The Bega Cheese Board is pleased to proceed with the merger, as the full integration of the businesses should provide both operational and financial benefits to all stakeholders.

Two of the TMI supplier directors will join the Bega Cheese Board following the merger.

Yours sincerely,

Barry Irvin
Executive Chairman

[Copy of the MIA to also be uploaded]

Annexure 2 – Scheme Deed

See attached.

Tatura Milk Industries Limited
ABN 66 006 603 970

and

Bega Cheese Limited
ABN 81 008 358 503

Scheme of arrangement deed

Norton Gledhill
COMMERCIAL LAWYERS

Level 23, 459 Collins Street
Melbourne Vic 3000
Australia

Tel: +61 3 9614 8933
Fax: +61 3 9629 1415
Ref: HMAS/11612

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This deed is made on

between: **Tatura Milk Industries Limited** ABN 66 006 603 970 (**Tatura Milk**)

and: **Bega Cheese Limited** ABN 81 008 358 503 (**Bega Cheese**)

Recitals

A. Tatura Milk and Bega Cheese have agreed to merge by:

- (a) Bega Cheese acquiring all of the Tatura Milk RP Shares; and
- (b) the Scheme Shareholders receiving 2 Bega Cheese Shares for every 1 of their Tatura Milk RP Shares acquired by Bega Cheese;

pursuant to a scheme of arrangement between Tatura Milk and the Scheme Shareholders under part 5.1 of the Corporations Act.

B. This deed sets out the terms of the proposed scheme of arrangement and merger which, subject to the shareholders of Tatura Milk passing a resolution in favour of, and the court approving, the scheme in accordance with section 411(4) of the Corporations Act, will be binding on the shareholders of Tatura Milk, as well as Tatura Milk and Bega Cheese.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context otherwise requires:

ASX means ASX Limited ACN 008 624 691 or, where appropriate, the market operated by it;

ASX Listing Rules means the listing rules (as defined in chapter 7 of the Corporations Act) of the financial market operated by ASX;

Bega Cheese Share means a fully paid ordinary share in the capital of Bega Cheese;

Business Day means a day which is not a Saturday, Sunday, bank holiday or public holiday:

- (a) for the purpose of sending or receiving a notice, in the city where the notice is received; and
- (b) for all other purposes, in Melbourne or Sydney;

Corporations Act means the Corporations Act 2001 (Cth);

Court means a court of competent jurisdiction under the Corporations Act;

Effective Date means the date an office copy of the Court order approving the Scheme under section 411(4)(b) of the Corporations Act is lodged with ASIC under section 411(10) or such other effective date of the Scheme as Tatura Milk and Bega Cheese may, with the consent of the Court, agree;

Encumbrance means a mortgage, charge, pledge, lien or other encumbrance created in respect of an asset by its owner or by operation of law to secure an obligation of the owner;

First Court Date means the first day on which an application to the Court is made seeking an order pursuant to section 411(1) of the Corporations Act that a meeting of the shareholders of Tatura Milk be convened and held to consider the Scheme;

Implementation Date means the 4th Business Day after the Effective Date;

Merger means the merger between Tatura Milk and Bega Cheese as contemplated under this deed whereby the Tatura Milk RP Shareholders become shareholders of Bega Cheese and Tatura Milk becomes a wholly owned subsidiary of Bega Cheese;

Merger Implementation Agreement means the merger implementation agreement dated 4 October 2011 between Tatura Milk and Bega Cheese;

Register Close Time has the meaning given in clause 3.5(a);

Scheme means the scheme of arrangement between Tatura Milk and its shareholders under part 5.1 of the Corporations Act on the terms set out in this deed which is to implement, or to facilitate implementation of, the Merger;

Scheme Meeting means the meeting of the Tatura Milk RP Shareholders convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act. It includes any adjournment of that meeting;

Scheme Shareholder means a person who is a Tatura Milk RP Shareholder as at 9:00 am on the Implementation Date, other than Bega Cheese or a subsidiary of Bega Cheese;

Sunset Date means 29 February 2012 or such other date as agreed in writing between Bega Cheese and Tatura Milk;

Tatura Milk Nominated Directors means 2 Tatura Milk Supplier Directors who are in office as at the Effective Date and who are selected by or in accordance with an agreement between the Tatura Milk Supplier Directors that is subsisting as at the Effective Date and notified to Bega Cheese to be appointed as directors of Bega Cheese;

Tatura Milk RP Share means an A class redeemable preference share in the capital of Tatura Milk;

Tatura Milk RP Shareholder means a person who is registered in the Tatura Milk Share Register as the holder of Tatura Milk RP Shares;

Tatura Milk Share Register means the register of members of Tatura Milk kept pursuant to the Corporations Act;

Tatura Milk Supplier means a person who conducts a dairy farming business and supplies milk to Tatura Milk or any of its related bodies corporate that is collected from the farm and delivered directly to the milk processing facility of Tatura Milk (or its related body corporate) located at Tatura, Victoria, including a person who supplies milk in partnership with others or as a sharefarmer; and

Tatura Milk Supplier Director means a Dairy Farmer Director of Tatura Milk, as defined in the constitution of Tatura Milk, who has not been appointed by Bega Cheese or a Subsidiary of Bega Cheese pursuant to its rights as the 'Majority Shareholder' under the Tatura Milk constitution.

1.2 Interpretation

In this deed headings and bold typing are included for convenience only and do not affect interpretation and, unless the context otherwise requires:

- (a) a reference to a word includes the singular and the plural of the word and vice versa;
- (b) a reference to a gender includes any gender;
- (c) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (d) a term which refers to a person includes a company, a partnership, an association, a corporation, a body corporate, a joint venture, a sovereign state, a government or a government department or agency;
- (e) a reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced;
- (f) a reference to a recital, clause, paragraph, schedule, annexure or other part is a reference to an item of that type in this deed;
- (g) a reference to a party is a reference to a Tatura Milk RP Shareholder on or after the Effective Date, Tatura Milk or Bega Cheese and includes a reference to that party's successors and permitted assigns;
- (h) a reference to a statute or regulation or a provision of a statute or regulation is a reference to that statute, regulation or provision as amended or a statute, regulation or provision replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws made or issued under that statute;
- (i) a reference to a document is a reference to a document of any kind including but not limited to an agreement in writing, a certificate, a notice, or an instrument;

- (j) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;
- (k) a reference to a time is a reference to Melbourne time;
- (l) a monetary reference is a reference to Australian currency;
- (m) a reference to an entity, other than a party to this deed, which ceases to exist or whose powers or functions are transferred to another entity, is a reference to the entity which replaces it or which substantially succeeds to its powers or functions;
- (n) a word or term defined in the Corporations Act 2001 has the same meaning in this deed; and
- (o) a word or term defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the same meaning in this deed where used in connection with the GST imposed under that Act.

1.3 Deed binding on, and for the benefit of, Scheme Shareholders

Subject to clause 2, this deed as amended binds Tatura Milk, Bega Cheese and, on and from the Effective Date, each Tatura Milk RP Shareholder for the benefit of each of the others of them, as if each Tatura Milk RP Shareholder had executed this deed as a party.

1.4 Jurisdiction of registration

Tatura Milk is taken to be registered in Victoria under the Corporations Act.

2. Deed conditional

This deed is conditional on:

- (a) the Merger Implementation Agreement not being terminated under clause 7 of that agreement on or before the Implementation Date; and
- (b) an order of the Court approving the Scheme being made under section 411(4)(b) of the Corporations Act on or before the Sunset Date.

If those conditions are not satisfied this deed will be of no effect, despite anything else contained in this deed.

3. Scheme

3.1 Lodgement of Court orders

Tatura Milk will lodge with ASIC office copies of the Court orders under section 411 of the Corporations Act approving the Scheme by 5pm on the Business Day immediately following the day such office copy is received (or such later date as agreed in writing by Bega Cheese).

3.2 Sale and transfer of Tatura Milk RP Shares

Each Scheme Shareholder in consideration for Bega Cheese's obligation to issue Bega Cheese Shares to the Scheme Shareholder in accordance with clause 3.4, and subject to Bega Cheese satisfying those obligations:

- (a) sells and transfers to Bega Cheese on the Implementation Date all of the Tatura Milk RP Shares held by the Scheme Shareholder at 9:00 am on the Implementation Date, free from Encumbrances to the extent permitted by law, together with all rights and entitlements attaching to the Tatura Milk RP Shares as at that date;
- (b) irrevocably appoints Bega Cheese and each director of Bega Cheese as the attorney of the Scheme Shareholder from the Implementation Date until those Tatura Milk RP Shares are registered in the name of Bega Cheese and authorises the attorney severally on behalf of and in the name of the Scheme Shareholder to do everything that Bega Cheese reasonably considers should be done to:
 - (1) register or otherwise perfect the transfer of those Tatura Milk RP Shares to Bega Cheese; and
 - (2) exercise any rights attached to those Tatura Milk RP Shares; and
- (c) warrants to Bega Cheese that the Scheme Shareholder has the power and capacity to sell and transfer, and sells and transfers, to Bega Cheese full legal and beneficial title to those Tatura Milk RP Shares free of any Encumbrance to the extent permitted by law, subject to the approval and registration of the transfer by Tatura Milk;

without, in each case, the need for any further act or document from that Scheme Shareholder.

3.3 Registration of transfers

- (a) Tatura Milk must register the transfers of Tatura Milk RP Shares made under clause 3.2 on the Implementation Date, subject to:
 - (1) the payment of any applicable duty; and
 - (2) Bega Cheese satisfying its obligations under clause 3.4.

Pending registration, Bega Cheese will be beneficially entitled to those Tatura Milk RP Shares from the Implementation Date.

- (b) The parties agree and acknowledge that Tatura Milk may register the transfers of Tatura Milk RP Shares made under clause 3.2 without the certificates or other title documents for those Tatura Milk RP Shares being provided to Tatura Milk, and upon registration of the transfers any such certificates or other title documents will be taken to be cancelled and will cease to have effect as documents of or evidencing title.

- (c) Bega Cheese agrees to accept the transfer of Tatura Milk RP Shares to be transferred to it under clause 3.2 and agrees to become a member of Tatura Milk in respect of those Tatura Milk RP Shares and, whilst such a member, agrees to be bound by the constitution of Tatura Milk as a member in respect of the Tatura Milk RP Shares held by it for the time being.

3.4 Issue of Bega Cheese Shares

- (a) Bega Cheese must, on the Implementation Date, issue to each Scheme Shareholder 2 Bega Cheese Shares for every 1 Tatura Milk RP Share sold and transferred to Bega Cheese by the Scheme Shareholder under clause 3.2.
- (b) Bega Cheese Shares issued under clause 3.3(a) will rank pari passu with all other Bega Cheese Shares then on issue.
- (c) Bega Cheese must apply for quotation on the financial market of ASX of all Bega Cheese Shares issued under clause 3.4(a) as soon as reasonably practicable after their issue, but in any case within the time limit prescribed by the ASX Listing Rules.
- (d) Each Scheme Shareholder applies for the Bega Cheese Shares to be issued to the Scheme Shareholder under clause 3.4(a) and agrees to become a member of Bega Cheese on the date the shares are issued, and authorises the Scheme Shareholder's name and address as it appears on the register of members of Tatura Milk to be entered into the register of members of Bega Cheese and, whilst a shareholder of Bega Cheese, agrees to be bound by the constitution of Bega Cheese in respect of the Bega Cheese Shares held by the Scheme Shareholder for the time being.
- (e) Bega Cheese must not declare or pay a dividend or make any other distribution to its shareholders on or before the Implementation Date, except as follows:
 - (1) Bega Cheese may declare and pay any dividend on the Bega Cheese Shares after 31 January 2012 in respect of the financial performance of Bega Cheese for the 6 months ending 31 December 2011, provided that the dividend does not represent more than 60% of the net profit after tax and non-controlling interests of Bega Cheese for that period and provided further that the record date for determining entitlements to the dividend occurs after 31 January 2012.
 - (2) For the avoidance of doubt, if the Bega Cheese Shares comprising the Scheme Consideration have not been issued by the record date applicable to a dividend declared or paid in accordance with clause 3.4(e)(1), Scheme Shareholders will have no rights to participate in the dividend.

3.5 Dealings in Tatura Milk RP Share before and after Implementation Date

- (a) If the Court makes orders under section 411(4) of the Corporations Act approving the Scheme, Tatura Milk must, subject to this clause 3.5, close the Tatura Milk Share Register in accordance with its constitution by 5 pm on the Effective Date (**Register Close Time**).

- (b) Tatura Milk must ensure that all registrable transfers and transmission applications in respect of Tatura Milk RP Shares which are:
 - (1) received by Tatura Milk (or its share registrar) before the Register Close Time; and
 - (2) not refused for registration in accordance with Tatura Milk's constitution;are registered as soon as reasonably practicable after receipt and, where registration occurs after the Register Close Time, by no later than the Business Day after the Register Close Time and with effect at the Register Close Time.
- (c) A Tatura Milk RP Shareholder (and any person claiming through that Tatura Milk RP Shareholder) must not dispose of or purport to agree to dispose of any Tatura Milk RP Shares or any interest in them after the Register Close Time.
- (d) For the avoidance of doubt, a person who is registered as the holder of a Tatura Milk RP Share at 9:00 am on the Implementation Date will be a Scheme Shareholder.
- (e) Tatura Milk must not register any transfer or transmission application in respect of Tatura Milk RP Shares received after the Register Close Time except for a transfer to Bega Cheese, until the transfers of Tatura Milk RP Share made under clause 3.2 are registered.

3.6 Tatura Milk directors to be appointed to Bega Cheese board

Bega Cheese agrees that:

- (a) if Bega Cheese is notified of the Tatura Milk Nominated Directors by the Effective Date, on or before the Implementation Date Bega Cheese will, subject to obtaining the necessary consents to act, appoint the Tatura Milk Nominated Directors to the board of Bega Cheese; and
- (b) Bega Cheese will use its best endeavours, including by the filling of a casual vacancy that may arise, to ensure that 2 individuals who are Tatura Milk Suppliers (or the representative of a body corporate that is a Tatura Milk Supplier) are on the Bega Cheese board throughout the period of two years from the Implementation Date.

4. Amendment to deed

4.1 Amendment before First Court Date

Before the First Court Date, this deed may be amended or repealed and replaced by supplementary deed between Tatura Milk and Bega Cheese.

4.2 Amendment between First Court Date and Implementation Date

Between the First Court Date and the Implementation Date (both dates inclusive), this deed may be amended or repealed and replaced by supplementary deed between Tatura Milk and Bega Cheese but only if the Court approves the amendment or replacement.

5. General

5.1 Governing law and jurisdiction

This deed is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

5.2 Counterparts

The parties may execute this deed in two or more counterparts and all counterparts together constitute one instrument.

5.3 Consent or approval

Subject to an express provision in this deed, a party may in its absolute discretion give its consent or approval conditionally or unconditionally, or withhold its consent or approval.

5.4 Further assurances

Each party must, at its own expense, do everything reasonably necessary to give effect to this deed and the transactions contemplated by it, including without limitation the execution of documents.

5.5 Notices

- (a) A party may send a notice in connection with this deed by hand delivery, pre-paid post or facsimile transmission to another party at the address details set out below or in such other way as the recipient party may have last notified each other party in writing:

(1) **Tatura Milk**

Address: 236 Hogan Street, Tatura Victoria 3616

Facsimile: 03 5824 2534

Attention: Company Secretary

(2) **Bega Cheese**

Address: 23 – 45 Ridge Street, North Bega New South Wales 2550

Facsimile: 02 6491 7700

Attention: Company Secretary

- (3) **A Tatura Milk RP Shareholder** – at the address or to the facsimile number shown for that person:

(A) in the Tatura Milk Share Register for notices to be sent on or before the Implementation Date; or

(B) in the Bega Cheese share register for notices to be sent after the Implementation Date.

(b) A notice is deemed to be received:

- (1) if sent by pre-paid post, on the second Business Day after the date of posting; or
- (2) if sent by facsimile transmission, on the next Business Day after the date the facsimile was sent in its entirety as shown by the transmission report produced by the sending machine.

Executed as a deed

Executed by Tatura Milk Industries Limited by:

.....	
Signature of director	Signature of director/company secretary

.....	
Name of director	Name of director/company secretary

Executed by Bega Cheese Limited by:

.....	
Signature of director	Signature of director/company secretary

.....	
Name of director	Name of director/company secretary

Annexure 3 – Constitution

That the constitution of Tatura Milk be modified as follows:

1. Insert the following new definition in alphabetical order in article 1(1):

“‘Scheme” means the scheme of arrangement between the Company and the holders of A class shares under part 5.1 of the Act the terms of which are embodied in the scheme of arrangement deed dated [insert date] between the Company and Bega Cheese Limited, as proposed or effected;’

2. Insert the following new paragraph at the end of article 4(2):

‘Article 4(2)(b) does not apply to Bega Cheese Limited in circumstances where it becomes the holder of A class shares due to the acquisition of A class shares under the Scheme. Further, this article 4 shall cease to apply and to have any effect after the Company becomes a wholly-owned subsidiary of Bega Cheese Limited upon the Scheme taking effect.’

3. Insert the following words after the ‘statute’ at the end of article 25(1)(a):

‘or, in the case of the transfer to Bega Cheese Limited under the Scheme, there has been delivered to the Company the scheme of arrangement deed which embodies the terms of the Scheme or such other proper instrument of transfer, duly stamped if necessary’

4. Insert the following after the word ‘Supplier’ at the end of article 25(1)(c):

‘, or the transfer is to Bega Cheese Limited of A class shares acquired by Bega Cheese Limited under the Scheme. This article 25(1)(c) shall cease to apply and to have any effect after the Company becomes a wholly-owned subsidiary of Bega Cheese Limited upon the Scheme taking effect’

5. Insert the following new paragraph at the end of article 65(5):

‘Article 65(5)(b) shall cease to apply and to have any effect after the Company becomes a wholly-owned subsidiary of Bega Cheese Limited upon the Scheme taking effect.’

6. Insert the following words after the word ‘Directors’ at the end of article 66(1)(a):

‘or after the Company becomes a wholly-owned subsidiary of Bega Cheese upon the Scheme taking effect, up to the maximum number of Directors’

7. Insert the following new paragraph (g) in article 72(1):

‘is a Director other than a Majority Shareholder Director and the Company becomes a wholly-owned subsidiary of Bega Cheese Limited upon the Scheme taking effect; or’

and relabel the existing paragraph (g) of article 72(1) as paragraph (h).