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**PROCEDURE AGREEMENT  
UNDER s22 OF THE FARM DEBT MEDIATION ACT 2019**

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**MARK KELLY.**  
Barrister & Commercial Mediator

**PROCEDURE AGREEMENT  
UNDER s22 OF THE FARM DEBT MEDIATION ACT 2019 (“FDMA”)**

**Parties**

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**Appointment of mediator**

1. Pursuant to the FDMA, the parties have agreed to appoint Mark Kelly (“mediator”) to mediate between them in accordance with this procedure agreement, and the FDMA.

**Discussion of the advantages and disadvantages of multi-party mediations (s24 FDMA)**

2. The parties:
  - (a) Consider that they are all of the appropriate parties to this mediation; and
  - (b) Do not seek a multi-party mediation.
3. Should any party, or the mediator, reach the view that it might be beneficial for further parties to be parties to this mediation, then that shall be flagged to all as soon as reasonably practicable. The mediator must then be given an opportunity to discuss the advantages and disadvantages of a multi-party mediation with all.

**Role of mediator**

4. The mediator will be neutral and impartial. The mediator will assist the parties to explore options for the possible resolution of matters between them, by helping the parties to:
  - (a) Isolate the issues;
  - (b) Identify the interests of each party;
  - (c) Develop options for the resolution of the issues; and
  - (d) Explore to what extent each option meets the interests of each party.
5. The mediator will not:
  - (a) Make decisions for any party;
  - (b) Impose a solution on the parties; or

- (c) Be responsible for the provision of professional advice of any kind whatsoever (including legal advice) to any party.

### **Legal representation**

- 6. Each party may be legally represented at the mediation.

### **Preliminary steps**

- 7. Prior to the mediation, the parties or their legal representatives on their behalf will, at a preliminary conference, or by correspondence, agree between themselves and with the mediator:
  - (a) The time and venue for the mediation;
  - (b) Arrangements for the exchange and/or presentation of any documents or other relevant material;
  - (c) Whether the mediator may engage an expert assessor for a stated or any other purpose;
  - (d) The persons who are to attend the mediation;
  - (e) Whether the mediation, or any part of it, is to be conducted by videoconference;
  - (f) Such further details of the mediation process as can usefully be agreed in advance; and
  - (g) Any other necessary matters.

### **Authority to represent and bind**

- 8. Each party will have an attendee, or attendees, with the authority to represent and bind them, and will advise all who that is prior to the commencement of the mediation.

### **Communication related to the mediation**

- 9. The mediator may communicate privately with any of the parties, at any time, provided the content of such communications are kept confidential (unless authorisation to disclose is given).
- 10. The mediation, all steps preliminary to it, and all associated communications, will be:
  - (a) Without prejudice; and
  - (b) Kept confidential, save as required by the FDMA (or otherwise by law), or otherwise agreed in writing and signed by all parties and the mediator.

11. The parties will not subpoena the mediator as a witness in any Court, arbitral, tribunal or other proceeding.
12. There will be no audio or video recording of the mediation, or any part of it.
13. Non-parties present at any time during the mediation will sign the confidentiality and conduct agreement at Schedule 1.

#### **Mediation by videoconference**

14. If the mediation, or any part of it, is conducted by videoconference, it is agreed that:
  - (a) Separate contact details (email and phone) for each person attending the mediation will be provided to the mediator, in advance;
  - (b) To the extent practicably possible, all persons attending will ensure that:
    - (i) They participate from a space which is private;
    - (ii) Their camera shows a full view of the space they are in, to demonstrate privacy;
  - (c) All persons attending must:
    - (i) Advise when they enter, or leave, the videoconference;
    - (ii) Advise, immediately, if anyone else has become able to see and/or hear the videoconference (for example, if someone else enters the room); and
    - (iii) Advise, immediately, if, through a technical error, or otherwise, they become able to see or hear a communication they ought not to be able to see or hear.

#### **Termination**

15. A party may terminate the mediation at any time after consultation with the mediator.
16. The mediator may terminate the mediation at any time after consultation with the parties.

#### **Variation of procedure agreement**

17. This procedure agreement may not be varied other than on a basis which is recorded in writing and signed by all parties and the mediator.

**Mediation agreements (FDMA ss29-31)**

18. No mediation agreement will be binding unless and until it has been reduced to writing and signed by or on behalf of the parties.
19. The parties hereby confirm that they are aware of, and understand, the cancellation rights set out in ss31-33 of the FDMA.

**Defamation**

20. The parties and the mediator agree that no statements or comments, whether written or oral, made or used during the mediation shall be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this document may be pleaded in bar to any such action.

**Costs**

21. The mediator's fee will be:
  - (a) \$8,750 plus GST for a full day mediation, including all pre-, and any post-, mediation attendances, on the basis that total attendances are 15 hours or less;
  - (b) An additional \$600 plus GST per hour for additional attendances beyond 15 hours; and
  - (c) Such reasonable related expenses as he may incur (if any).
22. The mediator's fee will be paid within seven days after the conclusion of the mediation. Interest of 2% per month will be payable on any outstanding sum after that period.
23. The mediator's fee will be shared between the parties, save that the fee share payable by any party attending as a farmer (as defined by the FDMA) will be limited to \$2000 (including GST) pursuant to s23 of the FDMA.
24. If the parties have legal representation, the mediator relies on the legal representatives to ensure payment of his fee, and reserves the right to look to the legal representatives for payment in the usual way such as when counsel is instructed.
25. Unless otherwise agreed in writing each party will otherwise pay its own costs and expenses of the mediation.

**Execution**

26. This procedure agreement may be executed in counterparts, and shall be binding when the same are exchanged (by email or otherwise) between the parties (or via their representatives) and the mediator.

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Authorised signature/s (and please print the name of the authorised signatory/signatories)

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Date

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Authorised signature/s (and please print the name of the authorised signatory/signatories)

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Date

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**Mark Kelly - Mediator**

.....  
Date

**SCHEDULE 1**

**CONFIDENTIALITY AND CONDUCT AGREEMENT BY NON-PARTY**

I, \_\_\_\_\_, hereby agree with the parties to this procedure agreement and the mediator that, in consideration for my attendance at the mediation, I will observe and adhere to such requirements of confidentiality, privilege and conduct as are set out in this procedure agreement, and as otherwise apply to the parties by law.

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Signature

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Date