



## Bluewater Mediation

Helping Separating and  
Divorcing Families

### Agreement to Mediate

**Between:**

**And**

(“the Parties”)

**And**

**Lene Madsen**

(“the Mediator”).

The parties retain the mediator on the following terms:

#### **Role of the Mediator**

1. The mediator is an impartial third party who provides a neutral and balanced dispute resolution process. The mediator will not make decisions, take sides, or provide legal advice.
2. Each party is responsible for seeking and obtaining all necessary advice, including legal advice. **The mediator strongly encourages each party to obtain legal advice throughout the process and before any Agreement is signed.**
3. There is no solicitor-client privilege between the mediator and the parties.

## **The Process**

4. The mediator will first meet each party separately, to identify issues, goals and concerns of that party. Thereafter, the parties and the mediator will meet together, either with or without their counsel, as they may agree.
5. The mediator may meet or communicate with either party separately at any time. The mediator may, in her discretion, disclose information or documents provided in such private meetings (called a "caucus") to the other party, and/or to a party's lawyer, unless agreed otherwise during the caucus.
6. All intake and screening information is confidential between the mediator and the party who completed the screening questionnaire, subject to the confidentiality provisions set out below.
7. Either party may have his or her lawyer attend the mediation. Other professionals or other persons whose presence is required (such as counselors or therapists for children, or financial planners) at the mediation may be present if all parties agree. Any third parties present must agree in writing to be bound by the confidentiality terms of this agreement.
8. Mediation is a voluntary process. Either party or the mediator may terminate the process at any time.
9. **The parties are advised to obtain, from independent legal and other advisors, all necessary legal, tax and other advice at the outset of the mediation process, and are advised to also obtain independent advice on the terms of any proposed settlement. They understand and acknowledge that an agreement reached without the benefit of legal and other necessary advice may be invalid, may later be set aside, or may have unintended consequences.**
10. The mediator may at the parties' request prepare a draft contract, setting out mediator's understanding of the terms of the agreement reached between the parties in mediation. However, the parties agree that they will **not** conclude a binding agreement in mediation. Any binding agreement shall be made by the parties following the mediation with the advice of lawyers retained by each of them to provide independent legal advice.
11. The parties fully indemnify the mediator from any claims arising out of any agreements entered into following this process whether they have obtained legal advice or not.
12. The parties authorize the mediator to discuss all aspects of the mediation with each other's lawyers and other advisors, excepting information that has been agreed to be confidential as per paragraph 6. The parties authorize the mediator to provide the parties' respective lawyers with all progress notes and all documents provided to the mediator for the purpose of mediation or prepared during the mediation, unless those documents are subject to a specific confidentiality agreement between the party that provided the document and the mediator.
13. The mediation will be held in private. Other professionals or persons may be in attendance with the consent of all parties and the mediator. All third parties must agree to be bound by paragraphs 14-17 herein.

### **Without Prejudice Communications**

14. All information, documents, notes, memos, correspondence (including e-mail), progress notes, memoranda of understanding, drafts, or other communications prepared or provided by any person for the purpose of the mediation shall, unless otherwise discoverable, be treated as without-prejudice settlement discussions, and shall be inadmissible for use by anyone in any proceeding for any purpose. The parties agree that they will not summons, subpoena, or seek access to any documents prepared or provided in connection with the mediation, including the file and notes of the mediator. The mediator shall not be called as a witness in any proceeding.
15. Closed mediation is a confidential, off-the-record process. Although the mediator cannot guarantee confidentiality, the purpose of a confidentiality rule is to help parties feel comfortable freely exchanging information, ideas, options, offers and concerns. The parties agree not to divulge communications made during the mediation process to anyone who was not present, including progress notes and e-mails from or to the mediator or between themselves, unless they all consent. **This rule does not prevent the parties from providing necessary information and documents to people whose advice they need in order to make informed decisions.**
16. The mediator agrees to be bound by these confidentiality provisions. However, the mediator may breach the rule of confidentiality in the following situations:
  - a) to communicate with the lawyers for the parties, and to third party advisors retained by a party or both parties;
  - b) for research, writing or educational purposes, on a non-identifying basis (with the written consent of the parties);
  - c) where ordered to do so by a judicial authority;
  - d) where required to do so by law, including obligations to report a child in need of protection; and
  - e) where the information discloses an actual or potential threat to human life or safety.
17. The confidentiality provisions of this Agreement apply to any assistant, intern, co-mediator or observer in the mediation.

### **Risks and Limitations of Mediation**

18. The parties acknowledge that there is no guarantee that they will resolve all issues in mediation, nor that they will be fully satisfied with the outcome. The parties further acknowledge that if no settlement is reached in mediation, any subsequent litigation may be more difficult than if the parties had not mediated.
19. The mediator cannot guarantee physical safety during the mediation process. The mediator cannot guarantee against bad faith or abuse of process by either party.

### **Document Drafting**

20. The mediator may draft interim memoranda or “progress notes” at the end of meetings and a final memorandum or a draft contract when the mediation concludes. All such memoranda are without prejudice settlement proposals; none are binding on a party until they have been finalized into legal agreements with the assistance of the lawyers for the parties.

### **Adversarial Processes Suspended**

21. The parties agree that they will not commence or advance any court proceedings, nor will they instruct their lawyers to correspond with each other with respect to issues in mediation while they are engaged in a mediation process, without first advising the other parties and the mediator.

### **Mediator’s Fees**

22. The parties agree to abide by the mediator’s fee schedule, attached as Schedule “A” to this Agreement. They also agree to abide by the mediator’s cancellation policy, which is as follows:
- Cancellation notice received **less than 72 hours** in advance of the scheduled commencement of the mediation: the fee for all preparation completed by the time notice of cancellation is received, plus \$500.00, plus actual expenses and disbursements incurred by the mediator to that date, plus HST.
  - Cancellation notice **more than 72 hours** but less than one week before the scheduled commencement of the mediation: the fee for all preparation completed by the time the notice of cancellation is received, plus \$250.00, plus actual expenses and disbursements incurred by the arbitrator to that date, plus HST.
  - Cancellation more than one week before the scheduled commencement of the mediation: There is no cancellation fee, but parties will be required to pay for all preparation completed by the time notice of cancellation is received, plus any actual expenses and disbursements incurred by the mediator to that date, plus HST.
23. On execution of this Agreement, the parties will provide the mediator with a retainer of **\$2,500.00** from which fees incurred, in accordance with the fee schedule below, will be deducted. These fees will be held in trust until services have been provided and bills rendered to the parties. Any amount not incurred will be returned to the parties, subject to the cancellation provisions in paragraph 19 of this Agreement.

**The parties affirm that they have had full opportunity to read and understand this agreement.**

_____	_____	_____
	Witness	Date

_____	_____	_____
	Witness	Date

_____	_____	_____
Lene Madsen	Witness	Date

**If a student or intern is present during part or all of the mediation process, he or she hereby agrees to abide by all of the terms respecting confidentiality as set out in this Agreement.**

_____	_____	_____
Student/Intern	Witness	Date

**2011 Mediation Fee Schedule (plus HST)**

1 hour consultation/intake:	\$250.00
Hourly mediation rate:	\$250.00
Hourly preparation rate:	\$250.00
Hourly rate for phone-calls, emails, letters, drafting ( <i>memoranda, joint net family property statements, agreements, etc.</i> )	\$250.00
Copies and faxes:	.25 per page
Travel time/mileage:	flat negotiable fee
Courier:	actual disbursement cost