



## Agreement to Mediate

This Agreement is entered into by the undersigned parties and Smarter Divorce Solutions, LLC, an Arizona Corporation, to work toward reaching a financial settlement in an informed and cooperative manner in this voluntary mediation process. The issues to be mediated are limited to spousal support, division of assets and debts, and such other financial matters which may be necessary in the opinion of the Mediator.

**NATURE OF MEDIATION** - Mediation is a cooperative conflict resolution process designed to put control back in your hands. The parties, with the assistance of the Mediator, negotiate their own voluntary agreement. An atmosphere of mutual respect should prevail, free from interrupting, criticizing, intimidating or threatening. You agree to leave aside fault, blame or revenge, and acknowledge that you are able to take responsibility for yourself, and to clearly express your wants, reasons and feelings.

**VOLUNTARY PROCESS** - You agree to negotiate in good faith and to consider mediation ongoing until either the case has closed or one or more of the participants has requested that the mediation process be terminated. Any party may suspend or terminate the mediation, for any reason or no reason at all, by giving notice to the Mediator. The parties also understand that the Mediator may suspend or terminate the mediation.

**FULL DISCLOSURE** - By signing this Agreement, you are affirming that you will fully and honestly disclose all information either requested by the other party or Mediator and/or as required by law, including income, assets and liabilities, and that you will not hide property, transfer or dispose of any real or personal property during the mediation process without the consent of the other party. It is understood that insurance policies will remain unchanged and that regular bills will continue to be paid as they have been in the past except by mutual agreement.

**COMMUNICATIONS** - A meeting or a series of meetings is held until resolution is reached on all issues. Most meetings are held with the Mediator and both parties. Occasionally the Mediator may meet with each of the parties separately (a caucus), either in person or via telephone or e-mail. In fairness to our other clients, meetings in the office, other than for leaving documents with a receptionist must be made in advance by appointment.

Communications with the Mediator should be in the presence of both parties, unless a "caucus" is needed. **Except for scheduling issues, you agree to avoid phoning or e-mailing the Mediator unless an urgent need exists and it has been disclosed to the other side. The other side must be copied on all e-mails to the Mediator, and the Mediator may forward to the other side any e-mails that appear to have omitted the other side.** Information obtained during a separate session may be confidential at the request of either party. However, if substantive information is not shared, the mediation may be terminated.

**MEDIATOR** - The Mediator is an impartial third party whose role is to facilitate the parties to explore options and obtain information so they can reach a workable agreement. The Mediator has disclosed any conflicts and the parties have waived any conflicts disclosed. You understand the Mediator can provide information only, and is not acting in the capacity of a legal representative for either side and does not provide legal advice during the course of the mediation, and will not appear in court on either party's behalf, should that become necessary.

**ADVICE** - You understand that Mediation is not a substitute for independent legal advice. During the mediation



process, other professionals and experts may be consulted to provide the parties with the information they need to make informed decisions. The parties are strongly requested to secure independent legal and possibly tax advice throughout the mediation process and to have an independent attorney review any completed agreements prior to signing, in order to maintain the integrity and fairness of the process. Should a party elect to forego legal representation, they do so at their own peril, and acknowledge that they have been requested to obtain independent counsel.

In addition to other attorneys, these experts may include real estate specialists and business appraisers. The parties may need to obtain appraisals of the major assets such as businesses or real estate. Neither Smarter Divorce Solutions, LLC, nor the Mediator shall be liable to any party for any act or omission in connection with the mediation of this matter.

**DOCUMENTATION** - At the conclusion of the mediation, "Meeting Minutes" will be provided to assist a legal document preparer or attorney in the preparation of the final Settlement Agreement. Referrals to these experts are available on request. The parties agree to have these documents reviewed by independent counsel prior to signing, or to accept complete responsibility. We will not appear in court on your behalf.

**CONFIDENTIALITY** - Arizona law regarding confidentiality governs mediations, including Arizona Revised Statute §12-2238. Communications made, materials created for or used and Acts occurring during mediation are confidential [but are not protected by the attorney-client privilege] and only be discovered or admitted into evidence under limited circumstances [i.e. all of the parties agree to the disclosure, the disclosure is required by statute or the communication, material or act is relevant to a claim or defense regarding the mediation, as enumerated in the statute]. However, threatened or actual violence is not privileged and may be disclosed. The parties agree not to subpoena or call the Mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding. As the use of recording devices tends to promote mistrust they are strictly prohibited.

**DOCUMENT RETENTION** - It is your responsibility to maintain copies of all documents received or generated on your behalf. When your mediation is terminated, we will dispose of or return to you any paper documents and only retain electronic copies. By signing this agreement, you acknowledge and consent that we will only maintain an electronic copy of your file and documents and we may destroy our copy of your electronic file five years after completion of the mediation.

**NO GUARANTEE OF OUTCOME** - You recognize that there is no guarantee of a particular result or outcome and/or that mediation will be successful or complete. The fee to be charged does not depend on the result obtained. You specifically acknowledge that no promises have been made as to what result can or will be achieved, and no promises have been made that the fee will not exceed a particular sum. You further acknowledge that any agreements made by the parties will be governed by applicable laws and reviewed by the court when judicial approval is required.

**MEDIATION FEES** – The Flat Fee for your mediation is \_\_\_\_\_. Unless other arrangements have been made, billable time includes, but is not limited to mediation sessions; data entry and analysis of financial data; reviewing and/or drafting responses to e-mails and other correspondence; reviewing, drafting or revising documents; consultations with third parties; telephone calls [if necessary], and any other time required in this matter. Time will be charged in increments of 1/4 (0.25) of an hour. All fees shall be paid as per the Smarter Divorce Solutions, LLC Retainer Agreement provided separately. By signing this document, you acknowledge



receipt of the Retainer Agreement.

Client is responsible for all additional out of pocket costs such as court filing fees, service of process, expert fees, outside copying fees, outside document reproduction, messengers, long distance telephone calls, faxes, recording fees, as well as outside experts, counselors, etc., including if a Qualified Domestic Relations Order is needed to divide an ERISA Regulated Retirement Plan.

All statements for services rendered are due upon receipt, and any bill that has not been paid within 10 days of its issuing date is subject to a late charge of eighteen [18%] per annum from the statement date until paid. The late charge is neither an invitation to delay payment nor a waiver or our right to demand immediate payment. Our relationship with our clients is important to us; many of our clients are referred by other satisfied clients. We ask you to immediately bring to our attention any objection to a billing entry or the charge[s] will be deemed as accepted, and you will have waived any future objections.

Unless otherwise agreed, each person shall pay one half of all such fees. However, each person signing this Agreement is jointly and severally liable for all fees, costs, and interests and acts individually and on behalf of his or her marital community.

**RETURNED CHECKS AND COLLECTION FEES** - On the rare occasion when a client's check is returned to us by our bank, there will be a \$50.00 fee. The face amount of the check and service fee shall be paid in cash, money order, cashier's check or certified check within 48 hours of our receipt of the bank's notice that a check has been returned. Do not wait for us to notify you. **WARNING:** Any checks returned for insufficient funds shall be subject to the provisions of A.R.S. § 12-671, and could result in a liability to the client for twice the amount of such check together with costs and reasonable attorney's fees.

In the event we are required to utilize collection services or the time of our office personnel to collect any amounts due under this agreement you agree to reimburse us for such collection fees, time, attorneys' fees, the fees of legal assistants and out-of-pocket expenses at the actual cost of such services, plus court costs, if any.

***I have read and understand and agree to be bound by this Agreement. I understand that Mediator does not provide legal advice. I understand that I have been directed and encouraged to seek independent legal counsel. I understand that by signing this agreement I am agreeing to mediate, in good faith, with complete honesty and full disclosure, and am agreeing that I will not subpoena the Mediator to testify in court in any subsequent court action. I acknowledge that I should consult with independent legal counsel prior to executing any binding agreements that I may reach in the course of my family court matter.***

(Party 1) \_\_\_\_\_ (Date) \_\_\_\_\_

(Party 2) \_\_\_\_\_ (Date) \_\_\_\_\_

\_\_\_\_\_  
(Date) \_\_\_\_\_

Smarter Divorce Solutions, LLC