

Sample Agreement

Allocation of Costs and Reimbursement of Expenses Between 501(c)(3) and 501(c)(4)

THIS AGREEMENT is made this ___ day of _____ 2012, by and between the Nonprofit Advocacy Education Fund ("Education Fund"), and Nonprofit Advocacy Action Campaign ("NAAC").

WHEREAS, EDUCATION FUND is organized and operated for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code ("Code") including, but not limited to, developing and carrying out a national strategy for the enhancement of access to justice and to maximize the use of advocacy by progressive nonprofits and the next generation of community activists; and

WHEREAS, NAAC is organized and operated for social welfare purposes within the meaning of Code section 501(c)(4) including, but not limited to, educating the public and conducting advocacy dedicated to improving access to justice; and

WHEREAS, EDUCATION FUND and NAAC have agreed that it is in their mutual best interests to minimize duplicative expenses and to carry out their complimentary purposes in an economical and efficient manner, including the sharing of employees whose skills and knowledge will assist both organizations and the sharing of office space and equipment;

NOW, THEREFORE, in consideration of these mutual promises and mutual benefits, EDUCATION FUND and NAAC agree to share a variety of personnel, facilities, goods and services in accordance with the terms set forth below.

Section 1: Sharing of Personnel and Facilities.

- 1.1 Personnel. EDUCATION FUND shall make available to NAAC the services of its employees, to the extent they are not otherwise occupied in providing services for EDUCATION FUND, to perform a variety of administrative, program, financial, fundraising, and other similar functions for NAAC on an as needed basis.
- 1.2 Equipment and Facilities. To the extent that the activities of NAAC are and remain consistent with the overall purposes and goals of EDUCATION FUND, employees of EDUCATION FUND who are made available to NAAC and employees and contractors hired directly by NAAC, if any, may use office space, office supplies, office equipment and furniture, and similar items of EDUCATION FUND.

Section 2: Method of Payment.

- 2.1 Payment of Direct Costs. NAAC shall pay EDUCATION FUND for all expenses incurred by EDUCATION FUND on NAAC's behalf. Such expenses shall include, but are not limited to, salaries and fringe benefits of EDUCATION FUND personnel who perform services for or otherwise assist NAAC in carrying out its purposes, fees to independent contractors, the costs of travel conducted by employees and contractors, postage, long-distance telephone charges,

mileage, printing, and other actual expenses; provided, however, that NAAC shall contract directly with vendors for the provision of such goods and services to the extent feasible.

- 2.2 Calculation of Payment for Salaries and Fringe Benefits. NAAC's payment for services of EDUCATION FUND personnel shall be based on the proportion of the salaries and fringe benefits of EDUCATION FUND's personnel expended on NAAC's functions, as determined in accordance with time-sheets or other reasonable documentation prepared by EDUCATION FUND's employees pursuant to instructions of management and agreed to by EDUCATION FUND and NAAC.
- 2.3 Payment of Overhead Costs. NAAC shall pay EDUCATION FUND an additional amount to cover overhead costs, which shall be calculated by multiplying EDUCATION FUND's total overhead costs by the percentage obtained by dividing the total staff hours charged to NAAC's activities by the total staff hours worked by all EDUCATION FUND staff. The overhead items to be reimbursed at this calculated percentage shall include, but are not limited to:
- a. costs of staff devoted to administrative matters, including, but not limited to, clerical, reception, and accounting activities, to the extent such costs are not accounted for under section 2.1;
 - b. storage;
 - c. equipment rental and maintenance;
 - d. depreciation of equipment and furniture owned by EDUCATION FUND;
 - e. premiums for liability and other insurance;
 - f. general office supplies;
 - g. general telephone service, exclusive of long distance charges;
 - h. computer and word-processing supplies;
 - i. professional staff, board, and committee travel not accounted for under section 2.1;
 - j. photocopying not accounted for under section 2.1;
 - k. local taxes;
 - l. subscriptions and other publications;
 - m. rent and utilities;
 - n. internet access costs;
 - o. legal expenses.

If and when NAAC shall use the services of any employee or contractor who is not also an employee or contractor of EDUCATION FUND, NAAC shall pay an additional amount of rent in proportion to these employees' or contractors' use of EDUCATION FUND's office facilities.

- 2.4 Payment of Joint Fundraising Costs. NAAC's payment for joint fundraising costs incurred by EDUCATION FUND shall be based on the proportion of the amount raised for NAAC in the fundraising effort.
- 2.5. Time of Payment. NAAC shall make payment to EDUCATION FUND of the amounts due under this Agreement no less frequently than quarterly on the basis of detailed invoices submitted by EDUCATION FUND. Amounts in arrears for more than thirty (30) days shall earn interest at the rate of 1% per month.
- 2.6 Additional Payment in Event of Adverse IRS Determinations. In the event that the Internal Revenue Service ("IRS") shall determine that the amounts paid by NAAC to EDUCATION FUND for goods and services pursuant to this Agreement constitute less than fair market value within the meaning of section 56.4911-3(c)(3)(A) of the Internal Revenue Regulations, then NAAC shall pay to EDUCATION FUND the difference between the amounts paid under the Agreement and the fair market value of such goods and services as determined by the IRS. In addition, in the event that the IRS shall determine that all or any part of the amounts

paid by NAAC to EDUCATION FUND for goods and services pursuant to this Agreement shall constitute unrelated business taxable income within the meaning of Code sections 511-513, NAAC shall pay to EDUCATION FUND the amount of taxes, penalties and interest, if any, determined by the IRS to be owed by EDUCATION FUND in respect of such income.

- 2.7 Change in IRS Requirements. It is the intention of EDUCATION FUND and NAAC that the method of calculating NAAC's share of the expenses incurred by EDUCATION FUND on its behalf shall conform in all material respects with the requirements imposed by the IRS with respect to similarly situated organizations. In the event that EDUCATION FUND is advised by counsel or other tax advisor that the method of calculating NAAC's share of expenses set forth in this Agreement no longer conforms with such requirements, the Agreement shall be amended to conform with all IRS requirements.

Section 3: License of Marks.

- 3.1 Definition. For purposes of this Agreement, "EDUCATION FUND's Trademarks" shall mean the registered and unregistered trademarks identified on Exhibit A hereto.
- 3.2 Grant. Subject to the terms and conditions herein, EDUCATION FUND hereby grants to NAAC a non-exclusive, non-transferable, license for the duration of this Agreement to duplicate and use EDUCATION FUND's Trademarks in connection with its activities to improve access to justice, subject to restrictions set forth in this Agreement.
- 3.3 Ownership. NAAC acknowledges that the EDUCATION FUND's Trademarks are owned exclusively by EDUCATION FUND. NAAC shall not use or authorize any third party to use EDUCATION FUND's Trademarks except as approved in advance by EDUCATION FUND.
- 3.4 Quality Standards. NAAC agrees to maintain such quality standards as shall be prescribed by EDUCATION FUND in the conduct of the business operations with which the trademarks are used. NAAC agrees to supply EDUCATION FUND with EDUCATION FUND shall comply with all applicable laws and regulations and obtain all appropriate government approvals pertaining to the sale, distribution and advertising of the goods and services covered by this License.
- 3.5 Good Will. NAAC agrees that all use by it of EDUCATION FUND's Trademarks shall inure to EDUCATION FUND's benefit.
- 3.6 Infringement. In the event that NAAC learns of any infringement, threatened infringement, or passing-off of EDUCATION FUND's Trademarks or that any third party claims or alleges that EDUCATION FUND's Trademarks are liable to cause deception or confusion to the public, NAAC shall notify EDUCATION FUND giving particulars thereof and NAAC shall provide necessary information and assistance to EDUCATION FUND in the event that EDUCATION FUND decides that proceedings should be commenced or defended.

Section 4: Mailing Lists

- 4.1 Availability. EDUCATION FUND shall make its full mailing list available to NAAC for NAAC use, subject to the restrictions contained within this Agreement.
- 4.2 Consideration. In consideration for the use of the EDUCATION FUND mailing list, NAAC shall provide EDUCATION FUND unlimited use of all unique names added to the NAAC mailing list in the course of NAAC's mailing list development. If within two (2) years from the date of this agreement, the number of unique names made available to EDUCATION FUND by NAAC does not equal or exceed the number of names initially made available to NAAC by EDUCATION FUND, NAAC shall pay to EDUCATION FUND the fair market value of the shortfall in names.

Section 5: Miscellaneous.

- 5.1 Termination. This Agreement may be terminated by either party at any time, upon provision of thirty (30) days' notice in writing to the other party.
- 5.2 Integration; Modification. This Agreement sets forth the entire agreement between the parties, and replaces and supercedes all other contracts, agreements and understandings, written or oral, relating to the subject matter hereof. The Agreement may not be changed or modified except by written instrument executed by both parties.
- 5.3 Governing Law. The Agreement shall be construed and interpreted in accordance with the laws of the District of Columbia.
- 5.4 Assignment. This Agreement is not assignable by either party.
- 5.5 Effective Date. The provisions of this Agreement shall apply to all applicable expenses incurred since _____, 2012.

IN WITNESS WHEREOF, the parties hereto has signed their names on the day and year before mentioned.

Nonprofit Advocacy Education Fund

Nonprofit Advocacy Action Campaign

By: _____, President

By: _____, President

APPENDIX A

Registered & Unregistered Trademarks

Nonprofit Advocacy Education Fund

NAEF

Nonprofit Advocacy Action Campaign

NAAC