

**MEMORANDUM OF AGREEMENT  
for the LAWYERS FOR AMERICA PROGRAM**

**I. PURPOSE**

This Memorandum of Agreement (“Agreement”) among:

1. The undersigned Fellow;
2. University of California, Hastings College of the Law;
3. [Name of Site Partner]; and
4. Lawyers for America (“LFA”)

describes the rights and responsibilities of each with respect to implementing the Lawyers for America Fellowship program.

**II. BACKGROUND**

The mission of the Lawyers for America Fellowship Program is to improve the lawyering skills of new lawyers while expanding the availability of legal services for those who cannot afford to hire lawyers and for the public by providing two-year work experiences in the public and nonprofit sectors.

The mission is accomplished through the cooperation of colleges, participating government agencies and legal nonprofits, and law students interested in devoting most of their third year of legal education to clinical experience and committed to returning for a year’s additional paid service to their clinical agency site thereafter.

**III. DEFINITIONS**

For purposes of this MOU, the following definitions shall apply:

- A. “Agency” shall mean the [name of site partner].
- B. “Agency Supervisor” shall mean a designated representative from the [name of site partner] assigned to supervise the Program and its Fellows.
- C. “Bar Exam” shall mean the California State Bar exam.
- D. “College” shall mean the University of California, Hastings College of the Law.
- E. “Fellow” shall mean a participant in the Program.
- F. “Program” shall mean the Lawyers for America Fellowship Program, which is a two-year program comprised of the training year and the service year.
- G. “Student” shall mean a student at the University of California, Hastings College of the Law and prospective participants in the Program.

H. "Training year" shall mean the one (1) academic year of clinical externship by a Fellow at the Agency during his or her third year at the College.

#### **IV. COLLEGE'S OBLIGATIONS**

- A. The College will designate a faculty member to supervise the activities of the Fellows during their training year.
- B. The College, through the supervising faculty member or other staff or faculty, will provide adequate counseling to Students interested in the Program. Such counseling will include determining a course of study for the Students' second year at the College that will prepare them for:
  - 1. A third year comprised primarily of an externship through the Program and
  - 2. Taking the Bar Exam.
- C. During the Fellow's training year, the College will provide the Fellow with:
  - 1. Adequate faculty supervision and resources, including an academically-sound classroom component that meets ABA requirements and provides Lawyers for America Fellows with substantive knowledge that complements their externship.
    - a. The classroom component may include reading, reflection, and writing assignments, at the discretion of the designated faculty supervisor.
    - b. The classroom component (4 units per semester) will be graded and the externship component (8 units per semester) will be pass/fail.
    - c. The faculty supervisor will ensure adequate and appropriate feedback about all aspects of the Fellow's work, including arranging for feedback from the Agency supervisors.
    - d. The College will require the faculty supervisor to maintain communication with Agency supervisors to ensure the quality and integrity of the overall Fellow experience.
  - 2. Supervised opportunity for adequate consideration of ethics and public policy.
  - 3. Supervised opportunity for guided reflection on the lawyering experience.
- D. The College will be responsible for enforcement of its student code of conduct policies, including ethical responsibilities, throughout the training year.
- E. After the Fellow's graduation, the College will have no continuing responsibility with respect to that Fellow during the service year of the Program.

## V. AGENCY'S OBLIGATIONS

- A. The Agency will provide adequate supervision that complies with the provisions of this Agreement and the Field Agency Agreement between the Agency and the College, throughout the course of each Fellow's experience.
- B. The Agency will provide an appropriate academic experience for Fellows during their training year by providing feedback directly to the student Fellows and to the faculty supervisor about the Fellows, and by meeting the obligations agreed upon in the Field Agency Agreement between the College and the Agency.
- C. During the training year, the Agency will cooperate with the College and the faculty supervisor in determining the types of experiences appropriate for the Fellows. The Agency will supervise workloads so that (except when an extraordinary emergency arises) Fellows are able to participate fully in the requirements of the classroom component and in any other courses or extracurricular activities which the Agency supervisor has approved.
- D. During the service year, the Agency will continue to provide each Fellow with sufficient training and feedback about his or her work to enable development of lawyering skills.
- E. For each Fellow, the Agency will pay a total of Forty-nine Thousand Dollars (\$49,000) to the Lawyers for America Program, by way of four equal installments payable September 15, 2017; February 15, 2018; November 15, 2018; and February 15, 2019.
- F. The Agency will ensure that each Fellow, until he or she becomes a member of the California Bar, is receiving supervision in accordance with standards of the American Bar Association and the State Bar of California. That supervision will cover the Fellow's substantive legal work as well as ethical practice obligations.
- G. The Agency will defend and indemnify Fellows from any and all claims, damages, or fees (including legal fees which will be paid as incurred) with respect to any work performed or undertaken by a Fellow or other actions or inactions by a Fellow while the Fellow is performing work within the scope of his or her responsibilities for or under the direction or supervision of the Agency during the training or service year to the same extent and manner the Agency provides such defense and indemnity with respect to its staff attorneys, including with respect to insurance coverage for malpractice claims. If and to the extent the Agency pays bar dues for its attorneys, it will also pay those dues for the Fellow.
- H. With respect to illness or other circumstances involving absences from work:

During the training year, Fellows will be treated as if they are regular student externs at the Agency.

During the training year, in cases necessitating significant absence, the Agency and the Fellow will make arrangements for a period of "make-up" time to ensure that the requirement of thirty-two (32) hours of work each week during the training year is met.

Fellows may seek pre-authorization from the Agency for up to ten days of leave during the training year (including leave time during the winter holidays), in addition to holidays or other days on which the agency is closed. Authorization will not be unreasonably withheld.

During the service year, a Fellow may request up to three weeks of paid vacation. A Fellow may request additional unpaid personal time, granting of which is within the discretion of the Agency, but approval will not be unreasonably withheld. LFA will pay Fellow's stipend during paid vacation time. Unused vacation time is not payable at termination of employment.

During the service year, should illness or other circumstance necessitate significant absence, the Fellow will continue to serve at the Agency beyond the original Fellowship end date to make up for that excess absence, unless the Fellow and the Agency agree that the Fellowship should terminate at the previously-determined date without the make-up period. During the excessive absence period, the Fellow will not receive the Fellowship stipend which would, however, continue during any make-up period. If the Fellowship terminates without a make-up period, LFA will refund to the Agency all amounts not used for Fellow payment because of the excessive absence.

- I. The Agency will collaborate with the College's Associate Dean for Experiential Learning or his designee(s) regarding development and subsequent modification of the Program's application process.
- J. As soon as practicable after receiving applications reviewed and approved by the College's designated committee, the Agency will review the applications, arrange any desired interviews, and extend offers. A waitlist may be created, at the option of the Agency, should a Fellow change his or her mind or become ineligible by the beginning of the third year of College. The Agency will select Fellows in full compliance with all legal obligations concerning equal employment opportunity.

## **VI. LAWYERS FOR AMERICA'S OBLIGATIONS**

- A. Lawyers for America will, to the extent practicable and legally permissible, provide support to the College and the Agency including, but not limited to, acting as a clearinghouse for contracts, curriculum, and other matters that will make the Program run more effectively.
- B. Lawyers for America, as the employer of the Fellows during the service year, will utilize the money provided by the Agency for Fellows in accordance with its contractual obligations. During the service year, Lawyers for America will pay each Fellow a total stipend of \$35,000 (paid biweekly, subject to any applicable federal, state, local, or foreign withholdings), will pay all required employment taxes, and will arrange for basic health insurance in such amount and coverage as Lawyers for America in its discretion may decide, and will maintain any required workers' compensation coverage. Lawyers for America will provide for one hour of paid sick leave to accrue for each 30 hours worked, with an accrual cap of 72 hours of paid sick leave. Unused leave is not payable at termination of employment. Employees may begin to use paid sick leave, for the diagnosis, care or treatment of their own illness or that of their family members, immediately upon its accrual. Paid sick leave may also be used by an employee who

is a victim of domestic violence, sexual assault, or stalking, for the following related purposes: to obtain legal relief such as a restraining order; to seek medical attention for related injuries; to obtain services from a domestic violence shelter, program, or rape crisis center; to obtain psychological counseling; and/or to participate in safety planning or to take actions to increase safety, including temporary or permanent relocation. Lawyers for America will certify the full-time employment of the Fellows during the service year, as needed.

- C. Lawyers for America will engage in no activity in conflict with its nonprofit/tax-exempt status.
- D. Lawyers for America will continuously maintain in force general liability insurance, workers' compensation insurance that includes employers' liability, and non-owned automobile liability insurance, each with a one million dollar (\$1,000,000) minimum policy limit.

## **VII. FELLOW'S OBLIGATIONS**

- A. Fellows will, to the best of their abilities, meet the substantive work requirements of the College and the Agency. Fellows will conduct themselves at all times as professionals and in accordance with the obligations of ethical practice including, but not limited to, maintaining client confidentiality and disclosing and refraining from any conflicts of interest. Fellows will, if required, sign a separate confidentiality agreement with the Agency.
- B. During the training year, Fellows must obtain approval of the course schedule for each semester from both the faculty supervisor at the College and the Agency Supervisor. In addition, the Fellow will notify the Agency Supervisor about any College extracurricular activities that might impact his or her work schedule, discuss any potential conflicts, and reach agreement with the Agency Supervisor about ways to mitigate any difficulties that might arise.
- C. Fellows are expected to be punctual and have good attendance. Punctuality and consistent attendance are requirements and essential functions of the position. If a Fellow's absence can be anticipated, or if a Fellow is unexpectedly delayed or unable to report to work for any reason, he or she must promptly and appropriately notify the Agency Supervisor and the faculty supervisor.
- D. Fellows will take the California bar examination immediately following graduation from the College. The service year will begin no sooner than two weeks following the Bar Exam or at a time thereafter as may be requested by the Agency, but no later than September 15, except by mutual agreement otherwise.

## **VIII. DISPUTES**

The dispute resolution process will be as follows:

Step 1: Informal meeting. In the event of any dispute arising from or related to this Agreement, the relationships among the parties, or the Program generally, including but not limited to claims for breach of contract, non-performance, bad faith, torts, unpaid wages, labor law violations, wrongful termination, and/or discrimination (including harassment) based upon any federal, state or local ordinance, statute, regulation, constitutional provision or common law (a "Dispute"), the aggrieved party will serve written notice upon the other parties regarding the

existence of a Dispute and request that they meet to attempt to resolve the Dispute informally. This provision does not restrict the right of the parties to file administrative claims with any government agency where, as a matter of law, the parties may not restrict the ability to file such claims (including, but not limited to, the National Labor Relations Board, the Equal Employment Opportunity Commission, and the Department of Labor). However, the parties agree that, to the fullest extent permitted by law, this dispute resolution procedure will be the exclusive remedy for the subject matter of such administrative claims.

Step 2: Mediation. If the parties are unable to resolve the Dispute informally, the parties agree that it can be very productive to engage the services of a professional, trained mediator whose role is to facilitate a mutually satisfactory resolution of the Dispute. Accordingly, the parties agree to mediate a Dispute that cannot be informally resolved. The parties will select a mutually agreed mediator and the mediation will be conducted confidentially in accordance with mutually agreed upon procedures. Statements during mediation will be considered statements during settlement negotiations and will not be discoverable or admissible in any subsequent proceedings. The cost of the mediator will be shared equally by the parties, except to the extent that a Fellow is a party.

Step 3: Arbitration. If the parties cannot resolve the Dispute by mediation (or if the parties cannot mutually agree on a mediator within thirty (30) days following service of the initial written notice of the Dispute), the parties agree to submit the Dispute to mandatory binding arbitration. All arbitration hearings will be conducted in Solano County, California, and will be conducted through a mutually agreed arbitrator in accordance with the California Administrative Procedure Act (CA Gov. Code §§ 11420.10-11420.30 and 11425.10-.60). The arbitrator will issue a written decision that contains the essential findings and conclusions on which the decision is based. **THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY.** The cost of the arbitrator will be shared equally by the parties.

## **IX. TERMINATION**

A. The College, the Agency, and Lawyers for America may terminate this Agreement immediately for cause upon giving notice in writing to the other parties. For purposes of this section, "cause" means: (i) a Fellow's conviction of or plea of nolo contendere to a felony, or to a misdemeanor involving moral turpitude; (ii) a Fellow's engaging in an act of gross negligence or willful misconduct in the performance of his or her obligations and duties; (iii) a Fellow's commission of an act of fraud against, or material misconduct or willful misappropriation of property belonging to, the College, Agency and/or Lawyers for America; (iv) a Fellow's engaging in any other misconduct that has had or will have an adverse effect on the College, Agency and/or Lawyers for America's clients, reputations, or businesses; (v) a Fellow's material violation of applicable codes of conduct of the College, the Agency, or the State Bar of California; or (vi) a Fellow's performance during the service year that does not meet minimum standards of professional competence as defined by the California Rules of Professional Conduct and/or case law.

B. The College, the Agency, and Lawyers for America may terminate this agreement without cause by giving at least ninety (90) days' notice in writing to the other parties. However, a termination without cause is subject to the following provisos:

1. If termination would interfere with either semester of the training year of any Fellow, this Agreement may not terminate until the end of that semester unless the Fellow is assured the promised, or an equivalent, experience to avoid harm to his or her academic advancement or remains able to register for other classes at the College. The College, through the Associate Dean for Experiential Learning, will assist the Agency in finding an equivalent experience.

If notice of termination occurs after November 15 of the training year, the Fellow will be paid by Lawyers for America from payments it has received from the Agency the sum of \$10,000, less any required withholdings, by Lawyers for America as anticipated post-Bar Fellowship earnings, unless a substitute service year is arranged.

2. If termination would interfere with the service year, this Agreement may not terminate until the end of that year unless the Fellow is assured the promised, or an alternative, work experience to avoid financial hardship and harm to his or her professional advancement, or the Fellow is paid the remainder of the stipend, less any required withholdings anticipated for the year. All the parties will cooperate in seeking to provide such alternative experiences for Fellows in case of termination.

C. The Fellow may, prior to the beginning of the training year, terminate this Agreement for any reason, by giving at least sixty (60) days' notice in writing to the College, the Agency, and Lawyers for America. The Fellow must provide notice in order to enable another student to join the Program.

D. During the course of the training year, if the Fellow needs to terminate the training year for illness or similar reasons, the College will determine credit eligibility under the Academic Regulations of the College.

E. If the Fellow wishes to terminate the training year due to Agency-related issues that are deemed to be for reasonable cause by the College, decisions concerning credit eligibility will be determined under the Academic Regulations of the College.

F. If the Fellow fails to return to the Agency for the service year, or leaves service with the Agency prior to the end of the service year, without just cause in breach of this Agreement,

1. The Fellow will pay the amount of \$10,000 to Lawyers for America in recognition of expenditures made on behalf of that Fellow; the benefits received from participation in the program, including supervision and training provided throughout the training year by the College and the Agency; the value of selection as a Fellow to employability; and the cost to the Agency of losing a trained post-bar employee.

2. The payment by the Fellow will be paid to the Agency. In addition, Lawyers for America will credit or repay the Agency for any amounts paid to Lawyers for America for the Fellow in breach that will not be expended for payment to that Fellow.

G. If a Fellow does not pass the first Bar Exam following graduation, the Fellow must retake the exam at the next sitting. The Fellow and Agency, in consultation with Lawyers for America, will confer and seek agreement on an appropriate unpaid leave of absence to allow

for bar study. In the Agency's discretion, the service year may be extended for a duration equivalent to the duration of the leave of absence granted for subsequent bar study. If the Fellow serves for less than a full year, Lawyers for America will credit or repay the Agency for those amounts paid to Lawyers for America for the Fellow that will not be expended for payment to that Fellow. Failure to pass the first Bar Exam attempted is not cause for termination. Failure to pass the second Bar Exam attempted can be cause for termination, at the discretion of Agency.

H. If a Fellow passes the first Bar Exam offered after graduation but is not admitted to the Bar and granted a license to practice law within 30 days of the release of bar results, the Fellow and Agency, in consultation with Lawyers for America, may confer and seek agreement on an appropriate unpaid leave of absence during the period of time while awaiting admission to the bar. In the Agency's discretion, the service year may be extended for a duration equivalent to the duration of the leave of absence granted for waiting for admission. If the Fellow is not admitted to the Bar and granted a license to practice law within three months of the release of bar exam results, the Fellow may be terminated. If a Fellow passes the second Bar Exam offered after graduation but is not admitted to the Bar and granted a license to practice law within 30 days of the release of those bar results, the Fellow may be terminated. In the event of termination under this provision, Lawyers for America will credit or repay the Agency for those amounts paid to Lawyers for America for the Fellow that will not be expended for payment to that Fellow and costs related to that Fellow's participation in the program.

## **X. INDEMNIFICATION**

A. Agency shall defend, indemnify, and hold College, LFA, and the Fellows, and their officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this contract, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of Agency, its officers, employees, or agents.

B. College shall defend, indemnify, and hold Agency, LFA, and the Fellows, and their officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this contract, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of College, its officers, employees, or agents.

C. Lawyers for America shall defend, indemnify, and hold Agency, College, and the Fellows, and their officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this contract, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of Lawyers for America, its officers, employees, or agents.

D. Fellow shall defend, indemnify, and hold Agency, College, and LFA, and their officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this contract, but only in

proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of the Fellow.

E. Agency, College, and Lawyers for America shall maintain adequate liability insurance or its equivalent to meet their obligations under this section.

## **XI. GENERAL PROVISIONS**

- A. **Employment Status.** Fellows under this Agreement are employees of LFA. Fellows are not employees of Agency for any purpose. The purpose of this Agreement is to provide Fellows in the LFA program with valuable training and professional experience during the service and training years only. This Agreement does not confer on Fellows a right to be hired by Agency as a temporary employee, permanent employee, or any other type of employee after their completion of the LFA program. Fellows are not entitled to any employment-related benefits provided by Agency to its employees including, but not limited to, retirement, sick leave, vacation, personal holiday, and workers' compensation.
- B. **Mutual Representations.** Each party represents to the others that it: (i) has full right, power and authority to enter into this Agreement and carry out its responsibilities hereunder; (ii) will comply with all applicable laws and regulations; and (iii) will not make any representations on behalf of the others or enter into any agreements on behalf of the others without the prior written consent of the relevant other parties.
- C. **Notices.** Notices or communications required or permitted to be given under this Agreement will be given as of the date of mailing to the respective parties by certified or registered mail, return receipt requested, at the addresses set forth on the signature page. Any party may change its address by providing written notice to the others of such change.
- D. **Surviving Provisions.** Notwithstanding the expiration or early termination of this Agreement, the provisions regarding termination, indemnification, and these general provisions will each survive in accordance with their terms.
- E. **No Assignment.** No party may, directly or indirectly, in whole or in part, by operation of law or otherwise, assign or transfer this Agreement or delegate any of its obligations under this Agreement without the other parties' prior written consent. Any attempted assignment, transfer, , or delegation without such written consent will be void.
- F. **Governing Law.** This Agreement is made under and will be construed in accordance with the laws of California, U.S., without reference to conflicts of law principles.
- G. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless remain in full force and effect, and the parties will negotiate in good faith a substitute, valid, and enforceable provision that most nearly effects the parties' intent in entering into this Agreement.
- H. **Headings.** The captions and headings used in this Agreement are for convenience in reference only, and are not to be construed in any way as terms or be used to interpret the provisions of

this Agreement.

- I. Waiver of Breach. A party's failure to exercise any of its rights hereunder will not constitute or be deemed a waiver or forfeiture of any such rights.
- J. Entire Agreement. This Agreement and Field Agency Agreement (as it applies to the College and Agency) represent the entire agreement and understanding among the parties concerning the subject matter of this Agreement, and supersede and replace any and all prior agreements and understandings among the parties concerning the subject matter of this Agreement and the Field Agency Agreement. This Agreement may not be modified or amended except by a written agreement signed by each party whose rights or obligations are being modified or amended.
- K. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

