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SAMPLE DRUG & ALCOHOL TESTING POLICY

{Note: This policy is a sample. It is not a one-size-fits-all approach to drug and alcohol testing. What works for one employer and in one jurisdiction may or may not work for another employer in another part of the country.}

EFFECTIVE DATE

This Policy is effective [date], and supersedes any prior policy as well as any other written or oral statements or representations by the company that are inconsistent with this Policy. [Company] reserves the right to amend or modify this Policy in its discretion, in accordance with the requirements of applicable law, or for any other lawful reason.

EFFECT OF POLICY

Employment at [Company] is “at-will,” and this can only be changed by a legally binding, written contract covering employment status. None of the provisions of this Policy are to be regarded as a contract between [Company] and any person subject to this Policy (see “Covered Persons” below).

PURPOSE

[Company], its subsidiaries, and affiliates (“[Company]”) is strongly committed to providing a safe, healthy, secure, and efficient workplace. [Company] is also strongly committed to promoting high standards for individual performance to secure the reputation of the company and its personnel within the community and the industry. As part of this commitment, [Company] strives to maintain a work environment free from the effects of drug and alcohol abuse and has enacted this Policy to help achieve its objective.

Specifically, this Policy:

- Provides guidelines for all employees regarding the use, abuse, possession or distribution of alcohol, Illegal Drugs and Unauthorized Substances;
- Makes all employees aware of the consequences of non-compliance with this Policy;
- Makes all employees aware of the risks of drug and alcohol abuse and aware of rehabilitation assistance provided by [Company]; and
- Assures [Company] complies with drug testing requirements set forth in local, state, and federal laws.

DEFINITIONS

For purposes of this Policy, the following words and terms mean:

1. **Company Premises or Property** — means all property owned, rented, or leased by [Company], including, but not limited to, parking lots and vehicles.
2. **Covered Persons** — means all non-union domestic employees, management, and domestic employees on temporary or long-term international assignments (excepting employees who work in [State(s)] [and excepting employees subject to Department of Transportation-mandated testing]), and to those union employees for which this Policy has been adopted through collective bargaining. Covered Persons also include all applicants seeking employment with [Company], all persons working under a contract or sub-contract agreement with [Company], and all persons entering [Company] premises (including contractor employees and visitors).
3. **Illegal Drug** — means any drug or controlled substance which is not legally obtainable under *both* state *and* federal law, including but not limited to (recreational and medicinal) marijuana, opiates, PCP (phencyclidine), cocaine, heroin, amphetamines, barbiturates, benzodiazepines, narcotics, hallucinogens, inhalants, designer drugs, and/or any substances and/or materials that are prohibited by federal or state regulations.
4. **Unauthorized Substance** — means over-the-counter or prescription drugs that: are not prescribed to the Covered Person and/or prescribed on an invalid or non-current prescription; prescription drugs that are prescribed to the Covered Person at non-therapeutic levels or used in a manner or quantity other than as set forth in the prescription; over-the-counter drugs in a manner or quantity other than set forth in the directions; or over-the-counter or prescription drugs used in an unsafe manner.
5. **Safety Sensitive Positions** — means a position that requires tasks involving a potential risk of injury to self or others. Generally employees who operate or perform maintenance on moving equipment such as overhead cranes, forklifts, bulldozers, backhoes, cherry pickers, excavators, graders, loaders, surface mining equipment, water trucks, aircraft, locomotive switching equipment, commercial trucks and other [Company] owned or leased motor vehicles, as well as those Covered Persons who operate non-moving heavy industrial equipment such as shears, punches, forming machines, rollers, brake presses, drills, lathes, welders and grinders are considered to work in Safety Sensitive Positions. Covered Persons employed in safety-related positions such as EMT, Plant Nurse (RN or LVN), First Responder, or Safety Representative, are also considered to work in Safety Sensitive Positions. Lastly, Covered Persons, regardless of classification, who work in “confined spaces,” require “fall protection” or handle explosives or “hazardous chemicals” as defined in OSHA regulations are generally considered to occupy Safety Sensitive Positions.

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6. **Security Sensitive Positions** — means a position that requires tasks involving security or protective service functions for [Company], or where cash or securities are handled.
7. **Reasonable Suspicion** — means a belief based on observed, specific, objective facts indicating the person is under the influence of drugs. The following factors, although not an exclusive list, should be considered: (a) observable phenomena, such as direct observation of drug use and/or the physical symptoms of being under the influence; (b) abnormal conduct, incoherent mental state or erratic behavior that is otherwise unexplained; (c) a workplace incident in which there was actual or potential harm or injury to any person or property; (d) information either provided by reliable and credible sources or independently corroborated; (e) newly discovered evidence that the employee has tampered with a previously administered drug test; (f) other action, conduct or misfeasance that provides reasonable suspicion that the employee may be under the influence; (g) coming forward to seek assistance and rehabilitation for a drug problem and/or successfully completing rehabilitation; and (h) a previous positive drug screen.

SCOPE

This policy applies to all Covered Persons. Drug and alcohol policies applicable to Covered Persons who work in [State(s)] [and Covered Persons subject to Department of Transportation-mandated testing] are addressed in separate policies available from Human Resources.

This Policy is subject to state and local statutes in specific jurisdictions where [Company] conducts business.

DRUG AND ALCOHOL POLICY

As a condition of employment, all Covered Persons agree to comply with this Policy and to consent to drug and/or alcohol testing as specified below. Covered Persons who engage in the conduct below or otherwise violate the terms of this Policy are subject to discipline up to and including termination of employment.

1. Covered Persons are prohibited from reporting to work, being on [Company] Premises or Property or operating/occupying a [Company] vehicle or equipment under the influence of alcohol, Illegal Drugs and/or Unauthorized Substances.
2. Covered Persons are prohibited from applying for employment, reporting to work, being on Company Premises or Property or operating/occupying a [Company] vehicle or equipment with alcohol in his/her system sufficient to yield a positive alcohol test result and/or with Illegal Drugs (and/or drug metabolites) in his/her system sufficient to yield a positive drug test result.
3. Covered Persons are prohibited from using, possessing, purchasing, transferring, dispensing, trafficking, or distributing (or attempting to use, possess, purchase, transfer, dispense, traffic or distribute) alcohol, Illegal Drugs and/or Unauthorized

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Substances, including related paraphernalia, in any amount, in any manner or at any time, on or in Company Premises or Property.

4. Covered Persons in Safety Sensitive Positions and Security Sensitive Positions who are taking a drug or medication which adversely effects, or which may reasonably be expected to adversely effect, the Covered Person's ability to perform work in a safe and productive manner, are required to report the use of such drug and/or medication to their Safety or Corporate Human Resources Representative using the Medications Disclosure Form attached hereto. This Medications Disclosure Form is job-related and consistent with business necessity. Failure to disclose such use, particularly where it may affect work performance or safety, is also grounds for disciplinary action, up to and including termination. Upon receipt of the completed Medications Disclosure Form, the Safety or Corporate Human Resources Representative, the Corporate Medical Director, and where appropriate, the employee and the employee's physician, will determine the appropriate response consistent with applicable law. In some cases, it may be necessary to impose certain job restrictions for the safety and security of other employees and Company Premises and Property.
5. Excepting the need for first-aid or emergency medical care, Covered Persons asked to submit to a post-accident or reasonable suspicion alcohol or drug test are prohibited from using alcohol or drugs (including over-the-counter or prescription drugs) for eight hours following the accident or determination of reasonable suspicion, or until the Covered Person undergoes an alcohol or drug test, whichever occurs first.

Exception for Alcohol Use at Company-Sponsored Events: Alcohol is served at certain [Company]-sponsored events, industry association events, and client events. At those events, alcohol consumption by Covered Persons (in moderation) does not violate the terms of this Policy so long as the Covered Person exercises good judgment and so long as the Covered Person acts in a lawful, safe, professional, and responsible manner at all times.

Note that it is the intention of [Company] to comply with state and federal laws. Where state and federal law differ, however, [Company] will comply with federal law. For example, some state laws permit the use and possession of marijuana for medical and/or non-medical purposes. Federal law does not. Consistent with federal law, [Company] considers marijuana to be an Illegal Drug for purposes of this policy in *all* states – even those states that allow for medical and/or non-medical use.

TYPES OF DRUG AND/OR ALCOHOL TESTING

1. **Pre-Employment/Post-Offer Testing:** Individuals extended a conditional offer of employment will submit to a drug test as a prerequisite to their employment with [Company].
2. **Post-Accident Testing:** Covered Persons will be drug tested if one or more of the following conditions occur (where permitted by state law): (A) injury or accident

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resulting in medical treatment, beyond first aid; and/or (B) property damage in any amount.

3. **Reasonable Suspicion Testing:** Covered Persons will be drug and/or alcohol tested when there is a reasonable belief based on specific facts and rational inferences drawn from those facts that a Covered Person is engaged in the inappropriate or illegal use of drugs or alcohol and/or has violated this Policy. A designated facility employee will personally escort the employee to the collection site, including driving the employee to the site if the testing site is different from the location of the employee.
4. **Random Testing:** Where permitted by state law, Covered Persons in Safety-Sensitive jobs are subject to random drug and alcohol testing. Once a Covered Person is notified of his/her selection for random drug and alcohol testing, the Covered Person must submit to such testing immediately.
5. **Periodic Testing:** All Covered Persons are subject to periodic, plant-wide drug testing to the fullest extent permitted by law and Covered Persons in Safety Sensitive jobs are subject to periodic alcohol testing.

SAMPLE COLLECTION PROCEDURES

Drug or alcohol test samples/specimens (typically breath in the case of alcohol and typically urine, oral fluid or hair otherwise) will be collected in private by a certified collector approved by Corporate Human Resources. Appropriate chain of custody documentation will be maintained.

Immediately after [Company] determines that a Covered Person shall be tested, [Company] shall direct or escort the Covered Person to a collection site or certified collector to facilitate the collection of the appropriate specimen.

Covered Persons cannot refuse to provide an adequate drug or alcohol test sample/specimen without a valid medical basis, refuse to cooperate during collection or testing, or fail to report (or report promptly) to the collection site without a legitimate reason. Covered Persons are also prohibited from providing an altered, adulterated, diluted, or substituted drug or alcohol test sample or specimen, or using a device or substance to interfere or attempt to interfere with a drug or alcohol test. Failure to comply with these procedures could result in discipline, up to and including termination.

NOTIFICATION OF DRUG AND/OR ALCOHOL TEST RESULTS

A Covered Person shall not be deemed to be positive on a drug or alcohol test until the Covered Person's sample/specimen has been subject to confirmatory testing.

Positive test results (or results determined to be adulterated, diluted, or substituted) will be communicated from [Company]'s testing laboratory to [Company]'s Medical Review Officer ("MRO"). On receipt of positive test results (or results determined to be adulterated, diluted or

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substituted), the MRO will inform the Covered Person of the positive test results and discuss the results with the Covered Person. In this discussion, the MRO will provide the sample donor with an opportunity, in confidence, to provide a medical explanation for the result (including the opportunity to identify prescription and non-prescription drug use), the opportunity to contest/rebut the positive test result and/or the opportunity to provide any information the Covered Person feels is relevant. If the MRO determines that legitimate, medically supportable reasons exist to explain the positive result, the MRO will report the test result to [Company] as negative. If the MRO determines there is no legitimate medically supportable reason for the positive test result, the MRO will report the test result to [Company] as positive.

After speaking with the Covered Person, the MRO will report the results to [Company] as appropriate. [Company]'s Corporate Human Resources department will make a determination regarding the appropriate response to positive test results, which may include discipline, up to and including termination of employment.

An employee who receives a confirmed positive test result will be given an opportunity, upon request, to have the sample re-tested at his/her own expense, at a reputable testing laboratory of his/her own choosing (subject to approval). The employee must submit the request in writing to the Director of Human Resources within 72 hours of being notified that the initial specimen is positive.

NOTIFICATION OF POLICY

[Company] will notify Covered Persons of this Policy by: (a) statements in recruiting ads; (b) notices posted at hiring locations; (c) notices in online career pages; (d) distributing this Policy; (e) notices at public entrances to [Company] buildings; and (f) making copies of this Policy available for inspection by Covered Persons during regular business hours.

EMPLOYEE ASSISTANCE PROGRAM

[Company] provides Covered Persons (and their dependents) with access to an Employee Assistance Program ("EAP") to provide confidential information concerning the dangers of substance abuse and to help in obtaining counseling, treatment, and/or rehabilitation for drug or alcohol abuse and other personal/emotional problems.

EAP eligibility information and EAP contact information can be obtained from Human Resources.

Note that a Covered Person's first request for assistance from EAP *before* drug or alcohol testing required under this Policy will not itself be used as the basis for disciplinary action. On the other hand, a Covered Person's request for assistance from EAP *after* drug or alcohol testing will not be a defense to the imposition of disciplinary action where a violation of this Policy has already occurred.

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PRIVACY

Consistent with [Company]'s Privacy and Security Medical Records Policy, the results of any and all drug or alcohol tests will be maintained in individual, secure (locked), confidential medical files – separate from personnel files. Where required by law, [Company] will disclose test-related information to state agencies that regulate the medical/drug testing industry.

INSPECTIONS

[Company] reserves the right to inspect all portions of its premises for drugs, alcohol, or other contraband; affected Covered Persons subject to a collective bargaining agreement may have union representation involved in this process. All Covered Persons may be asked to cooperate in inspections of their person, work areas, and property that might conceal a drug, alcohol, or other contraband. Covered Persons who possess such contraband or refuse to cooperate in such inspections are subject to appropriate discipline, up to and including discharge.

CRIMES INVOLVING DRUGS

[Company] does not desire to intrude into the private lives of its employees but recognizes that employees' off-the-job involvement with drugs and alcohol may have an impact on the workplace.

Therefore, [Company] reserves the right to take appropriate disciplinary action for drug usage/sale/distribution while off company premises. Employees are required to report any drug or alcohol-related criminal convictions, admissions, or nolo contendere pleas to the Corporate Human Resources department within five (5) working days. Employees are also required to report any suspension or revocation of their driver's license to the Corporate Human Resources department within five (5) working days. Failure to comply could result in automatic discharge. Cooperation in complying may result in suspension without pay to allow management to review the nature of the charges and the employee's past record with [Company].

QUESTIONS

Covered Persons shall direct questions about this Policy to Corporate Human Resources.

If you have any questions about this form, please contact Ogletree Deakins shareholder Austin E. Smith at (303) 764-6816 or austin.smith@ogletreedeakins.com.

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