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Sample Last Chance Agreement¹

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This Last Chance Agreement ("Agreement") is entered by and between John Smith ("Employee"), and ABC Corp. ("Company"), for the purpose of giving the Employee a final opportunity to deal with a substance use disorder involving his use of _____. The parties acknowledge and agree that absent this Agreement, the Company has ample grounds upon which to terminate the Employee's employment based upon its neutral and uniformly applied policies regarding behavior and work performance.

WHEREAS the Employee acknowledges he has a substance use disorder involving his use of _____, and acknowledges that he wishes to have an opportunity to seek medical treatment and counseling to overcome his _____ use disorder.

WHEREAS the Company wishes to give the Employee one opportunity to seek medical attention and to receive the necessary medical treatment and counseling for his substance use disorder involving his use of _____.

The parties hereby agree as follows:

1. The Employee shall seek treatment at the Employee's expense. The Employee shall follow a prescribed course of treatment arrived at by and between the Employee and a substance abuse professional.
2. The Employee agrees to utilize his best efforts and to participate in good faith in any treatment program prescribed by the substance abuse professional or any medical professional with whom he consults concerning his substance abuse problem.
3. The Employee will provide a fitness for duty certificate from his health care provider before being allowed to return to work.

¹ This sample Last Chance Agreement is provided for educational purposes only, and should not be relied on as legal advice. Consult with counsel before using this document.

4. Employee will give his health care providers written permission to speak with Company's human resources representatives so that Company can confirm that Employee is participating in good faith and following the directions of the health care professional.
5. The Employee understands and agrees that if at any time after he returns to duty, he uses _____ during the course of his employment, at work or at any work related social event or in his role as a representative of the Company or he is found to be under the influence of _____ and refuses to promptly submit to testing by the Company upon request or fails to comply with his obligations to abide by the terms of this Agreement or violates any Company policy concerning _____, he shall be terminated immediately.
6. The Employee understands and agrees that when he returns to duty, he must meet the performance requirements for his position with the Company or his employment will end.
7. Employee understands and agrees that after he returns to work, the Employee shall remain bound by the terms of this Agreement, and shall be subject to immediate discharge if he violates any Company policy concerning substance use.
8. Notwithstanding the terms of this Agreement, the Employee shall remain at all times an "at-will" employee and will continue to be subject to discipline, termination, performance reviews, and all other aspects of management decisions affecting employment. Specifically, nothing in this Agreement alters the at-will status of Employee's employment, meaning the Employee may sever his employment with the Company at any time, and the Company may sever its employment relationship with the Employee at any time, with or without cause, and with or without notice. Nothing in this Agreement shall be read to grant the Employee any additional protection from termination or discipline.
9. By entering into this Agreement with the Employee, the Company does not establish a practice or precedent for dealing with employees found to be using or under the influence of _____. The parties stipulate and agree that this circumstance is unique, and that this Agreement, or the fact this Agreement has been entered between the Company and the Employee, shall not be advanced as a practice or precedent in any future cases whether similar or dissimilar.
10. The Employee understands and agrees that he shall not be paid for time spent obtaining treatment and counseling for his substance abuse problem.
11. The Company agrees to limit disclosure of this Agreement to only those members of its workforce who require access to this Agreement to carry out its terms, including clerical employees, attorneys and agents, law enforcement officers, any government investigative officer with statutory or judicially granted power to compel Company to release this information, or to the testing or treatment laboratories and professionals described in this Agreement.

12. The Company shall also have the right and opportunity to admit this Agreement into evidence in a proceeding defending the termination of the Employee or in any other cause of action or claim brought by Employee. The Employee hereby consents to the use of this Agreement by the Company for these purposes, and agrees to hold the Company harmless and not responsible for any dissemination of this Agreement or any other information relating to this Agreement, as set forth above, or in any court or administrative agency proceeding.

13. The Employee agrees to keep this Agreement confidential, and not to share its terms with anyone except members of his immediate family, his attorney(s), and any health care providers from whom he seeks treatment pursuant to this Agreement.

WHEREFORE the parties to this Agreement hereto set their hands and acknowledge that they agree to the terms of this Agreement, and stipulate that the Agreement has been entered into fairly and in good faith between them.

John Smith

Dated: _____

ABC CORPORATION

By: [Insert Name and Title]

Dated: _____