THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DRUG TREATMENT COURT PROGRAM

Memorandum of Understanding

I. Mission Statement

The Drug Treatment Court Program for the Western District of Virginia is a cooperative effort between the U.S. District Court, U.S. Probation Office, Federal Public Defender's Office, and U.S. Attorney's Office to break the cycle of substance abuse in Western Virginia and provide rehabilitative services to individuals with substance abuse problems who are involved in the federal criminal justice system. It is founded on the premise that many substance abusers are repeatedly arrested for behavior related to their drug or alcohol addictions, and that, but for those addictions, they may be able to live law-abiding, productive lives. The goals of the program are to promote community safety, reduce recidivism, and assist with offender rehabilitation by implementing a blend of treatment and sanction alternatives.

II. Introduction

The Drug Treatment Court Program is the Western District of Virginia's federal drug court. It is a voluntary program of at least one year that is designed for criminal defendants who suffer from substance abuse or addiction. Participants may enter the Drug Treatment Court Program as either pretrial or post-conviction defendants. Pretrial defendants may be admitted to the program after they have pleaded guilty to federal charges but before they are sentenced on those charges. Post-conviction defendants may be admitted to the program after they have been charged with a violation of their supervised release but before they have been sentenced on that violation. All participants must be able and willing to abide by all of the program's rules as well as any additional instructions or orders issued by the presiding judge or by the supervising probation officer. Participants engage in varying levels of treatment in order to address issues of substance abuse.

The Drug Treatment Court Program holds regularly scheduled court hearings to assess participant progress. Each participant's involvement in the program is approved and confirmed through a written agreement that outlines the participant's obligations. This agreement is signed by the participant, his or her attorney, and the Drug Treatment Court program's supervising U.S. Probation Officer before it is approved by the program's presiding judge. The Drug Treatment Court Program lasts approximately twelve (12) to eighteen (18) months and is divided into three major phases. Each phase entails specific goals with a number of distinct, achievable expectations that are consistent with each stage of recovery. Participants will be required to develop a community-based sober support network and a comprehensive relapse prevention plan as conditions of graduation from the Drug Treatment Court Program.

Although no outcome is guaranteed, the U.S. Attorney's Office will take into consideration in fashioning its sentencing position the fact that the defendant successfully completed the Drug Treatment Court Program. Depending on the circumstance, the government may reduce the charges to a lesser offense, recommend a non-guideline sentence, or dismiss the charges entirely. Post-conviction defendants who successfully complete the Drug Treatment Court Program may have the violation charge(s) against them dismissed and may receive a one-year reduction in their term of supervised release or probation. Failure to abide by the mandates of the program may result in the participant being terminated from the program and returned to the traditional court process for sentencing. Violation proceedings may be initiated for those participants on supervised release or probation. Because this program is strictly voluntary, a participant is free to withdraw at any time. Participants who withdraw will be transferred to the original presiding judge and return to the traditional court process and proceedings.

III. Legal Authority

Pursuant to 18 U.S.C. § 3154, pretrial services officers are authorized to provide for the custody, care, counseling, treatment or other necessary social services to defendants released under pretrial supervision. Pursuant to 18 U.S.C. § 3603, probation officers are authorized to use all suitable methods to aid probationers and persons on supervised release in order to bring about improvement in their conduct and conditions.

The objective of providing support services for defendants on pretrial release, probationers, and persons on supervised release is to ensure the safety of the community and to provide these individuals with the structure and stability necessary to reasonably assure their appearance in court and also their reintegration into society as productive members of our communities. Treatment and other support services provide the judge with alternatives to pre-sentence detention and post-conviction revocation for those defendants who require close supervision and behavior monitoring.

IV. Team Members

The Drug Treatment Court Program team consists of the presiding judge, court staff, defense counsel, volunteer mentors, and representatives from the U.S. Attorney's Office, the Federal Public Defender's Office, the U.S. Probation Office, the U.S. Marshals Service, and treatment providers. Other individuals or entities may be asked to join the team from time to time, as deemed necessary for assisting with fulfilling program goals. All team members play important roles, as outlined below.

Presiding Judge: The presiding judge leads the Drug Treatment Court Program team and works with other team members to achieve program goals. Following the recommendation of the U.S. Probation Office, and with the agreement of the U.S. Attorney's Office and the Federal Public Defender, the presiding judge makes the final decision regarding approval or denial of a Drug Treatment Court application. His or her active involvement with program

participants is essential to the Drug Treatment Court Program's success. He or she provides encouragement and rewards participants when they are performing well in the program. When participants are not in compliance with program rules, engage in other misconduct, or are in violation of supervision, the presiding judge, with input from the Drug Treatment Court Program team, will impose appropriate sanctions based on the nature of the participant's non-compliance. While other members of the Drug Treatment Court Program team provide input, the presiding judge makes all final decisions regarding sanctions and terminations from the program. He or she presides over all team meetings and court hearings, including status conferences held for individual participants.

Supervising Probation Officer: The supervising probation officer assigned to the Drug Treatment Court Program works with other team members to achieve program goals. The supervising probation officer supervises all Drug Treatment Court Program participants. He or she is charged with making appropriate treatment referrals with contract and non-contract agencies based on the needs of each participant. The supervising probation officer works with treatment agencies to ensure effective communication between the treatment providers and the Drug Treatment Court Program team. He or she attends all team meetings, court hearings, and status conferences. In preparation for court sessions, the supervising probation officer gathers information in order to inform the team of the participant's status. The supervising probation officer makes recommendations regarding sanctions, including termination, and participates in all program planning decisions. The supervising probation officer regularly reports on the progress of the participants. When problems arise with individual participants, the supervising probation officer works with other members of the Drug Treatment Court Program team to intervene as needed. The supervising probation officer promptly reports to the team regarding all such interventions. The supervising probation officer maintains each participant's file, which contains a clearly identified separate section where all Drug Treatment Court Program documents are retained, including a fully executed copy of the participation agreement, progress reports, treatment records, and results of drug testing.

Assistant U.S. Attorney: The assistant U.S. attorney assigned to the Drug Treatment Court Program works with other team members to achieve program goals. The assistant U.S. attorney may refer defendants to the program; reports or comments on the participants' progress and any law enforcement input which may have been received by the U.S. Attorney's Office; and advocates on behalf of the government. He or she attends all team meetings and court hearings, including all status conferences held to address issues with individual participants. The assistant U.S. attorney makes recommendations regarding sanctions, including termination, and participates in all program planning decisions.

Assistant Federal Public Defender: The assistant federal public defender assigned to the Drug Treatment Court Program works with other team members to achieve program goals. The assistant federal public defender is, wherever possible, appointed to represent Drug Treatment Court Program participants for purposes of drug court only. The assistant federal public defender's appointment is dependent upon financial need. The assistant federal public

defender may refer defendants to the program; report or comment on the participants' progress during court hearings and team meetings; and advocate on behalf of his or her clients. He or she attends all team meetings, all drug court hearings, and any status conferences held for his or her clients. The assistant federal public defender makes recommendations regarding sanctions, including termination, and participates in all program planning decisions.

Defense Counsel: While the assistant federal public defender is often appointed to represent Drug Treatment Court Program participants for the purposes of drug court only, some participants choose to be represented in drug court by their privately-retained or court-appointed defense attorneys. Defense counsel work with other Drug Treatment Court Program team members to achieve program goals. Defense counsel may refer defendants to the program; report or comment on their clients' progress; and advocate on behalf of their clients. They attend all status conferences held for their clients, and frequently attend team meetings and drug court hearings. Defense counsel make recommendations regarding sanctions, including termination, for their clients.

Treatment Provider: The treatment provider works with other team members to achieve program goals. The Drug Treatment Court Program treatment provider for the Western District of Virginia provides treatment services pursuant to a contract with the U.S. Probation Office. The primary treatment provider evaluates each applicant referred by the court for assessment. When deemed necessary by the primary treatment provider, applicants may be referred to other treatment providers for additional assessment and evaluation. The results of applicant assessments are reported to the court, and for those applicants accepted by the court into the program, the primary treatment provider determines the appropriate level of substance abuse treatment and provides said treatment. The treatment provider may prescribe medication-assisted treatment ("MAT"), and help identify detox facilities, inpatient and outpatient centers, and additional support services, as appropriate. The treatment provider delivers regular progress reports to the Drug Treatment Court Program team. Treatment provider representatives attend all team meetings and all Drug Treatment Court hearings. The treatment provider makes recommendations regarding sanctions, including termination, and participates in all program planning decisions.

Mentors: Volunteer mentors work with other team members to achieve program goals. Mentors help participants integrate into the community by assisting with life skills, such as applying for and interviewing for jobs, obtaining GEDs and high school degrees, living healthily, and improving finances. See Appendix 1, Mentorship Application Form. Mentors also can include Certified Peer Recovery Specialists, who are individuals in long-term substance abuse recovery who have received training to mentor individuals suffering from addiction. Mentors attend all team meetings and may offer their observations and opinions regarding the suitability of applicants for the program. They may also make recommendations regarding sanctions, including termination.

Court Staff: Members of the courthouse staff support the Drug Treatment Court Program in a number of ways. Court staff work with the supervising probation officer to prepare reports to the entire Drug Treatment Court Program team; prepare the presiding judge for drug court hearings and status conferences; record minutes for each drug court hearing; and provide assistance in all other aspects of the program as necessary. Court staff make recommendations regarding sanctions, including termination, and participate in all program planning decisions.

United States Marshals Service: The United States Marshals Service ("USMS") provides security services for members and employees of the judiciary as well as visitors to the federal courthouse. The USMS works closely with the judge and partner agencies to carry out court orders if a sanction is ordered. The USMS may assist with field visits and searches at the request of the U.S. Probation Office. If an arrest/bench warrant is issued, the USMS will actively pursue and arrest the noncompliant participant.

V. Program Eligibility

The Drug Treatment Court Program is designed for nonviolent federal defendants with a history of drug or alcohol addiction. Participants may enter the Drug Treatment Court Program as either pretrial or post-conviction defendants. Pretrial defendants may be admitted to the program after they have pleaded guilty to federal charges but before they are sentenced on those charges. Post-conviction defendants may be admitted to the program after they have been charged with a violation of their supervised release but before they have been sentenced on that violation. Criminal defendants with a history of violent crime,[1] sex offenses,[2] or severe mental health conditions are not eligible for the Drug Treatment Court Program. Criminal defendants currently charged with a federal crime involving death or bodily injury to another person also are ineligible. A participant must not pose a danger to the community and must exhibit a willingness to participate in treatment and to comply with the stringent conditions of the program. Juvenile defendants are not eligible for the Drug Treatment Court Program.

An applicant's eligibility is fact-specific, and applicants will be considered and admitted on a case-by-case basis at the discretion of the presiding judge, upon the recommendation of the U.S. Probation Office, and with the agreement of the U.S. Attorney's Office and Federal Public Defender.

For pretrial defendants, eligibility for the Drug Treatment Court Program will generally align with the Safety Valve Provision of the U.S. Sentencing Guidelines Manual Section 5C1.2(a)(1)-(4). The program is not limited, however, to defendants facing possible conviction of a drug offense. When considering any defendant for admission to the Drug

[1] E.g., the presence of prior convictions for a firearms offense or a "crime of violence," as defined in U.S. Sentencing Guideline § 4B1.2(a), within the preceding ten years.

[2] E.g., pending or prior charges or convictions for stalking, child pornography, or any offense involving any conduct codified in 18 U.S.C. §§ 109A, 109B, 110, and 110A.

Treatment Court Program, regardless of pretrial or post-conviction status, the following eligibility criteria are considered, although they are not the sole deciding factors and are not weighted in any particular significant order:

- Verified evidence or history of current substance abuse and/or addiction, including whether the pending federal offense was motivated by the defendant's substance abuse, dependence, and/or addiction;
- Prior drug- or alcohol-related arrests/convictions;
- Prior on-going participation in drug treatment;
- Unrelated pending criminal cases, active warrants, or active capias in federal, state, or local courts;
- Mental health comorbidities and their severity, and any relevant treatment and medicinal demands;
- Desire to enter the program as well as willingness and ability to comply with requirements, including:
    - Whether the defendant is a citizen of the United States or is otherwise lawfully present here;
    - Any prior substance abuse treatment failures; and
    - Whether the defendant can otherwise fully participate in and comply with the requirements of the program;
- Nature of pending charge, criminal history, and danger posed to the community, such as:
    - The drug quantity alleged in the offense that is the subject of the pending federal charge;
    - Whether the defendant is alleged to have used violence or credible threats of violence, or have possessed a firearm, dangerous weapon, or body armor (or induced another to do so) in connection with the offense that is the subject of the pending federal charge;
    - Whether the defendant is alleged to have engaged in obstruction of justice, intimidation, or retaliation against a potential witness in the context of the pending federal offense;
    - The nature and kind of the defendant's alleged involvement in any conspiracy;
    - Whether or not the defendant was alleged to be an organizer, leader, manager, or supervisor of others in the offense that is the subject of the pending federal charge;
    - The degree of sentencing exposure;
    - Whether the defendant is alleged to be a member of a criminal street gang; and
    - Whether the defendant is alleged to be a member of any group espousing violence against the United States; and
- Reliable transportation, specifically whether the defendant has the ability to attend the program's many required events, including court hearings, self-help meetings, appointments with treatment providers, and drug testing.

Offenders must clearly understand that the purpose of the Drug Treatment Court Program is to help them stop their dependency on drugs and thus improve their lives, and further, that completing this program will require hard work and sacrifice. Offenders must be willing to participate for the duration of the program and must remain in the designated geographical area for that period of time. Offenders must voluntarily enter the program and agree to all requirements and stipulations of the program.

VI. The Referral Process

Judges, defense attorneys, probation officers, assistant U.S. attorneys, and members of the Drug Treatment Court Program team may refer criminal defendants to the program. The referrer completes and submits the initial referral form found on the U.S. District Court's website. See Appendix 2, Referral for Program Eligibility. Written supplemental information in the form of letters or relevant documentation may be provided in support of a referral by any interested party. Members of the Drug Treatment Court Program team meet periodically, at the discretion of the presiding judge, to review referrals.

After a criminal defendant has been referred to the program, the supervising probation officer then screens the defendant's criminal record, substance abuse and/or mental health history, willingness and ability to participate in the program, as well as other relevant factors to determine suitability for the program. As part of this screening process, the supervising probation officer usually interviews the criminal defendant and discusses the program's requirements. After the supervising probation officer completes this preliminary assessment, the Drug Treatment Court Program team reviews the referrals and the results of the preliminary assessment at the periodic meeting. If the presiding judge, the U.S. Attorney's Office, and the U.S. Probation Office agree to accept the criminal defendant into the Drug Treatment Court Program, the supervising probation officer also seeks approval from the district judge assigned to the case. If the criminal defendant is not already in substance abuse treatment, the supervising probation officer will then refer him or her for a thorough substance abuse evaluation. The treatment provider will then conduct a full psychosocial evaluation and provide the supervising probation officer with the defendant's diagnosis and recommended level of care based on the American Society of Addiction Medicine's criteria. If the defendant has a diagnosis of Substance Use Disorder Moderate to Severe, he or she will be deemed eligible for the program. A diagnosis of Substance use Disorder Mild generally would cause the defendant to be found ineligible for participation in Drug Treatment Court Program, but the team will consider exceptional circumstances for possible eligibility. The supervising probation officer will notify the team of the defendant's substance abuse evaluation, and then the team will extend an acceptance or denial to the defendant as appropriate.

For defendants who are accepted into the program, a motion will be filed requesting "Transfer of Supervision to the Drug Treatment Court Program" and a continuance of further proceedings until such time as the defendant completes the Drug Treatment Court

Program. Defendants agree to waive their speedy trial rights and have their cases heard within applicable time limits to participate in the program. If a defendant is not accepted into the Drug Treatment Court Program, final disposition of his or her criminal case will proceed on schedule.

If the capacity of the Drug Treatment Court Program reaches a point where there are insufficient staff members, resources, or support services for additional participants, a waiting list for entry into the program may be established. Accepted applicants will be placed on the list in chronological order, based on the date the applicant was accepted.

VII. Program Enrollment

All criminal defendants admitted to the Drug Treatment Court Program must review the participant overview and sign the participant agreement before they begin the program. See Appendix 3, Drug Treatment Court Program Participant Agreement & Waiver of Confidentiality; Appendix 4, Drug Treatment Court Program Participant Overview. The participant agreement outlines the Drug Treatment Court Program's rules and expectations. It must be signed by the participant and his or her attorney, the supervising probation officer, an assistant U.S. attorney, and the presiding judge. When completing the participant agreement, the criminal defendant also acknowledges whether he or she consents to the appointment of the assistant federal public defender as his or her attorney solely for the purposes of the Drug Treatment Court Program. In addition to the participant agreement, the criminal defendant must sign the drug testing contract that allows the U.S. Probation Office to test for drugs and alcohol for the duration of the defendant's participation in the Drug Treatment Court Program. Both the defendant and the supervising probation officer sign this agreement. See Appendix 5, Drug Testing Participant Contract.

Participants are generally expected to complete the program in twelve (12) to eighteen (18) months. The length of the program depends, in great part, on each participant's ability to succeed in the program. Individuals who struggle in treatment but remain dedicated to recovery may be given an extension of time to complete the program. Individuals who successfully complete the program may receive after-care services to support their recovery. The burden is on the participant to succeed in the Drug Treatment Court Program. Treatment includes extensive supervision, frequent drug testing, individual and group counseling, relapse prevention, learning to set and achieve personal goals, demonstrating responsibility, and realizing a clean and sober lifestyle as a productive and contributing community member.

VIII. Program Phases

The Drug Treatment Court Program is divided into three major phases. Movement through the phases is based upon the accomplishment of goals and requirements. Components of the program include: substance dependency assessment and treatment, mental health interventions, random drug testing, regular court appearances, case

management meetings and referrals, home visits, attendance at community support groups, employment or education, community service, and/or other requirements as directed by the court and/or the treatment provider.

The phases are designed to allow each participant to establish a sober and law-abiding lifestyle. While each phase has a specific purpose with distinct and achievable goals, the participants work throughout the program toward the development of a community-based sober support system. The various phases are meant to be a continuum of treatment and rehabilitation, and participants may be moved forward or backward on this continuum based on successes or needs identified by the Drug Treatment Court Treatment team. It is recognized that relapses are likely, and the program is designed to address them. As offenders progress through these phases, it is expected that they will accept more responsibility for themselves as well as reach out to their peers in the Drug Treatment Court Program to help them through the difficult stages. Each participant must successfully complete all levels in order to graduate from the program.

The presiding judge and the Drug Treatment Court Program team will determine if and when a participant has successfully completed the Drug Treatment Court Program.

Phase One – Early Recovery

Phase Length: Approximately four (4) months

Goals: Participants abstain from drug and alcohol use, engage in treatment and stabilize in the appropriate level of treatment services. Participants develop an understanding of addiction, patterns of use, and factors that influence use. Participants establish early recovery tools and a foundation of support for recovery.

Expectations for Participants:

- Abstain from use of all mood- or mind-altering drugs or alcohol, even if those substances are legally available, except as prescribed;
- Comply with the instructions of medical health professionals, particularly if receiving medication-assisted treatment ("MAT");
- Do not commit any crimes or acquire any criminal charges;
- Comply with all bond or supervised release conditions;
- Attend all Drug Treatment Court Program court hearings, which occur at least biweekly during Phase One;
- Participate in substance abuse treatment as directed;
- Attend weekly meetings with supervising probation officer;
- Attend at least three self-help meetings weekly and submit verification;
- Submit to drug and alcohol testing as ordered by the presiding judge or as deemed appropriate by the supervising probation officer;

- Submit to community and/or home visits as deemed appropriate by the supervising probation officer;
- Develop a plan to comply with any court-ordered restitution and, if possible, begin making payments;
- Perform community service, or engage in another productive activity approved by the designated Drug Treatment Court Treatment Provider staff, for a minimum of eight hours per week;
- Complete and submit for approval a phase report that reflects on progress in the program and sets goals for the next phase;
- Maintain sobriety for at least two consecutive months prior to moving into Phase Two; and
- Complete other requirements as determined by the designated treatment provider, the presiding judge, or supervising probation officer.

Phase Two – Primary Treatment & Continued Care

Phase Length: Approximately five (5) months

Goals: Participants begin to identify and understand adverse consequences of drug/alcohol use and take responsibility for same. Participants continue abstinence and continue to build a sober support network in the community.

Expectations for Participants:

- Abstain from use of all mood- or mind-altering drugs or alcohol, even if those substances are legally available, except as prescribed;
- Comply with the instructions of medical health professionals, particularly if receiving medication-assisted treatment ("MAT");
- Do not commit any crimes or acquire any criminal charges;
- Comply with all bond or supervised release conditions;
- Attend all Drug Treatment Court Program court hearings, which occur at least once per month;
- Participate in substance abuse treatment as directed;
- Attend regular meetings with supervising probation officer;
- Attend at least three self-help meetings weekly and submit verification;
- Submit to drug and alcohol testing as ordered by the presiding judge or as deemed appropriate by the supervising probation officer;
- Submit to community and/or home visits as deemed appropriate by the supervising probation officer;
- Seek and secure full-time employment/community service or enroll in and attend a full-time educational/vocational program, or a combination of both, or an acceptable

alternative, as deemed appropriate by the designated treatment provider personnel and the supervising probation officer, or as directed by the presiding judge;

- If offered and deemed necessary, participate in an available life-skills or comparable program, as directed by U.S. Probation Office.
- If offered and deemed necessary, participate in an available personal finance or comparable program, as directed by U.S. Probation Office.
- Identify personal wellness activity and begin weekly participation;
- Begin or continue making payments towards any court-ordered restitution;
- Complete and submit for approval a phase report that reflects on progress in the program and sets goals for the next phase;
- Maintain sobriety for at least three consecutive months prior to moving to Phase Three.
- Maintain stable housing, as directed and approved by the supervising probation officer; and
- Complete other requirements as determined by the designated treatment provider, the presiding judge, or supervising probation officer.

Phase Three – Relapse Prevention Planning

Phase Length: Approximately three (3) months

Goals: Participants secure long-term recovery needs and develop and finalize a relapse prevention plan.

Expectations for Participants:

- Abstain from use of all mood- or mind-altering drugs or alcohol, even if those substances are legally available, except as prescribed;
- Comply with the instructions of medical health professionals, particularly if receiving medication-assisted treatment ("MAT");
- Do not commit any crimes or acquire any criminal charges;
- Comply with all bond or supervised release conditions;
- Attend Drug Treatment Court Program court hearings once per month;
- Participate in substance abuse treatment as directed;
- Attend at least three self-help meetings weekly and submit verification;
- Submit to drug and alcohol testing as ordered by the presiding judge or as deemed appropriate by supervising probation officer;
- Submit to community and/or home visits as deemed appropriate by the supervising probation officer;
- Maintain full-time employment or community service commitments or full-time student status;

- Continue weekly personal wellness activity;
- Complete any court-ordered restitution;
- Complete and submit for approval a relapse-prevention plan which includes continued recovery goals;
- Maintain sobriety for at least five consecutive months prior to moving graduating from the Drug Treatment Court Program;
- Maintain stable housing, as directed and approved by the probation officer; and
- Complete other requirements as determined by the designated treatment provider, the presiding judge, or supervising probation officer; and
- Participate in alumni group, as directed by the presiding judge, the treatment provider, or the supervising probation officer for the last thirty (30) days.

Graduation and Alumni Group: Achievement and Giving Back

Participants who successfully complete all phases of the Drug Treatment Court Program, and also demonstrate sustained recovery, personal responsibility, and reduced public risk, will be recognized at a formal graduation ceremony. Graduates will have the opportunity to support their sustained recovery, act as mentors for other Drug Treatment Court Program participants, and/or contribute to the ongoing success of the program through their involvement as alumni in the alumni group.

IX. Drug Treatment Court Hearings

In advance of the regularly-scheduled drug court hearings, the Drug Treatment Court Program team will meet to review and discuss each participant's progress. The supervising probation officer, treatment providers, and mentors who are providing services to drug court participants will deliver progress reports to the other members of the Drug Treatment Court Program team, describing both successes and problems, which may be treatment-related, or otherwise. The entire team may provide recommendations and suggestions to the presiding judge as to how the participants' problems and successes should be addressed.

Participants and the Drug Treatment Court Program team assemble at the regularly-scheduled drug court hearings following the team meeting. Attendance at all scheduled court sessions is mandatory. The hearings are recorded, and participants ordinarily appear before the same judge throughout their enrollment in the Drug Treatment Court Program.

If a participant has elected to retain drug court counsel other than the Drug Treatment Court Program defense counsel, that counsel may also attend the drug court hearings. Participants report on their progress and team members may comment on the participants' successes or failures. Any Drug Treatment Court Program, bond, or supervised release violations are addressed by the presiding judge. Participants are expected to freely discuss their treatment and all other circumstances related to rehabilitation, including factors affecting their ability to accomplish treatment objectives and personal goals, with the

presiding judge. The presiding judge rewards or sanctions participants as he or she deems appropriate.

X. Supervision and Case Management

The supervision of participants in the Drug Treatment Court Program is multi-dimensional. It is more intense and requires the collaboration and flexibility of the presiding judge, the supervising probation officer, the treatment provider, and the participant. In addition to the regularly scheduled court hearings, the participant is required to report to the supervising probation officer and treatment provider as directed. The supervising probation officer maintains frequent contact with the participant, his or her family members or significant other, as deemed necessary, and also with treatment providers, and provides the presiding judge with status reports documenting the participant's attendance and progress in treatment. The supervising probation officer also regularly verifies the participant's residence and employment, if applicable, as well as his or her means of financial support. Criminal record checks are also conducted regularly, and participants are tested for illicit drug and alcohol use as directed by the supervising probation officer or treatment provider.

XI. Incentives and Rewards

Participation in the Drug Treatment Court Program offers many rewards. Most importantly, participants receive substance abuse treatment and regain hope for a sober and crime-free life. The U.S. Attorney's Office will take into consideration in fashioning its sentencing position the fact that the defendant successfully completed the Drug Treatment Court Program. Depending on the circumstance, the government may reduce the charges to a lesser offense, recommend a non-guideline sentence, or dismiss the charges entirely. The United States is under no obligation, however, to take any of these actions and no outcome is guaranteed. Post-conviction defendants who successfully complete the Drug Treatment Court Program may have the violation charge(s) against them dismissed and may receive a one-year reduction in their term of supervised release or probation.

As participants advance through the program, they may receive additional rewards during the drug court hearings. These rewards may include, but are not limited to:

- Applause and verbal praise;
- Written recognition or certificates of achievement;
- Reduced frequency of court appearances;
- Reduced drug testing;
- Elimination of curfew, home detention, or location monitoring;
- Reduction of travel limitations, increased driving privileges, or permission for a move to less restrictive housing options;
- Promotion to next phase;
- Recovery materials; and

- A graduation certificate upon program completion.

XII. Violations and Sanctions

Sanctions are imposed on participants who engage in misconduct as a way of deterring future misconduct. Violations of any type will be reported to the presiding judge. Sanctions are imposed with progressive severity. Misconduct and resulting sanctions may be addressed in the regularly-scheduled drug court hearings or at separate status conferences held by the presiding judge. Violations will be addressed at hearings as quickly as practicable. In cases where a significant liberty interest is at stake, the presiding judge and/or Drug Treatment Court Judge will not sanction a defendant in the absence of counsel, whether it be the Drug Treatment Court defense counsel or the counsel who represented the participant in his or her criminal proceedings, who will, along with the participant, have an opportunity to be heard. A participant may request that relatives or friends be present at any conference, and the court will consider all such requests on a case-by-case basis.

The following is a non-exhaustive list of behavior that the Drug Treatment Court Program team considers to be sanctionable misconduct:

- Dishonesty with members of the Drug Treatment Court Program team, including the presiding judge, supervising probation officer, and treatment provider;
- Unexcused absence from court hearings, meetings with the supervising probation officer, or meetings with the treatment provider;
- Positive alcohol or drug test results;
- Missed alcohol or drug test or refusal to submit to urinalysis testing;
- Submission or attempted submission of an adulterated urine sample;
- Failure to maintain employment, community service, or student status as directed;
- Failure to comply with conditions of bond or supervised release;
- New arrest;
- Failure to comply with court-ordered restitution; and
- Unacceptable behavior as reported to the Drug Treatment Court team and considered by the presiding judge.

The following is a non-exhaustive list of sanctions that the presiding judge may impose in response to sanctionable misconduct:

- Verbal or written reprimands;
- Writing assignment to describe and understand the events leading to the violation or misconduct, with formal presentation of assignment in court;
- Increased frequency of attendance at drug court hearings;
- Increased meetings with supervising probation officer and/or treatment provider;
- Increased drug and alcohol testing;

- Increased length of phase;
- Community service hours;
- Curfew or home confinement with or without location monitoring;
- Placement in a residential re-entry center, halfway house, or sober house;
- Placement in an in-patient or out-patient addiction treatment program;
- Days spent in custody of the U.S. Marshal's Service;
- Incarceration of varying length, generally no more than seven days;
- Revocation of bond; and
- Termination from the program.

XIII. Termination

There are four different ways in which participants are terminated from the Drug Treatment Court Program.

Successful Termination

Successful termination occurs when a participant completes the program successfully. Successful termination is recognized with a graduation ceremony and participants are awarded a Certificate of Completion. Pre-adjudication participants may proceed to disposition of their cases as the presiding judge deems appropriate.

Unsuccessful Termination With Return to Original Presiding Judge

This type of unsuccessful termination occurs when the participant has not committed a serious violation of program rules, but is not succeeding in the program. The participant may also have become a threat to public safety or program integrity. Termination may occur at the participant's request, or upon the joint recommendation of the Drug Treatment Court Program team.

The Drug Treatment Court Program presiding judge has the sole authority to terminate an unsuccessful participant's involvement in the program. When the presiding judge and the team believe that the circumstances of a participant's conduct warrant his or her termination, the presiding judge will conduct a hearing which will be attended by the AUSA, the defendant, and defense counsel. A determination by the presiding judge to terminate a participant is not subject to appellate review. Neither the U.S. Attorney's Office, nor the U.S. Probation Office, will move to revoke the "acceptance of responsibility" provision of the plea agreement for participants who are terminated from the program under this section. This course of action on the part of the U.S. Attorney and the U.S. Probation Office, however, is not binding upon the presiding judge with respect to assessing the level of the defendant's acceptance of responsibility for purposes of sentencing.

Pre-adjudication participants terminated under this section proceed to sentencing by their original presiding judge. Post-conviction participants are transferred back to traditional supervision without a violation charge.

Unsuccessful Termination With a Formal Violation

This type of unsuccessful termination occurs when the participant has committed a serious violation of the program rules and the presiding judge determines that participation in the Drug Treatment Court Program is no longer possible. The participant may also have become a threat to public safety or program integrity. The participant is returned to traditional supervision and generally faces a violation hearing before a magistrate judge or district judge. When the presiding judge and the Drug Treatment Court Program team believe that a participant's conduct is the basis for a sustainable violation of the conditions of his or her bond or supervised release, thereby warranting termination from the Drug Treatment Court Program, the presiding judge will conduct a hearing which will be attended by the AUSA, the defendant, and defense counsel. The presiding Drug Treatment Court Program judge has the sole authority to terminate an unsuccessful participant's involvement in the program. A determination by the presiding judge to terminate a participant is not subject to appellate review.

The participant is returned to traditional supervision and/or the traditional court process, and generally faces a violation hearing before a judge not involved in the program. Depending upon the nature and severity of the conduct leading to termination from the Drug Treatment Court Program, either the U.S. Attorney's Office or the U.S. Probation Office may recommend that the sentencing court disregard the "acceptance of responsibility" provision of the previously negotiated plea agreement and decline to decrease the defendant's offense level. This potential course of action on the part of the U.S. Attorney's Office or the U.S. Probation Office, however, is not binding upon the presiding judge with respect to assessing the level of the defendant's acceptance of responsibility for purposes of sentencing.

The following is a non-exhaustive list of the types of misconduct that may result in unsuccessful termination with a formal violation:

- Criminal conduct;
- Repeated drug use;
- Repeated failure to cooperate with the supervising probation officer;
- Repeated failure to cooperate with the treatment provider;
- Failure to comply with sanctions ordered by the presiding judge; and
- Repeated failure to comply with the program's rules, orders from the presiding judge, and/or directions given by the supervising probation officer.

It is the policy of the U.S. Probation Office not to allege conduct that has already been addressed within the Drug Treatment Court Program as a formal violation. After the criminal defendant has been terminated from the program with a formal violation, however, the U.S. Probation Office will advise the judge presiding over the violation hearing of all conduct that has taken place during the period of supervision, including successes, failures, and sanctions that occurred while the defendant participated in the program.

Administrative Discharge

Administrative discharge occurs when participation in the Drug Treatment Court Program is no longer practical for reasons such as long-term illness or the need for a participant to relocate. This type of termination is considered neither successful nor unsuccessful. Participants are returned to their traditional supervision outside of the Drug Treatment Court Program, but may be permitted to return to the program at a later date in the event their circumstances change.

XIV. Data Collection and Assessment

The supervising probation officer maintains records for each participant in the program, which include the case specifics, demographic data, and case outcomes. Reports are provided to the team detailing the progress and accomplishments of the Drug Treatment Court Program and of its participants. Research and data on participants, their progress, incidents of recidivism, and program structure will be gathered and evaluated to determine the viability of the program, as well as for facilitating program modifications and stewardship of resources.

The Drug Treatment Court Program team will work to establish a complete set of data necessary to accomplish assessment. Data collection will be accomplished, in part, by the use of standardized forms to be completed by each participant upon admission to the program, and at periodic intervals thereafter, to collect basic biographical information and measure program progress. Program goals will be objectively measured by the ongoing monitoring of arrest and recidivism rates among offenders who graduate from the program, compared with those who do not participate. The data base kept for each participating defendant will contain: basic biographical information; employment, educational, and vocational training information; treatment plan information; successes; and testing results and relapse occurrences. Further monitoring will be achieved by an active after-care and alumni program, with the goal of involving graduates in continued counseling to maintain a clean and sober life-style, provide them with a safe place to socialize and recreate, and involve them in giving back as a mentor and encouraging program participants.

The Drug Treatment Court Program team, at the discretion of the presiding judge, also periodically assesses the need for revision or modification of the Drug Treatment Court Program. When deemed necessary, after consultation with the program team, the presiding

judge, by directive, or by the entry of a standing order, decrees that the Drug Treatment Court Program standards be appropriately amended, modified, or revised.

XV. Scope of Memorandum of Understanding

The Drug Treatment Court Program, as reflected in this Memorandum of Understanding, is a non-binding collaborative effort to use the resources of the court to break the cycle of substance abuse in Western Virginia and provide rehabilitative services to individuals with substance abuse problems who are involved in the federal criminal justice system. In this process, the court, Probation, U.S. Attorney, Federal Public Defender, and private counsel each have discrete roles to play. Execution of this Memorandum is not intended to, nor does it, shift any of the rights, responsibilities, or obligations of one of these entities to another or alter their essential legal obligations or functions. As participation in the Drug Treatment Court Program is voluntary and non-binding, any entity may withdraw from participating in the Drug Treatment Court Program at any time.

Accepted for the United States District Court, Western District of Virginia:

_____ Date: 11-15-2018

Accepted for the United States Probation Office:

Michael A. Sheffield Date: 11-15-2018

Accepted for the United States Attorney:

_____ Date: 11-15-2018

Accepted for the Federal Public Defender:

_____ Date: 11-15-2018