

## Participant Contract

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

### CONTRACT FOR PARTICIPATION

#### VETERANS COURT (VC) PROGRAM

Name: \_\_\_\_\_

Docket#: \_\_\_\_\_

Offense(s): \_\_\_\_\_

#### INTRODUCTION

You have been invited to participate in the Veterans Court (VC) program of the Northern District of California as part of a post-guilty plea program that offers eligible military veterans either dismissal (Track I) or a non-custodial sentence (Track II) for successful completion of the program. Participation is entirely voluntary. Participation can only occur after you enter guilty plea(s) to one or more of the criminal charges currently pending against you in the case referenced above. The Court will need to make a final determination whether to accept your guilty plea(s) and plea agreement.

If the Court agrees to accept your guilty plea(s) and plea agreement, in doing so approving your participation, and you thereafter successfully complete the VC program, then you will receive the benefits described in your plea agreement, which contains the full set of promises between you and the government.

#### VC PROGRAM BASICS

The VC Program will last at least between 12-24 months. Participants in the program will have their cases referred to the Court before whom they will enter guilty pleas pursuant to plea agreements with the United States Attorney's Office for the Northern District of California ("USAO"). The choice of track is made prior to the entry of guilty plea(s) and is within the sole discretion of the United States Attorney's Office (USAO). Participants must agree that during the period of deferred sentencing, the time limitations contained in the Speedy Trial Act and the Sixth Amendment to the U.S. Constitution will be tolled to allow you to demonstrate your good conduct. 18 U.S.C. 3161.

Participants agree to participate in an evaluation for mental health and/or drug and alcohol evaluation, and in any and all treatment and testing recommended. In addition to the requirements of actively engaging in any treatment and testing that may be recommended for mental health and/or substance abuse issues, Participants are also required to participate in programs designed to address underlying causes of criminal activity and to comply with all conditions of this post-guilty plea program required by (1) the plea agreement entered for their guilty plea(s), or (2) the Pretrial Services Officer (PTSO).

Both your defense counsel and AUSA will work with the PTSO to provide additional support and encouragement for your success in the VC program.

### **VC PROGRAM APPEARANCES**

Approximately once per month, at a time to be determined, you will be required to appear before the Court to evaluate your progress. The PTSO, Defense Attorney, and AUSA will be present, and possibly treatment and/or other program providers such as the VA. Progress reports from the PTSO can be provided to the Judicial Officer, the Defense Attorney, and the AUSA. These reports will describe both successes and problems you have experienced.

### **VC PROGRAM TREATMENT AND COUNSELING PROGRAMS**

An important part of the VC program will be your participation in substance abuse and/or mental health treatment and counseling programs and/or other programs addressing underlying causes of criminal activity as determined to be necessary by the Court, PTSO, Defense Attorney, and AUSA. Treatment and other program providers will be expected to share information regarding your participation and progress in any treatment and counseling programs with the Court, PTSO, Defense Attorney, AUSA, and any research partner evaluating the VC program. Treatment and other program providers can also be present at VC program court appearances, at which they could discuss your participation and progress with the Court, PTSO, Defense Attorney, and AUSA. To enable treatment and other program providers to freely share information regarding your participation and progress in any treatment and counseling programs and other programs, you will be required to execute a waiver of confidentiality in the form attached as Exhibit A.

### **LIMITED USE OF STATEMENTS MADE DURING PROGRAM APPEARANCES**

Another important part of the VC program is your complete candor during your VC program court appearances and treatment sessions. To encourage your candor, the USAO has agreed as follows:

- 1) You agree to be truthful and complete during all VC program court appearances and associated treatment sessions.
- 2) Except as otherwise provided in subparagraph (3) below, the USAO will not offer in evidence any statements made by you during VC program court appearances (a) in a grand jury proceeding to indict you, (b) in its case-in-chief at a trial against you, or (c) at your sentencing. The USAO may use any statements made by you or any information directly or indirectly derived from statements made by you during VC program court appearances for any other purpose, including (a) to obtain leads to other evidence that may be used against you at any stage of a criminal prosecution; (b) in any prosecution of you for perjury, false statements, or obstruction of justice; or (c) in a prosecution of you for murder, attempted murder, or act of physical violence against the person of another, or conspiracy to commit any of those offenses.
- 3) Notwithstanding paragraph (2), the USAO may use any statements made by you during VC program court appearances for any purpose (a) if you testify at any hearing or trial; or (b) to rebut any

evidence offered, or factual assertions made, by or on behalf of you at any stage of a criminal prosecution (including but not limited to a detention hearing, trial, or sentencing).

- 4) You understand that this agreement is limited to statements made by you during VC program court appearances and does not apply to any oral, written, or recorded statements made by you at any other time or to any other information provided during such appearances. The parties further agree that statements made by you and the USAO during VC program court appearances do not constitute “plea discussions” or any “related statement” within the meaning of Federal Rule of Criminal Procedure 11(f) or statements “made in the course of plea discussions” within the meaning of Federal Rule of Evidence 410.
- 5) You understand that this agreement is not binding on any other United States Attorney’s office or on any other federal, state, tribal, or local office or agency. You further understand that no understandings, promises, or agreements have been entered into other than those set forth in this contract and your plea agreement, and nothing said at the VC program court appearances will constitute a promise or agreement unless you and the USAO agree in writing.
- 6) To encourage candor with treatment providers,<sup>2</sup> statements made in treatment proceedings will not offer in evidence any statements made by you during VC treatment appearances:
  - a. in a grand jury proceeding to indict you;
  - b. in its case-in-chief at a trial against you;
  - c. at your sentencing;
  - d. to obtain leads to other evidence that may be used against you at any stage of a criminal prosecution;
  - e. in any prosecution of you for perjury, false statements, or obstruction of justice;
  - f. or, in a prosecution of you for murder, attempted murder, or act of physical violence against the person of another, or conspiracy to commit any of those offenses.

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<sup>2</sup> Nothing in this program, contract, or prospectus shall be read to supersede or contradict any other professional or legal reporting obligations that a treatment provider might have.

## VC PROGRAM SUPERVISION VIOLATIONS AND SANCTIONS

VC program supervision violations and sanctions will ordinarily be handled on the regularly scheduled court calendar. The Court, however, can schedule an appearance at any time. Sanctions and modifications regarding treatment and other programs may also be handled on an expedited basis with the consent of the parties and the Court.

If there is an allegation of noncompliance, you may choose to agree that the allegation is true and waive the traditional protections and procedures afforded to those on pre-trial supervision when they are accused of violating supervision. If you do so, there will be no hearing on whether the allegation is true and the Court will decide whether a VC program sanction is appropriate. As noted above, noncompliance may be handled on an expedited basis outside the presence of the Court if all parties agree.

Noncompliant behavior (including, but not limited to, behavior inconsistent with the expectations set forth herein and in the plea agreement) by you, the Participant, will result in sanctions. The range of possible sanctions has been drafted broadly to assure that some level of sanction is available for every type of violation. Factors that will influence the type of sanction employed include the seriousness of the violation, the number of violations, and the amount of time you have remained compliant, either before a first violation, or between violations. In addition, an important factor will be whether you voluntarily disclose the violation. Dishonesty on your part will result in enhanced sanctions. Depending on these factors, any of the sanctions listed below—including termination from the VC program—is available. As a general rule, where there are repeat violations, more serious sanctions will be applied. Sanctions may include, but are not limited to:

- Judicial reprimand;
- Order to attend and observe other court proceedings;
- Order to submit a written assignment (for example, write out an explanation for your non-compliant behavior and describe a plan to correct it or write out a list of the special conditions of your post-guilty plea diversion and explain how you violated those conditions and how you plan to avoid similar violations in the future);
- Increase in the time for successful completion of the program;
- Curfew restriction for up to 30 days;
- Increase in frequency of progress hearings before the Court;
- Order to participate in community service as part of the VC program;
- Order to complete a term of home confinement (with conditions that may include substance abuse monitors and standard location monitoring with GPS);
- Order to complete a term of up to 30 days at a residential reentry center;
- Order to complete a term at a residential substance abuse treatment facility;
- Order to spend up to 7 days in jail;
- Termination from the VC program.

If appropriate, sanctions may be ordered more than once during the course of the VC program. Note that you must timely complete all phases of the VC program and that serious violations such as new criminal activity or repeat violations for less serious violations will likely lead to your dismissal from the program and/or prevent you from completing the program within 24 months.

If you admit to the violation, you may be able to complete the sanction and remain in the VC program. When expedited action is appropriate and the parties agree, a sanction or adjustment in treatment can be imposed through a modification without an appearance before the Court. The PTSO's report at the next VC program appearance will inform the Court whether you properly completed the sanction ordered at the last appearance

Failure to complete ordered sanctions may result in added sanctions, or termination from the VC program.

If you wish to contest the violation allegation, you may do so. The only permissible contested hearing in the VC program, however, is a claim of actual innocence of the alleged violation. If you wish to have a contested hearing, the defense attorney will assist you in contesting the violation allegation. The Court will ultimately decide whether the allegation is true.

It is important to note that the PTSO need not wait until your scheduled program appearance to address problems in supervision. If you fail to abide by directions of the PTSO, or if the PTSO believes that you have committed other violations of your supervision, the PTSO will have discretion to contact you directly to address the violation; to arrive at a proposed method of addressing the violation through discussions with the Court, Defense Attorney, and/or AUSA; or to request the issuance by the Court of a warrant for your arrest.

## **TERMINATION FROM THE VC PROGRAM**

You may be involuntarily terminated from the VC program if you fail to participate in treatment or other programs or if you violate the terms of the VC program or your post-guilty plea conditions set forth in the plea agreement and herein—including failure to make VC program court appearances, failure to participate actively in the VC program including failure to timely attend scheduled treatment without prior approval from the PTSO or treatment provider, repeated drug use, failure to meet all program requirements within a 24 month period, or a new law violation. Final decisions regarding involuntary termination will be made by the Court. If you are involuntarily terminated from the VC program, you will return to regular pretrial supervision and your case will be set for sentencing before the Court—in imposing sentence, the Court will not be bound to provide the benefits that your plea agreement would have required had you successfully completed the VC program. Instead, the Court can impose the sentence as suggested in the plea agreement for unsuccessful completion or termination. The plea agreement will provide the parties' position on sentencing for unsuccessful termination from the VC program.

You may also at any time voluntarily discontinue your participation in the program and have your criminal case set for sentencing before the Court—again, however, in such an instance, the Court will not be bound to provide the benefits that your plea agreement would have required had you successfully completed the VC program and you will also be bound by the terms of your plea agreement

Whether your termination from the VC program is voluntary or involuntary, the Court will be aware of, and can consider in imposing sentence, all conduct that has taken place during your participation in the VC program, including successes, failures, and sanctions that occurred during your participation in the VC program.

## **SUCCESSFUL COMPLETION OF PROGRAM**

Upon successful completion of the VC program, as determined by the Court, USAO, PTSO, and Defense Counsel, you will receive the benefits specified in your plea agreement, which contains the full set of promises between you and the government.

**AGREEMENT TO PARTICIPATE**

**Participant**

I, \_\_\_\_\_, have read, or someone has read to me in the language I best understand, this Contract, the progress plan, and the plea agreement that would be a condition of my participation in the VC program. I have discussed this Contract, the progress plan, and the plea agreement with my attorney and I understand its terms. I have also discussed with my attorney the VC program and I understand that program. I voluntarily agree to participate in the VC program subject to the terms set forth in this Contract, the progress plan, and the plea agreement. I understand I can revoke my voluntary participation in the VC program at any time and that, if I do so, my criminal case will be set for sentencing before the Court without any obligation to provide me the benefits set forth in the plea agreement for successful completion of the VC program. I understand that, in such a case, I will still be bound by the terms of my plea agreement and cannot withdraw my plea on the basis of voluntary revocation or involuntary termination from the program.

\_\_\_\_\_ I will appear in Court for my scheduled progress hearings.

\_\_\_\_\_ I will contact my Pretrial Services Officer and/or treatment provider as scheduled.

\_\_\_\_\_ I will work to meet the goals of my Individualized Program Success Plan.

\_\_\_\_\_ I understand my progress will be monitored and that rewards and responses will be applied as appropriate.

\_\_\_\_\_ I will meet the terms and conditions of my Pretrial Release.

\_\_\_\_\_ I will comply with drug testing requirements if applicable. If I miss a test, I understand that I am subject to a response from the court.

\_\_\_\_\_ I understand this is a phased-based program and that I progress through three different phases.

\_\_\_\_\_ I am accountable to all VC expectations.

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Signature

Date

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Typed Name

**Defense Counsel**

I, \_\_\_\_\_, the Defense Counsel representing the Participant in connection with the VC program, have discussed the VC program, the progress plan, the plea agreement that would be a condition of participation in the VC program, and this Contract with the Participant in the underlying criminal matter. I believe that the Participant understands the VC program, the terms of the plea agreement that would be a condition of participation in the VC program, the progress plan, and the terms of this Contract, and that the Participant's agreement to participate in the VC program subject to the terms of this Contract the progress plan, and the plea agreement that would be a condition of participation in the VC program is knowingly and voluntarily made.

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Signature

Date

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Typed Name

**Assistant United States Attorney**

I, \_\_\_\_\_, the Assistant United States Attorney representing the United States Attorney's Office for the Northern District of California (the "USAO") in this matter, agree to the terms of this Contract in this case on behalf of the USAO and accept the above named Participant into the VC program subject to the terms of this Contract, the progress plan, and the plea agreement that would be a condition of the Participant's participation in the VC program.

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Signature

Date

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Typed Name

**Pretrial Services Officer**

I, \_\_\_\_\_, the Pretrial Services Officer assigned to this case, accept the above named Participant into the VC program subject to the terms of this Contract, the progress plan, and the plea agreement that would be a condition of the Participant's participation in the VC program.

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Signature

Date

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Typed Name

**Court**

Subject to the Court's acceptance of the Participant's guilty plea(s) and plea agreement, the Court hereby accepts the above named Participant into the VC Program subject to the terms of this Contract, the progress plan, and the plea agreement that would be a condition of the Participant's participation in the VC program.

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Signature

Date

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Typed Name