

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
TRACK ONE  
CONTRACT FOR PARTICIPATION UTAH ALTERNATIVES TO  
CONVICTION (“U-ACT”) PROGRAM  
POST-GUILTY PLEA DIVERSION**

Name of Participant:

Docket number :

Offense :

**Introduction**

Congratulations! You have been selected to participate in the Utah Alternatives to Conviction (“U-ACT) program. Participation is entirely voluntary, but will require you to abide by the terms of your plea agreement and this contract. If you successfully complete U-ACT, your guilty plea will be vacated and the criminal case referenced above will be dismissed, as specified in your plea agreement.

**U-ACT Program Basics**

The U-ACT program will be at least 1 year, with the possibility that it may be extended up to a maximum of 24 months. As part of this program, you agree to participate in a PCRA evaluation, and you agree that a probation officer assigned to U-ACT will develop a treatment plan for you. One of your responsibilities will be to comply with this treatment plan during the time you are participating in U-ACT. The treatment plan may include drug and alcohol evaluations, testing, and treatment. The treatment plan may also include other kinds of treatment designed to address the underlying causes of criminal activity.

The U-ACT team is comprised of a Judicial Officer, a Probation Officer, an Assistant Federal Public Defender (“AFPD”), and an Assistant United States Attorney (“AUSA”). The AFPD will likely not be the same attorney who was appointed to represent you at your initial appearance. Should the need arise, you will be able to consult with the

attorney who was originally appointed to represent you. Both the AFPD and the AUSA will work with the Judicial Officer and the Probation Officer to provide additional support, input, and encouragement for your success in U-ACT.

### **U-ACT Program Participant Rules**

You will be required to comply with the U-ACT Program Participant rules. You will be given a copy of these rules, and asked to sign an acknowledgment that you have read and understand the rules. The U-ACT program rules are designed to help you and other Participants succeed in the program. Violations of the U-ACT program rules may result in involuntary termination from the U-ACT program.

### **Restitution**

If restitution is owed in your case, you will be required to make restitution payments during the program. Your Probation Officer will determine how much you need to pay each month. You will need to pay the restitution in full before you can successfully complete U-ACT, and failure to pay the restitution amount may result in your involuntary termination from the program. If you fail to successfully complete the program or you are terminated voluntarily or involuntarily, you will be ordered to pay any remaining restitution as part of your sentence.

### **U-ACT Program Appearances**

You will be required to attend frequent court hearings as part of U-ACT. These court hearings will be scheduled as deemed needed by the Judicial Officer, but the frequency may be decreased if you are doing well in the program. The Court will make reasonable efforts to ensure that the court appearances do not interfere with your employment, treatment, or other programming, but attending court hearings is part of the requirements of this program. The U-ACT team will be present, as well as treatment and other program providers. The Probation Officer will make reports about you to the U-ACT team prior to court appearances. These reports will report successes as well as failures that you have had. Other U-ACT participants will be present during your court appearances. There will not be a court reporter present, and no transcript of routine U-ACT proceedings will be available. By signing this contract, you waive your right to have a court reporter present and a transcript made of routine U-ACT proceedings. However, a

court reporter will be present to transcribe any contested violation hearings or any contested hearing to determine whether to terminate you from U-ACT.

### **U-ACT Program Treatment and Counseling Programs**

An important part of the U-ACT program will be participation in treatment as indicated in your treatment plan. Your treatment plan may be amended as deemed necessary by the Probation Officer and other members of the U-ACT team. Treatment and other programming providers will be expected to share information regarding your participation and progress with all of the members of the U-ACT team. Treatment and other program providers will also be present at U-ACT program appearances, and they will be expected to discuss your participation and progress with all members of the U-ACT team. To enable treatment and other program providers to freely share information regarding your participation and progress, you will be required to sign a waiver of confidentiality and privilege.

### **Limited Use of Statements Made During Program Appearances**

An important part of the U-ACT program is your complete candor during your court appearances about your case and your performance in the program. To encourage you to be forthcoming and honest, the USAO has agreed as follows:

- a. Except as otherwise provided in subparagraph (b) below, the USAO will not use any of the statements you make or documents or other information relating to your U-ACT case that you provide during U-ACT program appearances as evidence against you in any criminal prosecution in the USAO's case-in-chief.
- b. Notwithstanding the agreement set forth above in subparagraph (a), the USAO may use information, including statements made by you, about criminal conduct that is not related to your U-ACT case or that is beyond the scope of your U-ACT treatment plan. Before such information can be used, however, the following must take place :
  - The USAO will provide notice of the information it intends to use ;
  - You will have an opportunity to be heard by the Judicial Officer, with the assistance of counsel, representation offered by or on your behalf in connection with that proceeding ;

- The Judicial Officer will determine whether the information can be used by the USAO.

The USAO's agreement in subparagraph (a) above is limited to the USAO and cannot bind any other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authorities. Moreover, the USAO's agreement in subparagraph (a) above is limited to U-ACT program statements and does not apply to any statements made or documents or other information provided by you at any other time.

### **U-ACT Program Violations and Sanctions**

U-ACT program violations will ordinarily be handled on the regularly scheduled U-ACT program calendar. The U-ACT Judicial Officer, however, can schedule a court 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 U-ACT Judicial Officer.

If a report from the Probation Officer contains 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 pretrial supervision when they are accused of violating conditions of supervision. If you so waive, there will be no hearing on whether the allegation is true and the U-ACT Judicial Officer will decide whether a U-ACT program sanction is appropriate. As noted above, noncompliance may be handled on an expedited basis outside the presence of the U-ACT Judicial Officer if all parties agree.

Noncompliant behavior by you, the Participant, will result in sanctions. The range of possible sanctions has been drafted broadly to provide some level of sanction for a wide range of violations. 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 below, 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 :

- Reprimand by Judicial Officer delivered during program proceedings in front of other Participants

- Order to return to program proceedings to observe for a full session
- Order to submit written assignment (for example, written explanation of violation and plan to avoid similar issues in the future)
- Curfew restriction for up to 30 days
- Increase in frequency of program hearings before the Judicial Officer
- Order to participate in community service
- Order to complete a term of home confinement (with conditions that may include alcohol monitors and/or location monitoring)
- Order to complete a term of up to 30 days at a residential reentry center
- Order to complete a term at a residential drug treatment facility
- Order to spend up to 7 days in jail (“flash incarceration”)
- Termination from the program

If you admit to the violation, you may be able to complete the sanction and remain in the U-ACT 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 Judicial Officer. The Probation Officer’s report at the next U-ACT program appearance will inform the Judicial Officer whether you properly completed the sanction ordered at the last appearance. Failure to complete ordered sanctions may result in additional sanctions, or termination from U-ACT.

If you wish to contest the violation allegation, you may do so. The only permissible contested hearing in U-ACT, however, is a claim of actual innocence of the alleged violation. If you wish to have a contested hearing, your appointed counsel can help you in contesting the allegation. The Judicial Officer will ultimately decide whether the allegation is proven.

It is important to note that the Probation Officer need not wait until your next scheduled court appearance to address problems in supervision. If you fail to abide by the directives of the Probation Officer, or if the Probation Officer believes that you have committed other violations of your supervision, the Probation Officer will have discretion to contact you directly to address the violation; to arrive at a proposed method of addressing the violation through discussion with the Judicial Officer, AFPD, and AUSA; or to request that the Judicial Officer issue a warrant for your arrest.

## **Termination from U-ACT**

You may be involuntarily terminated from the U-ACT program if you fail to participate in treatment or other programs or if you violate the terms of the U-ACT program or your plea agreement. This includes :

- Failure to make U-ACT court appearances
- Failure to cooperate with program sanctions
- Repeated drug use
- A new violation of the law
- A pattern of failing to cooperate with the Probation Officer
- A pattern of failing to cooperate with treatment or other program providers
- Failure to participate in U-ACT in a meaningful manner
- Failure to pay restitution

Final decisions regarding involuntary termination will be made by the U-ACT Judicial Officer. If you are involuntarily terminated from the program, you will return to regular pretrial supervision and your case will be set for sentencing before the originally assigned District Court judge. You will not be entitled to the benefits contained in paragraph 13(c)(i) of your plea agreement and you will be sentenced as explained in paragraph 13(c)(ii). You will also not be able to appeal a decision by the Judicial Officer to involuntarily terminate you from U-ACT.

You may also voluntarily discontinue participation in U-ACT at any time. However, you will not be entitled to the benefits contained in paragraph 13(c)(i) if you voluntarily withdraw from the program, and you will be sentenced by the originally assigned District Court judge in accordance with paragraph 13(c)(ii) of your plea agreement.

Whether you are terminated voluntarily or involuntarily, the U-ACT Judicial Officer can confer with your sentencing judge and report on your performance during the time that you were participating in U-ACT and make a sentencing recommendation.

## **Graduation and Benefits**

The U-ACT program has 5 phases. In order to successfully complete the U-ACT program, you must complete Phase 5 and have maintained 6 months of sobriety, and you must also pay in full any restitution. The Judicial Officer will determine, in consultation with the U-ACT team, whether you have successfully completed U-ACT. If the Judicial

Officer determines that you have successfully completed the program, you will receive the benefits explained in paragraph 13(c)(i) of your plea agreement, including being permitted to withdraw your guilty plea and having your case dismissed.

**AGREEMENT TO PARTICIPATE**

Participant :

I, \_\_\_\_\_, have read, or someone has read to me in the language I best understand, this Contract. I have discussed this Contract and the plea agreement with my attorney and I understand its terms. I have also discussed the U-ACT program with my attorney and I understand the program. I voluntarily agree to participate in U-ACT subject to the terms set forth in this Contract and the plea agreement. I understand I can revoke my voluntary participation in the U-ACT program at any time and that, if I do so, my criminal case will be set for sentencing before the originally assigned District Court judge without any obligation to provide me the benefits set forth in the plea agreement for successful completion of U-ACT. I also understand that if I am involuntarily terminated from the U-ACT program, my criminal case will be set for sentencing before the originally assigned District Court judge without any obligation to provide me the benefits set forth in the plea agreement for successful completion of U-ACT.

\_\_\_\_\_  
(Signature of Participant)

\_\_\_\_\_  
(Date)

U-ACT Program Assistant Federal Public Defender

I, \_\_\_\_\_, the Assistant Federal Public Defender representing the Participant in connection with the U-ACT program, have discussed the U-ACT program, and this Contract with the Participant and the Participant's attorney in the underlying criminal matter. I believe that the Participant understands the U-ACT program, the terms of the plea agreement, and the terms of this Contract, and that the

Participant's agreement to participate in the U-ACT program subject to the terms of this Contract and plea agreement is knowingly and voluntarily made.

\_\_\_\_\_  
(Signature of Assistant Federal Public Defender)

\_\_\_\_\_  
(Date)

U-ACT Program Assistant United States Attorney:

I, \_\_\_\_\_, the Assistant United States Attorney representing the United States Attorney's Office for the District of Utah (the "USAO") in the U-ACT program, agree to the terms of this Contract on behalf of the USAO and accept the above-named Participant into the U-ACT program subject to the terms of this Contract and the plea agreement.

\_\_\_\_\_  
(Signature of Assistant United States Attorney)

\_\_\_\_\_  
(Date)

U-ACT Program United States Probation Officer:

I, \_\_\_\_\_, the United States Probation Officer assigned to the U-ACT program, accept the above-named Participant into the U-ACT program subject to the terms of this Contract and the plea agreement.

U-ACT Program Judicial Officer:

Subject to the Court's acceptance of the Participant's guilty plea and plea agreement, the Court hereby accepts the above named Participant into the U-ACT program subject to the terms of this Contract and the plea agreement.

\_\_\_\_\_  
(Signature of Judicial Officer)

\_\_\_\_\_  
(DATE)