IN THE CIRCUIT COURT OF [*county*] COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. [*case number*]

Hon. [*name*]

[*name-all caps*],

 Defendant.

**PLEA AGREEMENT**

**Diversion to Drug Court**

Now comes Defendant, [*insert name of defendant*], in person and by counsel, [*name of counsel*], and the State of West Virginia, by its Prosecuting Attorney, [*name of prosecuting attorney*], to present to the Court the following PLEA AGREEMENT.

1. **PENDING CHARGES:** Defendant is charged by way of indictment in the Circuit Court of [*county*] County, West Virginia, Case No. \_\_\_\_ ,with the following offense(s): Count One, the felony offense of [*insert felony offense*], in violation of W. Va. Code § [*code section*]; Count Two, the felony/misdemeanor offense of [*insert offense*], in violation of W.V. Code § [*code section*]; Defendant is also charged by way of Complaint in the Magistrate Court of [*county*] County, WV, with the misdemeanor offense of [*insert misdemeanor offense*] in violation of W. Va. Code § [*code section*].
2. **RESOLUTION OF THE CHARGES:**  Defendant has applied for, and has been admitted to the [*insert applicable drug court*] Regional Drug Court; in accordance with the conditions upon which [*he/she*] has been accepted into the Drug Court program; Defendant will plead guilty as charged to the felony offense of [*insert felony offense*] as set forth by Count \_\_\_ of the indictment. Upon entry of the plea, the State agrees to dismiss, without prejudice, any remaining counts of the indictment and any charges pending against the Defendant within [*county*] County, WV, as of the date the plea is entered. Defendant’s plea is entered into with the understanding that the Court will receive the plea but will delay any adjudication of “guilt” until the defendant either successfully completes, or is discharged, from the Drug Court program. The parties agree that if Defendant successfully completes and graduates from the Drug Court program, Defendant may withdraw the guilty plea and the State will dismiss this criminal action, with prejudice; the charges dismissed without prejudice upon entry of the plea will be dismissed with prejudice upon successful completion of the program. Defendant will have suffered no conviction as a result of the plea. If Defendant is discharged, or withdraws voluntarily, from the Drug Court program prior to graduation, this case will be returned to the Circuit Court, and the Court may adjudicate Defendant “guilty” upon the plea previously entered. Defendant may not withdraw the plea if discharged from the Drug Court program prior to graduation, except as provided by W. Va. R. Crim. P. 32(e), upon determination of a fair and just reason as determined in the Court’s discretion; it is understood and acknowledged that discharge from the Drug Court program is not sufficient cause, standing alone, to withdraw the plea. In the event the plea is permitted to be withdrawn for any other reason, the State may re-institute any criminal charges pending against Defendant at the time the plea was entered.
3. **WAIVER OF SPEEDY TRIAL RIGHTS:** Defendant, upon [*his/her*] signature below, hereby waives any applicable right to a speedy trial, or statute of limitations, that may otherwise prohibit an adjudication of the plea. To facilitate the implementation of this agreement, and to provide ample opportunity to complete the Drug Court program, Defendant waives such speedy trial rights as are prescribed by WV Code §§ 62-3-1 and 21, the U. S. Const. Amends. VI & XIV, and the Constitution of the State of West Virginia, Art. 3, §14.
4. **MAXIMUM POTENTIAL PENALTY:**  The maximum penalty to which Defendant will be exposed as a result of the guilty plea to the FELONY offense of [insert offense], if adjudicated, is IMPRISONMENT in the penitentiary of this State for [*a determinate / an indeterminate*] period of [*insert potential maximum penalty-all caps*] AND IMPOSITION OF A FINE OF UP TO $\_\_\_\_\_\_\_.
5. **DEFENDANT’S RIGHTS**: Defendant is waiving certain statutory and constitutional rights by entering a plea in accordance with this agreement. Defendant acknowledges that [*he/she*] has fully discussed this case, and the waiver of these rights, with [*his/her*] attorney, and that [*he/she*] has informed the attorney of all matters Defendant considers important regarding this case. Defendant has been informed, and understands, the following:
	1. Defendant has a right to a trial, in which the State would be required to prove its case beyond a reasonable doubt, but Defendant thoroughly understands that, by pleading guilty, [*he/she*] waives such a trial and shall not receive such a trial;
	2. Defendant has a right to stand silent during all proceedings;
	3. Defendant has a right to confront and cross-examine the accusers;
	4. Defendant has a right to present witnesses in [*his/her*] own defense and to testify in [*his/her*] own defense;
	5. Defendant has a right to petition for appeal of any conviction for any errors of law; and;
	6. Defendant has the right to move the Court to suppress illegally obtained evidence and illegally obtained confessions, if any, and
	7. Defendant has the right to challenge in the trial court and on appeal of all pre-trial proceedings;
	8. That by pleading guilty, Defendant waives all pretrial defects with regard to, among others, her arrest, the gathering of evidence and prior confessions, as well as all non-jurisdictional defects in this criminal proceeding.
6. **FINAL DISPOSITION:** In the event Defendant is discharged from the Drug Court and convicted upon the plea, this agreement does not provide for a recommendation regarding sentencing; sentence will be imposed within the sole discretion of the Court. The parties reserve the right to present evidence and argument relevant to sentencing.
7. **VOIDING OF THE AGREEMENT:** If either the State or Defendant violates the terms of this agreement, the other party shall have the right to void this agreement. Also, if the Court should refuse to accept this agreement for any reason, it shall be void.
8. **ENTIRETY OF THE AGREEMENT:** This written agreement constitutes the entire agreement between the State of West Virginia and Defendant in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Defendant in any court.

ACKNOWLEDGED and AGREED to on behalf of the State of West Virginia:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date

Asst. Prosecuting Attorney

State of West Virginia

West Virginia State Bar # \_\_\_\_\_\_\_

ACKNOWLEDGED and AGREED to by DEFENDANT

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby acknowledge by my signature, that I have read, understood, and agreed to each of the terms and conditions set forth in this agreement.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Defendant

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Attorney for the Defendant, hereby acknowledge by my signature that I have reviewed this agreement with the Defendant, and that I have explained the legal effect of each of its terms to the Defendant.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date

Counsel for the Defendant

West Virginia State Bar No.: \_\_\_\_\_

IN THE CIRCUIT COURT OF [*county*] COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. [*case number*]

Hon. [*name*]

[*name-all caps*],

 Defendant.

**PLEA(S) OF GUILTY**

 I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having been accused in an indictment returned by the \_\_\_\_\_\_\_ 20\_\_\_\_, term of the Grand Jury of the Circuit Court of [*county*] County, of committing the felony offense(s) of [*insert offense*], desire to enter a plea of guilty to the felony offense of [*insert offense*], a provable offense as contained in the indictment.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant

Before being called upon to enter any plea in this case, I fully understand the following:

1. That I have the right to hire an attorney of my choice and that if I cannot afford to hire an attorney, the Court will appoint an attorney qualified in the handling of criminal matters to defend me without any cost;
2. That I have a right to consult with my attorney and have him advise me and prepare a defense;
3. That if I plead not guilty, I would receive a public trial by an impartial jury of twelve (12) persons, but by pleading guilty I would not receive such trial;
4. That I have the right to have the State prove its case beyond a reasonable doubt;
5. That I have the right to remain silent during all proceedings;
6. That I have the right to confront my accusers and cross-examine them;
7. That I have the right to testify in my own defense and to present witnesses in my own defense;
8. That in the event I am convicted by a jury, I have the right to petition for an appeal of said conviction for any errors of law;
9. That I have the right to move the Court to suppress illegally obtained evidence and illegally obtained confessions, if any; and
10. That I have the right to challenge in the trial Court and on appeal all pre-trial proceedings, but by pleading guilty, I would waive all pre-trial defects with regard to, among others, my arrest, the gathering of evidence and prior confessions, as well as, all-non-jurisdiction defects in this criminal proceeding.

 Having read and understood my foregoing rights and further understanding that any plea bargaining which appears in the record of this case is not binding upon the Court

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Defendant

with respect to punishment or probation and understanding that in the event I should plead guilty to the felony offense of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, I could be sentenced to the penitentiary for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ years, it is still my intention and desire to enter a plea of guilty.

 Therefore, in the presence of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, my counsel, who has, to my total satisfaction, represented and advised me in this case and who has fully explained the nature and meaning of the charges contained in the indictment against me and having received a copy of the indictment before being called upon to plead, I hereby enter a plea of guilty to the felony offense of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a provable offense as contained in the indictment.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Defendant Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Counsel for Defendant Witness