

DATED

200( )

MEDWAY COUNCIL

AND

MEDWAY PRIMARY CARE TRUST

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AGREEMENT for the Commissioning of  
Mental Health Social Care Services In Medway  
Under Section 31 of the Health Act 1999

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Schedule 1 – COMMISSIONING STANDARDS

Schedule 2 – SECTION 31 MANAGEMENT BOARD TERMS OF REFERENCE

Schedule 3 – PERFORMANCE REPORTING REQUIREMENTS

Schedule 4 – PAYMENT

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THIS AGREEMENT is made the                    day of                    200(    )

BETWEEN:

MEDWAY COUNCIL ("the Council") of Civic Centre, Strood, Rochester, Kent ME2 4AU

MEDWAY PRIMARY CARE TRUST ("the PCT") of Unit 7/8 Ambley Green, Bailey  
Drive, Gillingham Business Park, Gillingham, ME8 ONJ

**A        BACKGROUND:**

- 1.1 In September 1999 the Government published the National Service Framework (NSF) for the provision of Mental Health services. This sets out a ten year programme to achieve high standards of care for users of mental health services and their carers. The Government expects Councils with Adult Social Services Responsibilities (CASSR) and the National Health Service (NHS) to work together to commission and provide integrated mental health services. Section 31 of the Health Act 1999 enables the NHS and CASSR's to bring together their respective resources and organisational processes to establish lead commissioning, pooled budgets and/or integrated provision to deliver services for which they both have responsibility.
- 1.2 This Agreement establishes lead commissioning arrangements whereby Medway Primary Care Trust (PCT) will commission specific mental health social care services on behalf of Medway Council pursuant to Section 31 of the Health Act 1999.

**B        PURPOSE/OBJECTIVES OF THIS AGREEMENT:**

- 1.3 To give the PCT a lead role to commission specific mental health services on behalf of both organisations. This Agreement sets out the financial, managerial and other arrangements by which such commissioning will take place.
- 1.4 The overall aim of the Agreement is to ensure that users of Mental Health services in Medway, and their carers, enjoy high quality and seamless services that meet their individual needs.
- 1.5 In support of this, the commissioning arrangements have the following objectives:
  - a) To support activities that prevents mental ill health in the population and encourages social inclusion; and
  - b) To ensure that social care ethos and principles underpin all mental health services in Medway; and
  - c) To promote involvement in the development of mental health services of service users and their carers; voluntary and community organisations; staff and other stakeholders.

**C        SERVICES TO BE COMMISSIONED:**

- 1.6 The services to which this Agreement relates are:

- a) mental health services for adults of working age; and
- b) older people with functional mental illness; and
- c) mental health services for dual diagnosis substance misusers.

1.7 Services will be commissioned inline with the following guiding principals, adapted from Reaching Out: an Action Plan on Social Exclusion (Cabinet Office, September 2006)

**Better identification and early intervention:** We will identify who is at risk of persistent exclusion and use this information to intervene and more effectively support those most in need before disadvantage becomes entrenched.

**Identifying what works:** We will systematically identify and promote interventions that work. To ensure effective adoption of best practice, we will build the capability of providers and commissioners.

**Multi-agency working:** We will break down barriers and enhance flexibility so local providers and agencies work together to meet the needs of excluded groups, especially those facing multiple problems.

**Personalisation, rights and responsibilities:** We will tailor services to the needs of the individual. We will empower, where it is appropriate, excluded groups to make choices or to ensure that there is an independent, trusted third party to work on their behalf. Our approach will be framed by a clear understanding of the rights and responsibilities of citizens, services and the community.

**Supporting achievement and managing underperformance:** We will routinely monitor the effectiveness of services and will act promptly on those found to be under-performing

## **D COMMISSIONING ARRANGEMENTS:**

- 1.8 Medway Primary Care Trust as Lead Commissioner will maintain appropriate expertise to enable it to produce and implement the Services and commissioning plans and to gather relevant intelligence about individual and community needs, market conditions and community capacity.
- 1.9 Medway Primary Care Trust as Lead Commissioner will prepare drafts of development and commissioning documents relevant to mental health services which are necessary to enable it to fulfil its responsibilities or are required by the Government. It will obtain the agreement of Medway Council (not to be unreasonably withheld or delayed) through the Section 31 Management Board before finalising these or giving draft versions a wide circulation.
- 1.10 Medway Primary Care Trust will provide the Section 31 Management Board with expert advice about mental health services whenever reasonably requested to do so and within the limits of the resources available to it.
- 1.11 Procurement of Services will be undertaken by Medway Primary Care Trust through its own procurement rules and procedures. Providers of services will be under contract to Medway Primary Care Trust. Medway Council will continue to contract

residential and homecare services for individuals under Medway Council procurements rules and procedures.

#### 1.12 Payment as in Schedule 4 – PAYMENT

### **E APPROVED SOCIAL WORKERS**

1.13 The Local Authority has the responsibility for the approval of Social Workers (ASWs) to carry out duties under the Mental Health Act 1983. From October 2008 other professional groups may take up this role as Approved Mental Health Practitioners (AMHPs) under the mental Health Act 2007. The Local Authority must also have arrangements to accept guardianship applications and maintain a Guardianship Register.

1.14 Responsibility for these arrangements remains with the local authority however processes are carried out on their behalf within KMPT.

#### **Approval of ASWs/AMHP**

1.15 The criteria for training and approval and re-approval of Mental Health Practitioners are more proscribed under the regulations associated with the Mental Health Act 2007. Medway Council will continue to fund up to 2 places each year and refresher training provided by Kent and Medway Approval programme validated and managed by Christchurch Canterbury. The Director of Children and Adults – Learning and Caring will write to successful candidates confirming that they are approved. A warrant will be issued by Medway Council who will keep a list of approved staff.

1.16 A re-approval panel will over see the re-approval and standard of AMHP practice across the Kent and Medway Area. The lead officers will be the Mental Health Training Manager (Christ Church and Kent County Council), Associate Director for Social Care (KMPT) for Medway and Associate Director for Social Care (KMPT AMHP lead) for Kent. The panel will be supported by the Kent and Medway ASW/AMHP good practice group. Consistent standards will be applied across Kent and Medway.

#### **Guardianship**

1.17 Medway Council guardianship register will be maintained by KMPT who will be responsible for annual reports to the NHS Information Centre for health and social care.

1.18 Medway Council will authorise the Associate Director of Social Care for Medway (KMPT) to accept Guardianship applications on their behalf in line with the Kent and Medway Guardianship procedure (attached).

#### **1.19 Legal Advice and Indemnity**

1.20 Medway Council Legal Services will provide legal advice to AMHPs acting on behalf of Medway Council.

1.21 Medway Council will inform their insurers of the arrangements to appoint AMHP working for KMPT.

## F COMMISSIONING STANDARDS

1.22 Shall be as detailed in Schedule 1 – COMMISSIONING STANDARDS

1.23 IT IS AGREED AS FOLLOWS:

### 2 DEFINITIONS

2.1 In this Agreement the following expressions shall have the meanings respectively ascribed to them.

<b>Expression or Abbreviation</b>	<b>Meaning</b>
Authorised Manager	a competent and appropriately qualified and experienced person appointed by the PCT to be its representative in relation to this Agreement who will receive and act on any instructions given by the Authorised Officer
Authorised Officer	Amanda Rogers or such other person as the Council may from time to time nominate and provide notification to the PCT
CASSR	Council with Adult Social Services Responsibilities
Council	Medway Council
Commencement Date	[to be inserted ]
CRES	Cash releasing efficiency savings
FOI	Freedom of Information Act 2000
NSF	National Service Framework for Mental Health
PCT	Medway Primary Care Trust
PEC	The PCT's Professional Executive Committee
S31 Management Group	The Management group of the PCT whose terms of reference are detailed at Schedule 2 – SECTION 31 MANAGEMENT BOARD TERMS OF REFERENCE of this agreement
SLA(s)	Service Level Agreement(s) entered into by the PCT, with Providers, on behalf of the Council
VfM	Value for Money

### **3 INTERPRETATION**

- 3.1 This Agreement shall be governed and construed in accordance with English Law and each party hereby submits to the exclusive jurisdiction of the English Courts.
- 3.2 Clause headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 3.3 References to Clauses, Schedules, Paragraph(s) or parts of Paragraph(s) are, unless otherwise provided, references to Clauses of and Schedules to this Agreement.
- 3.4 A reference to any statute, enactment, regulation or other similar instrument shall be construed as a reference to the statute, enactment, regulation, or instrument as amended by any subsequent statute, enactment, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 3.5 The masculine includes the feminine and the neuter and vice versa; and words denoting natural persons shall include corporations and vice versa.
- 3.6 Words importing the singular meaning shall where the context so admits include the plural and vice versa.

### **4 LEGISLATION**

- 4.1 The PCT and its employees shall conform in all respects with the provisions of any Acts of Parliament and all Statutory Instruments and Regulations relevant to the subject matter of this Agreement.

### **5 EXERCISE OF STATUTORY FUNCTIONS**

- 5.1 Nothing in this Agreement shall remove or modify the parties' respective statutory responsibilities for the provision of mental health services or act as a fetter on their ability to exercise such functions.

### **6 JOINT AND SEVERAL**

- 6.1 Where the PCT comprises more than one entity, all obligations on the part of the PCT shall be joint and several.

### **7 RIGHTS CUMULATIVE**

- 7.1 Except as otherwise expressly provided for in this Agreement, all remedies available to the Council are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.



## **8 AGREEMENT TERM**

8.1 The Agreement shall commence on the Commencement Date of [to be inserted] and shall continue in force subject to termination in whole or in part in accordance with these General Conditions.

## **9 STANDARD OF SERVICE**

9.1 The Services shall be provided in accordance with this Agreement. The Authorised Officer shall be entitled to give directions to the Authorised Manager from time to time with regard to the provision of the Services or any other matter relating thereto.

9.2 If any part of the Services provided is found to be inadequate or in any way differing from the Agreement, other than as a result of default or negligence on the part of the Council or its Authorised Officer, the Service Provider shall at his own expense re-schedule and provide the Services correctly within such reasonable time as may be specified.

## **10 EQUAL OPPORTUNITIES**

10.1 The PCT is required to ensure that providers of services:

- a) operate an equal opportunities policy for as long as this Agreement is in force; and
- b) provide Medway Council with a copy of any such policy at its request.

10.2 The PCT shall use all reasonable endeavours to ensure that its equal opportunities policy, and those of its providers, complies with all statutory obligations as regards discrimination on the grounds of colour, race, nationality, cultural or ethnic origin, marital status, gender, age, disability, religion or sexual orientation in relation to:

- a) decisions made by the PCT or its providers in the recruitment, training or promotion of staff employed or to be employed in the provision of the Services; and
- b) the provision of the Services; and
- c) the carrying out of its obligations under this Agreement.

10.3 In commissioning the Services, the PCT, together with its providers, shall observe as far as possible the Commission for Racial Equality's Code of Practice for Employment, (the 'Code'), any updates to the Code, or any code which may replace it.

10.4 The PCT shall provide the Council with such information as it may reasonably require in order for the Council to assess the PCT's and providers' compliance with the Code.

10.5 If any Court or Tribunal, or the Commission for Racial Equality (or any body which may replace the Commission) makes a finding that the PCT or any of its providers

has unlawfully discriminated against any person in the commissioning of the Services then the PCT shall:

- a) take all necessary steps to ensure that such unlawful discrimination does not happen again; and
- b) notify Medway Council in writing of the finding (s) and the steps taken to prevent its reoccurrence.

10.6 In commissioning the Services, the PCT shall give appropriate consideration to each service user's colour, race, nationality, cultural or ethnic background, marital status, age, gender, religion, sexual orientation and disabilities.

## **11 COMMISSIONING STANDARDS AND REMEDIES**

11.1 From the Commencement Date, the PCT shall commission services in accordance with the Commissioning Standards.

11.2 If at any time the PCT fails to commission the Service in accordance with the Commissioning Standards, or providers fail to provide the commissioned service, Medway Council shall have the right to:

- a) require the PCT to put in place such additional resources as are necessary to perform the Services in accordance with the Commissioning Standards as early as practicable thereafter at no additional charge to the Council; and
- b) require the PCT to promptly remedy any failure to meet the Commissioning standards at no additional charge to the Council.

11.3 The Council shall have the right to claim liquidated damages and/or to terminate the Agreement for any breach of this Clause 11 in accordance with the provisions of Clause 42. The PCT shall ensure that an Authorised Manager [insert title as applicable] is appointed and empowered to act on its behalf and is available to the Council in person, throughout the period that PCT staff are on duty.

11.4 The Authorised Manager shall inform the Authorised Officer promptly and in writing of any instances of activity or omission on the part of the Council that precludes the PCT from meeting its obligations under the Agreement.

11.5 The PCT will be required to make available the Authorised Manager or authorised deputy with full powers to act on the Agreement during core hours (8.30 am - 5.30pm). the PCT will also be required to make available the Authorised Manager or deputy for call out in the case of emergencies.

## **12 INDEMNITY TO COUNCIL**

12.1 The PCT shall not be liable for any loss, damage or delay suffered by the Council to the extent that such loss, damage or delay is attributable to instructions given by or on behalf of the Council.

12.2 Subject to Clause 12.1, the PCT shall indemnify the Council and any of its staff or agents against:

- a) Any loss or damage caused either to any property of the Council or its staff or agents or any injury (including injury resulting in death) sustained by the staff or agents of the Council by reason of any negligent act or omission of the PCT its employees or agents during the performance of this Agreement; and
- b) Any claim, demand or liability made against or incurred by the Council or any agent of the Council in respect of any loss of, or damage to any property of the Council's personnel or injury (including injury resulting in death) sustained by the Council unless such loss, damage or injury is caused by the negligent act or omission of the Council or any of its staff or agents; and
- c) Any claim, demand or liability made against or incurred by the Council or any agent of the Council in respect of any loss, damage or injury (including injury resulting in death) sustained by any third party during the currency of the Agreement in consequence of any negligent act or omission of the PCT, its employees or agents.

12.3 The Council shall have the right to deduct the amount of such liability, loss, costs, charges, claims, expenses (including professional expenses) or damages from any monies due to the PCT.

### **13 INSURANCE**

13.1 Without prejudice to its liability to indemnify the Council under Clause 12 (Indemnity to Council) the PCT shall effect and maintain such insurances as are necessary to cover its liability under Clause 12 (Indemnity to Council).

13.2 The insurance in respect of risks of liability to third parties arising out of the action or default of the PCT, its agents, servants or others acting under its control shall be to a minimum value of £5,000,000 (five million pounds) in respect of one claim and the number of incidents shall be unlimited. The PCT's insurance in respect of claims for personal injury or the death of any person under an Agreement of service with the PCT and arising out of hand and in the course of each person's employment shall comply with the Employers Liability (Compulsory Insurance) Act 1969.

13.3 In addition to any other liability which the PCT shall incur, and without prejudice to the foregoing provisions, the PCT shall be liable to the Council for any loss, damage, injury or expense (whether direct, consequential or otherwise) arising out of or in connection with the performance of the Agreement, were such loss, damage, injury or expense arises from a breach of this Agreement or a breach of duty or fault or negligence of the PCT, its employees or its agents.

13.4 Nothing in these General Conditions nor in any part of this Agreement shall impose any liability on any member of staff of the Council or the PCT or their representatives in their personal capacity.

- 13.5 The PCT shall prior to the commencement of the Services produce to the Authorised Officer without charge documentary evidence that the insurances required are properly maintained.
- 13.6 The Council shall be entitled, without prejudice to its existing rights and remedies, upon the failure of the PCT to maintain the insurance referred to in this Clause 13, to terminate this Agreement.
- 13.7 The PCT shall without charge, provide to the Council on request evidence that the premiums payable in respect of the insurances required under this Clause 13 have been paid and that the said insurances are in full force and effect

#### **14 HEALTH AND SAFETY**

- 14.1 The PCT shall promptly notify the Council of any health and safety hazards that may arise in connection with the performance of the Services.
- 14.2 The PCT shall notify the Council immediately in the event of any incident occurring in the performance of the Services on premises of the PCT where that incident causes any personal injury or damage to property or which could give rise to personal injury.
- 14.3 The PCT shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on premises belonging to the PCT in the performance of the Services.
- 14.4 The PCT shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

#### **15 SET OFF**

- 15.1 Whenever under this Agreement any sum of money shall be recoverable from or payable by the PCT to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the PCT under this or any other Agreement with the Council. Exercise by the Council of its rights under this Clause 15 shall be without prejudice to any other rights or remedies available to the Council under this Agreement or otherwise, however, at law and in equity

#### **16 DUTY OF BEST VALUE**

- 16.1 The PCT acknowledges that the Council is subject to the requirements of Best Value and the PCT has declared its intention to continuously improve delivery of the Services in accordance with the principles of Best Value.
- 16.2 The PCT shall provide such data as reasonably requested by the Authorised Officer to help demonstrate the Council's compliance with the Performance Indicators applicable to the Services.
- 16.3 The PCT shall comply with any reasonable request by the Council for assistance in preparing its Best Value performance plans under Section 6 of the Local Government

Act 1999, and shall co-operate with any reasonable request for information or assistance so as to facilitate any inspection of the Council's compliance with Best Value pursuant to Section 17 of the Local Government Act 1999.

## **17 VARIATION OF AGREEMENT**

17.1 Authorised Officer shall be entitled to issue to the PCT instructions in writing requiring the PCT to do all or any of the following:

- a) to omit any part of the Service or to cease to provide any part of the Service during such times or for such periods as the Authorised Officer may determine; and
- b) to provide such services additional to the Service including additional or substituted locations as the Authorised Officer may reasonably require, provided that any such additional services shall be the same as or similar to the Services; to vary the Service permanently.

17.2 Without prejudice to any other of the General Conditions of Agreement hereof no omission from, addition to or variation of the Agreement shall be valid unless it is agreed in writing signed by the Authorised Officer and Authorised Manager.

17.3 Subject to the provisions of this Clause 17 any provision inconsistent with these General Conditions of Agreement contained in any other document shall be void and of no effect.

## **18 ASSIGNMENT AND SUB-LETTING**

18.1 The PCT shall not assign or sub-Contract the Agreement or any part of it without the prior written consent of the Council.

## **19 DISPUTE RESOLUTION**

19.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement.

19.2 If the dispute cannot be resolved by the parties pursuant to Clause 19, the dispute may, by agreement between the parties, be referred to mediation pursuant to Clause 19.4 hereof.

19.3 The provision of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Clause 19.2 hereof.

19.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

- a) a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the parties or, if they are unable to agree upon the identity of the Mediator within 14 days after a request by one Party to the other (provided that there remains agreement for mediation), or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a

Mediator or within 14 days of notice to either party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator; and

- b) The parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure; and
- c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings; and
- d) if the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the Council and the PCT; and
- e) Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both parties; and
- f) if the parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

## **20 GRATUITIES**

20.1 The PCT, its employees and agents shall not solicit any gratuity, tip or any other form of money taking or reward nor make any payments (in cash or kind) to employees of the Council.

## **21 CORRUPTION**

21.1 The Council may terminate this Agreement and recover all of its losses if the PCT or its employees or anyone acting on behalf of the PCT with or without its knowledge:

- a) corruptly offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Agreement with the Council (even if the PCT does not know this has been done), or
- b) commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972

21.2 Any clause limiting the PCT's liability does not apply to this Clause 21.

## **22 WARRANTIES**

22.1 The PCT warrants, represents, and undertakes to the Council that:

- a) It has full authority to enter into this Agreement; and

- b) It is of sound financial standing and has sufficient working capital available to it to perform the Service in accordance with the Agreement for the entire duration of the Term; and
- c) It will make available to the Council copies of its audited accounts throughout the currency of the Agreement within 30 days of the formal adoption of such accounts by the PCT.

## **23 NOTICES**

23.1 Any notice to be served on either of the parties by the other shall be in writing and shall be served personally, by fax, or by sending the same by pre-paid registered post or recorded delivery to:

Medway Council:

Name: Amanda Rogers

Address:

Tel:

Fax:

Medway PCT:

Name:

Address:

Tel:

Fax:

23.2 Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served two working days after posting (and in proving such service it will be sufficient to prove that the notice was properly addressed, stamped and posted) and any notice sent by fax will be deemed to have been received by the addressee on the day of transmission (if sent before 4.00p.m on a working day otherwise the next working day). For the purposes of this Clause 23 working days are Monday to Friday inclusive but excluding bank and public holidays.

## **24 WAIVER**

24.1 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

## **25 COSTS**

25.1 Each of the parties shall pay any costs and expenses incurred by it in connection with the formalisation of this Agreement.

## **26 ACCESS TO INFORMATION**

26.1 The PCT shall provide reasonable access to the Council to such Information as it may reasonably require, including that for performance management, audit and Transfer of Undertakings (Protection of Employment) Regulations 1981 ("TUPE") purposes.

## **27 OMBUDSMAN**

27.1 In the event of an investigation by the Ombudsman into the acts or omissions of the PCT or its employees or agents when undertaking the Services for the Council, the PCT shall make documents available and co-operate with the investigation.

27.2 Where maladministration is found to have occurred due to the acts or omissions of the PCT, its employees or agents, the PCT shall pay any compensation awarded or recommended by the Ombudsman.

## **28 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

28.1 This Agreement does not in anyway whatsoever entitle a person who is not a party to it (including, without any limitation, any employee, officer, agent, representative, of either the Council or the PCT) to enforce any term of the Agreement, which expressly, or by implication, confer a benefit on him pursuant to the Agreement (Rights of Third Parties) Act 1999, without prior agreement in writing of both parties.

## **29 CONFLICT OF INTEREST**

29.1 The PCT shall ensure that potential conflicts of interest, likely to prejudice its independence and objectivity in performing the Agreement, are transparently and appropriately managed. It shall immediately notify the Council in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Council may reasonably require.

29.2 Where the Council is of the opinion that the conflict of interest notified to it under Clause 29.1 above is capable of being avoided or removed, the Council may require the PCT to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

- a) If the PCT fails to comply with the Council's requirements in this respect; or
- b) if, in the opinion of the Council, compliance does not avoid or remove the conflict, the Council may determine the Agreement and recover from the PCT the amount of any loss resulting from such determination.



### **30 CONFIDENTIALITY**

- 30.1 Except as provided in this Clause 30, both the Council and the PCT shall at all times during the currency of this Agreement and thereafter,
- a) use their respective best endeavours to keep all Confidential Information confidential and accordingly not to disclose any Confidential Information to any other person, and
  - b) not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement.
- 30.2 Confidential Information may be disclosed to such extent only as is necessary for the purposes contemplated by this Agreement or as is required by law or other regulatory body or court of competent jurisdiction.
- 30.3 Before deciding on requests to the Council under the Freedom of Information Act 2000 for the disclosure of Confidential Information the Council shall consult the PCT with a view to obtaining its agreement to the action to be taken in respect of any such requests.
- 30.4 The consultation shall take the form of a letter to the PCT setting out full details of the request for Confidential Information and the PCT shall submit any comments it wishes to make to the Council as to whether the disclosure would prejudice its commercial interests if it were to be released, within five working days of the date of said letter.
- 30.5 The Council will take into account any comments made by the PCT before any decision is made as to whether or not the Confidential Information requested is to be released. In any cases where the Council decides that the public interest in disclosing the Confidential Information outweighs the public interest in not doing so, it shall notify the PCT accordingly.
- 30.6 Any requests that are made directly to the PCT for the disclosure of Confidential Information shall be immediately referred to the Council (and in any event not later than two working days from the PCT's receipt of the request) for it to decide whether the Information should be disclosed. Clauses 30.3 and 30.4 will also apply to such requests that are referred from the PCT to the Council.
- 30.7 Any Confidential Information may be used for any purpose or disclosed to any other person to the extent that:
- a) it is at the Effective Date, or becomes thereafter public knowledge through no fault of the disclosing party provided that in doing so the disclosing party shall not disclose any Confidential Information which is not public knowledge; or
  - b) The disclosing party can show to the reasonable satisfaction of the other that the Confidential Information was already known to the disclosing party before it was divulged by the other party.

- 30.8 Nothing contained in this Clause 30 shall prevent either the Council or the PCT from distributing and/or issuing or permitting to be distributed or issued any material in connection with the Council's Best Value Duty.
- 30.9 The obligations under this Clause 30 shall survive the expiry or termination of this Agreement for a period of three years.
- 30.10 The PCT may retain copies of the information produced or collected in the course of providing the Services, but shall not disclose such information and shall not exploit such information commercially without the prior written consent of the Council, which may be withheld, or may be granted upon such terms and conditions as the Council in its absolute discretion shall see fit, and save as shall be permitted by such consent, the PCT shall use such information only for the purposes of the Agreement.
- 30.11 Either party ("the Receiving Party) may disclose Confidential Information to its officers, professional advisers, members or employees where such disclosure is reasonably necessary provided always that the Receiving Party shall use reasonable endeavours to ensure that such officers, professional advisers, members, employees comply with the same obligations that the Receiving Party is obliged to comply with pursuant to this Clause 30.

## **31 FORCE MAJEURE**

- 31.1 Force Majeure means an event beyond the reasonable control of the affected party which does not relate to its fault or negligence. Force Majeure includes (without limitation) acts of God, expropriation or confiscation of facilities, any form of Government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, sabotage or riots, floods, fires, explosions or other catastrophes, power shortages and computer viruses. Force Majeure does not include:
- a) failure by the affected party to adequately test equipment supplied by a third party, or any consequence of the failure; or
  - b) Strikes or other industrial action by employees of the affected party.
- 31.2 Neither party shall be responsible for failure to carry out any of its duties (save as to payment) under this Agreement to the extent to which this is caused by Force Majeure (as defined in this Clause 31) provided that the affected party:
- a) has taken all reasonable steps to prevent and avoid the Force Majeure; and
  - b) carries out its duties to the best level reasonably achievable in the circumstances of the Force Majeure; and
  - c) takes all reasonable steps to overcome and mitigate the effects of the Force Majeure as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them; and
  - d) on becoming aware of the Force Majeure promptly informs the other party in writing that something has happened which is a Force Majeure, giving details of the

Force Majeure, which obligations have been affected, together with a reasonable estimate of the period during which the Force Majeure will continue; and

e) Within seven calendar days of becoming aware of the Force Majeure provides written confirmation and reasonable evidence of the Force Majeure; and

f) Tells the other party when the Force Majeure has stopped.

31.3 The charges for work affected by a Force Majeure shall be reduced or waived by a reasonable amount to be agreed between the parties to reflect the extent and standard to which the affected work is being provided. If a Force Majeure results in suspension of all of the Services or in the Services being provided to a level of negligible value to the Council, the Council shall not be liable to pay for the Services.

31.4 If the Force Majeure results in suspension of all work or in work being provided to a level of negligible value to the Council and this continues for more than five calendar days, the Council may terminate this Agreement by giving thirty calendar days' written notice to the PCT.

31.5 Any disclosure of or access to personal data allowed under Clause 30 shall be made in confidence and shall extend only so far as that which is specifically necessary for the purpose of the Agreement.

31.6 The PCT shall store or process such personal data only at sites specifically agreed in writing, in advance, with the Council.

31.7 If the PCT materially fails to comply with the provisions of this Clause 31 the Council may summarily determine the Agreement by notice in writing to the PCT provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council.

31.8 The decision of the Council upon matters arising under this Clause 31 shall be final and conclusive.

## **32 TUPE**

32.1 The parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of this Agreement, and should they so apply that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the PCT on the commencement of the Services.

32.2 During the period of six months preceding the expiry of this Agreement or after the Council has given notice to terminate the Agreement and within 20 working days of being so requested by the Council, the PCT shall fully and accurately disclose to the Council for the purposes of TUPE all information relating to its employees engaged in providing Services under the Agreement, in particular, but not necessarily restricted to the following:

a) The total number of PCT staff wholly or mainly engaged in the provision of the Services; and

- b) For each such person, their age and gender, details of their salary, and pay settlements which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and
- c) Full information about the other terms and conditions on which the affected Staff are employed (including but not limited to their working arrangements), or where that information can be found; and
- d) Details of pensions entitlements, if any; and
- e) Job titles and the qualifications required for each position.

32.3 The PCT shall warrant the accuracy of the information provided to the Council pursuant to clause 32.2 and authorises the Council to use the information for the purposes of TUPE and of re-tendering.

32.4 The PCT agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 32.2.

32.5 The PCT agrees to indemnify the Council from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Agreement is terminated and/or transferred to any third party ("Relevant Transfer Date") arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

32.6 In the event that the information provided by the PCT in accordance with Clause 32.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the PCT becoming aware that the information originally given was inaccurate, the PCT shall notify the Council of the inaccuracies and provide the amended information.

32.7 The provisions of this clause shall apply during the continuance of this Agreement and any extensions thereof for six years after its termination.

### **33 EMPLOYEES AND EMPLOYMENT MATTERS**

33.1 The Council and the PCT agree that where the identity of an employee (including the Council) of the Services is changed pursuant to this Agreement (including upon termination of this Agreement) then the change may constitute a Relevant Transfer. On the occasion of each Relevant Transfer (including a Relevant Transfer upon termination of this Agreement), the PCT shall comply with all of its obligations under the Regulations and the Directive in respect of the Relevant Employees.

33.2 The PCT shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all

wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of the Relevant Transfer.

## **34 PENSIONS**

34.1 The PCT shall ensure that all Transferring Employees are offered membership of the pension scheme of which they were, or were eligible to be, members prior to the Transfer Date or are afforded pension rights which are certified by the Government Actuaries Department [or by a professional qualified actuary] as being broadly comparable to or better than the terms of the pension scheme of which they were, or were eligible to be, members prior to the Transfer Date.

## **35 PCT TO INFORM AUTHORITY OF ANY MEASURES**

35.1 The PCT shall within 10 working days of receiving a request from the Council, furnish to the Council any information deemed by the Council necessary concerning any measures (within the meaning of the Regulations and the Directive) that the PCT intends to take in relation to any Relevant Employee and shall indemnify the Council against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this obligation.

## **36 INDEMNITIES**

36.1 The PCT shall indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses), which the Council shall use its best endeavours to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of or termination of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the PCT in relation to any Relevant Employee, on or after the date of the Relevant Transfer.

36.2 The PCT shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the PCT in respect of all or any of the Relevant Employees) arising from or connected with any failure by the PCT to comply with any legal obligation to such trade union, staff associated or other employee representative whether under Regulation 10 of the Regulations, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.

36.3 The PCT shall indemnify the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any Relevant Employee that the identity of the PCT is to that Relevant Employee's detriment or that the terms and conditions to be provided by the PCT or any proposed measures of the PCT are to

that employee's detriment whether such claim arises before or after the Transfer Date.

36.4 The PCT shall indemnify the Council and a successor of the PCT appointed by the Council and keep the Council and such successor of the PCT indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) which the Council and any such successor appointed by the Council shall take all reasonable steps to mitigate, awarded against or incurred or paid by the Council or any new Service Provider appointed by the Council as a result of or in connection with the employment or termination of employment of any employee of the PCT during any period prior to the date of expiry or termination of this Agreement.

### **37 NEW EMPLOYEES**

37.1 The Council and the PCT shall have regard to the Code in interpreting and applying the Code Obligations.

37.2 Subject to Clause 37.1, the PCT shall employ New Employees on terms and conditions of employment which are, overall no less favourable than those of the Transferring Employees engaged in the provision of the Services and holding the same or a similar position to that of the New Employees.

37.3 The PCT shall consult with the recognised trade unions and where there is no recognised trade union any other employee representative body on the terms to be offered to the New Employees pursuant to Clause 37.2.

37.4 In addition to its obligations under Clause 37.2 above, the PCT shall procure that the New Employees are offered membership of a good quality employer pension scheme, being a contracted-out final salary based defined benefit scheme, or a defined contribution scheme.

### **38 COMPLIANCE WITH CODE OBLIGATIONS**

38.1 During the term of this Agreement, the PCT shall on request by the Council provide the Council with accurate and complete information as soon as reasonably practicable, including the terms and conditions of employment of the Transferring Employees and the New Employees, where this is required to monitor the PCT's compliance with its Code Obligations.

38.2 The PCT shall support any central Government sponsored review and monitoring programme on the impact of the Code and on request by the Council provide the Council with accurate and complete information as soon as reasonably practicable in order to assist the Council in doing this.

38.3 The Council and the PCT shall in the first instance seek to resolve by discussions between them any complaints from any employee or any recognised trade union in relation to compliance by the PCT of its Code Obligations.

38.4 Where it appears to the Council or the PCT that it is not possible to resolve the matter by continuing discussions between them pursuant to clause 38.3 or where an

employee of the PCT or any recognised trade union writes to the Council to confirm that it has been unable to resolve its complaint directly with the PCT in relation to the PCT's Code Obligations, the Council shall first write to the PCT to seek an explanation for the alleged failure by the PCT to comply with its Code Obligations. The PCT shall provide such an explanation in writing within 5 working days of receipt of the request from the Council.

38.5 If the response provided by the PCT satisfies the Council that the Code Obligations have been met, then the Council will inform the complainant of this and the matter will be deemed to have been concluded.

38.6 In the event that the Council is not satisfied with the response provided by the PCT the Council shall write to the PCT within 5 working days to require the PCT to take immediate action to resolve this dispute.

38.7 If, following such a request by the Council the PCT still appears to the Council not to be complying with its Code Obligations, the matter shall be dealt with in accordance with clause 19.

### **39 RISK SHARING**

39.1 The PCT shall ensure that no overspend takes place without the prior agreement of the Section 31 Management Group.

39.2 The payments referred to in Clause 0 will be apportioned between the parties on the following basis.

a) The PCT will produce an analysis of the reasons for the overspending; and

b) The PCT shall at all times keep the Section 31 Management Group informed of any anticipated underspend.

39.3 Each party to this agreement shall be responsible for the proper treatment of Value Added Tax relating to receipts, payments and transfers between the parties in accordance with relevant legislation and Government guidance.

39.4 No arrangement shall be entered into by the parties in respect of this Agreement the sole or principal purpose of which is to evade the proper treatment of Value Added Tax.

### **40 MONITORING AND QUALITY ASSURANCE**

40.1 Overall quality assurance shall be the responsibility of the PCT.

40.2 The PCT will monitor the number, nature and outcome of complaints made against Providers about social care commissioned under the terms of this agreement and shall include an analysis of this in its regular reporting to the Council (see Schedule 3 – PERFORMANCE REPORTING REQUIREMENTS).

- 40.3 The PCT shall actively monitor the performance of Service Providers and ensure that problems or potential failures in service delivery are identified at an early stage and that appropriate corrective action is taken.
- 40.4 The PCT shall report promptly to the Council any serious or untoward incidents that occur in the course of service delivery.
- 40.5 The basis of activity monitoring and quality assurance shall be the standards set out in the NHS Plan, the National Service Framework for Mental Health, the Performance Assessment Framework for Social Services and other monitoring/quality assurance reporting requirements specified by the Government and relevant local policies adopted by the Council and the PCT. The PCT will agree, as part of its SLA/Agreement, with each Service Provider a series of Performance Indicators which will include statutory requirements and the relevant measures listed in Schedule 3 – PERFORMANCE REPORTING REQUIREMENTS.
- 40.6 The PCT shall obtain from Services Providers and pass to the Council the information it requires to comply with the relevant statutory reporting requirements in a timely manner.

#### **41 REVIEW OF AGREEMENT**

- 41.1 This Agreement shall be reviewed annually by the S31 Management Group whose terms of reference are shown in Schedule 2 – SECTION 31 MANAGEMENT BOARD TERMS OF REFERENCE

#### **42 TERMINATION**

- 42.1 The Agreement may be terminated at any time by mutual consent of both parties.
- 42.2 The Council shall be entitled forthwith to terminate this Agreement in the event that;
- a) there is any change in law or guidance that materially affects the arrangements set out in this Agreement; or
  - b) either or both of the parties in breach of their statutory obligations; or
  - c) if a party commits a material breach of the Agreement and, in the case of a breach which is capable of remedy, fails to remedy such breach within 28 days of being required by the other party in writing to do so, the injured party shall be entitled to terminate the Agreement with immediate effect by notice in writing to the other party and without prejudice to any rights or remedies of the parties accrued to the date of the termination of the Agreement.
- 42.3 In the event of termination by the Council and without prejudice to any other rights and remedies:
- a) The PCT shall unless requested otherwise by the Authorised Officer forthwith cease to provide any of the Services; and



- b) The Council shall be under no obligation to make any further payment to the PCT and shall be entitled to retain in its hands any payment which may have fallen due to the PCT before termination until the PCT has paid in full to the Council all sums due from the PCT to the Council under this Agreement; and
- c) If the Agreement is terminated the parties shall cooperate in making appropriate arrangements to ensure that termination takes place in an orderly manner, that service commissioning and delivery are maintained and that the interests of parties, service users and carers are not prejudiced.

### **43 ENTIRE AGREEMENT**

43.1 The PCT irrevocably and unconditionally waives, in the absence of fraud, any rights which it might otherwise have had to seek to rescind or terminate this Agreement or to claim damages against the Council or any of its officers, employees, advisers or agents for, or arising out of, any representation or breach of any warranty not contained in this Agreement.

## **Schedule 1 – COMMISSIONING STANDARDS**

These commissioning standards will fully adhere to *World Class Commissioning* (NHS, October 2007) to support the vision that will be developed, articulated and owned by the NHS, lead locally by Medway Primary Care Trust, with a strong mandate from local people and other partners including Medway Council.

Any contract or service level agreement for the delivery of services entered into by the PCT on behalf of the Council shall:

- a) specify activity levels, milestones, timescales, performance indicators, quality standards and expected outcomes for the services to be delivered; and
- b) require the service provider to report at regular intervals to the PCT on its performance against those requirements and give reasons for significant variations or failures in service delivery and its plans to remedy this.

Such contracts and SLAs shall also require the service provider to:

- c) Comply with all relevant statutes including employment legislation; and
- d) provide the agreed services within the budget set out in the contract/SLA. As part of this it shall be made explicit that no funding will be made available to cover any overspends/shortfall in income from other sources or losses because activity volumes have been less than forecast; and
- e) seek the Council's prior approval, via the PCT, for any proposed virements between budget headings and services; as part of this it shall be noted that no virement between social care and health budgets will be permissible; and
- f) obtain, via the PCT, the Council's agreement before adapting any new policies which would affect the Council's social services, functions and liabilities; and
- g) obtain via the PCT, the Council's agreement before making any decision which appears likely to give rise to significant public concern or which would bring about major change in the services provided; and
- h) provide, in a timely manner, the information and data required to enable the Council to fulfil its statutory reporting duties in respect of the services provided; and
- i) provide reports, to the Council via the PCT, on any aspect of its social services responsibilities where this is necessary to enable the Executive or the full Council to make a decision; as part of this, providers will also be required to arrange for appropriate senior officers to attend to present these reports and/or to attend a Scrutiny Committee of the Council when requested with reasonable notice; and
- j) provide, via the PCT, information to individual councillors on request about any matter relevant to their local representative role. However nothing in contracts or SLAs shall permit or require providers to provide councillors with information which would identify any individual patient or service user without that person's specific permission; and

- k) at all times, maintain professional relations with the Council and the PCT and to undertake not to do anything which would knowingly bring either into disrepute, damage their credibility, misrepresent them or adversely affect the proper conduct of their business; and
- l) keep confidential, unless disclosure is required by law or sanctioned by the Council or PCT acting on its behalf, all information - not already in the public domain, it is privy to about the Council's plans; and
- m) consult and cooperate with the Council, via the PCT, prior to responding to any request for information/comment or making any public statement on matters which the Council has a legitimate interest in (e.g. MP and press enquiries) insofar as reasonably practicable having regard to the nature and urgency of the issue involved; and
- n) respond, within statutory timeframes, to any FOI requests; and
- o) keep, at all times during the continuance of the SLA/contract and after its termination, confidential all documents or papers which it receives or otherwise acquires in connection with the Council and which are marked "Commercial - in confidence" or such other similar words signifying that they should not be disclosed. The provider shall undertake that, should any of these documents be requested for disclosure under applicable codes or legislation etc, the decision on whether or not to disclose shall be referred to and made by the Council via the PCT; and
- p) be a signatory to the Kent and Medway Information Sharing Protocol; and
- q) supply to the Council, as required, any necessary records to support any legal or audit requirements; and
- r) hold adequate insurance and indemnify the Council against all legal liabilities to third parties arising from the provision of social care under their contract/SLA, except that they shall not be responsible for acts of any employees of the Council or PCT; and
- s) ensure that service users and carers are appropriately consulted and engaged at every level; and
- t) cooperate with the Council where required to enable the Council to fulfil its statutory duties to consult; and
- u) have in place strategies, policies and processes to ensure they are responsive to the needs of service users and carers, whatever their age, gender, ethnicity, religion, disability or sexuality; and
- v) have an effective procedure for resolving complaints about social care commissioned under the terms of this agreement; and
- w) ensure that all users of social care services are informed of their right to appeal to the Council on social care matters under the statutory social services complaints procedure if they are not satisfied with the provider's response; and

- x) contribute to Value for Money and similar reviews and as part of this, provide staff to lead on any elements a VfM review when they have the relevant expertise; and
- y) acknowledge the Council's funding/support when highlighting its achievements in delivering services commissioned on their behalf by the PCT; and
- z) cooperate with investigations undertaken by relevant regulators, statutory agencies and Ombudsmen.

Such agreements and contracts shall also:

- aa) reflect the requirement for the Council and PCT to achieve Gershon and CRES efficiency savings; and
- bb) specify that the amount, if any, of social care funding uplift provided each year will be determined by the Council and shall not be subject to arbitration; and
- cc) provide for payment of Council funding to be on a phased basis and, where necessary to meet the Council's overall budget plans, allow for the agreed amount to be reduced in year. Any such reduction will be made no later than 30th September and will be reflected in the relevant contract/SLA by an appropriate variation to agreed service and/ or activity levels; and
- dd) reflect current contract guidance issued nationally to Councils and PCTs.

## **Schedule 2 – SECTION 31 MANAGEMENT BOARD TERMS OF REFERENCE**

### **The initial membership of the S31 Management Board will be:**

- Director of Mental Health Commissioning for Kent and Medway
- The Director of Finance of the PCT
- The Assistant Director Social Care of Medway Council (The Authorised Officer)
- Chief Finance Officer of Medway Council
- Primary Care Trust Non-Executive Director with Mental Health lead.
- Medway Council Portfolio Holder for Social Care
- The Authorised Manager

The Parties may change their representatives having first advised the other Party of the proposed change provided always that the Director of Mental Health Commissioning chairs the meeting, or that in her absence the chair is taken by the NED of the PCT.

### **Role of Section 31 Management Board**

The Management Board shall:

- Receive outcomes of consultation with service users and carers
- Undertake the annual review of this Agreement and refresh its schedules.
- Agree such variations to this Agreement from time to time as it thinks fit.
- Advise on the specified outcomes and terms of any proposed contracts.
- Set and monitor financial and performance targets.
- Agree a response to notifications of potential overspends
- Agree the best use of resource available through potential underspends

### **Service and Support**

Officers from Medway PCT will support the Section 31 Management Board.

### **Meetings**

The Section 31 Management Board will meet at least quarterly at a time to be agreed.

The quorum for meetings shall be a minimum of three members with at least one representative from Medway Council and one from the PCT. In the event that a decision cannot be agreed, dispute resolution as detailed in Clause 19 will be invoked. Minutes of

all decisions shall be kept and copied to the members of the Management Board within 7 days of every meeting.

### **Information and Reports**

The Authorised Manager will submit regular reports on targets and performance measures as set out in Schedule 5.

### **Post-termination**

The S31 Management Board will reconvene as necessary following the termination of this agreement.

## Schedule 3 – PERFORMANCE REPORTING REQUIREMENTS

### Reporting Requirements

During 2008/2009 when the new national Indicator set of 198 indicators are bedding down there is a requirements to continue to provide performance data as detailed in the Performance Assessment Framework (PAF) through a series of statutory returns.

The table below sets out the measures that are used to assess the performance of mental health services. These measures should be reported a minimum of twice a year (last day of September and last day of March).

	Description	Current level of performance	Required level of Performance	Enhanced performance
PAF C29	Adults with physical disabilities helped to live at home.	4.1	>4.2	5+
PAF C30	Adults with learning disabilities helped to live at home.	2.1	>2.3	3+
PAF C31	Adults with mental health problems helped to live at home.	4.9	>2.3	
PAF C32	Older People helped to live at home (BVPI 54).	86	>90	>150
PAF C51	Direct Payments (BV201).	77	>120	>150
PAF C62	Services for Carers.	8%	9<12	12+
PAF D40	Clients receiving a review.	64%	60<75	75<100
PAF D55	Acceptable waiting times for assessments (BVPI 195).	82%	85<90	90<=100
PAF D56	Acceptable waiting times for care packages (BVPI 196).	87%	85<90	90<=100
PAF E47	Ethnicity of older people receiving assessment.	2	1<2	
PAF E48	Ethnicity of older people receiving services following an assessment.	1.02	0.9<1.1	
PAF E82	Assessments of adults and older people leading to provision of service.	61%	63<68	68<77

	Description	Current level of performance	Required level of Performance	Enhanced performance
PAF C72	Permanent admissions of older people into residential and nursing care.	90	0<90	
PAF C73	Permanent admissions of adults into residential and nursing care.	4.2	2.5<3.5	1.5<2.5
PAF B11	Intensive homecare as a percentage of intensive home and residential care.	37%	27<45	
PAF B12	Cost of intensive homecare for adults and older people.	£419	£419	
PAF B17	Unit cost of homecare for adults and older people.	£12.80	£12.80	
PAF C28	Intensive home care.	17.7	16+	
PAF D54	Percentage of items of equipment and adaptations delivered within 7 working days (BVPI 56).	87%	85<=100	
PAF D75	Practice Learning (adults services).	13.8	11<17	17+

In addition to these measures the council requires regular information on its clients in order to continue to meet its reporting duties. The following table describes the data items that should be made available through the Primary Care Trust from mental health providers:

Data required	Format	Frequency
<b>all referrals</b>		
Number of referrals dealt with at point of contact	Integer	last day of: JUN, SEP, DEC and MAR
Number of referrals leading to assessment	Integer	last day of: JUN, SEP, DEC and MAR
Source of referral	prescribed list	last day of: JUN, SEP, DEC and MAR



<b>Data required</b>	<b>Format</b>	<b>Frequency</b>
<b>For each client</b>		
First Name	text	last day of: SEP and MAR
Last Name	text	last day of: SEP and MAR
Date of Birth	date	last day of: SEP and MAR
Ethnicity	prescribed list	last day of: SEP and MAR
Address	BS7666	last day of: SEP and MAR
Start date of referral	date	last day of: SEP and MAR
End date of referral	date	last day of: SEP and MAR
Start date of assessment	date	last day of: SEP and MAR
End date of assessment	date	last day of: SEP and MAR
Start date of Service	date	last day of: SEP and MAR
End Date of Service	date	last day of: SEP and MAR
Start date of Review	date	last day of: SEP and MAR
End Date of Review	date	last day of: SEP and MAR
outcome of assessment	prescribed list	last day of: SEP and MAR
Type of Service	prescribed list	last day of: SEP and MAR
Residential / Nursing placement	prescribed list	last day of: SEP and MAR
Care plan completed	yes / no	last day of: SEP and MAR
<b>For each carer</b>		
Carers plan completed	yes / no	last day of: SEP and MAR
Carers assessment	joint / separate / declined	last day of: SEP and MAR
End Date of Carers assessment	date	last day of: SEP and MAR
Outcome of Carers' Assessment	prescribed list	last day of: SEP and MAR

In order to measure value for money and inform commissioning decisions the council requires service specific cost information as follows:

For each service specified below the PCT should provide: total monthly cost of the service, number of clients per month, unit cost as specified.

<b>Service</b>	<b>Unit cost rate</b>
Residential Care	Per week
Respite care	Per day
Crisis beds	Per day
forensic	Per day
...	

### **Reporting Requirements to support the National Indicator Set and Local Area Agreement.**

The following tables outlines the indicators relevant to mental health services. The collection of data above, together with the use of surveys, will provide the necessary information in the majority of cases. NI 149 and NI 150 will require the PCT to report quarterly (The PCT will provide quarterly (last day of: June, September, December and March) each year

<b>Ref</b>	<b>Description</b>	<b>Method of Collection</b>
NI 119	Self-reported measure of people's overall health and well being	Collection proposed through a place survey
NI 127	Self-reported measure experience of social care users	Triennial cycle of social care user surveys
NI 128	User reported measure of respect and dignity in their treatment	Surveys undertaken by LA
NI 132	Timeliness of social care assessment	From RAP return – based on assessment dates
NI 133	Timeliness of social care packages	From RAP return – based on assessment and packages of care dates

<b>Ref</b>	<b>Description</b>	<b>Method of Collection</b>
NI 135	Clients receiving needs assessment or review and a specific carers service or advice and information	From RAP return – based on assessment and packages of care dates
NI 136	People supported to live independently through social services (all ages)	From the RAP and the GFS1 returns
NI 140	Fair treatment by local services	Collection proposed through a place survey
NI 149	Adults in contact with secondary mental health services in settled accommodation	
NI 150	Adults in contact with secondary mental health services in employment	

The performance measures and levels of performance will be subject to change and will form part of the annual budget setting and commissioning / development planning process.

## Schedule 4 – PAYMENT

<b>Funding Allocation For Mental Health Services</b>	
<b>Service</b>	<b>Medway Council 2008/2009</b>
Adult Mental Health Services	2,853,000
Older People with Functional mental Illness	742,000
Child and Adolescent Mental Health Services	
Voluntary Organisation Funding	127,000
Advocacy	67,000
	<b>3,789,000</b>

The Council will pay its allocation to the PCT in quarterly Instalments in arrears as follows:

<b>Date of instalment</b>	<b>% total allocation to be transferred</b>
30 June	25%
31 September	25%
31 December	25%
31 March	25%