Joint Committee of Barnsley, Bassetlaw, Doncaster, Rotherham and Sheffield Primary Care Trusts – Cluster Board

Draft Establishment Agreement – MARCH 2011 (Final)

THIS AGREEMENT is made between the under-mentioned PCTs (to be referred to as "Member PCTs")

(1) **Barnsley Primary Care Trust**

(2) **Bassetlaw Primary Care Trust**

(3) **Doncaster Primary Care Trust**

(4) **Rotherham Primary Care Trust**

(5) **Sheffield Primary Care Trust**

1.0 INTRODUCTION

1.1. The Boards of the PCTs wish to establish a joint committee to which they may delegate their functions in accordance with the Regulations (as defined more particularly below). In so doing, they recognise the transitional nature of this arrangement and that it is made with the explicit objectives of sustaining management capacity, support for delivery of PCT functions in terms of statutory duties, quality, finance, performance, quality, innovation, productivity and prevention (QIPP) and NHS Constitution requirements through to March 2013, enabling the transition to GP-led commissioning, enabling new arrangements with Local Authorities and Health and Wellbeing Boards to develop, and supporting provider reform elements of the transition to the new NHS arrangements proposed by the Government.

The joint committee of PCTs will be known as the Cluster Board and will be established as a joint committee of the PCTs referred to at (1) to (5) above,known as Member PCTs

1.2 The Cluster Board is established in accordance with Regulation 10 of the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administrative Arrangements) (England) Regulations 2002, as amended (the "Regulations") and shall have such powers and functions as set out in this Agreement. The PCTs therefore acknowledge that the Cluster Board is subject to any directions which may be made by the Yorkshire and the Humber Strategic Health Authority or by the Secretary of State.

1.3 The Cluster Board will act in accordance with the objectives of the Member PCTs and the wider strategy for improving health and healthcare in the region covered by them in relation to the functions for which it is responsible.

1.4 The Cluster Board will carry out its functions in a transparent way with clinical leadership support and in line with the latest guidance on public and patient engagement.

1.5 The Cluster Board will function as a corporate decision-making body for the management of the Delegated Functions (as defined more particularly below).

2.0 INTERPRETATION

In this Agreement, unless the context otherwise required, the following terms have the following meanings:

"Board" or **"PCT Board"** means the board of each respective PCT

"Chair" and "Vice Chair" mean the persons respectively appointed to or by the Cluster Board in accordance with this Agreement

"Cluster Board" has the meaning ascribed to it at recital 1.2 above

"Commissioned Services" means health services commissioned or to be commissioned by the Cluster Board pursuant to this Agreement and from time to time set out in Schedule 1

"Delegated Functions" means the functions set out at Schedule 1 to this Agreement

"Executive member" means the persons engaged by the Cluster Board to support it and its Sub-committees

"NHS Body" and **"NHS Contract"** respectively mean a body and a contract so defined in section 9 of the National Health Service Act 2006

"Regulations" has the meaning ascribed to it at recital (c) above

"Sub-committee" means any sub-committee formed from time to time by the Cluster Board

"Strategic Health Authority" means, in relation to the PCTs, the Yorkshire and the Humber Strategic Health Authority whose area includes the areas of the PCTs

A reference to the singular shall include the plural and vice versa and reference to a gender shall include any gender.

3.0 AGREEMENT STATUS

This Agreement is made between the PCTs as NHS Bodies pursuant to the National Health Service Act 2006, Section 9.

4.0 THE CLUSTER BOARD: FUNCTIONS AND MONITORING

4.1 The Cluster Board is hereby established as a joint committee of the Boards of the Member PCTs in accordance with the Regulations and shall be formally known as the South Yorkshire and Bassetlaw PCTs Cluster Board.

4.2 The PCTs acknowledge therefore that the Cluster Board and its sub-committees are subject to any directions which may be made under the Regulations by any appropriate Strategic Health Authority or by the Secretary of State for Health.

4.3 The PCTs jointly delegate their respective functions as set out in Schedule 1 to the Cluster Board with authority to act on their behalf and will ensure that this is reflected in their respective schemes of delegation..

4.4 The Cluster Board shall operate within the current Standing Orders and Standing Financial Instructions of its Member PCTs.

4.5 The Cluster Board shall have authority to form one or more sub-committees in accordance with Standing Orders and Standing Financial Instructions.

5.0 MEMBERSHIP

5.1 Membership of the Cluster Board shall consist of:

- The chairs of each Member PCT (or in their absence a nominated deputy);
- The Cluster Chief Executive;
- The Cluster Director of Finance;
- The Cluster Medical Director;
- The Cluster Director of Nursing;
- The Cluster Director of Commissioning Development.

5.2 Where any of the positions are occupied on a shared basis by more than one individual, that position shall only exercise one vote.

5.3 The Member PCTs' Chief Operating Officers will attend and participate in meetings of the cluster board.

5.4 Additional non-voting members may be co-opted on to the Cluster Board from time to time.

6.0 CHAIR AND VICE-CHAIR

6.1 The Cluster Chair will be appointed by the Chair of the Strategic Health Authority.

6.2 Members of the Cluster Board may elect a Vice-Chair from among the Member PCT chairs.

7.0 CHIEF EXECUTIVE

The Delegated Functions shall be exercised on behalf of the Cluster Board by the Cluster Chief Executive acting as the chief officer to the Member PCTs and to the Cluster Board in accordance with the Scheme of Delegation. The Cluster Chief Executive will determine which functions they will perform personally of those assigned to them under the Scheme of Delegation and shall nominate officers to undertake the remaining functions for which the Cluster Chief Executive will still retain accountability to the Cluster Board. A memorandum of accountability will be developed between the Chief Executive and each PCT Member's Chief Operating Officer for this purpose

8.0 QUORUM

No business shall be transacted at a Cluster Board meeting unless at least five members (including at least one non-officer member and one officer member) are present.

9.0 MEETINGS

9.1 Meetings of the Cluster Board shall be held in public, subject to the Public Bodies (Admission to Meetings) Act (1960), at least six times per year at such times as the Cluster Board may determine.

9.2 Notice of Cluster Board meetings (which will be accompanied by an agenda and supporting papers) shall be sent to members no later than five working days before the meeting. When the Chair deems it necessary in the light of urgent circumstances to call a meeting at short notice the notice period shall be such as he shall specify.

9.3 The Cluster Board may delegate tasks to such Member PCTs, individuals, sub-groups or individual members as it shall see fit provided that any such delegations are recorded in a Scheme of Delegation and are governed by terms of reference.

9.4 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the Cluster Board's next meeting, where they shall be signed by the Chair.

10.0 DECISION MAKING

10.1 The Chair will work to establish unanimity as the basis for decisions of the Cluster Board. If, exceptionally, the Cluster Board cannot reach a unanimous decision, the Chair will put the matter to a vote.

10.2 The Chair will make all reasonable attempts to resolve any dispute arising in the conduct of the Cluster Board's business.

10.3 Where, as a result of a decision by vote, one or more Member PCT Boards are left at issue with the decision taken, they must discuss it at their PCT Board or relevant committee meeting and formally notify the Cluster Board of its position.

10.4 The Chair (or Vice Chair in the event of a conflict of interest) will seek to facilitate agreement through local mediation arrangements and may refer any dispute to the SHA or its successor organisation for arbitration, in accordance with the principles of dispute resolution within the NHS.

10.5 A decision of the Cluster Board shall be binding upon each of the PCTs,except where it has been agreed that Cluster Board decisions are to be referred to PCT Boards for ratification or approval as necessary.

10.6 The Cluster Board will not reach or seek to implement decisions which may place a Member PCT at risk of breaching its legal or statutory duties.

11.0 PERFORMANCE

11.1 The Cluster Board must act in a way which supports Member PCTs to meet their statutory obligations.

11.1 Where a Member PCT is failing to meet one or more of its statutory obligations or the required performance standards have not been achieved, the Cluster Board may act in the interests of that PCT and take all reasonable actions to remedy the situation.

12 REPORTING

12.1 Communications

12.1.1 The Cluster Board shall formally report to the Member PCT Boards on an agreed basis. Each PCT's chair, supported by the Cluster Chief Executive (or their delegated representative), shall act as the overall communication link to their respective Boards and shall present the approved minutes from each Cluster Board meeting to the next following public meeting of the Boards of Member PCT. These minutes need not include minutes of any Cluster Board meeting, or part of any Cluster Board meeting, which is a closed session. Minutes of the Cluster Board meetings in closed session shall be presented to the next closed meeting of the Member PCT Boards.

12.1.2 Minutes should specifically report any exceptions to the agreed programme of work that the Cluster Board has approved.

12.1.3 The Member PCTs members of the Cluster Board are responsible for ensuring that the views of the Boards they represent are communicated to the Cluster Board.

12.1.4 Each Member PCT's Annual Report shall include a section in respect of the Cluster Board, which shall be produced within the agreed timetable for the production of annual reports.

13 ACCOUNTABILITY

13.1 The Cluster Board is accountable to the Member PCTs who will set a framework for assessing the performance of the Cluster Board in the discharge of the Delegated Functions.

13.2 Each Member PCT is accountable through its statutory responsibilities to use its resources to improve the health of its population and retains that accountability even where functions are best achieved by working with other Member PCTs.

14 OBLIGATIONS OF EACH MEMBER PCT

14.1 Each Member PCT shall remain responsible for performing and exercising its statutory duties and functions for delivery of the Commissioned Services to its population and its patients. No Member PCT will exercise any functions jointly by way of the Cluster Board save for those expressly permitted under the Regulations

14.2 Each Member PCT further undertakes to indemnify:

14.2.1 each member of the Cluster Board and every Sub-committee; and

14.2.2 each of the Cluster Executive member,

against any liability, damages, costs, claims or proceedings arising out of or in connection with any act or omission (which is not recklessly negligent, fraudulent or involving criminal liability) committed or omitted by it during the course of performing its duties under this Agreement.

14.3 Each Member PCT shall appoint its representative member(s) to the Cluster Board and, as decided by the Cluster Board, any Sub-committee.

15 FUNDING ARRANGEMENTS

Each Member PCT will contribute in each financial year to the running costs of the cluster.. The apportionment of these contributions between the Member PCTs will be determined by the Cluster Board. Any subsequent arrangements for services to be provided at cluster level will be supported with an appropriately documented business case and financial regime, including apportionment of running costs.

16 STANDING ORDERS, STANDING FINANCIAL INSTRUCTIONS AND SCHEME OF DELEGATION

The standing orders, standing financial instructions and scheme of delegation for the Cluster Board will be those of each Member PCT. Each Member PCT's standing orders, standing financial instructions and scheme of delegation and reservation will contain a scheme of delegation for the Cluster Board in accordance with this establishment agreement.

17.0 REVIEW

This Agreement shall be reviewed regularly, at a minimum on an annual basis, with the first review due after six months of operation. Any amendment to the provisions of this Agreement must be agreed at a meeting of the Cluster Board by unanimous vote and endorsed by Boards of Member PCTs.

18.0 DISPUTE RESOLUTION

When any matter is referred to dispute resolution under this Clause the matter shall be determined in accordance with 10.4 above.

19.0 TERMINATION OF THIS ESTABLISHMENT AGREEMENT

This Agreement may be terminated entirely by a decision of the Cluster Board in an ordinary or special meeting at which all Member PCTs shall be entitled to attend and vote. Such a decision requires a unanimous vote of Member PCTs and shall take effect in respect of all Member PCTs at the conclusion of the meeting at which the decision to terminate this Agreement is made.

20.0 GOVERNING LAW

The formation, interpretation and operation of this Agreement shall be subject to English law.

AS WITNESS in the Schedule the hands of the duly authorised representatives of the parties listed therein

SCHEDULE 1

The Delegated Functions the Member PCTs will delegate to the Cluster Board

Governance

Support each PCT board to ensure that it maintains good standards of governance and accountability.

Resilience

Support each PCT to sustain the delivery of all priority functions, retains capability and capacity to deliver its statutory and legal duties and is able to respond in accordance with the Civil Contingencies Act.

Strategy and plans

Maintain oversight of each PCT's single integrated plan for 2011/12, and advise on the strengthening of these plans as necessary.

Performance

Seek assurance from each PCT about operational performance with specific reference to patient safety, Operating Framework requirements, finance, contracts and QIPP, and advise on and support corrective action where required

Transition

Oversee the preparation and implementation of plans for transition to the changed NHS arrangements as proposed in the Health and Social Care Bill, including the development of GP commissioning consortia, the development of commissioning support services, the development of new public health arrangements and the development of the NHS Commissioning Board

Partnership

Support the continuation of effective partnership working within each PCT's area including the development of the local Health and Wellbeing Board, Joint Strategic Needs Assessments, Joint Health and Wellbeing Strategies, and Healthwatch.

Specialised commissioning

Ensure that the PCTs can fulfil their obligations in relation to the commissioning of specialised services and their membership of the Yorkshire and the Humber Specialised Commissioning Group.

Collaborative commissioning

Co-ordinate and oversee collaborative commissioning in relation to the following services and committees:

Cancer services and the North Trent Cancer Network
Cardiac services and the Cardiac Network
Stroke services and the Stroke Network
Screening services and COSSAC
Children's services and Childrens Network
Neonatal and North Trent Neonatal Network
Renal services
Critical care and the Critical Care Network
Patient transport and ambulance services

Collaborative Contracting

Ensure that the collaborative contracting arrangements for all local providers of NHS services are effectively sustained