

BUSINESS ASSOCIATES AGREEMENT

This Business Associates Agreement ("Agreement") is entered into this ____ day of _____, 201_ by and between Brick Township Board of Education (hereinafter the "Plan Sponsor"), on behalf of the Plan Sponsor Group Health Plan(s) (hereinafter the "Covered Entity") and Conner Strong Companies, Inc. (hereinafter "Business Associate"). Capitalized terms not otherwise defined herein shall have the meaning given to them in the Privacy Regulations.

WHEREAS, Covered Entity is a group health plan maintained by Plan Sponsor as defined in the administrative simplification provisions within the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (hereinafter "HIPAA");

WHEREAS, Business Associate is an insurance broker that provides consulting services to plan sponsors and group health plans on matters related to employee benefits;

WHEREAS, Business Associate has been retained by Plan Sponsor to perform one or more functions or activities on behalf of either the Plan Sponsor and/or on behalf of Covered Entity that requires that the Business Associate have access to Protected Health Information (as defined below);

WHEREAS, Covered Entity desires to receive satisfactory assurances from the Business Associate that it will comply with the obligations required of business associates under HIPAA;

WHEREAS, the Department of Health and Human Services ("HHS") has promulgated regulations at 45 C.F.R. Parts 160-164, implementing the privacy and electronic security requirements set forth in the Administrative Simplification provisions of HIPAA (the "Privacy Regulations");

WHEREAS, the Privacy Regulations provide, among other things, that a covered entity is permitted to disclose Protected Health Information to a business associate and allow the business associate to obtain and receive Protected Health Information, if the covered entity obtains satisfactory assurances in the form of a written contract that the business associate will appropriately safeguard the Protected Health Information;

WHEREAS, Business Associate acknowledges that the enactment of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5, ARRA) amended certain provisions of HIPAA in ways that directly regulate, or will on future dates directly regulate, Business Associate's obligations and activities under the Privacy Regulations;

WHEREAS, effective as of February 17, 2010, Business Associate acknowledges that Business Associate may also be subject to 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 of the Privacy Regulations;

WHEREAS, Business Associate will have access to, create and/or receive certain Protected Health Information in conjunction with the services being provided by Business Associate to Covered Entity, thus necessitating a written agreement that meets the applicable requirements of the Privacy Regulations. Both parties

have mutually agreed to satisfy the foregoing regulatory requirements through this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

1.1 Activities. Pursuant to the agreement defining the scope of the engagement relating to the services to be provided by Business Associate (“Services Agreement”), Business Associate may use or disclose PHI to perform its obligations and services to Covered Entity (“PHI Activities”), provided such use or disclosure would not violate the Privacy Regulations if done by Covered Entity. Except as otherwise expressly specified herein, Business Associate may make any and all uses of Protected Health Information reasonably necessary as determined by Business Associate, to exercise its rights, remedies or privileges under or in connection with the Services Agreement or this Agreement. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed (including employee, accountants, agents, subcontractors, attorneys, or any other person) that it will be held confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

1.2 PHI and Electronic PHI. For the purpose of this Agreement, the term “PHI” shall have the same meaning as the term "Protected Health Information," as defined by 45 C.F.R. 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. The term “Electronic PHI” shall have the same meaning as the term "Electronic Protected Health Information," as defined by 45 C.F.R. 160.103.

1.3 Individual. For the purpose of this Agreement, the term "Individual" shall have the same meaning as the term "individual" as defined by 45 C.F.R. 160.103 and shall include a person who qualifies as the Individual's personal representative in accordance with 45 C.F.R. 164.502 (g).

1.4 Obligations and Activities of Business Associate. In connection with the PHI Activities, Business Associate agrees as follows:

(a) To not use or further disclose PHI other than as permitted or required to perform the Services, this Agreement, or as “Required by Law,” as such phrase is defined in 45 C.F.R. 164.103, as determined by Business Associate in its sole but reasonable discretion. To the extent practicable, Business Associate shall limit its use or disclosure of PHI or requests for PHI to a limited data set, or if necessary, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request.

(b) To use reasonably appropriate safeguards to prevent the use or disclosure of PHI other than as provided for or permitted by this Agreement, as determined by Business Associate in its sole but reasonable discretion, including establishing procedures that limit access to PHI within its organization to those employees with a need to know the information. Business Associate agrees that it will implement reasonable administrative, physical, and technical safeguards to protect the confidentiality, integrity and availability of Electronic PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity, as required by the HIPAA Privacy and Security Rules.

(c) In the event of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, to use reasonable steps to mitigate, to the extent practicable, any harmful effect that is actually known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, as determined by the Covered Entity and the Business Associate. In the event of a Breach, as defined in Section 13400(1) of ARRA, by Business Associate or any of its officers, directors, employees, subcontractors or agents, Business Associate shall cooperate with Covered Entity to notify the affected Individuals pursuant to Section 13402 of ARRA.

(d) To report to Covered Entity any use or disclosure of PHI not provided for or permitted by this Agreement of which it becomes aware. In event of a Breach, as defined in Section 13400(1) of ARRA, by Business Associate or any of its officers, directors, employees, and subcontractors or agents, Business Associate shall immediately notify Covered Entity in accordance with the requirements of Section 13402 of ARRA.

(e) To require that any agent, including a subcontractor to whom it provides PHI or Electronic PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) To provide access to PHI in a Designated Record Set as such term is defined in 45 C.F.R. 164.501, in the time and manner Required by Law, to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 C.F.R. 164.524 and any subsequent legislation or guidance regarding an Individual's right to access his or her PHI, including, but not limited to, the requirements of Sections 13405 of ARRA and the regulations there under.

(g) To make any amendment(s) to PHI in a Designated Record Set pursuant to 45 C.F.R. 164.526 and any subsequent legislation or guidance regarding an Individual's right to request amendment of his or her PHI at the request of Covered Entity or an Individual, and in the time and manner Required by Law.

(h) To make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate, on behalf of Covered Entity, available to the Secretary of HHS or his designee during normal business hours, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Regulations.

(i) To document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and any subsequent legislation or guidance regarding an Individual's right to an accounting of the disclosures of his or her PHI, including but not limited to, the requirements of Sections 13405 of ARRA and the regulations there under.

(j) To provide to Covered Entity, upon request and in the time and manner Required by Law, an accounting of disclosures of an Individual's PHI, collected in accordance with Section 1.4(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and any subsequent legislation or guidance regarding an Individual's right to an accounting of the disclosures of his or her PHI, including, but not limited to, the requirements of Section 13405 of ARRA and the regulations there under. If Covered Entity requests an accounting of an Individual's PHI more than once in any twelve (12) month period, Business Associate will impose a reasonable fee for such accounting in accordance with 45 C.F.R. 164.528(c).

(k) To request from Covered Entity and so disclose to its affiliates, subsidiaries, agents and subcontractors or other third parties, only the minimum PHI necessary to perform or fulfill a specific function

required or permitted hereunder in accordance with the Privacy Regulations and Section 13405(b) of ARRA and any regulations there under.

(l) To use reasonable and appropriate safeguards, in accordance with the applicable requirements of 45 C.F.R Part 164 and any subsequent legislation or guidance, including, but not limited to the requirements of Section 13401 of ARRA and the regulations there under in order to maintain the security of the Electronic PHI and to prevent unauthorized uses or disclosures of such Electronic PHI. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. "Security Incident" shall mean the successful unauthorized access to, disclosure, modification or destruction of, or interference with, the Electronic PHI by a third party.

(m) To comply with the applicable requirements of 45 C.F.R. Part 162 if Business Associate conducts any Standard Transactions on behalf of Covered Entity.

(n) That it may use PHI to provide data aggregation services to Covered Entity as permitted by the Privacy Regulations or for de-identification of PHI as permitted by the Privacy Regulations.

2. OBLIGATIONS OF COVERED ENTITY.

2.1 Privacy Notice. Simultaneously with the execution hereof, Covered Entity shall provide to Business Associate a true and complete copy of the notice of privacy practices that Covered Entity produces and delivers in accordance with 45 C.F.R. 164.520, as well as any changes to such notice.

2.2 Change or Revocation of Use. Covered Entity shall promptly provide to Business Associate written notice of any changes in, or revocation of, the permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

2.3 Restriction on Use. Covered Entity shall promptly provide to Business Associate written notice of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522.

2.4 Minimum PHI Necessary. Covered Entity acknowledges that it shall provide to, or request from, the Business Associate only the minimum PHI necessary for Business Associate to perform or fulfill a specific function required or permitted hereunder.

2.5 Permissible Requests by Covered Entity. Covered Entity represents and warrants that it has the right and authority to disclose PHI to Business Associate for Business Associate to perform its obligations and provide services to Covered Entity, and Business Associate's use of PHI to perform its obligations and provide services to Covered Entity requested by Covered Entity does not violate the Privacy Regulations, Covered Entity's privacy notice, or any applicable law. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

3. TERM AND TERMINATION.

3.1 Term. Unless terminated as provided in Sections 3.2 and 3.3 hereof, the term of this Agreement shall be effective as of the date of execution and shall terminate at the later of: (i) the termination of the Services being delivered pursuant to the Services Agreement, or (ii) when all of the PHI provided by

Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is infeasible, in the reasonable opinion of Business Associate, to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

3.2 Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall set forth with particularity the nature of such breach and provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not so cure the breach or end the violation within 60 days after written notice thereof (or such longer period, if such cure cannot be reasonably effected within such time and Business Associate is proceeding diligently to effect such cure) is received by Business Associate, Covered Entity may terminate this Agreement; provided, however, Covered Entity may immediately terminate this Agreement upon written notice to Business Associate if Business Associate has breached a material term of this Agreement and cure is not possible in the reasonable opinion of Business Associate or the Covered Entity.

3.3 Termination by Business Associate or Covered Entity. Either Party may terminate this Agreement upon 30 days' written notice to the other Party.

3.4 Effect of Termination.

(a) Except as provided in paragraph (b) of this Section 3.4, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI, including any PHI that is in the possession of subcontractors or agents of the Business Associate. Business Associate shall retain no copies of the PHI, except as necessary for its own administrative or management functions or procedures and provided appropriate safeguards are followed to protect the confidentiality thereof.

(b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible and Business Associate shall use reasonable procedures to extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

(c) Except as otherwise agreed, a termination of this Agreement shall not in any way cause a termination of the insurance arranged for by Business Associate for Covered Entity or otherwise.

4. REPRESENTATIONS AND WARRANTIES.

4.1 Mutual Representations and Warranties of the Parties. Each party represents and warrants to the other party:

(a) That it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized, it has the full power and authority to enter into this Agreement and to perform its obligations hereunder, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provisions of any license, corporate charter, bylaws or other organizational documents.

(b) That neither the execution of this Agreement, nor its performance hereunder, will directly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations required for its performance hereunder. Each party represents and warrants to the other party that it will not enter into any

agreement the execution and/or performance of which would violate or materially interfere with this Agreement.

(c) That it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition.

5. **INDEMNIFICATION.** Each party agrees to indemnify, defend and hold harmless the other party and its employees, directors, officers, subcontractors, agents or other members of its workforce (the "Indemnified Parties"), against all actual or direct losses suffered by the Indemnified Parties and all liability to third parties arising from or in connection with any breach by the other party of or under this Agreement or any failure of any party, including the other party, its employees, directors, officers, subcontractors, agents or other members of its workforce, to comply with the Privacy Regulations, except for any misconduct or negligence by the Indemnified Parties, its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, the party shall advance or reimburse the Indemnified Parties for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon the Indemnified Parties by reason of any suit, claim, action, proceeding or demand by any third party for which indemnification is permitted hereunder. The party's obligation to indemnify the Indemnified Parties shall survive the expiration or termination of this Agreement for any reason.

6. **MISCELLANEOUS.**

6.1 **Independent Covenant; No Affect on Insurance Services.** It is expressly understood and agreed that notwithstanding anything contained in this Agreement to the contrary, the Parties are entering into this Agreement purely for the purposes of complying with the obligations imposed by the Privacy Regulations upon Covered Entity for its disclosure of PHI to the Business Associate. Any obligations imposed upon the Parties hereunder are wholly independent of, and separate from, the rights, remedies and privileges available to Business Associate, and obligations of Covered Entity, in connection with its Services.

6.2 **No Limitation on Services.** Nothing contained in this Agreement is intended to limit, impair, or affect the rights, remedies or privileges of the Parties under or in connection with the Services Agreement except with respect to Business Associate's right to use or disclose PHI as expressly provided herein.

6.3 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under this Agreement shall survive the expiration or termination of this Agreement.

6.4 **Amendments; Waivers.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in writing duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either party may, by written notice to the other party, and by mutual agreement, amend the Agreement in such manner as such party determines necessary to comply with such law or regulation.

6.5 **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

6.6 **Binding Authority.** This Agreement shall be binding upon, and inure to the benefit of the parties hereto, its and each of its respective successors and assigns.

6.7 **Neutral Construction.** Each of the parties represents to the other that it has had a full and complete opportunity to review this Agreement with its counsel, has provided input as to the drafting and preparation of this Agreement and that no rules of construction shall be applied to construe this Agreement against any party as the drafter of this Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits both parties to comply with the Privacy Regulations, as amended by ARRA, and subsequent regulations. In the event of any inconsistency or conflict between this Agreement and any other agreement between the parties, the terms, provisions and conditions of this Agreement shall govern and control.

6.8 **Entire Agreement.** This Agreement represents the entire agreement among the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous oral or written understandings or agreements among the parties with respect to the subject matter hereof.

6.9 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. Signature by facsimile or electronic mail shall bind the parties hereto.

6.10 **Jurisdiction and Venue.** The parties hereby agree that this Agreement shall be governed by, and construed in accordance with, the laws (including conflicts of laws) of the State of New Jersey and hereby submit themselves to jurisdiction and venue of the federal and state courts in the State of New Jersey.

6.11 **Compliance with Laws.** The parties shall perform all of their respective obligations under this Agreement in compliance with all applicable federal, state and local laws, ordinances, rules, regulations, codes or orders including without limitation all environmental and labor laws.

6.12 **Regulatory References.** A reference in this Agreement to a section in the Privacy Regulations means the section as in effect or as amended, and for which compliance is required.

6.14 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if delivered by: hand with delivery receipt; or certified or registered mail, return receipt requested, with package prepaid; or overnight or express courier with receipt-for-delivery tracking system. All notices are to be delivered to the addresses stated on the first page of the contract and the designated point person for the performance of the services under this Agreement.

6.15 **Independent Contractor.** Business Associate is an independent contractor of Covered Entity. Business Associate is not an employee of Covered Entity for any purposes, and not eligible for any benefits available to employees of Covered Entity. Accordingly, Business Associate shall be solely responsible for payment of all taxes including Federal, State and local taxes arising out of Business Associate's activities in accordance with this Agreement including by way of illustration but not limitation, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required.

IN WITNESS WHEREOF, the undersigned hereto have executed this Business Associate Agreement.

**Brick Township Board of Education
ON BEHALF OF ITS GROUP HEALTH
PLAN(S)**

CONNER STRONG COMPANIES, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

