PRACTICE FORM

Please feel free to e mail me at [bstanger@stangerlaw.com](mailto:bstanger@stangerlaw.com) if you would like a Word version of this letter. Bruce Stanger

Disclosure Letter for Lawyer Serving on the Board of a Client

[Lawyer’s Personal Letterhead; Do Not Use Firm Letterhead]

[Client name and address]

Re: Board Service

Dear [name of client representative]:

This letter is written in response to your invitation to me to serve on the board of directors (Board) of [client name] (the Company). Consistent with the Connecticut Rules of Professional Conduct governing lawyers, ethics opinions interpreting those rules, and the policy of my law firm, (the Firm), I am informing you and the Company of some of the risks and complications of having a lawyer for the Company serve simultaneously as a director. The Firm’s policy also requires that I obtain an acknowledgment that the Board and management of the Company have been informed of those risks and complications.

Differing Rules

The responsibilities of counsel for the Company and the responsibilities of a director of the Company, while in many respects consistent, also differ in important ways that the Board and management should understand. As counsel, my only client is the Company. In that role, I do not represent management, any individual member of management, the Board, and director, or any employee, shareholder, or other constituent of the Company. Thus, for example, if I, as counsel, learn information from management or some other source that I believe requires me to advise the Board in a manner contrary to the wishes of management, I owe an obligation to the Company to render that advice, regardless of management’s desires or direction. Also in my role as counsel for the Company, I would normally refrain from advising the Board, or expressing views, on the nonlegal aspects of business, financial, personnel, and other issues considered by the Board.

By contrast, in my role as a director, I may often have an obligation to participate in consideration of, and to vote on, many nonlegal questions. The directors and management of the Company should understand that in my director role, I will not be rendering legal advice to the Board. Rather, I will be exercising my best judgment as a director. In order to help keep this distinction clear, I will arrange for another lawyer from my Firm to attend all Board meetings at which I am present (as well as those at which I cannot be present) to provide legal advice and counsel to the Board.

Personal Capacity

It is also important that the Board and management of the Company understand that if I accept the Company’s invitation to serve on the Board, I will be serving in my personal and individual capacity only. I will not be acting as an agent, partner, or employee of the Firm, and the Firm will not be responsible for my conduct in my role as a director.

Recusal From Certain Board Matters

The Board should be aware that in having a lawyer from the Firm serve as a director, it is possible that the Firm might in some circumstances be disqualified from representing the Company. For example, if litigation were to occur involving decisions of the Board in which I had participated, it might be necessary for me to be a witness in that litigation. In that situation, it might be in the Company’s best interest, or might in some circumstances be required by the rules of professional conduct, for the Company to have non-Firm lawyers represent it in the litigation.

Another possible consequence of my serving on the Board is that I would be unable to participate in the consideration of and voting on certain issues that come before the Board for decision. For example, matters that involve the interests of the Firm, such as whether to retain the Firm to represent the Company in particular matters, whether to undertake projects that will involve substantial legal fees to the Firm, or how to resolve any differences that may develop between the Company and the Firm, might involve a conflict of interest that would require me not to participate in the discussion or vote on those matters. In addition, if the Board considers questions involving persons or other companies that are clients of the Firm, I might be unable to participate in those discussions and decisions.

It is also possible that if, in my judgment, my service on the Board posed a threat to the independence of the Firm’s or my professional judgment in providing legal advice to the Company or to other Firm clients, I would be required, under the Rules of Professional Conduct, to resign as a director. If such a resignation were to occur during the course of a significant or protracted project in which I had been involved as a director, the cost and inconvenience to the Company could be substantial.

Protected Communications

There is a risk that opponents of the Company in litigation may claim that some communications between the Firm and the Company officials are not covered by the attorney-client privilege, and thus not entitled to confidential treatment, because one of the Firm’s lawyers is a director of the Company. There are legal precedents holding that in some circumstances communications between a client and a lawyer-director or the lawyer-director’s firm are not privileged.

Other Consequences of Board Service

There may be an increased risk that litigants with claims against the Company will also make claims against me or my Firm because of my dual positions as both a director of the Company and a lawyer in a firm that represents the Company. This risk, in turn, could conceivably have an effect on either my conduct as a director, or the advice rendered to the Company by the Firm, or both. Although both the Firm and I will do our best to avoid any such effects, there is a possibility they could occur, and the Company is entitled to know about and consider this possibility in deciding whether it wishes to have one of its lawyers serve as a director.

Under some directors’ and officers’ (D&O) liability insurance policies, it is possible that some or all of the costs to the Company of indemnifying me for litigation costs arising out of my service as a director might not be recoverable. This could occur if the D&O insurance carrier takes the position that I engaged in the conduct at issue as a lawyer rather than as a director.

Finally, the Board should be aware that my Firm’s policy prohibits service by Firm lawyers on client boards unless the Firm’s Executive Committee has granted written permission to me for such service in a particular case. The Firm’s policy requires the Executive Committee to reconsider this question at least annually. Although the Executive Committee has initially indicated that it will permit me to serve as a director of the Company, it is possible that the Committee could change its view on this question in the future. If this were to occur, I would have to resign as a director at that time.

You should also be aware of my Firm’s policy that whenever a Firm lawyer serves on the board of directors of a client, that lawyer shall not perform legal services for the client company and another lawyer in the Firm must have principal responsibility for the Firm’s legal work for that client. Therefore, if I become a director of the Company, the Company will need to discuss with the Firm the selection of another Firm lawyer to be principally responsible for the Firm’s legal work for the Company.

In light of these considerations, the Company may wish to consult with other counsel about the desirability of having a lawyer who practices with a law firm that represents the Company simultaneously serve on the Company’s Board. If Board members have any questions about these issues, I encourage you to consult a lawyer from another firm about those questions.

One alternative the Board may wish to consider is the possibility of having me attend all Board meetings in the role of legal advisor to the Board. This would make my advice and counsel consistently available to Board members, but would avoid some of the ethical, liability, and other risks described above.

Please let me know if you or other Board members have any questions about these matters. If, after considering the above, the Board continues to want me to serve as a director, please sign and return to me the enclosed copy of this letter acknowledging that the Board has been informed of the risks described above and still wishes to have me serve as a director of the company. In whatever capacity you and the Board decide to ask me to serve the Company, I look forward to continuing to work with you and the Board in the future.

Very truly yours,

[Lawyer name]

AGREED TO AND ACCEPTED:

[Client name]

By:

Title:

Date: