

Drafting Contracts With an Eye Towards Litigation

40th Annual Corporate Counsel Institute

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What's the trouble with these clauses?

THIS AGREEMENT ("Agreement") is made and entered into by and between

_____, a Texas limited liability company, for the benefit of itself and its subsidiaries and affiliates, directors, officers, attorneys, consultants and employees (hereinafter referred to as "_____), and _____ (hereinafter referred to as "_____)".
_____ and _____ shall be sometimes referred to, individually, as "Party" and collectively, as the "Parties."

The Injunction Clause

17. In the event of a breach of this Agreement, the RECEIVING PARTY agrees that the DISCLOSING PARTY will suffer irreparable injury that could not adequately be compensated by monetary damages, that the DISCLOSING PARTY's monetary damages would be exceedingly difficult to measure, and that the DISCLOSING PARTY's remedies at law would be inadequate. Accordingly, the RECEIVING PARTY consents to entry of an order by a court of competent jurisdiction granting an injunction against such breach without any requirement to provide or post a bond or other security as a condition of such relief. The DISCLOSING PARTY's right to injunctive relief shall be in addition to any and all other rights and remedies the DISCLOSING PARTY may have.

Assignment

15. This Agreement may not be changed or altered, except by written agreement signed by both Parties. However, this Agreement may be assigned, upon notice to the other Party, to a successor-in-interest or affiliate of the Parties hereto.

Applicable Law

16. This Agreement shall be governed by and construed under the laws of the State of Texas, without regard to choice of law rules, and any disputes arising out of this Agreement resulting in litigation shall be litigated in the state or federal courts located in the city of Austin, Texas.

The Integration Clause

18. This Agreement constitutes the full, complete and only agreement between the Parties hereto with respect to the foregoing, only, and supersedes any previous agreements, representations or understandings, either oral or written with regard to confidentiality and non-disclosure.

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"Drafting Contract Clauses That Actually Help if Litigation Arises"