COMMENTS TO CONTRACT PARAGRAPHS

Paragraph 1A. This is essentially a broad description of the employee's role at the company and explains why this agreement is necessary. Often, a clause like this precedes a statement indicating that the employer gets to keep any value that the employee adds to the firm.

Paragraph 1B. This paragraph establishes that a relationship of trust and confidence exists between employer and employee. Through this clause, both parties are agreeing they owe duties to each other related to information that benefits the company. The clause implies that that there will be negative consequences for the employee if he or she breaks that relationship.

Paragraph 1C. This paragraph establishes what the term "Proprietary Information" means. In contracts, terms that are capitalized and placed in quotation marks (sometimes in parentheses as well) are called "defined terms." Whenever the term "Proprietary Information" appears throughout the rest of the contract, it will have the definition set out in this paragraph. The definition is extremely broad and captures almost any intellectual property, data, and similar items. The contract asserts that this information is important to the business and gives the company some strategic advantage.

Paragraph 1D. This clause clarifies that customer lists belong to the employer even if the employee develops or expands the lists in some way. This may become important if the employee leaves the company because the clause clarifies that the employee may not recruit or "steal" customers.

Paragraph 2. Here, we see the defined term "Proprietary Information" again. This paragraph documents that the employer owns all Proprietary Information, as defined, even if it was created by the employee. Further, the employee agrees to give the employer any legal rights that the employee may obtain to any Proprietary Information.

Paragraph 3. In this clause, the employee promises that he or she will work full-time for the employer and will not take any additional employment without the employer's permission.

Paragraph 4. This clause further asserts that the company takes the confidential nature of the Proprietary Information seriously. Here, the employee promises that if he or she leaves the company's employment, he or she will turn over any work-related material to the company.

Paragraph 5. If the employee creates something of any kind at work, he or she must tell the employer about it, and the employer will receive any disclosures confidentially. The contract goes out of its way to ensure that almost anything the employee invents at work or that is related to work fits under this paragraph. Such items are given a new term called "Inventions." Note that the definition of inventions includes the same items that are in the definition of Proprietary Information as well as some additional ones. The paragraphs discussing Proprietary Information deal with information that the company already possesses and will continue to possess and that the employee will access or need. This paragraph expands the obligations of the employee to what could be called new proprietary information, defined as "Inventions."

Paragraph 6. Just as the employee agreed to give any right in already existing information (such as a modified customer list) to the employer, here the employee promises to give all legal rights to inventions to the employer. In addition, because the rights may originally belong to the employee, the employee promises to help the employer secure any rights or protections necessary to increase the value of the invention. This obligation to help the employer continues to exist after the employee leaves the firm, and the employer agrees to pay for the work required in that situation. The employer is making sure that it can keep anything the employee invents during work time or with company resources.

Paragraph 7. The employer wants to ensure that this contract does not conflict with any others the employee may have already signed. Here, the employee affirms that he or she has made no conflicting agreements. The clause implies that the employee will be responsible for any consequences that arise from such conflicts.

Paragraph 8. The employer does not want to become involved in a dispute with another company by hiring this employee. In this clause, the employee states that he or she is not bringing the employer any confidential information belonging to someone else.

Paragraph 9. This paragraph is a covenant not to compete, one of the most important provisions from the perspective of the employee. Employers worry that former employees will join a rival company and take their information and expertise with them. A covenant not to compete helps prevent that from happening. In short, a covenant not to compete prohibits an employee from working for a competing business for a specified time. This covenant applies regardless of whether the employee leaves the company or is terminated. Covenants not to compete have to be carefully drafted. A court will not enforce a covenant that is too broad in its coverage or that lasts for too long. Three years, the length of this covenant not to compete, is not unduly long. If the covenant is challenged, however, the employer will have to show that this length of time was necessary to protect its business interests. Employees do not appreciate covenants not to compete, but find that they are an inevitable part of employment in information-sensitive industries.