

HIGH

Overall severity

## Summary

This mutual NDA contains several one-sided and potentially unenforceable provisions, including an unusually long 20-year confidentiality term, a global 5-year non-solicitation clause, a pre-set €250,000 liquidated damages penalty per incident with no damage-cap limit, and an exclusive Delaware jurisdiction clause that may be inconvenient or unenforceable depending on your location. This report is an informational preview, not legal advice.

## Red-flag findings

### **[HIGH] 1. Extremely long 20-year confidentiality term**

*"This Agreement shall continue in force for a period of TWENTY (20) YEARS from the date of last disclosure."*

Twenty years is unusually long for an NDA and extends well beyond typical business confidentiality needs. This means you remain bound by the agreement for two decades after any single disclosure, even if business circumstances change dramatically. Most NDAs use 3–5 years instead.

**Question to ask:** Does GrowthCorp's actual business information need protection for 20 years, or would a shorter term like 5 years better reflect the useful lifetime of their secrets?

### **[HIGH] 2. Global non-solicitation with no time limit carve-out**

*"During the term of this Agreement and for FIVE (5) YEARS thereafter, Recipient shall not solicit, hire, or engage any employee, contractor, customer or business partner of Disclosing Party, in any capacity, anywhere in the world."*

This clause prevents you from hiring any of GrowthCorp's employees, contractors, or customers worldwide for 5 years after the agreement ends—meaning a total of 25 years if you receive information on day one. This is extremely broad and may restrict your normal business operations and hiring freedom.

**Question to ask:** Are you comfortable being unable to hire anyone who has ever worked with GrowthCorp for a quarter-century, or should the non-solicitation period be much shorter and geographically limited?

### **[HIGH] 3. Fixed €250,000 penalty per incident with no damage cap**

*"Recipient agrees that any breach of this Agreement shall result in liquidated damages of EUR 250,000 per incident, plus all legal fees, costs and injunctive relief, without requirement of Disclosing Party to prove actual damages."*

You could owe €250,000 for each separate breach regardless of actual harm caused. Combined with the 'no limitation on damages' clause (Section 8), there is no upper limit, so even a minor or good-faith breach could be extremely costly. Courts sometimes refuse to enforce liquidated damages that are unreasonably high.

**Question to ask:** Is €250,000 per incident a reasonable penalty, or should it be tied to actual provable damages or have a reasonable cap based on the value of the information?

#### **[HIGH] 4. Exclusive Delaware jurisdiction, anywhere in the world**

*“Recipient hereby irrevocably submits to the exclusive jurisdiction of the courts of Delaware, United States, for any dispute arising under this Agreement. Recipient waives any objection to venue or inconvenient forum.”*

You waive your right to sue or defend yourself in your own country's courts. If you are outside the United States, you must travel to Delaware and use U.S. lawyers, which is expensive and inconvenient. You also lose the ability to argue that Delaware courts are an inappropriate venue.

**Question to ask:** Are you willing and able to litigate in Delaware courts at potentially significant expense, or should disputes be handled in a neutral location or your home jurisdiction?

#### **[HIGH] 5. No cap on total liability for breaches**

*“The parties agree that no cap or limitation on liability shall apply to breaches of this Agreement, notwithstanding any contrary provision in any other agreement between the parties.”*

This overrides any liability caps in other agreements you may have with GrowthCorp. Combined with the €250,000-per-incident liquidated damages clause, your total exposure is unlimited, making it impossible to predict or insure against worst-case financial risk.

**Question to ask:** Should there be a reasonable cap on your total liability (for example, a multiple of annual fees or a fixed ceiling), or are you comfortable with unlimited exposure?

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