SAMPLE. Real Ramtek output on a fictional matter. Names, facts and parties are made up. One real insurer name was replaced with a fictional one; otherwise shown as produced, without attorney edits. Not legal advice.

CONTRACT RISK REVIEW: MUTUAL NONDISCLOSURE AGREEMENT (APEX HOLDINGS LLC / NORTHWIND SOFTWARE INC.)
Prepared for: Northwind Software Inc.

GOVERNING LAW NOTE: The agreement selects Delaware law and Delaware courts (Section 6). Florida courts generally enforce contractual choice-of-law clauses unless the chosen law violates strong Florida public policy. That means Delaware law, not Florida law, would likely decide most issues below. Where Florida would protect Northwind better, this review says so. Changing the governing law is itself a negotiating point.

1. RISK SUMMARY

- Not actually mutual. Only Northwind owes confidentiality. Apex has no duty to protect anything Northwind discloses and may share freely with affiliates, investors and advisors.
- The definition can lock Northwind out of its own technology. Confidential Information includes what Northwind "already knew or independently develops," which invites claims that Northwind's own products contain Apex information.
- Severe one-way remedies. Northwind faces $250,000 per breach plus Apex's attorneys' fees. Apex's total exposure is capped at $1,000.
- Apex controls the deal. Apex alone can terminate, assign, amend by notice, and designate "trade secrets." Northwind is bound in perpetuity and cannot exit.
- Hostile forum. Northwind must litigate in Wilmington under Delaware law with no jury.

2. RISKY CLAUSES

Section 2: "Northwind shall hold Confidential Information in strict confidence in perpetuity. Apex may disclose... without notice."
- This is the core defect. Northwind's disclosures are completely unprotected, and Northwind carries an unlimited-duration obligation.
- Negotiate fully reciprocal obligations and limit use to a defined Purpose (the evaluation of a specific transaction).
- Disclosure should be limited to representatives with a need to know who are bound by confidentiality obligations at least as protective, with each party liable for its representatives' breaches.

- Replace "perpetuity" with a 2-3 year term, keeping a longer survival period only for genuine trade secrets.

Section 1: "including information the receiving party already knew or independently develops."
- This reverses the market standard. It could let Apex claim rights over Northwind's existing and future software and support an injunction against Northwind's own product line.
- It also sweeps in all oral and unmarked information.
- Strike the clause and add the standard exclusions: information already known, independently developed, or rightfully received from a third party.
- Require marking, or written confirmation of oral disclosures within 30 days.

Section 4: "$250,000 per breach... Apex's liability... limited to $1,000."
- Under Delaware law, liquidated damages are enforceable only if actual damages are uncertain and the amount is a reasonable forecast. A flat per-breach figure with no tie to harm is vulnerable as a penalty, but Northwind should not rely on winning that fight.
- "Per breach" could multiply quickly, for example one figure per email.
- The "irreparable harm" acknowledgment gives Apex an easy path to an injunction.
- Negotiate: delete liquidated damages, make remedies mutual (actual damages plus equitable relief for either party), make the cap mutual or remove it, and use prevailing-party fees.
- Florida contrast: Fla. Stat. § 57.105(7) lets a court award fees to the other party when it prevails under a one-way fee clause. Delaware has no equivalent statute, so under the Delaware choice Northwind likely loses that protection.

Section 3: "information Apex designates as 'trade secret' remains confidential regardless."
- This lets Apex unilaterally keep public information off-limits, contrary to the statutory definition of a trade secret under both the Delaware and Florida Uniform Trade Secrets Acts (Fla. Stat. § 688.002). A trade secret must not be generally known and must be subject to reasonable secrecy efforts.
- Delete the clause. Public information should be excluded unless it became public through the receiving party's breach.

Section 5: "terminated by Apex on 5 days' notice. Northwind may not terminate."
- Northwind is bound indefinitely, while Apex can walk away at will. Apex owes no obligations anyway.
- Negotiate mutual termination on 30 days' notice, a fixed disclosure period (for example 1 year), and a defined survival period that applies equally to both parties.

Section 8: "Amendments by Apex may be made by written notice."
- Apex can rewrite any term, including damages, scope or venue, without Northwind's agreement. This alone defeats every other negotiated protection.
- Require amendments to be in writing and signed by both parties.

Section 6: "laws of Delaware... exclusive jurisdiction... Wilmington... waives trial by jury."
- Forum costs and travel burden fall on Northwind.
- Jury waivers are generally enforced in both Delaware and Florida when knowing and voluntary.
- Negotiate Northwind's home forum (Florida, if applicable), a neutral forum, or a "defendant's home forum" clause. Make the jury waiver mutual or delete it.
- Note that Section 6 binds only Northwind, so Apex is not equally limited to Delaware courts.

Section 7: "Apex may assign this Agreement freely. Northwind may not assign without Apex's written consent in its sole discretion."
- Apex could assign to a Northwind competitor. Northwind could be blocked in a merger or sale of the company.
- Negotiate mutual assignment restrictions, with consent not unreasonably withheld, and a carve-out for assignment to a successor in a merger, acquisition or sale of substantially all assets.

3. MISSING PROTECTIONS

- A defined Purpose and a restriction on use.
- A compelled-disclosure exception allowing disclosure required by law, subpoena or court order, with prompt notice to the other party where lawful.
- Return or destruction of information on request or termination, with a carve-out for routine backups and legal-hold retention.
- No license or IP transfer: each party keeps ownership of its own information and IP.
- A residuals clause covering general know-how retained in unaided memory (important for a software company).
- No obligation to proceed with any transaction, and freedom to pursue similar business independently.
- An "as is" disclaimer of warranties on disclosed information.
- A non-solicitation clause, if desired, made mutual.
- A notice provision specifying the method and addresses for notices.
- Severability and a mutual no-waiver clause.
- Mutual representatives' liability and a mutual standard of care (reasonable care, no less than a

party uses for its own information).
- A carve-out for whistleblower and regulatory reporting. Under Florida law, Fla. Stat. § 69.081 (the Sunshine in Litigation Act) voids terms that conceal a public hazard. That statute may not apply under the Delaware choice of law, so an express carve-out is cleaner.

4. OVERALL RISK RATING: HIGH

Labeled "mutual," this agreement imposes perpetual, uncapped-in-practice obligations and punitive remedies on Northwind alone. Its definition threatens Northwind's own technology, and Apex can amend it unilaterally. Northwind should not sign without a full rewrite, ideally on Northwind's own mutual NDA form.

NEXT STEPS FOR THE ATTORNEY
- Confirm Northwind's state of incorporation and principal place of business to frame the forum counterproposal.
- Confirm what Northwind expects to disclose and receive. If Northwind is primarily the disclosing party, the absence of any Apex obligation is the leading point.
- Consider offering Northwind's own mutual NDA form instead of redlining this one.
- The Delaware-law points above (penalty doctrine, enforceability of jury waivers, absence of a reciprocal-fee statute) should be confirmed against current Delaware authority before advising the client.