ClauseCheck

AI Contract Risk Report

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Contract Type: Software Development Agreement (B2B)

Report Overview

Signing Recommendation: Sign After Negotiation

The overall framework is workable, but Sections 5, 8, and 12 contain materially unfair terms. Sign only after redlines are accepted; current financial and compliance exposure is too high.

Executive Summary

This is a custom software development agreement that favors the service provider. Critical exposure lies in 200% liquidated damages and an overbroad worldwide non-compete. At least three core clauses must be renegotiated before signing; signing as-is is not recommended.

Overall Risk Score

72

Medium Risk

Weighted: Fairness x 35% + Compliance x 25% + Financial x 40%

Risk by Dimension

Contract Fairness **78**

Legal Compliance **45**

Financial Risk **82**

Higher score = greater risk in that dimension

Action Plan (Priority)

Before signing: worst case, top negotiations, gaps, and next steps

Worst-Case Scenario

If 200% liquidated damages, worldwide 5-year non-compete, and auto-renewal all trigger together, exposure may exceed 2x contract value with an additional year of locked-in obligations.

Negotiation TOP 3

1 **Section 5**

Current wording: Liquidated damages at 200% of contract value

Suggested revision: Cap at 30% of contract value

Excessive penalties may be struck down in court and can cause severe financial loss if triggered

2 **Section 8**

Current wording: Worldwide non-compete for 5 years

Suggested revision: Core business region only, 2-year maximum

Overbroad restrictions are often reduced by courts — better to negotiate upfront than litigate

3 **Section 12**

Current wording: Auto-renewal + 90-day notice

Suggested revision: Mutual renewal confirmation + 30-day notice

Avoid being locked in without realizing it; preserve flexibility to exit

Missing Key Clauses

- Service Level Agreement (SLA)
- Acceptance criteria & process

Next Steps

1. Renegotiate Section 5 damages cap to 30% with mutual application
2. Narrow Section 8 non-compete to core regions, max 2 years
3. Replace Section 12 auto-renewal with mutual confirmation + 30-day notice

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Time-Sensitive Clauses

Auto-renewal

Section 12: Contract auto-renews for 1 year unless 90-day written notice is given

Notice period

Section 12: 90-day termination notice — much longer than the typical 30 days

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5 Clauses Flagged

High Risk

Category: Liquidated damages

Section 5: Liquidated damages set at 200% of contract value — far above industry norms

Original text: "The breaching party shall pay liquidated damages equal to 200% of the total contract value"

Legal basis: Courts routinely reduce penalties grossly disproportionate to actual harm

If unchanged: On a $100K project, a single breach could trigger a $200K claim

Revise to: "Either party's liability for breach shall not exceed 30% of the contract value attributable to that breach, applied symmetrically to both parties."

High Risk

Category: Non-compete

Section 8: Non-compete covers worldwide scope for 5 years

Narrow scope to core business regions and limit duration to 2 years or less

Medium Risk

Category: Auto-renewal

Section 12: Auto-renews for 1 year; requires 90-day written notice to terminate

Switch to mutual renewal confirmation 30 days before expiry, or add a 30-day exit clause

Medium Risk

Category: Jurisdiction

Section 3: Disputes must be heard in the counterparty's home jurisdiction

Negotiate your jurisdiction or the place of signing to reduce enforcement cost

Medium Risk

Category: Payment

Section 7: No refunds after payment; no service-level guarantees

Add SLA terms with partial refund if service standards are not met

Supplementary Detail

Favorable Terms (Leverage)

- Section 2: IP transfers to client upon full payment — protects deliverables
- Section 9: 90-day defect remediation period exceeds the typical 30-day industry standard

Missing Standard Clauses

Service Level Agreement (SLA)

Development contracts should define response times, uptime, and remedies for underperformance

Add SLA: P1 incidents within 4 hours, 99.5% monthly uptime, 5% fee credit for misses

Acceptance criteria & process

Without clear acceptance standards, delivery disputes and payment conflicts are likely

Define milestone acceptance criteria, 15-business-day review period, and deemed-accepted conditions

Overall Assessment & Action Plan

Risk ranking: ① Excessive liquidated damages (highest) → ② Overbroad non-compete → ③ Inflexible auto-renewal → ④ Unfavorable jurisdiction → ⑤ No refund protection.

Next steps: (1) Renegotiate Section 5 damages first — biggest financial exposure; (2) Narrow non-compete scope; (3) Replace auto-renewal with mutual confirmation to avoid silent lock-in.

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