CHAPTER 325A

INVENTION SERVICES

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325A.01 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 325A.01 to 325A.10, the following terms shall have the meanings given.

Subd. 2. **Contract for invention development services.** "Contract for invention development services" includes a contract by which an invention developer undertakes to develop or promote an invention for a customer.

Subd. 3. **Customer.** "Customer" means any natural person who is solicited by, inquires about, seeks the services of or enters into a contract with an invention developer for invention development services.

Subd. 4. **Invention.** "Invention" includes a process, machine, manufacture, composition of matter, improvement upon the foregoing, or a concept.

Subd. 5. **Invention developer.** "Invention developer" means any person, firm, corporation or association and the agents, employees or representatives of the person, firm, corporation or association which develops or promotes or offers to develop or promote an invention of a customer in order that the customer's invention may be patented, licensed or sold for manufacture or manufactured in large quantities, except the term does not include:

(1) a partnership or corporation when all of its partners, stockholders or members are licensed by a state or the United States to render legal advice concerning patents and trademarks, or a person so licensed,

(2) a department or agency of the federal, state or local government,

(3) a charitable, scientific, educational, religious or other organization registered under section 309.52 or described in section 170 (b) (1) (A) of the Internal Revenue Code of 1954, as amended and in effect on January 1, 1977,

(4) a person, firm, corporation, association or other entity that does not charge a fee for invention development services, or

(5) any person, firm, corporation, association or other entity whose gross receipts from contracts for invention development services do not exceed ten percent of its gross receipts from all sources during the fiscal year preceding the year in which any contract for invention development services is signed.

For the purposes of this subdivision, "fee" shall include any payment made by the customer to the entity, including reimbursements for expenditures made or costs incurred by such entity, but shall not include a payment made from a portion of the income received by a customer by virtue of invention development services performed by the entity.

Subd. 6. **Invention development services.** "Invention development services" includes acts required or promised to be performed, or actually performed by an invention developer for a customer.

Subd. 7. **Business day.** "Business day" means any day other than a Saturday, Sunday or holiday as defined in section 645.44, subdivision 5.

History: *1977 c 288 s 1*

325A.02 GENERAL CONTRACT REGULATION.

Subdivision 1. **Written contract; customer copy.** Every contract for invention development services shall be in writing and shall be subject to the provisions of sections 325A.01 to 325A.10. A copy of each fully executed, written contract shall be given to the customer at the time the customer signs the contract.

Subd. 2. **Multiple contracts or performance phases; written statement and summary to customer.** If one or more contracts are contemplated by the invention developer in connection with an invention or if the invention developer contemplates performance of services in connection with an invention in more than one phase with the performance of each phase covered in one or more contracts, the invention developer shall so state in a written statement and shall supply to the customer the written statement together with a copy of each contract or a written summary of the general terms of each contract, including the total cost or consideration required from the customer, before the customer signs the first contract.

History: *1977 c 288 s 2; 1986 c 444*

325A.03 RIGHT OF CANCELLATION.

Subdivision 1. **Form and manner.** Notwithstanding any contractual provision to the contrary, the customer shall have the unconditional right to cancel a contract for invention development services for any reason at any time before midnight of the third business day following the date the invention developer and the customer sign the contract and the customer receives a fully executed copy of it. Written notice of cancellation may be delivered personally or by mail. If given by mail, the notice is effective upon deposit in a mailbox, properly addressed and postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the customer not to be bound by the contract. Within ten business days after receipt of the notice of cancellation, the invention developer shall deliver to the customer, personally or by mail, all moneys paid, any note or other evidence of indebtedness and all materials provided by the customer.

Subd. 2. **Contract notice.** Every contract for invention development services shall contain the following statement in 10-point boldface type immediately above the place where the customer signs the contract:

"The three business day period during which you may cancel this contract for any reason by mailing or delivering written notice to the invention developer will expire on (last date to mail or deliver notice). If you choose to mail your notice, it must be placed in the United States mail addressed to (Name of Invention Developer), at (Address of Invention Developer's Place of Business) with first class postage prepaid before midnight of this date. If you choose to personally deliver your notice to the invention developer, it must be delivered by the end of the developer's normal business day on this date."

History: *1977 c 288 s 3; 1986 c 444*

325A.04 MANDATORY CONTRACT FORM.

Subdivision 1. **Type size.** A contract for invention development services shall set forth the information required in this section in at least 10-point type or equivalent size if handwritten.

Subd. 2. **Disclosure statement.** The following disclosure statement shall be in boldface type and shall be located conspicuously on a cover sheet that contains no other writing:

"The following disclosures are required by law and are expressly made a part of this contract: You have the right to cancel this contract for any reason at any time within three business days from the date you and the invention developer sign the contract and you receive a fully executed copy of it. To exercise this option you need only mail or personally deliver to this invention developer written notice of your cancellation. The method and time for notification is set forth in this contract immediately above the place for your signature. Upon cancellation, the invention developer must return by mail or personal delivery, within ten business days after receipt of the cancellation notice, all money paid and all materials provided either by you or by another party in your behalf.

An invention developer who is also a lawyer may give you legal advice concerning patent, copyright, or trademark law or advise you of whether your idea or invention may be patentable or may be protected under the patent, copyright, or trademark laws of the United States or any other law. An invention developer who is not a lawyer may not give you legal advice on these subjects.

No patent, copyright or trademark protection will be acquired for you by the invention developer or by this contract. Your failure to inquire into the law governing patent, copyright or trademark matters may jeopardize your rights in your idea or invention both in the United States and in foreign countries. Your failure to identify and investigate existing patents, trademarks or registered copyrights may place you in jeopardy of infringing the copyrights, patent or trademark rights of other persons if you proceed to make, use, distribute or sell your idea or invention."

Subd. 3. **Description of acts or services to be performed.** The contract shall describe fully and in detail the acts or services that the invention developer contracts to perform for the customer.

Subd. 4. **Prototypes or models.** The contract shall state whether the invention developer contracts to construct one or more prototypes, models or devices embodying the customer's invention, the number of such prototypes to be constructed and whether the invention developer contracts to sell or distribute such prototypes, models or devices.

Subd. 5. **Earnings estimate.** If an oral or written estimate of customer earnings is made, the contract shall state the estimate and the data upon which it is based.

Subd. 6. **Other customer disclosure.** In a single statement the contract shall set forth both (1) the total number of customers who have contracted with the invention developer, except that the number need not reflect those customers who have contracted within the last 30 days, and (2) the number of customers who have received, by virtue of the invention developer's performance of invention development services, an amount of money in excess of the amount of money paid by such customers to the invention developer pursuant to a contract for invention development services.

Subd. 7. **Completion date.** The contract shall state the expected date of completion of the invention development services.

Subd. 8. **Title issues.** The contract shall state whether and the extent to which it effectuates or makes possible the purchase by the invention developer of an interest in the title to the customer's invention.

Subd. 9. **Records retention.** The contract shall explain that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for that customer for a period not less than three years after expiration of the term of the contract for invention development services.

Subd. 10. **Customer review of records.** The contract shall state that the records and correspondence required to be maintained pursuant to section 325A.08 will be made available to the customer or the customer's representative for review and copying at the customer's expense on the invention developer's premises during normal business hours upon seven days' written notice, the time period to begin from the date the notice is placed in the United States mail properly addressed and first class postage prepaid.

Subd. 11. **Identity disclosures.** The contract shall state the name of the person or firm contracting to perform the invention development services, all names under which said person or firm is doing or has done business as an invention developer during the previous ten years, the names of all parent and subsidiary companies to the firm and the names of all companies that have a contractual obligation to the firm to perform invention development services.

Subd. 12. **Business address and service of process disclosures.** The contract shall state the invention developer's principal business address and the name and address of its agent in this state authorized to receive service of process in this state.

Subd. 13. **Bond compliance.** The contract must state that the invention developer has fully complied with the bonding requirements of section 325A.06.

History: *1977 c 288 s 4; 1986 c 444; 2001 c 190 s 1*

325A.05 DISCLOSURES MADE PRIOR TO CONTRACT.

Subdivision 1. **Requirement.** In either the first written communication from the invention developer to a specific customer or at the first personal meeting between the invention developer and a customer, the invention developer shall make a written disclosure to the customer of the information required in this section.

Subd. 2. **Median fee.** The disclosure shall state the median fee charged to all of the invention developers' customers who have signed contracts with the developer in the preceding six months, excluding customers who have signed in the preceding 30 days.

Subd. 3. **Other customers.** The disclosure shall include a single statement setting forth (1) the total number of customers who have contracted with the invention developer, except that the number need not reflect those customers who have contracted within the preceding 30 days, and (2) the number of customers who have received by virtue of the invention developer's performance of invention development services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract for invention development services.

Subd. 4. **Intellectual property statement.** The disclosure shall contain the following statement:

"An invention developer who is also a lawyer may give you legal advice concerning patent, copyright, or trademark law or to advise you of whether your idea or invention may be patentable or may be protected under the patent, copyright, or trademark laws of the United States or any other law. An invention developer who is not a lawyer may not give you legal advice on these subjects.

No patent, copyright or trademark protection will be acquired for you by the invention developer. Your failure to inquire into the law governing patent, copyright or trademark matters may jeopardize your rights in your idea or invention, both in the United States and in foreign countries. Your failure to identify and investigate existing patents, trademarks or registered copyrights may place you in jeopardy of infringing the

copyrights, patent or trademark rights of other persons if you proceed to make, use, distribute or sell your idea or invention."

History: *1977 c 288 s 5; 1986 c 444*

325A.06 FINANCIAL REQUIREMENTS.

Subdivision 1. **Surety bond.** Every invention developer rendering, offering to render, or advertising invention development services in this state shall maintain a continuous corporate surety bond issued by a surety admitted to do business in this state, and equal to either ten percent of the invention developer's gross income from the invention development business in this state during the invention developer's preceding fiscal year, or $50,000, whichever is larger. A copy of the bond shall be approved by and filed with the attorney general before the invention developer renders, offers to render, or advertises invention development services in this state. The attorney general shall maintain a list of all outstanding bonds filed under this subdivision. The invention developer shall have 90 days after the end of each fiscal year within which to change the bond as may be necessary to conform to the requirements of this subdivision.

Subd. 2. **Bond administration and enforcement.** The bond required by subdivision 1 shall be in favor of the state of Minnesota for the benefit of any person who, after entering into a contract for invention development services with an invention developer, is damaged by fraud or dishonesty of the invention developer in performance of the contract, by the insolvency or the cessation of business by the invention developer or by the intentional violation of sections 325A.01 to 325A.10 by the invention developer. Any person claiming against the bond may maintain an action at law against the invention developer and the surety company.

The aggregate liability of the surety company to all persons for all breaches of conditions of the bond shall in no event exceed the amount of the bond.

Subd. 3. [Repealed, 2001 c 190 s 5]

History: *1977 c 288 s 6; 2001 c 190 s 2; 2004 c 251 s 11*

325A.07 RESTRICTION ON USE OF NEGOTIABLE INSTRUMENTS.

In connection with a contract for invention development services, the invention developer shall not take from a customer a negotiable instrument other than a check as evidence of the obligation of the customer. A holder is not a holder in due course if the holder takes a negotiable instrument taken from a customer in violation of this section.

History: *1977 c 288 s 7; 1986 c 444*

325A.08 RECORDS.

Every invention developer shall maintain all records and correspondence relating to performance of each invention development contract for a period of not less than three years after expiration of the term of the contract.

History: *1977 c 288 s 8*

325A.09 REMEDIES AND ENFORCEMENT.

Subdivision 1. **Compliance with other law.** The provisions of sections 325A.01 to 325A.10 are not exclusive and do not relieve the parties or the contract from compliance with all other applicable provisions of law.

Subd. 2. **Compliance with act.** Any contract for invention development services that does not comply with the applicable provisions of sections 325A.01 to 325A.10 shall be unenforceable against the customer as contrary to public policy, provided that no contract shall be unenforceable if the invention developer proves that noncompliance was unintentional and resulted from a bona fide error in spite of reasonable procedures adopted to avoid any such errors, and if the invention developer makes an appropriate correction.

Subd. 3. **Fraud, misrepresentation, or deceptive practices.** Any contract for invention development services entered into by a customer with an invention developer who has used any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice in respect to that customer with the intent that the customer rely thereon, whether or not the customer was in fact misled, deceived or damaged, shall be unenforceable against the customer.

Subd. 4. **Waivers void.** Any waiver by the customer of the provisions of sections 325A.01 to 325A.10 shall be deemed contrary to public policy and shall be void and unenforceable.

Subd. 5. **Private actions.** Any person who has been injured by a violation of sections 325A.01 to 325A.10 by an invention developer, by any false or fraudulent statement, representation or omission of material fact by an invention developer or by failure of an invention developer to make all the disclosures required by sections 325A.01 to 325A.10 may bring a civil action against the invention developer for the damages sustained together with costs and disbursements, including reasonable attorney's fees. The court in its discretion may increase the award of damages to an amount not to exceed three times the damages sustained or $10,000, whichever is greater.

Subd. 6. **Contract voidability.** Failure to make the disclosures required by section 325A.05 shall render any contract subsequently entered into between the customer and the invention developer voidable by the customer.

Subd. 7. **Attorney general enforcement.** In addition to the penalties provided in subdivisions 1 to 6, any invention developer who is found to have violated sections 325A.01 to 325A.10 shall be deemed in violation of section 325F.69, subdivision 1, and the provisions of section 8.31 shall apply.

Subd. 8. **Limitation on actions.** The statute of limitations on actions arising out of a breach of contract for invention development services shall be six years as provided in section 541.05, subdivision 1.

History: *1977 c 288 s 9; 1986 c 444; 2001 c 190 s 3,4*

325A.10 CITATION.

Sections 325A.01 to 325A.10 may be cited as the "Invention Services Act."

History: *1977 c 288 s 10*