STATE OF MINNESOTA
Department of Employment and Economic Development
332 Minnesota Street, Suite E200
St. Paul, MN 55101

PROFESSIONAL AND TECHNICAL SERVICES MASTER CONTRACT

This master contract is between the State of Minnesota, acting through its Department of Employment and Economic Development ("State") and

Functional Industries, Inc
1801 Highway 25 N
PO Box 336
Buffalo, MN 55313-1934

("Contractor").

Recitals

1. Under Minnesota Statute § 15.061, the State is empowered to contract for professional or technical services and a contract negotiated under this section is not subject to the competitive bidding requirements of chapter 16C(10).

2. Under Minnesota Statute § 268A.03(b), and Minnesota Rules 3300.5060, the State is empowered to provide vocational rehabilitation services to persons with disabilities in accordance with the federal Rehabilitation Act of 1973, Public Law 93-112, as amended, and persons with a disability are entitled to informed choice of vendor.

3. Under Minnesota Statute § 268A.03(j), the State is empowered to enter into contractual arrangements with instrumentalities of federal, state, or local government and with private individuals, organizations, agencies, or facilities with respect to providing vocational rehabilitation or independent living services.

4. Under Minnesota Rules 3300.5060, the State must provide vocational rehabilitation services to: (a) determine whether an individual is eligible for vocational rehabilitation services and the nature and scope of vocational rehabilitation services needed by the individual, and (b) to assist an eligible individual to achieve an employment goal in accordance with the eligible individual's approved employment plan.

5. This master contract is an operating agreement for the purposes of Minnesota Rules 3300.5060, whereby payments may be made to (a) CARF accredited providers, (b) providers that are in the process of applying for CARF accreditation, (c) non-CARF accredited providers with whom the State has signed a limited-use vendor operating agreement specifying the maximum dollar amount the provider may receive annually, and Centers for Independent Living.

6. The State may have need for the vocational rehabilitation services under this master contract, but the State does not commit to spending any money with the Contractor.

7. The Contractor represents that it is duly qualified and agrees to perform all services described in this contract and performed under a work authorization to the satisfaction of the State.

Master Contract

1. **Term of Master Contract.**

   1.1. ***Effective Date*: July 1, 2012**, or the date the State obtains all required signatures under Minnesota Statute§ 16C.05, subdivision 2, whichever is later. Contractor must not accept work under this master contract until this master contract is fully executed and the Contractor has been notified by the State's Authorized Representative that it may begin accepting Work Authorizations.

   1.2. ***Work Authorizations***. The term of work under Work Authorizations issued under this master contract may not extend beyond the expiration date of this master contract.

   1.3. ***Expiration Date: June 30, 2017***.

   1.4. ***Survival of Terms*.** The following clauses survive the expiration or cancellation of this master contract and all work authorizations: 8. Indemnification; 9.State Audits; 10. Government Data Practices and Intellectual Property; 14. Publicity and Endorsement; 15.Governing Law, Jurisdiction, and Venue; and 16. Data Disclosure.

2. **Scope of Work.**

   The Contractor, who is not a state employee, may be requested to perform any of the services identified in *Attachment B – Fee-for-Service Rate Schedule* when requested under an individual Work Order Contract, hereinafter referred to as a "Work Authorization" in accordance with the Individual Employment Plan developed between Vocational Rehabilitation Services and an individual consumer. A complete detailed description of required work will be furnished in each Work Authorization issued. This master contract is no guarantee of a Work Authorization. The Contractor may begin work only upon receipt of a fully executed Work Authorization. No effort, expenses, or actions taken before the work authorization is fully executed are authorized under Minnesota Statutes, and all such efforts, expenses and actions are under taken at the sole responsibility and expense of the Contractor.

   When Contractor accepts Work Authorizations to provide services, Contractor shall manage and disburse funds to persons served without additional charge to the State or persons served.

   Additional terms and conditions of the applicable work to be performed are attached and incorporated herein as *Attachment A – Work Plan* and, if applicable *Attachment C – Performance-based Agreement for Placement Services*.

3. **Time.**

   The Contractor must comply with all the time requirements described in Work Authorizations. In the performance of Work Authorizations, time is of the essence.

4. **Consideration and Payment.**

   4.1. ***Consideration***. All services provided by the Contractor under this contract shall be performed to the State's satisfaction, as determined at the sole discretion of the State and in accordance

with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Contractor shall not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law. The State will pay for all services satisfactorily performed by the Contractor, under fully executed Work Authorizations issued under this master contract, according to the applicable fee schedule(s), attached and incorporated herein as *Attachment B – Fee-for-Service Rate Schedule* and if applicable *Attachment C – Performance-based Agreement for Placement Services*. The total compensation of all Work Authorizations may not exceed $600,000.

4.2. ***Fee-for-Service Rates*.** Contractor shall ensure costs used to determine rates for service fees shall be (a) necessary and reasonable, in nature and amount, costs will not exceed that which would be incurred by a prudent person under the same circumstances; (b) costs shall be allocable and assignable to VRS and the costs will be incurred for the exclusive benefit of persons referred by the State; (c) costs shall be adequately documented; and (d) costs shall be subject to State monitoring, audit and reconciliation. The Contractor shall not bill the State for an amount greater than the fee for service indicated in the current fee schedule, *Attachment B – Fee-for-Service Rate Schedule*. The Contractor shall charge the State no higher fee than the Contractor charges other purchasers of services, and may bill for services only for the authorized time period.

4.3. ***Performance-Based Milestone Rates*.** The Contractor shall bill the State for the statewide, uniform, performance-based milestone rates in *Attachment C – Performance-based Agreement for Placement Services* for job development, placement and retention services that meet the scope, terms and conditions of the attachment. The Contractor shall not bill the fee-for-service rate for intake when placement services are authorized under a Performance-based Agreement for Placement Services.

4.4. **Payment.**

4.4.1. ***Invoices***. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Upon completion of services, invoices will be submitted timely and with required documentation identified in attachments A, B, and C, as applicable.

4.4.2. ***Federal funds*.** Payments under this contract will be made from federal funds obtained by the State through Title 1 CFDA number 84.126 of the Rehabilitation Act of 1973. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor’s failure to comply with federal requirements.

5. **Conditions of Payment.**

All services provided by the Contractor under Work Authorizations must be performed to the State’s satisfaction, as determined at the sole discretion of the State’s Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6. **Authorized Representatives.**

The State's Authorized Representative for this master contract is **David Sherwood-Gabrielson, Director Community Partnerships, 651-259-7350**, or his/her successor, and has the responsibility to monitor the Contractor's performance. The State's Project Manager will be identified in each work authorization.

7. **Assignment, Amendments, Waiver, and Contract Complete.**

7.1. ***Assignment.*** The Contractor may neither assign nor transfer any rights or obligations under this master contract or any Work Authorization without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this master contract, or their successors in office.

7.2. ***Amendments.*** Any amendment to this master contract or any Work Authorization must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.

7.3. ***Waiver.*** If the State fails to enforce any provision of this master contract or any Work Authorization, that failure does not waive the provision or its right to enforce it.

7.4. ***Contract Complete***. This master contract and any Work Authorizations contain all negotiations and agreements between the State and the Contractor. No other understanding regarding this master contract or Work Authorization, whether written or oral, may be used to bind either party.

8. **Indemnification.**

8.1. In the performance of this contract by Contractor, or Contractor's agents or employees, the contractor must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the state, to the extent caused by Contractor's:

8.1.1. Intentional, willful, or negligent acts or omissions; or

8.1.2. Actions that give rise to strict liability; or

8.1.3. Breach of contract or warranty.

8.2. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligation under this contract.

9. **State Audits.**

Under Minnesota Statute § 16C.05, subdivision 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to any Work Authorization are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this master contract.

10. **Government Data Practices and Intellectual Property.**

10.1.***Government Data Practices***.

The Contractor and State must comply with the Minnesota Government Data Practices Act, Minnesota Statute Ch. 13, as it applies to all data provided by the State under any Work Authorization, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under the Work Authorization. The civil remedies of Minnesota Statute§ 13.08 apply to the release of the data referred to in this clause by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released.

*10.2.**Intellectual Property Rights***

The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under Work Authorizations. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this master contract or any Work Authorization. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of a Work Authorization. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of the Work Authorization. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

10.2.1. *Notification*. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of the Work Authorization, the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

10.2.2. *Representation.* The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought

against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11. **Workers' Compensation and Other Insurance Requirements.**

Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

11.1. ***Workers' Compensation Insurance*:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

$100,000 – Bodily Injury by Disease per employee
$500,000 – Bodily Injury by Disease aggregate
$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

11.2. **Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

$2,000,000 – per occurrence
$2,000,000 – annual aggregate
$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage
Personal and Advertising Injury

Blanket Contractual Liability
Products and Completed Operations Liability
Other; if applicable, please list: None
State of Minnesota named as an Additional Insured

11.3. **Commercial Automobile Liability Insurance**: If Contractor transports DEED consumers, Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

$1,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:
Owned, Hired, and Non-owned Automobile

11.4. Additional Insurance Conditions:

11.4.1. Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;

11.4.2. Contractor's policy(ies) and Certificate(s) of Insurance shall contain a provision that coverage afforded under the policy(ies) shall not be cancelled without at least thirty (30) days advanced written notice to the State of Minnesota;

11.5. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

11.6. The successful responder is required to submit Certificates of Insurance acceptable to the State of Minnesota as evidence of insurance coverage requirements prior to commencing work under the contract.

11.7. Further, the Contractor certifies that it is in compliance with Minnesota Statute § 176.181, subdivision 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

12. **Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions.**

Contractor certifies that neither it nor its principles is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the contract award was based. Contractor

shall provide immediate written notice to the State's authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

13. **Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.**

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the contract award was based.

13.1. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions**

Instructions for Certification

13.1.1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

13.1.2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

13.1.3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

13.1.4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

13.1.5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

13.1.6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

13.1.7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

13.1.8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

13.1.9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

13.2. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.**

13.2.1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

13.2.2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

14. **Publicity and Endorsement.**

14.1. ***Publicity***. Any publicity regarding the subject matter of a WORK Authorization must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from a WORK Authorization.

14.2. ***Endorsement***. The Contractor must not claim that the State endorses its products or services.

15. **Governing Law, Jurisdiction, and Venue.**

Minnesota law, without regard to its choice-of-law provisions, governs this master contract and all Work Authorizations. Venue for all legal proceedings out of this master contract and/or any Work

Authorizations, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

16. **Data Disclosure.**

Under Minnesota Statute § 270C.65, Subdivision 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

17. **Payment to Subcontractors.**

(If applicable) As required by Minnesota Statute § 16A.1245, the prime contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

18. **Termination.**

18.1. ***Termination by the State.*** The State or commissioner of Administration may cancel this master contract and any Work Authorizations at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

18.1.1. **CRPs.** Contractor shall maintain CARF-accreditation, in the appropriate CARF service areas, for all services and service locations provided under this contract that can be accredited by CARF. Contractor shall provide evidence of accreditation including, but not limited to: (a) Intent to Survey (application), (b) notification of survey team and dates, (c) Survey Report, (d) Quality Improvement Plans, (e) supplemental surveys, etc. The State permits the Contractor to add new services to this contract between CARF site surveys providing no new service vended to the State remains unaccredited for more than 3 years. CARF-accredited providers will be permitted to provide services under this contract for a maximum of 5 years. Contractor failure to maintain accreditation will result in the termination of this contract.

18.1.2. **LUVs.** Non-CARF-accredited providers will be permitted to provide limited services; shall be known as Limited-Use Vendors (LUVs), and the term of those contracts shall not exceed two years or $20,000 in services each year. The State will lift the term and dollar restrictions of LUVs that makes a written commitment to become CARF-accredited within one year; demonstrating reasonable follow through; and providing the State with evidence of application, payment, site survey schedule, and survey report. LUVs that make commitment to achieving CARF-accreditation, but do not engage in a site survey within 3 years, or engage in a site survey but do not receive accreditation, shall be prohibited from vending services to the State for a period of 3 years or until the services become accredited by CARF.

18.1.3. **CILs.** Centers for Independent Living shall maintain their VRS Certification and will be permitted to provide IL services under this contract for a maximum of 5 years. Failure to maintain VRS certification will result in the termination of this contract.

18.2. ***Termination for Insufficient Funding.*** The State may immediately terminate this master contract and any Work Authorization if it does not obtain funding from the Minnesota legislature or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the master contract or work order is terminated because of the decision of the Minnesota legislature or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

19. **Minnesota Statute § 181.59.**

The vendor will comply with the provisions of Minnesota Statute § 181.59 which requires: Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

20. **Affirmative Action Requirements for Contracts in Excess of $100,000 and if the Contractor has More than 40 Full-time Employees in Minnesota or its Principal Place of Business.**

The State intends to carry out its responsibility for requiring affirmative action by its Contractors.

20.1. ***Covered Contracts and Contractors***. If the Contract exceeds $100,000 **<u>and</u>** the contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minnesota Statute § 363A.36 and Minnesota Rule Parts 5000.3400-5000.3600. A contractor covered by Minnesota Statute § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

20.2.***Minnesota Statute § 363A.36****.* Minnesota Statute § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

*20.3.****Minnesota Rule 5000.3400-5000.3600.***

20.3.1. *General*. Minnesota Rule 5000.3400-5000.3600 implement Minnesota Statute § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota Rule 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

20.3.2. *Disabled Workers*. The Contractor must comply with the following affirmative action requirements for disabled workers.

20.3.2.1. The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

20.3.2.2. The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

20.3.2.3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

20.3.2.4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

20.3.2.5. The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes Section 363A.36, of the

Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

20.3.3. *Consequences*. The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.

20.3.4. *Certification*. The Contractor hereby certifies that it is in compliance with the requirements of Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

21. **E-Verify Certification (In accordance with Minn. Stat. §16C.075).**

For services valued in excess of $50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

1. CONTRACTOR

The Contractor certifies that the appropriate person(s) have executed the contract on behalf of the Contractor as required by applicable articles or bylaws.

By: _____

Title: President/CEO

Date: 06/07/2012

2. STATE AGENCY

By: _____
(with delegated authority)

Title: Kimberley T. Peck

Date: DIRECTOR
REHABILITATION SERVICES
6-13-12

3. COMMISSIONER OF ADMINISTRATION
As delegated to Materials Management Division

By: _____

Date: 6-26-12

Attachment A – Work Plan

Contractor shall retain **qualified personnel** to perform and administer vocational rehabilitation services. Contractor shall conduct background checks using primary sources on all personnel authorized to provide direct services or transport persons served under this contract. When transportation is provided for persons served under this contract, Contractor shall maintain current records of driving licenses and satisfactory driving history of drivers.

Contractor shall safeguard the **records** of persons served to the best of Contractor's ability including storage under lock with reasonable protection against fire, water damage, and other hazards.

Contractor shall **work collaboratively** with VRS counseling personnel in providing services that are part of the person's served Individual Employment Plan, the State document that describes the services and outcomes agreed to by the State counselor and person served.

Contractor shall develop and distribute to the State's local referral counselors, a **referral packet** including the designation of a contact person and telephone number.

Contractor shall develop and locally distribute current detailed written **marketing information** specifying the programs and services, locations, demographics of persons served, and outcomes of persons served.

Contractor shall develop and locally distribute detailed written information specifying the procedure for **notification of acceptance** of the person referred by the State, the start date, the intake process, orientation to the Contractor and list of services, and other relevant service planning and delivery arrangements.

Contractor shall provide the most effective **mode(s) of communication** to diverse populations without charge to the State or persons served. Interpreter services are included in the fee-for-service rates and performance-based agreement rates. The Contractor shall make all direct payments necessary for interpreting costs.

Contractor shall maintain effective communication and work collaboratively with State personnel in providing diagnostic or other authorized rehabilitation services in accordance with an ***Individual Employment Plan*** (IEP). The IEP is the State document that describes the services and outcomes agreed to by the State and persons served. Contractors may develop separate program plans with persons served so long as they are not inconsistent with the State's IEP and they conform to *CARF Standards*. Contractor-initiated program changes that result in variations from the approved IEP, shall be agreed to by State personnel and the person served prior to Contractor implementing the change.

Contractor shall focus on the potential of persons served to benefit from **assistive technology** in order to more fully participate in and gain from their rehabilitation program. Contractor will advise the State counselor if further evaluation is indicated to determine the need for assistive technology.

Contractor shall develop and locally distribute detailed written information specifying the Contractor's policies and procedures for **monitoring the progress** of persons served and communicating progress to the State.

Contractor shall develop and locally distribute detailed written information specifying the Contractor's policies and procedures for **termination**, program exit, and case closure, and the written communication of events and program summaries to the State.

Contractor shall **seek annual input for program improvement** from persons served, State counselors, rehabilitation area managers, and the State's authorized representative. Contractor shall consider input to improve the effectiveness and efficiency of services to persons served.

Contractor shall annually develop and distribute a **report of outcomes** achieved by persons served. Contractor shall include, but is not limited to: job types, average hours worked, average wages earned, and fringe benefits.

Attachment B-6 – Fee-for-Service Rate Schedule

Contractor		Referral Contact	
Name	SWIFT#	Name	10-digit Phone Number
Functional Industries, Inc	0000209551-001, 0000209551-002, 0000209551-003	Rod Pederson	763.233.5161

SERVICE	FEE	UNIT OF SERVICE (HOUR, DAY, WEEK, EACH)	CARF PENDING
Intake/Screening (not applicable to PBA – Attachment C-1)	$85 $85	Each Cancellation fee <3 business days notice	☐
Comprehensive Vocational Eval (CVE)			
Work / Vocational Evaluation Non-Integrated			☐
Work/Vocational Evaluation Community Based – Integrated			☐
Situational Assessment or Simulated Job Site			☐
Other CVE (specify):			☐
Employment Planning Services (EPS)			
Situational Assessments	$65 $80	Per hour Cancellation fee <3 business days notice	☐
Job Tryouts / Job Shadowing / Paid Work Trials	$60 $90	Per hour Cancellation fee <3 business days notice	☐
Job Seeking Skills Training	$60 $90 $25 $50	Per hour, individual Cancellation fee <3 business days notice Per hour, group Cancellation fee <3 business days notice	☐

SERVICE	FEE	UNIT OF SERVICE (HOUR, DAY, WEEK, EACH)	CARF PENDING
Other EPS (specify): Discovery Assessment	$80 $160	Per hour Cancellation fee <3 business days notice	☒
Situational Assessment 1:1 Coaching	$85 $80	Per hour Cancellation fee <3 business days notice	
On the Job Evaluation	$65 $80	Per hour Cancellation fee<3 business days notice	
Rural Situational Assessment	$75	Per hour, 20 miles or more from FII office	
Rural Employability Assessment	$75	Per hour, 20 miles or more from FII office	
Rural On the Job Evaluation	$75	Per hour, 20 miles or more from FII office	
Employment Skills Training (EST)			
Skill Training/Occupational Vocational Training (specify):			☐
Employee Development Services (EDS)			
Work Adjustment Training Non-Integrated	$70 $91 $140	Per partial day <4 hours Per day >4 hours Cancellation fee <3 business days notice	☐
Work Adjustment Training Community Based – Integrated	$70 $91 $140 $65	Per partial day <4 hours Per day >4 hours Cancellation fee <3 business days notice Per hour, Individual Site with Job Coach	☐
Job Seeking Skills Training	$60 $90	Per hour Cancellation fee <3 business days notice	☐

SERVICE	FEE	UNIT OF SERVICE (HOUR, DAY, WEEK, EACH)	CARF PENDING
Other EDS (specify): Employability Assessment	$65	Per hour	☐
	$80	Cancellation fee <3 business days notice	
Employability Assessment 1:1 Coaching	$85	Per hour	
	$80	Cancellation fee <3 business days notice	
Employability Development Training - Group (2+)	$25	Per hour per individual	
	$50	Cancellation fee <3 business days notice	
Employability Development Training - Individual	$40	Per hour	
	$80	Cancellation fee <3 business days notice	
Transitional Work Group	$1200	Milestone 1: Intake	
	$900	Milestone 2: 10 days of employment	
	$400	Milestone 3: 20 days of employment	
	$200	Milestone 4: 90 days of employment, completion of program	
	$80	Cancellation fee <3 business days notice	
	$2700	Total per person	
Community Employment Services (CES): Job Site Training (JST)			
Job Coaching for Employment with time-limited supports	$55	Per hour	☐
	$80	Cancellation fee <3 business days notice	
Job Coaching for Employment with ongoing supports	$55	Per hour	☐
	$80	Cancellation fee <3 business days notice	
Job Seeking Skills Training	$60	Per hour	☐
	$90	Cancellation fee <3 business days notice	

SERVICE	FEE	UNIT OF SERVICE (HOUR, DAY, WEEK, EACH)	CARF PENDING
Other CES / On-the-job training (specify):			☐
Career Exploration and Retention Training	$57	Per hour	
	$114	Cancellation fee <3 business days notice	
Career Mentoring	$55	Per hour	
	$80	Cancellation fee <3 business days notice	
Community Employment Services (CES): Job Development (JD), Job Site Training (JST), Job Supports (JS)			
Placement and Retention Services under a Performance Based Agreement (PBA)	☒ Yes ☐ No	See Attachment C-1	☐
☐ Occupational Communication Specialist Services (OCSS) Differential	$400	Each	
Other CARF-Accredited Services			
Benefits Planning Service			☒
Intake Fee	$85	Per intake	
Professional Benefits Consultation	$70	Per hour	
Benefits Analysis (BA)	$800	Per BA	
Other Services Not Accreditable by CARF			
Specify:			N/A
Psychometric Testing / Work Sample Assessment	$75	Per hour	
	$75	Cancellation fee <3 business days notice	
Transportation	$25	Per day, established routes	
	$50	No show fee	
Background Checks	$50	Each	
Independent Living (IL) Services The Independent Living services in the checklist below (Title 34, CFR Part 364.4) are reserved for eligible Centers for Independent Living (Title 34, CFR Part 366.50).			
Independent Living Skills Assessment			N/A
Independent Living Skills Training			N/A

SERVICE	FEE	UNIT OF SERVICE (HOUR, DAY, WEEK, EACH)	CARF PENDING
Peer Mentoring			N/A
Assistive Technology Assessments and Training			N/A
Advocacy			N/A
Information and Referral			N/A
Other – specify:			N/A

Attachment C-1 – Performance-based Agreement (PBA) for Placement and Retention Services

Vocational Rehabilitation Services (VRS) purchases job placement services exclusively through this agreement for eligible persons from a qualified provider that complies with the provisions of the contract. Job placement services are intended for individuals who require assistance finding competitive employment (with or without ongoing employment support services) consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. VRS also purchases other services on a fee-for-service basis as identified as *Attachment B – Fee for Service Rate Schedule*.

Scope of Placement and Retention Services

Placement services assist persons served to obtain employment in a competitive job consistent with the *Individual Employment Plan* (IEP) developed by the person served and the VRS counselor. Frequent verbal communication is necessary among all parties. The community rehabilitation provider (CRP) is required to meet with the person served and the VRS counselor for the completion of the placement plan and at 90-day intervals to review the progress of the person served until the PBA is closed. The CRP must contact VRS when the person served has achieved job stabilization in supported employment outcomes as it is at stabilization that Vocational Rehabilitation Services can consider the consumer has moved out of training and into employment and the 90-day follow-up period starts. CRPs will not be paid until 90 days after stabilization has occurred and VRS will not close the case at 90 days past the job hire in supported employment cases. During this 90-day period, VRS will provide follow-up to ensure that the long-term supports are adequately meeting the consumer's needs. Placement services may not result in center-based employment or participation in a work crew or enclave. Nor can a CRP hire the person served as an employee and receive the PBA milestone payment as there would be an implicit and explicit conflict of interest between the role of service provider and the role of employer. PBA service is intended to pay for the CRP's efforts in seeking and securing employment with another employer. Any party can discontinue the relationship if job placement and retention plan objectives are not being met or progress is not being achieved. The party who wishes to discontinue the relationship must contact the other parties involved.

Placement services may include:

- **Intake** - community rehabilitation providers and consumers must agree that there is a "good fit," a provider may wish to review referral information or interview a potential consumer. These activities are considered "intake" and are included in the PBA fee. The community rehabilitation provider is not committed to working with a consumer until the provider signs the job placement and job retention plan.

- **Job Development** – using community resources and contacting employers to identify current job opportunities; assessing the characteristics of persons served and job tasks to focus efforts on jobs most likely to result in satisfying job matches; educating employers about the benefits of hiring people with disabilities; etc.

- **Job Seeking Skills** - assisting persons served to develop the skills necessary to successfully complete activities leading to employment, such as: completing an application, developing a

resume, conducting online job searches, writing cover letters, interviewing, writing thank you letters/following up after interviews, etc.

- **Job Site Training** – Before the person served accepts a job offer, to assist persons served become knowledgeable about potential job duties, personnel benefits, rates of pay, employment policies and practices, transportation to work, etc. to enable the person served in making an informed decision, and to assist potential employers identify, modify, or eliminate architectural, procedural, instructional, attitudinal, or communication barriers to achieve the employment and advancement of persons with disabilities etc.

Retention services may include:

- **Job Site Training** - Job coaching to promote adequate job adjustment and ensure satisfaction of the person served and the employer to perform work duties, training and assistance with work behaviors, development and facilitation of natural supports and assistance to the employer and coworkers to assist the person served to retain or advance in employment. Job coaching, in this context, is time limited to promote job retention for persons who are competitively employed.

- **Job Supports** – Job coaching to maintain contact, or follow-up, with the person served and employer to ensure ongoing satisfaction of both parties. May include providing group or individual training and/or "refresher" training on techniques for maintaining employment, including: dealing with conflict, changes or personal issues affecting job performance, asking for a raise, career development, or a new job, etc. May include providing routine on-site job analysis, consultation, and recommendations for work site and job modification, when appropriate. Job coaching, in this context, is not time-limited and may be referred to as supported employment or extended services for persons with the most significant disabilities.

Milestone Payments

The 1st and 2nd milestone authorization will be completed by the counselor in advance of the initial placement plan meeting. The 3rd milestone authorization will be entered following the counselor being notified of the completion of the first full shift of work. CRPs must provide written reports on all services when they invoice for milestone payments. Payment of a milestone will constitute payment in full for all services delivered during that phase of the program. The provider is required to meet with the person served and VRS counselor to develop the placement plan, and at 90 day intervals until the final milestone is achieved. If the placement and job retention plan is amended significantly (e.g., the employment goal or services change substantially, or there is a significant time when the consumer is unavailable for services) a new PBA can be started. A maximum of $3,800 will be paid, in the following increments, as milestone events are achieved and the required documentation is received by the State: Signed Placement Plan $1,000; Job Hire $1,300; Successful Placement $1,500.

Milestone Events and Required Documentation

Signed Placement Plan. A signed *Placement and Retention Plan* is developed at a face-to-face meeting involving the person served, the community rehabilitation provider and the VRS counselor. The plan identifies the job goal, defines the roles and responsibilities of each of the three parties, and creates a consensus about the desired outcome. The plan must be signed by all three parties. The

required documentation for each placement plan shall include: date; person served and telephone number(s); employment goal(s); expected employment outcome including number of hours per week, benefits, wages, and any special considerations such as physical limitations and/or job accommodations, days of the week, transportation needs, geographic limitations, child care or therapy needs, etc.; and the responsibilities of each party, the person served, VRS counselor, and service provider.

Job Hire. Job hire is the first complete, paid shift worked by the person served in the integrated labor market. If the person served loses his or her job prior to achieving the final milestone, the consumer is re-placed by the provider with no additional payment. The required documentation for each placement plan shall include: date, person served, date of first day of work, job title, job responsibilities, wage, benefits, number of hours per week, work schedule, employer and address, and any accommodations made to enable the person served to perform the job. The documentation shall be signed by Contractor's assigned placement staff or communicated via email whereby no signature is required.

Successful Placement. The person served has achieved the employment outcome that is described in the individual's IPE, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice, and is in the most integrated setting possible consistent with the person's informed choice. The person served has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the person served no longer needs vocational rehabilitation services. At the end of the appropriate period, the individual and the VRS counselor consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment. The following documentation shall be provided by Contractor before Contractor shall be entitled to claim the successful placement milestone event and payment: date; employer and address; hire date; job title; job responsibilities; wage; benefits; number of hours per week; work schedule; accommodations; ongoing employment support needs; employer comments on job performance; person served comments on job satisfaction; and the signature of Contractor's assigned placement personnel.