

**VERNON MACHINE CORP dba BENDERUS**  
**MASTER SERVICES AGREEMENT NUMBER: \_\_\_\_\_**  
**Fabrication, Tooling, Machining and Shop Repair Services**

This Master Services Agreement ("Agreement") is entered into effective \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_ ("Customer") and BENDERUS (the "parties"). This Agreement relates to fabrication, tooling, machining and shop repair services ("Services") to be performed by BENDERUS from time to time on an as needed basis, as Customer may request or require.

1. **Invoicing and Payment.** Customer will pay BENDERUS for the Services, in accordance with BENDERUS fee schedules ("Schedules") in effect at the time the Services are performed.

1.1 BENDERUS shall invoice Customer monthly for its Services.

In the event of a dispute over payment, customer shall pay all undisputed amounts in accordance with this Agreement.

1.2 Invoices are due upon presentation and past-due thirty (30) days from the date of the invoice. Should any invoice for payment become past due, Customer agrees that BENDERUS may suspend Services and/or demand prepayment of fees at BENDERUS option.

1.3 Customer agrees to pay a service charge of one and one-half (1-1/2) percent per month, compounded monthly from the past due date of the invoice, on past-due accounts, not to exceed limits set by any applicable usury laws. In the event that it becomes necessary for BENDERUS to commence action to force payment of invoices, BENDERUS shall be entitled to reasonable collection costs.

2. **Warranty.** BENDERUS shall perform the Services in accordance with the standards of care and diligence customary in the industry. In the event BENDERUS fails to perform in accordance with those standards, there is an error in the Services resulting in a defect in fabricated items, tooled, machined or repaired parts ("Parts"), Customer shall give written notice thereof to BENDERUS. Such notice must be given during the one-year period following the date the Services are completed, or, if Parts are provided, the date that such Parts are available for use in Customer's facility. Upon such notice, BENDERUS shall perform all corrective Services within the original scope of Services as necessary to conform the Services to such standard. All costs of such reperformance of work shall be borne by BENDERUS.

Notwithstanding the above, in the event that Parts are stored or remain unused for thirty (30) days or more following furnishing by BENDERUS, BENDERUS warranty shall be void, and BENDERUS shall be released from all liability whatsoever in connection with the Parts unless, prior to startup of the equipment in which the Parts are used, BENDERUS, at customer's expense, is afforded an opportunity to perform an inspection and any necessary testing to assure that the Parts can be warranted. Customer shall compensate BENDERUS for all costs of such inspection and testing in accordance with BENDERUS Schedules.

EXCEPT AS EXPRESSLY STATED ABOVE, BENDERUS MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, CONCERNING ANY OF THE SERVICES OR PARTS WHICH MAY BE FURNISHED PURSUANT TO THIS AGREEMENT.

BENDERUS shall, for the protection of Customer, demand available warranties, indemnities and guaranties with respect to third party machinery, equipment, materials and services from all vendors and subcontractors with whom BENDERUS contracts, and shall render all reasonable assistance to Customer for the purpose of enforcing the same.

3. **Limitations.** BENDERUS liability, including that of its employees, agents, and officers shall not exceed amounts paid to BENDERUS under this Agreement, plus BENDERUS warranty obligation, as stated in 2, above. CUSTOMER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD BENDERUS AND ITS EMPLOYEES, OFFICERS AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL OTHER CLAIMS, DEMANDS, LOSSES AND CAUSES OF ACTION.

4. **Changes.** In the event Customer desires to make changes in the Services, BENDERUS will perform such changes pursuant to the terms, conditions and pricing of this Agreement. Customer acknowledges that the individual signing this Agreement on its behalf, or any authorized representative of Customer, may amend or change any Scope of Work.

5. **Termination.** Either party may, prior to completion and with or without cause, terminate the Services at any time upon five (5) working days' written notice to the other. In event that Customer terminates this Agreement without cause, BENDERUS shall be paid for Services performed to the date of termination plus non-cancelable commitments entered into prior to BENDERUS receipt of notice of termination, and actual, reasonable, termination costs.

6. **Term.** The term of this Agreement is one year from its effective date; however, this Agreement shall automatically be renewed for consecutive one-year terms unless terminated by either party. Termination shall not affect the rights, obligations and remedies of the parties.

7. **Dispute Resolution.** Any dispute arising out of, or relating to, this Agreement must be settled by mediation by a neutral person acceptable to both parties under the Commercial Mediation Rules of the American Arbitration Association (AAA). Failing resolution by mediation, such dispute shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

8. **Entire Agreement.** This Agreement constitutes the complete Agreement of the parties. No other representations of any kind, oral or otherwise, have been made. If Customer elects to utilize a purchase order or other form as a convenience, for billing purposes or in accordance with its customary practice, BENDERUS will refer to the same in invoices or correspondence, with the understanding that this Agreement supersedes all inconsistent terms.

9. **Choice of Law.** The laws of the State of California shall govern this Agreement. Any mediation or litigation arising from this Agreement shall take place in Orange County, California.

10. **Severability.** If any provision of this Agreement is finally determined to be contrary to, prohibited by, or invalid under applicable laws or regulations, such provision will be renegotiated so as to give effect to the original intent of the parties to the maximum possible extent. Other terms shall be modified

only to the extent necessary for consistency with renegotiated terms.

11. **No Third Party Rights.** Nothing contained in or relating to the formation of this Agreement is intended to make any person or entity that is not a signatory to the Agreement a third party beneficiary. No one other than Customer shall be entitled to use the Parts produced hereunder.

12. **Execution and Counterparts.** This Agreement and any Scope of Work may be executed and delivered in counterparts and by each party in separate counterparts, each of which, taken together, shall constitute but one and the same instrument.

13. **Remedies.** Neither party shall be held liable for indirect or consequential damages of any nature whatsoever, howsoever arising. THE OBLIGATIONS, RESPONSIBILITIES, WARRANTIES AND LIABILITIES OF THE PARTIES WITH RESPECT TO THE SERVICES AND PARTS SHALL BE SOLELY THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND THEY SHALL APPLY REGARDLESS OF WHETHER AN ACTION IS BROUGHT IN CONTRACT, OR IS BASED ON NEGLIGENCE, STRICT LIABILITY OR ANOTHER THEORY OF LAW. The limitations stated in this Agreement extend collectively to the parties' partners, joint venturers, licensors, insurers, and affiliates. Customer and BENDERUS agree that, notwithstanding the Dispute Resolution provision, above, any legal action with respect to the Services or Parts shall be brought solely against the parties, and not against affiliated companies, individual officers, employees or former employees of the parties. All legal actions by either party against the other for breach of this Agreement, or for the failure to perform in accordance with the applicable standard of care, however framed, that are essentially based upon such breach or failure shall be barred following expiration of BENDERUS one (1) year warranty period.

14. **Force Majeure.** Unless otherwise specified in this Agreement, BENDERUS shall be obligated to perform its Services within a reasonable period of time. Schedules are estimates only. BENDERUS shall not be responsible for delays in the completion of the Services if such delays are created by reason of any unforeseen cause or causes beyond BENDERUS reasonable control. In the event of delay due to any such cause, BENDERUS shall be paid for actual out of pocket costs occasioned by such delay, including standby costs.

15. **Compliance.** BENDERUS agrees to perform its Services in accordance with all applicable laws and regulations which are in force and effect at the time of performance.

16. **Information Obtained from Others.** BENDERUS will be supplied with certain information and/or data by Customer and/or others, and BENDERUS shall be entitled to rely on same. BENDERUS shall not be responsible for verifying the accuracy of such information.

17. **Headings and Construction.** Headings used herein are for convenience of reference only and shall not affect meaning. This Agreement shall be construed according to its fair meaning and not strictly for or against any party hereto.

18. **Independent Contractor.** BENDERUS shall perform its services as an independent contractor and not an employee or agent of Customer.

19. **Notices.** Any and all notices and other communications hereunder shall be in writing and be deemed received when delivered, or five (5) days after being mailed, via certified or registered mail, return receipt requested, postage prepaid, to the

last known addresses of the parties as the parties may from time to time notify each other.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date first written above.

**VERNON MACHINE CORP dba BENDER US**

By (Signature)

(Print Name)

Date:

**CUSTOMER**

By (Signature)

(Print Name)

Date: