

SERVICE AGREEMENT

PeterBrabant San Bernardino County Information Services Department 670 E. Gilbert St. San Bernardino, CA 92415 Phone:909-388-0776
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AND

Name ("TIC"): Toshiba International Corporation
Address: 13131 West Little York Road
City, State, Zip: Houston, Texas 77041

FOR

Product Type: 4400F3F500XA	Serial Number: 221101121 & 221001967
End-User Name/Address: San Bernardino County ITD 777 East Rialto Ave. San Bernardino, CA 92415	Coverage Period: Payment Type: ESTIMATED

SCOPE OF WORK

AS SET FORTH IN QUOTATION# QUO-25403-H0H1T1 REVISION# 1	
TOTAL PAYMENT SALES TAX & FREIGHT NOT INCLUDED	\$39,500.00

BY EXECUTING THIS SERVICE AGREEMENT IN THE SPACE PROVIDED BELOW, CUSTOMER, INTENDING TO BE LEGALLY BOUND, HEREBY AGREES TO PURCHASE AND PAY TIC FOR THE WORK, SUBJECT TO AND IN ACCORDANCE WITH THE ATTACHED AGREED UPON **AGREED SERVICE TERMS AND CONDITIONS (DATED JANUARY 1, 2013)** ("AGREED TERMS WHICH ARE INCORPORATED HEREIN BY REFERENCE AND MADE PART OF THIS AGREEMENT. **IN THE EVENT OF CONFLICT BETWEEN THE AGREED TERMS AND ANY OTHER TERMS AND CONDITIONS, THE AGREED TERMS SHALL TAKE PRECEDENCE.** THIS SERVICE AGREEMENT HAS BEEN EXECUTED BY CUSTOMER AS OF THE DATE SET FORTH BELOW AND SHALL BE EFFECTIVE UPON THE EXECUTION OF THIS SERVICE AGREEMENT BY CUSTOMER.

CUSTOMER:

Signature:	
Name:	
Title:	Date:

Purchase Order Number:

AGREED SERVICE TERMS AND CONDITIONS
(DATED JANUARY 1, 2013)

1. Cover Sheet. A cover sheet entitled "Service Agreement" is attached hereto (the "Cover Sheet") and is incorporated into this Service Agreement (this "Agreement") by reference. Terms used but not otherwise defined herein shall have the meanings ascribed to them in the Cover Sheet.

2. Scope. TIC shall perform the maintenance, inspection or other services, and provide the parts, materials or equipment, identified in the scope of work set forth in the Cover Sheet (the "Work"). TIC shall, except as otherwise expressly provided herein, furnish all labor, supervision, tools, equipment, and services needed to complete the Work. All work performed by TIC and all purchase orders issued by Customer for the Work shall be subject to the terms and conditions contained in this Agreement. It is acknowledged by the parties that all instruments and documents issued or delivered pursuant to this Agreement including, without limitation, all purchase orders, order acceptances, order acknowledgements, invoices, order confirmations and other instruments (each, an "Order Document" and, collectively, the "Order Documents"), shall incorporate the terms and conditions of this Agreement, irrespective of whether any such Order Document expressly references this Agreement, and shall be subject to the terms and conditions contained in this Agreement. For the avoidance of doubt, Customer acknowledges that any purchase order issued by Customer shall be for the sole purpose of authorizing payment, and no terms and conditions contained or referenced in any Order Document issued by Customer shall be binding upon TIC or shall amend or modify this Agreement in any way. For the avoidance of doubt, any standard or pre-printed terms and conditions contained or referenced in any Order Document shall be null and void and shall have no force and effect whatsoever, including, without limitation, even if services are provided in response to such Order Document, payment is made pursuant to such Order Document and/or such Order Document is executed and returned by the parties. The parties acknowledge that this provision shall be construed as an objection to any standard or pre-printed terms and conditions contained in an Order Document now or hereafter delivered by a party pursuant to this Agreement for purposes of Section 2-207 of the Uniform Commercial Code.

3. Access. Customer shall provide TIC with access to the site as necessary for the performance of the Work, and shall furnish a safe work environment for TIC's employees, and such safe storage areas at the site as may be necessary for TIC's materials, tools and equipment. Customer shall be responsible for coordination of the Work with any on-going operations and any other work at the site. Customer shall furnish such plans, specifications, data, information, and advisory personnel as may be necessary to familiarize TIC with the equipment and operations of the site as they relate to the Work. Customer shall provide all utilities necessary for performance of the Work. TIC's shall comply with Customer's reasonable safety, security, and insurance requirements when performing Work at Customer's facilities.

4. Payment. In consideration of the Work, Customer shall pay TIC the amount set forth in the Cover Sheet, on a fixed price or time or materials basis, as set forth in the Cover Sheet, plus any and all taxes payable in connection with the Work, whether or not set forth on the Cover Sheet ("Payment"). Unless otherwise set forth in the Cover Sheet, the Payment and Reimbursable Expenses shall be paid in full, in United States dollars, within

sixty (60) days after the date of TIC's invoice, and all such invoices shall be mailed to Customer upon completion of the Work. ALL CREDIT AND PAYMENT TERMS ARE SUBJECT TO CREDIT APPROVAL BY TIC AND, IF CREDIT HAS BEEN EXTENDED BY TIC, THE AMOUNT OF CREDIT MAY BE CHANGED OR WITHDRAWN BY TIC AT ANY TIME. Unless otherwise stated herein the Payment does not include and TIC shall not be responsible for any federal, state, municipal, or local property, license, privilege, sales, use or similar taxes which may be applicable to the performance of the Work. If Customer is required by applicable law to withhold any tax on any amount payable by Customer to TIC hereunder, then such amount payable to TIC shall be grossed-up so that the amount actually received by TIC is equal the amount that would have been received, but for such withholding.

5. Time of Completion; Force Majeure. The time for completion of the Work shall be as set forth in the Cover Sheet. If no date is specified in the Cover Sheet, TIC shall proceed with reasonable diligence. Notwithstanding the foregoing, TIC shall be entitled to an extension of the time for completion of the Work in the event the Work is delayed, hindered or suspended by reason of Customer's failure to provide unrestricted access to the site, Customer's failure to furnish materials, equipment, services or information to be furnished by Customer, changes in the Work, concealed or unknown conditions at the site, acts of any governmental authority, war, riot, revolution, strikes or other labor disputes, fire, flood, unavoidable casualties, Acts of God, adverse weather conditions or other causes beyond TIC's reasonable control.

6. Delivery. Unless otherwise set forth on the Cover Sheet, delivery terms for all parts, materials or equipment provided in connection with the Work shall F.O.B. shipping point, freight prepaid and added. The term "F.O.B. shipping point" as used in this paragraph shall mean loaded, free of expense to Customer, on board the carrier's conveyance, at TIC's designated facility. Unless otherwise set forth herein title to and risk of loss for all parts, materials or equipment shall pass from TIC to Customer when such parts, materials or equipment are loaded on board the carrier's conveyance at TIC's designated facility. Carrier claims resulting from in transit damage to any parts, materials or equipment will be the sole responsibility of Customer.

7. Service Warranty. TIC hereby warrants to Customer that the Work shall be performed in a good, safe and workmanlike manner, and in accordance with the provisions of this Agreement. TIC DOES NOT WARRANT THAT THE WORK INCLUDES ALL PREVENTATIVE MAINTENANCE, REPAIR, UPGRADE OR OTHER SERVICES NECESSARY TO ENSURE CONTINUED, UNINTERRUPTED OR OPTIMAL PERFORMANCE OF THE APPLICABLE EQUIPMENT OR FACILITY. THE FOREGOING WARRANTY SHALL EXPIRE NINETY (90) DAYS AFTER THE DATE THE WORK IS PERFORMED. TIC MAKES NO OTHER WARRANTIES WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WHICH EXTEND BEYOND THE ABOVE DESCRIPTION HEREOF, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. If the Work does not conform to the foregoing warranty, TIC shall, upon Customer's written notification to TIC, re-perform the Work or, if such Work cannot be re-performed, refund the purchase price paid for such Work. THE FOREGOING OBLIGATION TO RE-PERFORM OR REFUND THE PURCHASE PRICE FOR THE WORK SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER FOR BREACH OF THE FOREGOING WARRANTIES.

8. Materials Warranty. TIC hereby warrants to Customer that all materials furnished by TIC and incorporated into the Work, if any, shall be free from defects in material and workmanship. THE FOREGOING WARRANTY SHALL EXPIRE ONE HUNDRED EIGHTY (180) DAYS

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AFTER SUCH MATERIALS ARE INCORPORATED INTO THE WORK, TIC MAKES NO OTHER WARRANTIES WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WHICH EXTEND BEYOND THE ABOVE DESCRIPTION HEREOF, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. If any materials furnished by TIC and incorporated into the Work do not conform to the foregoing warranty, TIC shall, upon Customer's written notification to TIC, repair or replace the nonconforming materials or, if such nonconforming materials cannot be repaired or replaced, refund the purchase price paid for such materials. THE FOREGOING OBLIGATION TO REPAIR, REPLACE OR REFUND THE PURCHASE ORDER PRICE FOR THE MATERIALS SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER FOR THE BREACH OF THE FOREGOING WARRANTY. TIC SHALL HAVE NO OBLIGATION TO: (I) REMOVE OR INSTALL ANY MATERIALS THAT DO NOT CONFORM TO THE FOREGOING WARRANTY; (II) DISASSEMBLE, REASSEMBLE, REMOVE OR INSTALL ANY EQUIPMENT, MATERIALS, STRUCTURES OR OTHER ITEMS APPURTENANT TO OR AFFECTED BY THE MATERIALS THAT DO NOT CONFORM TO THE FOREGOING WARRANTY; OR (III) PAY ANY COSTS INCURRED IN CONNECTION WITH SUCH DISASSEMBLY, REASSEMBLY, REMOVAL OR INSTALLATION.

9. Limitation of Liability. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE TOTAL LIABILITY OF TIC UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED 100% OF THE PAYMENT RECEIVED BY TIC UNDER THIS AGREEMENT. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, ALLEGED NEGLIGENCE, LIABILITY WITHOUT FAULT OR ANY OTHER LEGAL THEORY, AND REGARDLESS OF WHETHER TIC HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES, SHALL TIC BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY, DEATH, PROPERTY DAMAGE, LOSS OF PROFITS OR REVENUE, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, LOSS OF USE OF THE EQUIPMENT DESCRIBED HEREIN OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, DOWNTIME COSTS, LABOR COSTS, OR CLAIMS OF CUSTOMERS OF CUSTOMER FOR SUCH DAMAGES.

10. Insurance. At all times during the term of this Agreement, TIC shall, at its own expense and with deductibles for its sole account, obtain and maintain insurance in accordance with TIC's standard Customer-wide insurance policies. At Customer's request, TIC shall furnish Customer with insurance certificates as evidence of the coverage described above.

11. Work Changes. Customer may at any time by written notice to TIC request reasonable changes in the scope of the Work, including increases and decreases therein. In such event, the Payment and time for completion of the Work shall be adjusted by mutual written agreement executed by the parties. Where the increase or decrease in the Work involves items of Work to be performed hereunder on a time and materials or unit price basis, the Payment shall be adjusted on such basis, whether there is an increase or decrease in such items or units of Work. Where the increase or decrease in the work involves Work to be performed on a lump sum basis, the Payment shall be adjusted by mutual written agreement executed by the parties, and TIC shall have no obligation to proceed with the Work, as increased or decreased, unless and until such written agreement is executed by the parties.

12. Applicable Laws. TIC and its subcontractors shall at all times comply with all applicable laws (including but not limited to the Occupational Safety and Health Act of 1970), ordinances, rules, regulations, codes and orders of the United States, any state, county or any executive or administrative agency thereof and any other governmental body having any jurisdiction over the Work.

13. Assignment. Neither party shall assign this Agreement, or any rights or obligations hereunder without the prior written consent of the other party.

14. Proprietary Information. Neither party shall disclose to third parties any confidential or proprietary information revealed to it during the performance of the Work, including information relating to equipment and to manufacturing processes, with the exception of such disclosure as may be necessary to perform or obtain permits related to the Work, to enable subcontractors to perform any portion of the Work, or such disclosure as may be required by applicable law. Any information disclosed by parties under this Agreement shall remain the property of and be deemed proprietary to the disclosing party.

15. Independent Contractor. In performance of the Work, TIC shall operate as an independent contractor and not as an agent of Customer. Neither TIC nor the employees of TIC shall be deemed to be employees or agents of Customer for any purpose whatsoever. TIC shall have sole control over the means, methods and techniques employed in the performance of the Work.

16. Environmental Health Safety. While performing the Work on premises owned or controlled by the Customer, TIC and its subcontractors shall at all times comply with the environmental, health and safety rules and regulations provided by Customer that are applicable to the Work.

17. Waiver. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

18. Governing Law; Remedies. This Agreement shall be construed and governed by the laws of the State of California, United States of America. The parties irrevocably submit to jurisdiction in the State of California with respect to any dispute between them arising out of, relating to, or in connection with this Agreement, and venue will lie in the state court in the county of San Bernardino, California, or the federal court in the county of Riverside, California, as is appropriate. To the extent an express remedy is provided herein, such remedy shall be the sole and exclusive remedy of the parties. If no express remedy is provided herein, each party shall be entitled to the remedies available at law or in equity; provided, however, that any liability of the parties hereunder will be limited to direct actual damages as the sole and exclusive remedy. Except as otherwise set forth herein, all other remedies at law or in equity are waived.

19. Severability. Each provision of this Agreement is severable. If any provision or part thereof is held to be prohibited by or invalid under applicable law or rule in any jurisdiction, in any respect, such invalidity shall not affect the validity, legality and enforceability of the rest of the provision or any other provision of this Agreement.

20. Termination. Either party may terminate this Agreement at any time, without cause, upon thirty (30) days prior written notice to the other party. In the event this Agreement is terminated by Customer, Customer shall pay TIC all amounts due and payable for the Work performed prior to such termination. If either party in good faith considers the other party to be in default hereunder, that party shall give the other party written notice thereof, describing in detail the alleged conditions of default. If the default is not

cured within thirty (30) days of the date of receipt of the notice, the other party, as its sole and exclusive remedy, may terminate the Agreement by written notice thereof.

21. Notices. Any notice provided for in this Agreement and any other notice, demand or communication required or permitted to be given hereunder or which any party may wish to send to another ("Notice" or "Notices") shall be in writing and shall be deemed to have been properly given if given by: (i) personal delivery; or (ii) registered or certified U.S. mail, or by comparable private carrier, First Class, return receipt requested in a sealed envelope, postage or other charges prepaid, addressed to TIC at 13131 West Little York Road, Houston, Texas 77041 or to the Customer at the address set forth in the Cover Sheet, or such other address as any party may request by notice given as set forth above.

22. Amendments. No change, modification or addition to this Agreement shall be effective unless in writing and signed by both parties by a duly authorized representative. This Agreement, including, without limitation, the Cover Sheet, constitutes the entire understanding between the parties and supersedes any prior or contemporaneous negotiations, understandings and agreements, written or oral, with respect to the Work.

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23. Execution. This Agreement shall be effective upon the date of execution by Customer and TIC by a duly authorized representative of each party

Agreed and Accepted:
County of San Bernardino
Signature: _____
Name: _____
Title: _____

Toshiba International Corporation
Signature: _____
Name: Greg Mack
Title: VP and GM of Power Electronics Division