

# District School Board of Pasco County

20430 Gator Lane • Land O' Lakes, Florida 34638 • 813/794-2221

Heather Fiorentino, Superintendent


[www.pasco.k12.fl.us](http://www.pasco.k12.fl.us)

Department of Purchasing  
Kendra Goodman, CPPO, CPPB, Purchasing Agent  
813/794-2221 Fax: 813/794-2111  
727/774-2221 TDD: 813/794-2484  
352/524-2221 e-mail: [kgoodman@pasco.k12.fl.us](mailto:kgoodman@pasco.k12.fl.us)

October 18, 2011

## MEMORANDUM

**TO:** Honorable School Board Members

**FROM:** Kendra Goodman, CPPO, CPPB, Purchasing Agent 

**SUBJECT:** Permission to Enter Into Warranty Agreement with Apple Computer  
IOS Direct Service Agreement Account Application

Per the attached memo from Mr. John Simon, Director of Information Services, and Mr. Craig Coile, Supervisor of Information Services, we are requesting permission to enter into an agreement with Apple Computer for repairs on Apple's line of mobile devices, including the iPod and iPad models. This agreement would allow District staff to perform pre-warranty inspections and streamline the process of returning these devices to Apple for repair. Any shipping charges or parts required for non-warranty repairs would fall under our existing purchase order for service of Apple Computers. If the Board approves this agreement its term will be from October 19, 2011 –October 18, 2012.

Apple hardware, software and licensing are copyrighted and proprietary to the company, and Apple's technology is standard for the District. Negotiation for high-technology purchases are permitted under Florida Administrative Rule 6A-1.012(14). The agreement was reviewed by the Board's attorney from McClain, Alfonzo Meeker & Dunn, P.A on October 5, 2011.

If you have any questions or concerns, please feel free to contact Craig Coile or me at your earliest convenience.

KDG/mw  
Attachments

Date/Time: October 12, 2011 08:48:00



# District School Board of Pasco County

7227 Land O' Lakes Boulevard • Land O' Lakes, Florida 34638 • 813/794-2000

Heather Fiorentino, Superintendent

[www.pasco.k12.fl.us](http://www.pasco.k12.fl.us)

Dept. of Information Services  
Craig Coile, Supervisor  
813/794-2415 Suncom 597-2415  
Fax: 813/794-2172

## MEMORANDUM

**Date:** October 7, 2011

**To:** Kendra Goodman, Purchasing Agent  
Mike Woodall, Purchasing Buyer

**From:** Craig Coile, Supervisor of Information Services *CC*  
John Simon, Director of Information Services *JS*

**Re:** IOS Direct Service Account Application - #705624

The Technology Services division of Information Services is asking for permission to enter into an IOS Direct Service Account with Apple Computer Inc. The District School Board of Pasco County would benefit from this agreement by allowing the Technology Services Division of Information Services to perform repairs on Apple's line of mobile devices, including the iPod and iPad models. Most service performed would be on units that are currently under warranty. Any shipping charges or parts required for non-warranty repairs would fall under our existing P.O. for service of Apple computers.

Thank you for your consideration.

# Apple Inc.

## Limited Billing Service Account Terms and Conditions of Sale

If Buyer has agreed, either electronically or via a signed agreement with Apple to terms and conditions applicable to the subject matter of this Agreement, then those terms and conditions shall apply. If no such current agreement with Apple exists, then the terms and conditions contained herein shall apply between Apple and Buyer, irrespective of whether Buyer accepts this Agreement by a written or online acknowledgement, or by implication. Any term or condition on any other document submitted by Buyer shall be of no force or effect whatsoever and Apple specifically rejects any different or additional terms and conditions proposed by Buyer.

### 1. SCOPE.

A. These Terms and Conditions of Sale shall apply to all quotations made and contracts of sale entered into between Apple and Buyer. These Terms and Conditions of Sale are the sole terms and conditions on which Apple is willing to sell goods and services to Buyer, and Apple hereby specifically rejects any counteroffers to these Terms and Conditions of Sale, regardless of how communicated. To the extent that Buyer places orders using purchase orders, electronic data interchange, or other communications that purport to impose different or additional terms, those communications shall be deemed only to be order placements under these Terms and Conditions of Sale, and shall not constitute counteroffers to these Terms and Conditions of Sale. To the extent that Apple accepts orders Buyer places using such communications, Apple shall not be deemed as a result also to have accepted a counteroffer that subjects it to any different or additional terms set out in such communications.

B. Apple will provide Buyer a limited billing service account to use when placing service orders such as Customer Installable Parts ("CIPs") and mail-in or on-site repairs. Buyer may be asked to submit a purchase order when placing a service order. Buyer acknowledges that Apple does not provide service CIP or repair pricing on an authorized Apple price list; Apple will quote current pricing to Buyer prior to processing any purchase order, and Buyer will have the option to either accept or decline the quoted prices. In the event Buyer accepts the quoted pricing, Apple will process the purchase order under these Terms and Conditions of Sale; should Buyer decline the quoted prices, Apple will not process the purchase order.

2. RESTRICTIONS. Product(s) purchased (a) shall be for Buyer's own use in facilities in the United States and shall not be purchased for the purpose of resale to another entity or individual and (b) shall not be purchased for export outside the United States, either directly or indirectly.

3. ORDER ACCEPTANCE. Apple reserves the right to accept or decline any order, in whole or in part. Apple may cancel any accepted order prior to shipment or commencement of services. Apple will not be liable for any failure to ship complete orders or failure to perform service in a timely manner. Buyer will be invoiced separately for each partial shipment and will pay each invoice when due, without regard to subsequent deliveries. Apple will allocate its available inventory and make deliveries (including partial shipments) in its sole discretion and without liability to Buyer. Prices include standard freight and insurance using an Apple-selected carrier. Applicable local sales or use taxes, duties, or other imposts, if any, on account of purchases hereunder shall be paid by Buyer. Proof of exempt status must be on file at Apple's Support Center for any order to be treated

as a tax-exempt transaction.

4. TITLE AND DELIVERY. Title and risk of loss to all Products or parts ordered will pass to Buyer upon shipment from Apple's shipping location. For Products shipped pursuant to Apple's standard practices in all but the last week of every Apple fiscal quarter during the term of these Terms and Conditions of Sale, Apple will issue credits or replace Products returned due to damage in transit or that are lost in transit. For Products shipped pursuant to Apple's standard practices in the last week of every Apple fiscal quarter during the term of the Terms and Conditions of Sale, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Instead, Apple will provide third-party insurance for damaged or lost Products with Purchaser named as the loss payee. When not shipping Products pursuant to Apple's standard practices but instead shipping via a carrier selected by Purchaser, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Shipping charges for orders that are shipped under Purchaser's instructions will be added to Apple's invoice, or shipped freight collect, at Apple's option.

5. PAYMENT. Buyer shall prepay all orders unless Apple extends credit. If Apple extends credit, Buyer will be invoiced upon shipment of products and payment of such invoice is due no later than thirty (30) days from the date of invoice. Apple reserves the right to change Buyer's credit terms at any time.

### 6. REPAIR SERVICES PROVIDED BY APPLE.

A. Repair service provided by Apple is governed by these Terms and Conditions of Sale, except when service is covered by Apple's warranty or extended service contract, (including the AppleCare Protection Plan), in which case the terms of warranty or the extended service contract will govern the repair. Apple will use new, used or refurbished

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AND APPROVED:  
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the extended service contract will govern the service. Apple will use new, used or refurbished parts. Apple will retain the replaced part that is exchanged under repair service as its property, and the replacement part will become the property of the Buyer. Replaced parts are generally repairable and are exchanged or repaired by Apple for value. If applicable law requires Apple to return a replaced part to the Buyer, Buyer agrees to pay Apple the additional cost of the replacement item.

B. Apple may charge a diagnostic fee including shipping charges, of up to \$100, plus applicable tax, if Apple inspects Buyer's product and determines based on the inspection that the product does not require repair service.

C. Apple warrants (1) that the repair will be performed in a workmanlike manner and (2) that all parts used in the repair will be free from defects in materials and workmanship for ninety (90) days from the date of the repair. The warranty on parts is an express limited warranty. If a defect arises in a replacement part during the ninety (90) day warranty period, at its option, Apple will (1) repair the part, using new, used or refurbished replacement parts, or (2) replace the part with a new, used or refurbished equivalent part, or (3) refund the fair market value of the part.

**7. LIMITATION OF LIABILITY AND REMEDIES.**

DIRECT DAMAGES FOR ALL CLAIMS MADE BY BUYER ARISING WITH RESPECT TO ANY PRODUCT OR PART SERVICED BY OR PURCHASED FROM APPLE SHALL BE LIMITED, IN THE AGGREGATE, TO THE SUM PAID TO APPLE FOR THE SERVICE OR PURCHASE AT ISSUE. IN NO EVENT, WHETHER AS A RESULT OR BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, OR THE COST OF THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) OR FOR PUNITIVE OR EXEMPLARY DAMAGES. This Limitation is a critical element of the parties' bargained-for consideration and will be effective even in the event either party is informed in advance of the possibility of such damages. The remedies set forth in this Terms and Conditions of Sale shall be Buyer's sole and exclusive remedies for any claims against Apple under or related to this Terms and Conditions of Sale.

**8. DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTY STATED HEREIN AND ANY EXPRESS WARRANTY CONTAINED IN A DOCUMENT THAT ACCOMPANIES A PRODUCT OR PART, APPLE SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, REMEDIES, AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, WITH RESPECT TO ALL PRODUCTS, PARTS OR SERVICES PROVIDED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IF APPLE CANNOT LAWFULLY DISCLAIM IMPLIED WARRANTIES UNDER THIS LIMITED WARRANTY, ALL SUCH WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN DURATION TO THE DURATION OF THE EXPRESS LIMITED WARRANTY. Some states, provinces and jurisdictions do not allow the exclusion or limitation of incidental or consequential damages or exclusions or limitations on the duration of

implied warranties or conditions, so these limitations or exclusions may not apply to you. The express limited warranty on repair parts gives you specific legal rights, and you may also have other rights that vary by state, province or jurisdiction.

**9. TERM AND TERMINATION.**

A. Unless terminated earlier as provided in these Terms and Conditions of Sale, the initial term shall be from the date Apple signs it until March 31, and unless either party provides written notice to the contrary to the other party not less than thirty (30) days before the expiration of any renewal term, these Terms and Conditions of Sale shall be renewed for additional one (1) year periods.

B. Either party may terminate these Terms and Conditions of Sale without cause upon thirty (30) days prior written notice. Either party may terminate these Terms and Conditions of Sale immediately in the event the other is in material breach of these Terms and Conditions of Sale. In the event notice is given terminating these Terms and Conditions of Sale, the due date of all Apple invoices shall be accelerated so that they become due and payable as of the date of notice of termination.

**10. GENERAL TERMS.**

A. **Governing Law.** To the extent permitted by applicable law, these Terms and Conditions of Sale will be governed and interpreted under the laws of California, U.S.A., without regard to its conflict of laws provisions.

B. **Notices.** Any notice under these Terms and Conditions of Sale, must be in writing and will be deemed given upon the earlier of actual receipt or ten (10) days after being sent by first class mail, return receipt requested, to an address as may be provided by the parties.

C. **Severability.** If a court of competent jurisdiction holds that any provision of these Terms and Conditions of Sale is invalid or unenforceable, the remaining provisions of these Terms and Conditions of Sale will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of these Terms and Conditions of Sale.

D. **Waivers.** A party's waiver of any breach by the other party or failure to enforce a remedy will not be considered a waiver of subsequent breaches of the same or of a different kind.

E. **Assignments.** Buyer shall not assign its order, or any interest therein, or any rights hereunder without the prior written consent of Seller.

F. **Entire Agreement.** These Terms and Conditions of Sale contain all the agreements, warranties, understandings, conditions, covenants, and representations made between Buyer and Apple. Neither Buyer nor Apple will be liable for any agreements, warranties, understandings, conditions, covenants, or representations not expressly set forth or referenced in these Terms and Conditions of Sale.

G. **Modifications.** No modification to these Terms and Conditions of Sale will be binding unless in writing and signed by an authorized representative of each party.

**H. Signature Authorization**

The person signing this Agreement certifies that he or she has authority to contractually bind Buyer to the terms and conditions of this Agreement. Also, the person signing this Agreement certifies that Buyer's policies do not prohibit the acceptance and execution of terms and conditions in electronic form.

CONTRACT REVIEWED  
AND APPROVED:  
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These Limited Billing Service Account Terms and Conditions of Sale ("Terms and Conditions of Sale") are made between Apple Inc., a California corporation located at 1 Infinite Loop, Cupertino, CA 95014 ("Apple") and:

By checking this box, I represent and warrant that all the information provided is true and correct and that I am authorized to agree to the terms and conditions in this Agreement on behalf of said applicant. I have read and accept the terms and conditions of this Agreement and acknowledge this will be accepted as my signature in lieu of a written signature with full force and effect.

### Export Control Form

The U.S. government prohibits the use of Apple products in the design, development, production, collection, or use of nuclear, chemical and biological weapons and missiles. In order to help ensure that Apple meets its export obligations, please certify entity will abide by the following:

#### NUCLEAR END-USE

Entity is not involved in any nuclear activity such as the following:

- Nuclear Explosive activities
- Nuclear Reactor
- Critical facility for nuclear development
- Facility for the fabrication of nuclear fuel
- Facility for the conversion of nuclear material from one chemical form to another or separate storage installation
- Facilities for the chemical processing of irradiated special nuclear source material
- Facilities for the production of heavy water
- Facilities for the separation of isotopes of source and special nuclear material
- Facilities for the fabrication of nuclear reactor fuel containing plutonium

#### CHEMICAL AND BIOLOGICAL WEAPONS

Entity is not involved in the design, development, production, stockpiling, or use of chemical or biological weapons.

#### MISSILE TECHNOLOGY

Entity is not involved in the design, development, production, or use of any rocket systems (including ballistic missile systems and space launch vehicles and sounding rockets) and unmanned air vehicles (including cruise missile systems, target drones and reconnaissance drones) end-uses.

#### CERTIFICATION

Entity acknowledges that the products purchased from Apple Inc. are subject to certain restrictions imposed by the United States Export Administration Regulations. In accordance with those regulations, entity will not knowingly sell or make available any of the Apple products to: (I) any entity listed on the various United States Agencies' Restricted Parties Lists, or (II) any other person, firm, corporation or other entity that is engaged in the research, design, development, production, testing, stockpiling or use of any nuclear, chemical or biological weapons or missiles.

Entity further acknowledges that using these products for nuclear, chemical and biological weapons or missile technology proliferation activities, without first obtaining the required license, constitutes a violation of US Export Administration Regulations.

Entity agrees that it will not export, re-export, resell or transfer any Apple products to any country to which trade is embargoed by the United States. (Currently embargoed countries: Cuba, Iran, North Korea, Sudan and Syria)

If you are unable to agree to the terms above, please contact Apple's Worldwide Channel Compliance Department at [wwchannelcompliance@apple.com](mailto:wwchannelcompliance@apple.com).

By checking this box, I represent and warrant that all the information provided is true and correct and that I am authorized to agree to the terms and conditions in this Agreement on behalf of said applicant. I have read and accept the terms and conditions of this Agreement and acknowledge this will be accepted as my signature in lieu of a written signature with full force and effect.

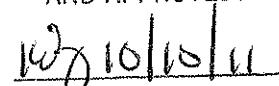
#### Company and Location Information

Legal Name

Operating As/Doing Business As Name

Address Line 1

Address Line 2

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Address Line 2

Country

State/Province/Region

City

Postal Code

**Authorized Representative**

First Name

Last Name

Title

Email

Phone

Fax

All connections to our server are logged and traced: YOUR IP ADDRESS HAS BEEN LOGGED: 199.164.68.140

Note:

If you would like to print and review the terms and conditions of this agreement prior to accepting and submitting it to Apple, please use your browser's print function to print this agreement and retain for your records.



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