

WV Network for Educational Telecomputing

837 Chestnut Ridge Road
Morgantown, WV 26505

Voice: (304) 293-5192
Fax: (304) 293-5540

Purchase Order

#29099 CO#8

Please show this number on all packages and documents related to this order.

P Doc No.:

Page #:

Vendor:

Apple Computer Inc
1 Infinite Loop
Cupertino, CA 95014

Ship to:

WVNET
837 Chestnut Ridge Road
Morgantown, WV 26505

Invoice to:

Accounts Payable
WVNET
837 Chestnut Ridge Road
Morgantown, WV 26505

WVFIMS: 89000

FEIN: 942-404-110

Date	Buyer	Ship Via	F. O. B.	P. O. Date	Terms	Delivery Date Required
6/12/07	GK		Destination	1/30/01	Net 30	

Item	Quantity	U/M	Description	Unit Price	Extended Price
			<p>CHANGE ORDER #8</p> <p>Change order to enter into a new contract with new terms and conditions approved by the WV Attorney General Office on May 25, 2007.</p> <p>Contract Period: February 1, 2007 - December 31, 2007</p> <p>There are (3) three renewals remaining.</p> <p>Contact: Robin Martinez</p> <p>Phone: 408-974-1406 FAX: 408-974-4908</p> <p>Email: rmartinez@apple.com</p>		

AUTHORIZED AGENT:	DISCOUNT	
AUTHORIZED SIGNATURE: <i>Richard H. Donovan 6/13/07</i>	ADDL. CHARGES	
ATTORNEY GENERAL: (if required)	PURCHASE ORDER TOTAL	OPEN END

ACCOUNTING INFORMATION: This order is tax exempt. Exemption #:550571237

TERMS AND CONDITIONS

1. **ACCEPTANCE:** Seller shall be bound by this Order and its terms and conditions upon receipt of this Order. This Order expressly limits acceptance to the terms and conditions stated herein. Additional or different terms proposed by the Seller are objected to and are hereby rejected, unless otherwise provided for in writing by the Buyer and approved by the Attorney General.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the Procedural Rules of the Governing Board having jurisdiction shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder, may be assigned by the Seller without the Buyer's consent.
4. **BUYER:** For the purposes of these Terms and Conditions, the "Buyer" means the institution purchasing goods and services for which a Purchase Order has been lawfully issued to the Seller.
5. **CANCELLATION:** The Buyer may cancel any Purchase Order/Contract upon 30 days written notice to the Seller.
6. **COMPLIANCE:** Seller shall comply with all federal, state and local laws, regulations and ordinances including, but not limited to, the prevailing wage rates of the W. Va. Division of Labor, if applicable.
7. **DELIVERY:** For exceptions to the delivery date as specified in the Order, the Seller shall give prior notification and obtain the approval of the Buyer. Time is of the essence of this Order and it is subject to termination by the Buyer for failure to deliver on time.
8. **DISPUTES:** Disputes arising out of the agreement shall be submitted to the West Virginia Court of Claims.
9. **HOLD HARMLESS:** The Buyer will not agree to hold the Seller or any other party harmless because such agreement is not consistent with state law.
10. **MODIFICATIONS:** This writing is the parties' final expression of intent. No modification of this Order shall be binding unless agreed to in writing by the Buyer.
11. **NON-FUNDING:** All services performed or goods delivered under this Purchase Order/Contract are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
12. **ORDER NUMBERS:** Contract Order numbers or Purchase Order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices and correspondence.
13. **PAYMENTS AND INTEREST ON LATE PAYMENTS:** Payments may only be made after the delivery of goods or services. Interest may be paid on late payments in accordance with the West Virginia Code.
14. **RENEWAL:** The Contract may be renewed only upon mutual written agreement of the parties.
15. **REJECTION:** All goods or materials purchased herein are subject to approval of the Buyer. Any rejection of goods or materials resulting in nonconformity to the terms, conditions or specifications of this Order, whether held by the Buyer or returned to the Seller, will be at the Seller's risk and expense.
16. **SELLER:** For the purposes of these Terms and Conditions, the "Seller" means the vendor whose quotation, bid, proposal or expression of interest has been accepted and has received a lawfully issued Purchase Order from the Buyer.
17. **SHIPPING, PACKING, BILLING & PRICING:** Unless otherwise stated, all goods are to be shipped prepaid, FOB destination. No charges will be allowed for special handling, packing, wrapping, bags, containers, etc., unless otherwise specified. All goods or services shall be shipped on or before the date specified in this Order. Prices are those that are stated in this Order. No price increase will be accepted without written authority from the Buyer.
18. **TAXES:** The State of West Virginia (the Buyer) is exempt from Federal and State taxes and will not pay or reimburse such taxes.
19. **TERMINATION:** In the event of a breach by the Seller of any of the provisions of this contract, the Buyer reserves the right to cancel and terminate this contract forthwith upon giving written notice to the Seller. The Seller shall be liable for damages suffered by the Buyer resulting from the Seller's breach of contract.
20. **WARRANTY:** The Seller expressly warrants that the goods and/or services covered by this Order will: (a) conform to the specifications, drawings, samples or other description furnished or specified by the Buyer; (b) be merchantable and fit for the purpose intended; (c) be free and clear of all liens, claims and encumbrances of any kind; and/or (d) be free from defect in material and workmanship.



Education/State & Local Government Purchase Agreement

This Education/State & Local Government Purchase Agreement ("Agreement") is made between Apple Inc., a California corporation located at 1 Infinite Loop, Cupertino, CA 95014 ("Apple") and:

Institution or Agency Name ("Purchaser"): WVNET
Address: 837 CHESTNUT RIDGE ROAD
City, ST, Zip: MORGANTOWN, WV 26505

Purchase Authorizations

Purchaser represents and warrants the following (indicate by checking **one** box only):

Check this box if Purchaser is a **private** entity.

Check this box if Purchaser is a **public** entity.

Apple reserves complete discretion in making eligibility determinations. Should Purchaser's status change, Purchaser shall notify Apple immediately.

1. Definitions

A. Apple Products. "Apple Products" means hardware, software, service, support, and training products manufactured, distributed or licensed ("sold") under the Apple brand name, that Purchaser may acquire from Apple for its own use.

B. Products. "Products" means hardware, software, service, support and training products, including Apple Product that may be sold by Apple to Purchaser for Purchaser's own use.

2. Purchases from Apple

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

B. Price. Prices shall be as set forth on the applicable Apple price list in effect on the date Purchaser's order is accepted by Apple. Apple reserves the right to accept or decline any order, in whole or in part. Apple may cancel any accepted order prior to shipment. Unless Purchaser notifies Apple otherwise, Apple may make partial shipments of Purchaser's orders. Apple will not be liable for any failure to ship complete orders. Purchaser 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 Purchaser. Prices include standard freight and insurance using an Apple-selected carrier. All applicable local sales or use taxes, duties and other imposts, if any, due on account of purchases hereunder shall be paid by Purchaser. Proof of tax exempt status must be on file at Apple's Support Center for any order to be treated as a tax-exempt transaction.

C. Delivery. Title and risk of loss to all Products will pass to Purchaser 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 this Agreement, 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 Agreement, 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.

D. Payment. Purchaser shall be invoiced upon shipment of Products and, provided Purchaser is qualified for credit with Apple, payment of such invoice will be due no later than thirty (30) days from date of invoice. Apple will also charge for any fees due from Purchaser by regulation or statute, including, if applicable, fees due under the California Electronic Waste Recycling Act or similar statutes in other states. Apple reserves the right to change the Authorized Apple Price Lists and Purchaser's credit terms at any time.

3. Limited Warranty

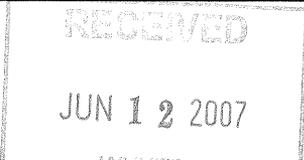
A. The sole warranty for Apple Product, if any, purchased under this Agreement shall be Apple's standard Limited Warranty as set forth in the documentation that accompanies each Apple Product.

B. All Products, other than Apple Product, are sold "as is" and without warranty or support from Apple, but may be accompanied by a manufacturer's warranty, as more particularly provided in any warranty documentation that accompanies such Products. Upon Purchaser's request, Apple will provide a copy of any manufacturer's warranty accompanying Products offered by Apple under this Agreement.

4. Proprietary Rights. Purchaser, as an end user, is licensed to use any software contained in the Products, subject to the terms of the license accompanying the Products, if any, and the applicable patent, trademark, copyright, and other intellectual property, federal and state laws of the United States. Unless Purchaser has obtained Apple's prior written consent, Purchaser, in addition to any obligations or restrictions set forth in any license that may accompany a Product, shall not copy the software, except to back up or for archival purposes, and Purchaser shall promptly affix to any such copy the same proprietary and copyrights notices as were affixed to the original. Purchaser shall not disassemble, decompile, reverse engineer, copy, modify, create derivative works thereof, or otherwise change any of the software or its form.

5. End User Indemnification

A. Apple will defend any proceeding or action brought by a third party against Purchaser to the extent based on a claim that: (1) the marketing or licensed use of any Apple-branded product sold by Apple that Purchaser has paid to acquire infringes any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party; or (2) a defective Apple Product directly caused death or personal injury or damage to tangible property (provided the product at issue has not been altered, modified or otherwise changed by Purchaser). Apple will indemnify Purchaser





for damages awarded to third parties solely as a result of such claims. Apple's obligation to so defend and indemnify Purchaser is contingent on Purchaser's compliance with the Notice/Defense paragraph set forth below.

B. Notice/Defense: Purchaser shall promptly notify Apple of any claim, demand, proceeding or suit of which Purchaser becomes aware which may give rise to a right of defense or indemnification pursuant to this section ("Claim"). Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to Apple within thirty (30) days of Purchaser's first learning of such proceeding. Notice must include an offer to tender the defense of the Claim to Apple. Apple, if it accepts such tender, may take over sole control of the defense of the Claim. That control includes the right to take any and all actions necessary to completely and finally resolve the Claim by settlement or compromise. Upon acceptance of tender, Purchaser will cooperate with Apple with respect to such defense and settlement. If a Claim is settled and to the extent permitted by law, both parties will not publicize the settlement and will make every effort to ensure the settlement agreement contains a non-disclosure provision.

6. Limitation of Liabilities and Remedies. To the extent permitted by law, the total liability of Apple, whether in contract, warranty, tort, strict liability, statute or otherwise, shall be limited to an amount not to exceed one million dollars (\$1,000,000) for all claims arising out of this Agreement, except with respect to defective Products that directly cause death, personal injury or tangible property damage. IN NO EVENT, WHETHER AS A RESULT OR BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL APPLE 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. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claims against Apple under or related to this Agreement.

7. Term and Termination

A. Term; Termination. Unless terminated earlier as provided in this Agreement, the initial term of this Agreement shall be from the date Apple signs it until March 31, 2008; 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, this Agreement shall be renewed for additional one (1) year periods. Either party may terminate this Agreement without cause upon thirty (30) days prior written notice. Either party may terminate this Agreement immediately in the event the other is in material breach of this Agreement

B. Survivorship. Those sections that by their nature survive expiration or termination of this Agreement will survive expiration or termination.

8. General

A. Governing Law. If Purchaser is a public institution or agency, this Agreement will be governed and interpreted under the laws of the state in which Purchaser is located. If Purchaser is a private institution, this Agreement will be governed and interpreted under the laws of the State of California, without regard to its conflict of laws provisions (in the event that litigation commences, the parties agree that the venue shall be Santa Clara County, California.)

B. Severability. If a court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the remaining portions of this Agreement 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 the Agreement.

C. 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 a different kind.

D. Export Compliance. Purchaser agrees that it will not export or transfer any commodities, technical data or software in violation of U.S. Export control laws and regulations.

E. Entire Agreement; Modifications. This Agreement supersedes all previous agreements and representations of, between or on behalf of the parties. This Agreement contains all of Apple's and Purchaser's agreements, warranties, understandings, conditions, covenants, and representations. Neither Apple nor Purchaser will be liable for any agreements, warranties, understandings, conditions, covenants, or representations not expressly set forth or referenced in this Agreement. Apple may refuse any different or additional provisions in purchase orders, invoices or similar documents and such refused provisions will be unenforceable. Except as otherwise provided in this Agreement, no modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party.

F. Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and shall have the same force and effect as an original but such counterparts together shall constitute one and the same instrument.

The duly authorized representatives of the parties execute this Agreement as of the dates set forth below.

Purchaser	Apple Inc.
SIGNATURE: <u><i>Gregory A Kidder</i></u>	SIGNATURE: <u><i>Michael Taloni</i></u>
PRINT NAME: <u>GREGORY A KIDDER</u>	PRINT NAME: <u>Michael Taloni</u>
TITLE: <u>TECHNOLOGY Procurement Officer</u>	TITLE: <u>Education Contracts Manager</u>
DATE: <u>6/8/2007</u>	DEPT: <u>Sales Contracts Management</u>
	EFFECTIVE DATE: <u>5/29/07</u>

AGREEMENT ADDENDUM

TO APPLE INC. EDUCATION / STATE & LOCAL GOVERNMENT PURCHASE AGREEMENT

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **ARBITRATION** - Any references to arbitration contained in the agreement are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. *Agency agrees to promptly pay for all product delivered and services performed prior to date of termination.* However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - Deleted. See Section 6 of Apple Inc. Agreement, Version WV NET Revised LOL 5/25/07.
14. **RIGHT TO TERMINATE** - Either party shall have the right to terminate the agreement upon thirty (30) days written notice to the other.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

WVNET

APPLE INC.

Signed:

Signed:

Title:

Title:

Date:

Date:

Approved as to form prior to signature this 25th day of May, 2007 by Dawn E. Warfield, Deputy Attorney General