

# Purchase Order

# WVNET

837 Chestnut Ridge Road  
Morgantown, WV 26505

Direct all inquiries regarding this order to: (304) 293-5192

Purchase Order #

29157



Vendor FEIN:  
880-411-440

Vendor WVFIMS #  
0000384257

THIS ORDER IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS PRESENTED ON REVERSE SIDE HEREOF AND AS SET FORTH HEREIN.

To:  
eVISIONS INC  
18818 TELLER AVE STE 250  
IRVINE CA 92612

Ship To:

WVFIMS Account #.

P.O. Date	Buyer	Ship Via	F.O.B.	Terms	Contract #
061301	GROSS		DESTINATION	NET 30	

Item #	Quantity	Description	Contract Item #	Contract Page #	Unit Price	Extended Price
		<p><b>OPEN-END CONTRACT</b></p> <p>To establish an open-end contract to allow WV Higher Education institutions to purchase software and support, including free web-based training, installation support for forms, printing of purchase orders and checks to operate with Banner Finance. Contract provides institutions ability to buy the institution's one-time licensing fee and the annual support fee.</p> <p>Contract effective June 5, 2001 through June 4, 2002; with options to renew for annual support fees.</p> <p>Contact: Torrence Sullivan Phone: 949-833-1384 Fax: 949-833-0327 Email: tsullivan@evisions.com</p> <p>OPTIONS: \$3000.00 initial licensing fee for NoStep Laser Printed A/P Check Module for Banner (includes 1st year support). \$2000.00 initial licensing fee for NoStep Laser Printed P/O Module for Banner (includes 1st year support). \$500.00 per module, Annual Support Fee.</p> <p>THIS ORDER IS EXEMPT FROM ALL SALES TAX LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER</p>				

WV State Purchasing Division  
Administration Unit  
Certified Encumbered

JUN 21 2001

*Amy Fairchild*

FUND	AREA	ORG.	STATE LINE ITEM	OBJ. CODE	ENCUMBER AMOUNT	Total
						OPEN-END

Bill original invoice and 2 copies to:  
WVNET  
Accounts Payable  
837 Chestnut Ridge Road  
Morgantown, WV 26505

**APPROVED FOR ONE FISCAL YEAR**

*L Gross* 06/13/01  
Authorized Signature Date

*Dawn E Wayfield*  
Attorney General (for orders, \$15,000.00 and over) Date

**QUOTE**

West Virginia Network  
 837 Chestnut Ridge Road  
 Morgantown, WV 26505

DATE 6/5/2001

QUOTE # 20003412

Fax #:

Product	Description	Qty	Rate	Amount
A/P	NoStep Laser Printed Accounts Payable Check Module for Banner	1	3,000.00	3,000.00
P/O	NoStep Laser Printed Purchase Order Module for Banner	1	2,000.00	2,000.00

This quote applies to all of the West Virginia Network Schools, Colleges, Universities, and Administrative Organizations using the SCT/Banner system. It may be applied to individual locations or the quantities may be increased for centralized purchases. The discounts shown are in consideration of a group purchase of 6 or more containing the same basic layout, but with the exception of different logos, signatures, bank codes, and MICR encoding. The Purchase Orders will have up to 4 copies, each of which will have the same format, excepting watermarks or other formatting to distinguish them from one another. The annual licensing fee for each module is \$500, a total of \$1000 for both Accounts Payable and Purchase Orders. This pricing is not available to individual institutions outside the WVNET. Our price includes FREE web-based training, installation support, on-line and telephone post-sale technical support, and FREE upgrades.

**TOTAL****\$5,000.00****We look forward to working with you!**


*[Signature]* June 5, 2001

**OUR FEDERAL TAX ID# IS 88-0411440**

## EVISIONS NO-STEP™ SOFTWARE LICENSE AND SALES AGREEMENT

**THIS AGREEMENT** ("Agreement") is hereby entered into between Evisions, Inc., with offices at 18818 Teller Ave., Suite 250, Irvine CA 92612 ("Licensor") and West Virginia Network, located in Morgantown, West Virginia, representing a network of educational institutions, ("Licensee") on the following terms and conditions:

1. Licensed Products. The parties are entering into this Agreement to establish a general relationship and procedure whereby Licensee, (or any of it's network members), may from time to time order software products (in each case, a "Licensed Product") from Licensor's available NoStep™ Laser Check Products to be temporarily evaluated or to be licensed for immediate operational use according to the terms and subject to the conditions set forth herein and in the applicable Order Form.

2. Scope of Use.

(a) Operating Licenses. With respect to each Licensed Product ordered by Licensee's network member, and accepted by Licensor, the Licensee or network member, is granted a nonexclusive license to install, store, load, execute and display (collectively, "Use") the Licensed Product according to the applicable License Type (described below) designated on the applicable Order Form. Licensor's acceptance of an Order Form shall be by written acceptance or by shipment of the Licensed Products. If a particular License Type is not specified on the Order Form, the Licensee shall be deemed to receive a System-Wide License.

(i) System-Wide License. Licensee or network member, is granted a nonexclusive license to Use as many copies of the Licensed Product as it deems necessary in support of personnel (per individual network member) Using the particular information system on which the Licensed Product was originally installed (Code: SWL).

3. Term. The term of this Agreement is comprised of two parts: an "Ordering Period" during which Licensee may place orders for Licensed Products; and the term of "Operating Licenses" granted under Section 2(a)("Operating Licenses") for Licensed Products delivered under this Agreement.

(a) Ordering Period. The Ordering Period for this Agreement shall commence on the date last below written and shall continue in full force and effect for a period of one (1) year, unless terminated earlier in accordance with Section 11 ("Termination").

(b) Operating Licenses. Subject to one-time payment of applicable license fee, the term for any Operating License granted under Section 2(a)("Operating Licenses") shall commence upon Licensor's acceptance of an Order Form describing the Licensed Product and shall continue in full force and effect indefinitely, unless terminated earlier in accordance with Section 11 ("Termination").

4. Program Code & Documentation.

(a) Program Code. Unless otherwise specified in an Order Form accepted by Licensor, the Licensed NoStep™ Product(s) shall be provided to Licensee or network member, and Used strictly in machine-readable object code format. No source code or technical-level documentation are licensed under this Agreement.

(b) Program Documentation. The Licensee or network member, shall be provided one (1) copy of "Documentation" describing in reasonable detail understandable by a user of general proficiency the use and operation of the Licensed Product. The Documentation shall be supplied in electronic form and may be reproduced by Licensee for purposes authorized herein.

5. Acceptance. A Licensed Product shall be deemed accepted by Licensee unless Licensee notifies Licensor in writing of a material defect in the Licensed Product within ten (10) business days after delivery and commencement of the Operating License.

6. Support Services. For a period of at least five (5) years after expiration of any warranty under Section 9 ("Warranties"), the Licensee shall have the option (exercised by payment of the Annual Support Fee set forth in the Schedule of Prices) to receive the Licensed Product support services set forth below.

(a) Hotline Service. Assistance for error correction and advice on the use and operation of the most current version of the Licensed Product, Monday through Friday, from 9:00 a.m. to 5:00 p.m., Licensor's local time (PST). Service requests

transmitted during non-business hours shall be considered received by the Licensor on the next business day. Trouble Reports shall be communicated by telephone, email or fax machine and shall provide sufficient information to enable Licensor to replicate and diagnose the reported problem. Licensor shall be provided reasonable access to the Licensed Product via remote dial-in contact, subject to Licensee's normal security requirements. Unless otherwise agreed, out-of-scope work or maintenance work outside regular business hours shall be subject to a surcharge equal to the Licensor's current labor rate.

(b) Updates. Copies of each revision or "Update" to the Licensed Product and associated Documentation which Licensor generally distributes. The Licensor's designation of an item as a new version or an enhancement rather than an Update shall be conclusive unless clearly erroneous. Licensee agrees to install all Updates within the time period designated by Licensor. The Licensor shall only provide support for the most recent version of the Licensed Product, incorporating all Updates.

(c) Certain Conditions. Licensor shall not be obligated to provide support service if: (i) the reported error was caused by unauthorized changes in Licensed Product source code, program parameters or other user adjustable features; (ii) the error results from operator error, errors in data not supplied by Licensor or use that is not in accordance with the Documentation or specifications; (iii) the error is in a prior release that was corrected through issuance of an Update that Licensee has failed to install, or (iv) the Licensee or network member has failed to pay any required Annual Support Fee or is otherwise in default of this Agreement.

(d) Training. This Agreement provides for training services sufficient to operate Product. This shall include teleconferences as necessary and electronic documentation to supplement oral conversations.

7. Prices & Payment. The prices for Licensed Products and any services provided hereunder are set forth on the formalized quote supplied by Licensor. Invoiced amounts shall be paid within thirty (30) days from date of invoice. Licensee or network member may not withhold or "setoff" any amounts due hereunder. Licensor reserves the right to stop work and assert appropriate liens until all amounts due are paid in full.

#### 8. Confidential & Proprietary Information.

(a) Acknowledgment. Licensee hereby acknowledges that the Licensed Product (including any Documentation, source code, translations, compilations, partial copies and derivative works) contains confidential and proprietary information belonging exclusively to Licensor or such third party as may be identified on the Licensed Product or applicable Documentation ("Confidential & Proprietary Information"). Confidential & Proprietary Information does not include: (i) information already known or independently developed by the Licensee outside the scope of this relationship by personnel not having access to any Confidential & Proprietary Information; (ii) information in the public domain through no wrongful act of the Licensee, or (iii) information received by the Licensee from a third party who was free to disclose it.

(b) Covenant. With respect to the Confidential & Proprietary Information, and except as expressly authorized herein, the Licensee hereby agrees that during the Term and at all times thereafter it shall not use, commercialize or disclose such Confidential & Proprietary Information to any person or entity, except to its own employees having a "need to know" (and who themselves are bound by similar nondisclosure restrictions), and to such other recipients as the Licensor may approve in writing; provided that all such recipients shall have first executed a confidentiality agreement in a form acceptable to Licensor. Neither the Licensee nor any recipient shall: (i) alter or remove from any Licensed Product or associated Documentation any proprietary, copyright, trademark or trade secret legend, or (ii) attempt to decompile, disassemble or reverse engineer the Licensed Product or other Confidential & Proprietary Information (and any information derived in violation of such covenant shall automatically be deemed Confidential & Proprietary Information owned exclusively by Licensor). The Licensee and its personnel shall use at least the same degree of care in safeguarding the Confidential & Proprietary Information as it uses in safeguarding its own confidential information, but in no event shall less than due diligence and care be exercised. Upon termination, Licensee shall return or destroy all Confidential & Proprietary Information in its possession or control and cease all further use thereof.

(c) Injunctive Relief. Licensee acknowledges that violation of the provisions of this Section would cause irreparable harm to Licensor not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation.

#### 9. Warranties.

(a) Noninfringement Warranty. Licensor represents and warrants that the Licensed Product, when properly used as contemplated herein, will not infringe or misappropriate any United States copyright, trademark, patent, or the trade secrets of any third persons. Upon being notified of such a claim, Licensor shall (i) defend through litigation or obtain through negotiation the right of Licensee to continue using the Licensed Product; (ii) rework the Licensed Product so as to make it

noninfringing while preserving the original functionality, or (iii) replace the Licensed Product with functionally equivalent software. If none of the foregoing alternatives provide an adequate remedy, Licensee may terminate all or any part of this Agreement and recover only amounts paid for the infringing Licensed Product.

(b) Limited Performance Warranty. Licensor represents and warrants for a period of one (1) year from delivery ("Warranty Period") that it will make its best effort to ensure the Licensed Product operates substantially in accordance with the applicable Documentation; provided, that (i) the Licensed Product is installed, implemented and operated in accordance with all instructions supplied by Licensor; (ii) Licensee notifies Licensor of any such defect within ten (10) calendar days after the appearance thereof; (iii) Licensee has properly installed all updates made available with respect to the Licensed Product, and updates recommended by Licensor with respect to any third party software products (including operating system software) that materially affect the performance of the Licensed Product; (iv) Licensee has properly maintained all associated equipment, software and environmental conditions in accordance with applicable specifications and industry standards; (v) Licensee has not introduced other equipment or software creating an adverse impact on the Licensed Product; (vi) Licensee has paid all amounts due hereunder and is not in default of any provision of this Agreement; (vii) Licensee has made no changes (nor permitted any changes to be made other than by or with the express approval of Licensor) to the Licensed Product source code.

(c) No Undocumented Features. Licensor represents and warrants that (i) the Licensed Product will not contain any timer, counter, lock or similar device (other than security features specifically approved by Licensee in the specifications) that inhibits or in any way limits its ability to operate, and (ii) it will scan the Licensed Product with commercially available anti-virus software and shall use due diligence to remove viruses capable of being detected with such software. All corrections shall be as fully warranted as the original work through expiration of the original Warranty Period.

(d) Warranty Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION ("WARRANTIES") THE LICENSOR HEREBY DISCLAIMS WITH RESPECT TO ALL LICENSED PRODUCTS, SUPPORT SERVICES OR OTHER DELIVERABLES PROVIDED HEREUNDER, AND ANY APPLICATIONS CREATED THROUGH USE OF THE LICENSED PRODUCT, ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, ACCURACY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE. ANY CHANGES TO SOURCE CODE TO A LICENSED PRODUCT WILL VOID THE WARRANTY PROVIDED UNDER THIS SECTION. THE FOREGOING WARRANTY DOES NOT EXTEND TO ANY APPLICATIONS CREATED THROUGH USE OF A LICENSED PRODUCT.

10. Limitation of Remedies & Liabilities. The parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk:

(a) Remedies. Except for certain injunctive relief authorized under Section 8 ("Confidential & Proprietary Information"), Licensee's sole and exclusive remedies for Licensor's default hereunder shall be (i) to obtain the repair, replacement or correction of the defective Licensed Product or services to the extent warranted under Section 9 ("Warranties") or, if Licensor reasonably determines that such remedy is not economically or technically feasible, (ii) to obtain an equitable partial or full refund of amounts paid with respect to the defective Licensed Product or services.

(b) Liabilities. LICENSOR SHALL NOT BE LIABLE FOR ANY AMOUNT EXCEEDING THE TOTAL PORTION OF THE CONTRACT PRICE ACTUALLY PAID BY LICENSEE. IN NO EVENT SHALL EITHER PARTY BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS, LOST PROFIT OR BUSINESS INTERRUPTION EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY) ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT.

11. Termination. Either party may, in addition to other relief, terminate this Agreement or any license granted hereunder if the other party breaches any material provision hereof and fails within ten (10) days after receipt of notice of default to correct such default or to commence corrective action reasonably acceptable to the aggrieved party and proceed with due diligence to completion. Termination of this Agreement or any licenses granted hereunder shall have no effect on the parties' rights or obligations to safeguard and respect Confidential & Proprietary Information under Section 8 ("Confidential & Proprietary Information"), rights or obligations under Section 9 ("Warranties"), or Section 10 ("Limitation of Remedies & Liabilities").

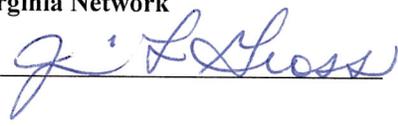
12. Disputes, Choice of Law. Except for certain emergency judicial relief authorized under Section 8(c) ("Injunctive Relief") which may be brought at any time, the parties agree that all disputes between them shall first be subject to the procedures in Section 11 ("Termination") and then shall be submitted for informal resolution to their respective chief operating officers. Any remaining disputes shall be submitted to a panel of three (3) arbitrators, with each party choosing one (1) panel member and the third member chosen by the first two (2) panel members. The proceedings shall be conducted in accordance with the

Commercial Arbitration Rules of the American Arbitration Association. The award of the arbitrators shall include a written explanation of their decision and be limited to remedies otherwise available in court. If the parties are still unable to reconcile their differences after the arbitration panel issues its award the dispute may then be taken to court by either party. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE UNITED STATES AND CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

13. Miscellaneous. This document and the accompanying attachments specifically referenced herein constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. This Agreement may be modified or amended only by a writing signed by the party against whom enforcement is sought. Except as specifically permitted herein, neither this Agreement nor any rights or obligations hereunder may be transferred or assigned by Licensee without Licensor's prior written consent and any attempt to the contrary shall be void. Licensor reserves all rights not specifically granted herein. Neither party shall be liable for delays caused by events beyond its reasonable control. Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions. Headings are for reference purposes only and have no substantive effect.

**IN WITNESS WHEREOF**, for adequate consideration and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**Evisions, Inc.**  
By:   
Name: TORRENCE SUMMAN  
Title: Business Development Director  
Date: June 1, 2001

**West Virginia Network**  
By:   
Name: Janice L. Gross  
Chief Procurement Officer  
WVNET  
Title: \_\_\_\_\_  
Date: 6-12-01

**WEST VIRGINIA NETWORK ORDER FORM – Reference#20003412**

The following proprietary software programs from Evisions and related documentation constitute "Licensed Products" within the meaning of the Software License Agreement. The "license code" described below corresponds to the codes and related descriptions contained in Section 2(a) ("Operating Licenses") of the Agreement.

<u>Product Name</u>	<u>Price</u>	<u>License Code*</u>
<b>Evisions NoStep Laser Accounts Payable Checks</b> Includes: one-time licensing fee, up to 10 hours of form modifications, free Banner upgrades and phone support the first year of ownership. Pricing predicated on all WVNetwork members utilizing the same basic layout for all checks, with the exception of different logos, signatures, bank codes, and MICR encoding.	\$3,000.00	SWL (per institution)
<b>Evisions NoStep Laser Purchase Orders</b> Includes: one-time licensing fee, up to 10 hours of form modifications, free Banner upgrades and phone support the first year of ownership. Purchase Orders will have up to 4 copies, each of which will have the same format, excepting watermarks or other items to distinguish them from one another.	\$2,000.00	SWL (per institution)
<b>Annual Support Fee</b> Includes free Banner upgrades, phone/web support and 10 additional hours of form/program modifications for one year. To be payable at the one-year anniversary of original software purchase and every year thereafter.	\$500.00 per process	ASF

This pricing is not available to individual institutions outside the WVNET.

\* Summary of License Codes:

<u>Code</u>	<u>Description</u>
SWL	System-Wide License (per institution)
ASF	Annual Support Fee

**IN WITNESS WHEREOF**, for adequate consideration and intending to be legally bound, the parties hereto have caused this Order Form to be executed by their duly authorized representatives.

**Evisions, Inc.**  
 By: \_\_\_\_\_  
 Name: TORRENCE SULLIVAN  
 Title: Business Development Director  
 Date: June 5, 2001

**West Virginia Network**  
 By: \_\_\_\_\_  
 Name: Janice L. Gross  
 Title: Chief Procurement Officer WVNET  
 Date: 6-12-01

**AGREEMENT ADDENDUM**

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. 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** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages or limiting the Vendor's liability under a warranty to a certain dollar amount or to the amount of the agreement is hereby deleted. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor.
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:  
STATE OF WEST VIRGINIA**

Spending Unit: WVNET

Signed: Janice L. Gross

Title: Chief Procurement Officer  
WVNET

Date: 6-12-01

**VENDOR**

Company Name: EVISIONS, INC

Signed: [Signature]

Title: Director, Business Development

Date: 6/5/2001