



Aivea Corporation
3075 SW 234th Ave. Suite 110
Hillsboro, OR 97123
Phone: (800) 779-7506
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Aivea Corporation

Value Added Product Reseller Agreement



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Legal Notices and Disclaimers

Disclaimers

THIS AGREEMENT IS COPYRIGHTED BY AND SHALL REMAIN THE PROPERTY OF AIVEA CORPORATION.

NO LICENSE, EXPRESS OR IMPLIED, BY ESTOPPEL OR OTHERWISE TO ANY INTELLECTUAL PROPERTY RIGHTS IS GRANTED HEREIN.

AIVEA DISCLAIMS ALL LIABILITY, INCLUDING LIABILITY FOR INFRINGEMENT OF ANY PROPRIETARY RIGHTS, RELATING TO IMPLEMENTATION OF INFORMATION IN THIS SPECIFICATION. AIVEA DOES NOT WARRANT OR REPRESENT THAT SUCH IMPLEMENTATIONS WILL NOT INFRINGE SUCH RIGHTS.

NO PART OF THIS DOCUMENT MAY BE COPIED OR REPRODUCED IN ANY FORM OR BY ANY MEANS WITHOUT PRIOR WRITTEN CONSENT OF AIVEA CORPORATION.

AIVEA CORPORATION RETAINS THE RIGHT TO MAKE CHANGES TO THESE SPECIFICATIONS AT ANY TIME, WITHOUT NOTICE.

Legal Notices

Aivea software products and service deliverables are copyrighted by and shall remain the property of Aivea Corporation and/or its Clients. Use, duplication or disclosure is subject to restrictions stated in Aivea's Software License Agreement, or in the case of software delivered to the government, in accordance with the software license agreement as defined in FAR 52.227-7013.

The Aivea logo is a registered trademark of Aivea Corporation.



< Other brands and names are the property of their respective owners >



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This Reseller Agreement is entered as of this ____ day of _____, 20__ ("Effective Date") by and between Aivea Corporation, an Oregon, USA Corporation and _____, a _____ corporation, having its principal place of business at _____ ("Reseller").

NOW THEREFORE, for good and valuable consideration, the parties hereby agree as follows:

1. GRANT OF RIGHTS

1.1 License. Subject to the terms and conditions of this Agreement, Aivea hereby grants to Reseller a non-transferable, non-exclusive license to distribute Aivea's proprietary computer program, **Aivea® eShop™ and Aivea® eShip™ Web Service** in object code format (the "Software") and any documentation supporting the Software provided from time to time by Aivea (the "Documentation") solely to third parties to whom Reseller licenses the Software for internal use and not for resale ("End Users") within the following territory (the "Territory"): _____. Any sublicense by Reseller hereunder shall be a personal use license for use on a single personal computer. Reseller shall have no right to reproduce the Software or Documentation, or any part thereof. All copies of the Software distributed by Reseller shall be distributed pursuant to Aivea's current End User License, as amended by Aivea from time to time (the "End User License"), a copy of which Aivea will provide Reseller. Reseller shall not distribute any Software to any End User unless the End User has accepted the terms of Aivea's current End User License under penalty of perjury and in writing or by a customary click-wrap mechanism. The acceptance by the End User shall include the provision required by Section 2.9.

1.2 Ownership. As between Aivea and Reseller, Aivea owns and retains all right, title, and interest in and to all Software and Documentation; all trademarks, service marks or trade names associated with the Software or Documentation (the "Trademarks"); all copyrights, patents, trade secret rights, and other intellectual property rights therein (collectively, together with the Software, Documentation, and Trademarks, the "Property"). Except as expressly granted herein, Aivea does not grant to Reseller any right or license, either express or implied, in the Software, Documentation or Property. Reseller shall not reverse engineer, disassemble, de-compile, or otherwise attempt to derive source code from the Software without the written permission of the Aivea.

1.3 Modifications. The Reseller must not, without the written permission of the Aivea, alter or modify the Software, or any part of the Software, that it re-sells in accordance with this Agreement.

1.4 Identification of Software. The Reseller must not, without the written permission of the Aivea, re-package, re-label or in any other way change any identifying features of the Software, or any brand, logo or badge associated with the Software. If the Reseller wishes to resell the Software, as part of Reseller solution with their client or their logo, the reseller must submit get approval from an authorized Aivea Account Manager on each copy of the software sold.



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1.5 Distribution. The Reseller is prohibited to distribute, re-sell the Software free of charge. The charge associated with the software may be an indirect fee associated with goods or services that the Reseller provides.

2. RESELLER'S OBLIGATIONS

2.1 Reseller's Marketing. Reseller shall not make any representations or warranties other than those contained in the Documentation and shall not make any representations or warranties on Aivea's behalf.

2.2 Trademarks; Property. During the term of this Agreement, Reseller shall have the right to use and reproduce the Trademarks in connection with Reseller's marketing, advertising, promotion and distribution of the Software. Reseller's use of the Trademarks shall not create any right, title or interest therein. Reseller shall use the Trademarks only in a manner, which complies in all material respects with Aivea's reasonable policies in effect from time to time, a copy of which shall be delivered to Reseller, and all such use shall be for Aivea's benefit. Reseller shall not remove, obscure or alter Aivea's copyright notice or the Trademarks from the Software or Documentation. If Reseller, in the course of distributing the Software, acquires any goodwill or reputation in any of the Trademarks, all such goodwill or reputation shall automatically be transferred to and shall vest in Aivea when and as, on an on-going basis, such acquisition of goodwill or reputation occurs, as well as at the expiration or termination of this Agreement, without any separate payment or other consideration of any kind to Reseller, and Reseller agrees to take all such actions necessary to effect such vesting. Reseller shall not contest the validity of any of the Property or Aivea's exclusive ownership of them. Reseller shall not adopt, use, or register, whether as a corporate name, trademark, service mark or other indication of origin, any of the Trademarks, or any word or mark confusingly similar to the Trademarks in any jurisdiction.

2.3 Support for Software. Aivea shall provide full technical support to the Reseller upon request based upon its then-customary support policies including <http://support.aivea.com> support system.

2.4 Compliance with Applicable Laws. Reseller shall comply with all laws and regulations applicable to Reseller's marketing and distribution of the Software hereunder. Without limiting the generality of the foregoing, Reseller shall, at its own expense, make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, licenses, permits and authorizations in the Territory required for Reseller to perform its obligations under this Agreement and, if applicable, shall provide Aivea with English language translations thereof.

2.5 Security Issues. Reseller shall take all action necessary to ensure that (a) the Software and Documentation on Reseller's servers or computer systems is appropriately secured so that the Software and Documentation can only be viewed, copied, or utilized by licensed End Users; and (b) that the object code of the Software can only be accessed by employees authorized by Aivea and cannot be copied or downloaded by any of Reseller's licensees or by any other third party. In addition, Reseller shall make its offices and equipment available in person, upon reasonable notice, and to the extent feasible, remotely, to Aivea to inspect and test Reseller's physical and technical set-up to ensure that Reseller is complying with



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its obligations under this Section. Reseller agrees to indemnify and hold Aivea harmless in accordance with the provisions of Section 4.4 to the extent that Reseller breaches its obligations under this Section 2.5.

2.6 Protection of Proprietary Rights. Reseller shall cooperate without charge (provided that Aivea will reimburse out of pocket expenses as agreed in advance in writing), in Aivea's efforts to protect Aivea's rights in the Property. Reseller shall promptly notify Aivea of any infringements of Aivea's Property Rights that come to Reseller's attention. Aivea shall have the exclusive right to institute infringement or other appropriate legal action against alleged infringers of its Property Rights. Aivea shall incur all expenses in connection therewith and shall retain all monetary recoveries received there from.

2.7 No Excess Representations or Warranties. Reseller covenants that it shall not make any representations or warranties with respect to the Software or Documentation in excess of those provided by Aivea herein. Reseller agrees to indemnify and hold Aivea harmless in accordance with the provisions of Section 4.4 to the extent that Reseller breaches its covenant under this Section 2.7.

2.8 Fulfillment of Reseller's Obligations. Reseller covenants that it will fulfill all of its contractual and legal obligations to its customers. Reseller covenants that it will (a) provide its customers with first quality sales and technical support with respect to any Software sold by Reseller, (b) promptly, courteously and appropriately respond to its customers questions, concerns and complaints, and (c) generally deal with its customers in a professional manner that shall add to the good reputation of Reseller and Aivea. To the extent that Reseller fails to fulfill its contractual and legal obligations to its customers, Reseller agrees that Aivea may elect to fulfill those obligations, or any portion of them, and Reseller shall reimburse Aivea any costs and expenses so incurred by Aivea. Reseller agrees to indemnify and hold Aivea harmless in accordance with the provisions of Section 4.4 to the extent that it breaches any of its covenants under this Section 2.8.

2.9 Safeguards Against Sales Outside the Territory. Reseller shall use commercially reasonable efforts to ensure that it does not make sales outside the Territory. Without limiting the foregoing, Reseller shall require its end user customers to affirm in writing or over the Internet by click-wrap, under penalty of perjury, that they are residents within the Territory. If, now or in the future, Reseller can through commercially reasonable efforts and at minimal cost determine the location of a prospective customer's computer, then Reseller shall from that time forward utilize such technology and shall not sell the Software to anyone with a location so indicated to be outside the Territory.

2.10 Agents. Reseller shall not distribute the Product Units or any portion thereof to any party, including any dealers, agents, representatives, sub-distributors, original equipment manufacturers, value added resellers, systems integrators or other third parties, other than End Users, and shall not authorize or appoint any dealers, agents, representatives, sub-distributors, original equipment manufacturers, value added resellers, systems integrators or other third parties to distribute or sublicense the Product Units.



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3. PRICE AND PAYMENT; SHIPMENT AND DELIVERY

3.1 Suggested End User Prices. Reseller is free to determine its own end user prices for the Software. Although Aivea may publish suggested end user prices for the Software from time to time, these are suggestions only.

3.2 Per Copy Fees. Reseller shall pay to Aivea for each unit of the Software distributed hereunder per copy fees (the "Per Copy Fees") equal to seventy five (75%) of the suggested end user prices for the Software, adjusted by Aivea from time to time in its sole discretion. In the event that Aivea changes the Suggested Prices, Per Copy Fees based on such changed Suggested Prices shall apply to any order for the Software received by Aivea after the effective date of the increase.

3.3 Payment. All payments to Aivea must be made in full prior to the delivery of the license file needed to remove software limitations.

3.4 Taxes, Tariffs, Fees. Aivea's Suggested Prices and Per Copy Fees do not include any national, state or local sales, use, value added or other taxes, customs duties, or similar tariffs and fees which may be required to be paid or collected upon the delivery of the Software or upon collection of the prices for the Software or the Per Copy Fees. Should any tax or levy be made, Reseller agrees to pay such tax or levy and indemnify Aivea against any claim for such amount. Reseller represents and warrants to Aivea that all Software acquired hereunder is for redistribution in the ordinary course of Reseller's business, and Reseller agrees to provide Aivea with appropriate resale certificate numbers and other documentation satisfactory to the applicable taxing authorities to substantiate any claim of exemption from any such taxes or fees.

3.5 Shipment and Delivery. Aivea shall electronically deliver software to Reseller. Reseller shall inspect all Software delivered to it, upon receipt and shall, within 10 days of receipt, give written notice to Aivea of any claim of damage or missing portions. Should Reseller fail to give such notice, or fail to obtain an extension of such 10-day period from Aivea, the packages shall be deemed to be accepted by Reseller. Aivea shall use commercially reasonable efforts to meet delivery dates requested by Reseller, but in no event shall Aivea be liable for its failure to meet such dates. In the event that Aivea shall be unable to meet Reseller's requested ship dates, Aivea shall advise Reseller of the change in or actual delivery schedule.

4. WARRANTY AND LIABILITY

4.1 Product Warranty. With respect to Software delivered by Aivea to Reseller on CD-ROM, Aivea warrants that for a period of thirty (60) days following delivery to Reseller, the media on which the Software is furnished to Reseller will be free from defects in materials and workmanship during normal use. Aivea warrants that its Software will substantially conform to the user documentation. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS". AIVEA HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR



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STATUTORY, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4.2 Product Indemnity. Aivea will indemnify, defend and hold Reseller and its subsidiaries (each, an "Indemnified Party"), harmless from and against any and all claims, losses, costs, liabilities and expenses (including reasonable attorneys' fees), arising as a result of or in connection with any claim that the Software or Documentation infringes any intellectual property right of a third party provided: (i) the Indemnified Party promptly gives written notice of any claim to Aivea; (ii) the Indemnified Party provides any assistance which Aivea may reasonably request for the defense of the claim (with reasonable out of pocket expenses paid by Aivea); and (iii) Aivea has the right to control of the defense or settlement of the claim, provided, however, that the Indemnified Party shall have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense. Additionally, if an injunction or order issues restricting the use or distribution of any of the Software or Documentation, or if Aivea determines that the Software or Documentation are likely to become the subject of a claim of infringement or violation of any proprietary right of any third party, Aivea shall in its discretion and, at its option (a) procure the right to continue using, reproducing, and distributing the Software and Documentation; (b) replace or modify the Software and Documentation so that they become noninfringing, provided such modification or replacement does not materially alter or affect the specifications for or the use or operation of the Software; require return of the Software to Aivea and refund any licensing fees relating to the future use of the Software.

4.3 LIMITATION OF LIABILITY. EXCEPT FOR AIVEA'S OBLIGATIONS UNDER SECTION 4.2, IN NO EVENT SHALL AIVEA'S OR ITS LICENSORS' LIABILITY TO RESELLER OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY AIVEA HEREUNDER DURING THE PREVIOUS SIX (6) MONTHS. IN NO EVENT SHALL ANY PARTY OR AIVEA'S LICENSORS BE LIABLE TO ANOTHER PARTY OR ANY THIRD PARTY FOR LOSS OF DATA, COSTS OF PROCUREMENTS OF SUBSTITUTE GOODS OR SERVICES OR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER ANY CAUSE OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

4.4 Indemnification. Reseller shall indemnify and hold Aivea harmless from and against any and all damages, liabilities, costs and expenses (including reasonable attorney's fees) which Aivea incurs as a result of any claim based on any breach of any representation or warranty, covenant or agreement by Reseller under this Agreement or any breach of this Agreement by Reseller; provided: (i) that Aivea promptly gives written notice of any claim to Reseller; (ii) at Reseller's expense, Aivea provides reasonable assistance which Reseller may reasonably request for the defense of the claim; and (iii) Reseller has the right to control the defense or settlement of the claim, provided, however, that Aivea shall have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense.



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5. TRADEMARK LICENSE

5.1 Trademark License. Subject to the terms and conditions of this Agreement, Aivea hereby grants to Reseller a non-exclusive, non-transferable, revocable license, without the right to sublicense, only in the Territory, to use, display and reproduce the trademarks, service marks, or trade names owned by Aivea and placed on the applicable Product Unit or otherwise used in connection with the applicable Product Unit by Aivea ("Aivea Trademarks"), solely in connection with marketing, advertising, promotion, and distribution of the Product Units during the Term of this Agreement. As a condition to the above trademark license, Reseller agrees to fully comply with the Trademark Guidelines. All rights of Aivea in and to such Aivea Trademarks not expressly granted under this Section 5.1 are reserved by Aivea. Reseller agrees that all use of the Aivea Trademarks, and all goodwill arising out of such use, shall inure to the sole benefit of Aivea. Aivea will have the right to monitor Reseller's use of the Aivea Trademarks. From time to time and upon Aivea request, Reseller shall promptly submit to Aivea samples of all materials bearing the Licensor Trademarks, including, without limitation, any advertising, web pages, packaging or other materials. In the event of any improper use of the Aivea Trademarks, Aivea shall have the right to deliver written notice describing the improper use to Reseller, and Reseller shall immediately remedy such improper use. If Reseller fails to immediately remedy such improper use, Licensor shall have the right to terminate the trademark license contained in this Section 5.1 by providing written notice of such termination to Reseller.

5.2 Restrictions on Use. Except as permitted in this Agreement, Reseller agrees that it will not adopt or use as part or all of any corporate name, trade name, trademark, service mark, certification mark, any of the Aivea Trademarks or other marks based on "Aivea" or any other designation confusingly similar to any Aivea Trademarks. Reseller agrees that it will comply with all applicable laws and regulations pertaining to the proper use and designation of the Aivea Trademarks in a particular country. Reseller shall not make any use of the Licensor Trademarks which will tarnish, blur, or dilute the quality associated with the Aivea Trademarks or the associated goodwill. Reseller will not register any of the Aivea Trademarks or any word or combination of words containing "Aivea" or any confusingly similar designation anywhere in the world.

5.3 Notice of Infringement. Reseller agrees to notify Aivea of any unauthorized use of (i) any of the Aivea Trademarks or (ii) other trademarks or service marks by third parties based on any of the Aivea Trademarks or that are confusingly similar to any of the Aivea Trademarks. Aivea will have the sole right and discretion to bring, prosecute and settle infringement, unfair competition, and similar proceedings based on the Aivea Trademarks.

6. TERM AND TERMINATION

6.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date until 2 years and continue until terminated after the 2 year period.



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6.2 Termination of Agreement. Aivea may terminate this Agreement for convenience by giving at least thirty (90) days written notice of termination to Reseller. This Agreement may be terminated by either party in the event of a material breach of this Agreement by the other party that is not cured within thirty (30) days of the other party's receipt of written notice of such breach. If a material breach is cured within a thirty (30) day cure period this Agreement shall remain in effect as if no material breach had occurred. This Agreement shall terminate automatically without notice and without further action by the other party in the event that the other party becomes insolvent, which means it becomes unable to pay its debts in the ordinary course of business as they come due, or makes an assignment of this Agreement for the benefit of creditors.

6.3 Effect of Termination. Upon the expiration or termination of this Agreement:

(a) Reseller shall, within thirty (30) days, return to Aivea all products and demonstration copies received from Aivea, erase any and all of the foregoing from all computer memories and storage devices within Reseller's possession or control and, if requested, provide Aivea with a signed written statement that Reseller has complied with the foregoing obligations. All rights and licenses granted by Aivea hereunder shall terminate, provided such termination shall not result in the termination of end user licenses for copies of the Software which already have been purchased by end users in accordance with the provisions of this Agreement.

(b) The following shall survive termination of this Agreement: Section 1.2, the last two sentences of Section 2.2, Sections 2.3 through and including 2.9, Section 3.6, Section 4, Section 5, this Section 6 and Section 7.

6.4 Limitation of Liability Upon Termination. In the event of termination in accordance with Section 6.1, Aivea shall not be liable to Reseller because of such termination for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with the business or goodwill of Reseller.

7. GENERAL PROVISIONS

7.1 Confidentiality. By virtue of this Agreement, each party may have access to information that is confidential to the other ("Confidential Information"). Confidential Information shall include, but not be limited to, software, documentation, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, the terms and pricing under the Agreement, and any information clearly identified in writing at the time of disclosure as confidential.

A party's Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the other party; or (b) is independently developed by the other party without use of or reference to the first party's Confidential Information. In the event, Confidential Information is required to be disclosed by law or other governmental authority, a party hereunder shall not



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be prohibited from disclosing such information by this Section provided that the responding party shall first have given prompt notice to the other party hereto and shall have made a reasonable effort to obtain a protective order restricting or limiting the disclosure of the Confidential Information to the extent possible.

7.2 This Agreement Controls; Merger; Amendment; Waiver. This Agreement shall control Reseller's distribution of the Software and Documentation. All different or additional terms or conditions in any Reseller purchase order or similar document shall be null and void. This Agreement, including any Exhibits hereto, constitutes the final, complete, and exclusive agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing signed by both parties. The failure or delay by either party in exercising any right, power or remedy under this Agreement shall not operate as a waiver of any such right, power or remedy.

7.3 Notices. All notices shall be given in writing and shall be considered effective when (a) personally delivered, (b) upon confirmed receipt if sent by electronic mail or facsimile; or (c) two (2) days after posting if sent by overnight registered private carrier (e.g. DHL, Federal Express, etc.).

7.4 Assignment. Reseller may not assign any of its rights or delegate any of its obligations hereunder, whether by operation of law or otherwise, without Aivea's prior written consent. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

7.6 Force Majeure. Aivea will not incur any liability to Reseller or any other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations) to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control, and without the negligence of, the parties. Such events, occurrences, or causes include, without limitation, acts of God, telecommunications outages, Internet outages, power outages, strikes, lockouts, riots, acts of war, floods, earthquakes, fires, and explosions.

7.7 General. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect. Reseller is an independent contractor, and nothing herein shall be construed to create an employer-employee, partnership, joint venture, or agency relationship between the parties. Reseller shall have no authority, right or power to create any obligation or responsibility on behalf of Aivea. This Agreement shall be governed by and construed under the laws of State of Oregon, the Federal laws of the United States of America and the United Nations Convention on Contracts International Sale of Goods. This Agreement may be executed simultaneously in two or more counterparts, each one of which shall be deemed an original, but all of which shall constitute one and the same instrument.



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If any action at law or in equity is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses, in addition to any other relief to which it may be entitled. Any litigation relating to this Agreement may be instituted in any state or federal court in Washington County, Oregon, USA or an International Court of Law and the parties submit to the jurisdiction of any such court.

IN WITNESS WHEREOF, the following duly authorized representatives have signed this Agreement on behalf of the entities indicated below, as of the date first above written.

Aivea Corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____