

South Jersey Shore Regional Multiple Listing Service, Inc. Participant Data Access Agreement

This **AGREEMENT** is made and entered into by South Jersey Shore Regional Multiple Listing Service, Inc. ("SJSRMLS"), with offices at 204 E. White Horse Pike, P.O. Box 507, Absecon, NJ 08201; the real estate brokerage firm identified as "Firm" on the signature page below ("Firm"); the Sales Licensees affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the "Sales Licensee Party"); and the individual or business association identified as "Consultant" on the signature page below ("Consultant").

DEFINITIONS

1. For purposes of this Agreement, the following terms shall have the meanings set forth below.

Confidential Information: "Confidential Information" means information or material proprietary to a party or designated "confidential" by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all SJSRMLS Data, except to the extent to which this Agreement and the SJSRMLS Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that SJSRMLS obtains from any third party that SJSRMLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by SJSRMLS; (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive; and (e) any claims and evidence presented by any party in any arbitration under this Agreement. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

Data Interface: The transport protocols and data storage formats provided by SJSRMLS for use by Firm, Sales Licensee Party, and Consultant; SJSRMLS may modify the Data Interface in its sole discretion from time to time.

Firm Internal Use: Any use of those portions of the SJSRMLS Data relating to Firm's own listings; and any use of those portions of the SJSRMLS Data relating to listings of Participants other than Firm that exposes SJSRMLS Data only to Firm-Related Persons and to Sales Licensees affiliated with Firm, subject to the SJSRMLS Policies.

Firm-Related Persons: Consultant, if any, and employees of Firm who are not Sales Licensees or broker/managers.

IDX: Use and display of portions of the SJSRMLS Data under the Internet Data Exchange (sometimes also referred to as Broker Reciprocity) provisions of the SJSRMLS Policies.

Participant: This term has the meaning given to it in the SJSRMLS Policies. For purposes of this Agreement, "Participant" does not apply to participants of MLSs other than SJSRMLS. Where applied in this Agreement to Participants other than Firm, "Participant" also includes Sales Licensees affiliated with those Participants for whom the Participants are responsible under the laws of the State of New Jersey.

Sales Licensee: Any person holding a real estate license in New Jersey who is not a Participant but who is subject to a Participant's supervision under the laws of New Jersey.

SJSRMLS Data: Data relating to real estate for sale, previously sold, or listed for sale and data relating to SJSRMLS Participants (including text, photographs, and all other data formats now known or hereafter invented)

entered into SJSRMLS's databases by SJSRMLS Participants and SJSRMLS, or on their behalf.

SJSRMLS Policies: SJSRMLS's Rules and Regulations, as amended from time to time, and any operating policies promulgated by SJSRMLS.

VOW: Use and display of portions of the SJSRMLS Data under the Virtual Office Website (VOW) provisions of the SJSRMLS Policies.

SJSRMLS'S OBLIGATIONS

2. SJSRMLS grants to Firm and Sales Licensee Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the SJSRMLS Data, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement; any other use of the SJSRMLS Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. SJSRMLS retains all rights not expressly granted herein.

3. SJSRMLS agrees to provide to Firm (and Sales Licensee Party, where applicable) and Consultant, during the term of this Agreement, (a) access to the SJSRMLS Data via the Data Interface under the same terms and conditions SJSRMLS offers to other SJSRMLS Participants; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the SJSRMLS Policies. SJSRMLS does not undertake to provide technical support for the Data Interface or the SJSRMLS Data. The Data Interface, together with access to the SJSRMLS Data, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface, or otherwise. Any interruption or unavailability of access to the Data Interface or SJSRMLS Data shall not constitute a default under this Agreement.

FIRM'S OBLIGATIONS

4. Firm and Sales Licensee Party shall comply with the SJSRMLS Policies at all times. In the event of any perceived conflict between the SJSRMLS Policies and this Agreement, the SJSRMLS Policies shall prevail and govern.

5. Firm and Sales Licensee Party shall use the SJSRMLS Data obtained under this Agreement for Firm Internal Use, IDX, and VOW use only. Any other use is strictly prohibited. Firm and Sales Licensee Party shall not make the SJSRMLS Data or the Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Sales Licensee Party may display the SJSRMLS Data on a web site available to the public only to the extent permitted by the SJSRMLS Policies and then only on a site or sites resident at the second-level and third-level domain(s) indicated on the signature page and in Exhibit A of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Firm and Sales Licensee Party acknowledge that ownership and use rights relating to copyrights in the SJSRMLS Data are defined in the SJSRMLS Policies or in the terms of the participant and subscriber agreements between SJSRMLS Firm and Sales Licensee Party, or both. Firm and Sales Licensee Party shall not challenge or take any action inconsistent with SJSRMLS's ownership of or rights in the SJSRMLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If SJSRMLS notifies Firm or Sales Licensee Party of a breach of the SJSRMLS Policies or this Agreement and Firm or Sales Licensee Party does not immediately cure the breach, Firm and Sales Licensee Party shall hold Consultant harmless from any liability arising from Consultant's cooperation with SJSRMLS under Paragraph 10.

8. Firm and Sales Licensee Party shall pay the fees, if any, that SJSRMLS customarily charges other SJSRMLS Participants for data access. Firm and Sales Licensee Party acknowledge receipt of SJSRMLS's current schedule of such fees, if any. SJSRMLS may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm and Sales Licensee Party. Firm and Sales Licensee Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Sales Licensee Party's and Consultant's obligations under this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

CONSULTANT'S OBLIGATIONS

10. Consultant shall immediately correct any breach of this Agreement or violation of the SJSRMLS Policies within its control, whether committed by Firm, Sales Licensee Party, or Consultant, upon notice from SJSRMLS.

11. Consultant acknowledges that (as among the parties to this Agreement) Firm and SJSRMLS possess all right, title, and interest in all copyrights in the SJSRMLS Data. Consultant shall not challenge or take any action inconsistent with SJSRMLS's and Firm's ownership of or rights in the SJSRMLS Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

12. Consultant shall not make the SJSRMLS Data or the Confidential Information available to any third party, except on behalf of Firm and Sales Licensee Party and in a manner consistent with Firm's and Sales Licensee Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the SJSRMLS Data, whether commercial or personal. In the event that Consultant provides services to Participants other than Firm for to Sales Licensees affiliated with Firm other than the Sales Licensee Party), Consultant must enter separate contracts with SJSRMLS. Consultant must ascertain, using the Data Interface on a daily basis, that each Participant to which Consultant provides services remains an eligible Participant; and in the case of Sales Licensees, that each Sales Licensee Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph, will result in SJSRMLS terminating all of Consultant's access(es) to the SJSRMLS Data under this Agreement and all similar agreements. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

13. Consultant is surety for Firm's and Sales Licensee Party's obligations to pay fees under Paragraph 8. The provisions of the preceding sentence shall survive the expiration or other termination of this Agreement in perpetuity. Consultant shall notify SJSRMLS within five business days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

AUDITS OF COMPLIANCE

14. SJSRMLS may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm, Sales Licensee Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Sales Licensee Party's, and Consultant's compliance with this Agreement ("Audit"). SJSRMLS may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Sales Licensee Party's, and Consultant's web sites and systems to ensure that SJSRMLS Data is displayed in accordance with the SJSRMLS Policies; using all features available to end-users of Firm's, Sales Licensee Party's, and Consultant's systems that employ the SJSRMLS Data; and posing as consumers to register and test services Firm, Sales Licensee Party, and Consultant make available to consumers using the SJSRMLS Data. SJSRMLS shall pay the costs it incurs, and the out-of-pocket costs Firm, Sales Licensee Party, and Consultant incur, as part of any Audit; provided, however, Firm or Sales Licensee Party shall be liable for all costs of any Audit that discloses that Firm, Sales Licensee Party, or Consultant

has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

CONFIDENTIAL INFORMATION

15. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

TERM AND TERMINATION

16. The term of this Agreement begins on the date that SJSRMLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in SJSRMLS; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) immediately upon Firm's notice to a Consultant that Consultant is no longer designated to provide IDX or VOW services to it; (f) with regard to any Sales Licensee Party, immediately upon any event that results in the Sales Licensee Party no longer being affiliated with Firm; (g) as provided in Paragraphs 26 and 29.

17. In the event Firm's privileges as a Participant (or Sales Licensee Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and SJSRMLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if SJSRMLS resumes its obligations under Paragraphs 2 and 3. In the event Firm, Sales Licensee Party, or Consultant breaches this Agreement and entitles SJSRMLS to terminate under Paragraph 16, SJSRMLS may in its sole discretion suspend its performance instead of terminating this Agreement. SJSRMLS may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Sales Licensee Party's, and Consultant's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, neither Firm, Sales Licensee Party, nor Consultant shall make any further use of the SJSRMLS Data or any derivative works based on it (except the portions of it relating to Firm's own listings) until and unless Firm's or Sales Licensee Party's rights under this Agreement are restored.

GENERAL PROVISIONS

18. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of New Jersey, without regard to its conflicts and choice of law provisions.

19. **Survival of Obligations.** The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity. Other provisions shall survive according to their terms.

20. **SJSRMLS's Remedies.** (a) Injunctive relief. Because of the unique nature of the SJSRMLS Data and Confidential Information, Firm, Sales Licensee Party, and Consultant acknowledge and agree that SJSRMLS would suffer irreparable harm in the event that any of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate SJSRMLS for a breach. SJSRMLS is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further

breach by Firm, Sales Licensee Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by SJSRMLS, and without posting any bond. (b) Liquidated damages: Firm, Sales Licensee Party, and Consultant acknowledge that damages suffered by SJSRMLS from access to the SJSRMLS Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the SJSRMLS Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to SJSRMLS to enter into this Agreement, Firm, Sales Licensee Party, and Consultant agree that in the event Firm, Sales Licensee Party, Firm-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the SJSRMLS Data or disclose the SJSRMLS Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Sales Licensee Party, and Consultant shall be liable to SJSRMLS for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement. Liability of Firm, Sales Licensee Party, and Consultant under this paragraph is joint and several.

21. Limitation of liability/exclusion of warranties. IN NO EVENT SHALL SJSRMLS BE LIABLE TO FIRM, SALES LICENSEE PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF SJSRMLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL SJSRMLS BE LIABLE TO FIRM, SALES LICENSEE PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM, SALES LICENSEE PARTY, AND CONSULTANT HAVE PAID SJSRMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM, SALES LICENSEE PARTY, AND CONSULTANT ACKNOWLEDGE THAT SJSRMLS PROVIDES THE SJSRMLS DATA ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NON-INFRINGEMENT, AND ACCURACY. SJSRMLS SHALL NOT BE LIABLE TO FIRM, SALES LICENSEE PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE SJSRMLS DATA, ANY FAILURE TO UPDATE THE SJSRMLS DATA PROMPTLY, OR THE SJSRMLS DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. SJSRMLS makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.

22. Dispute resolution; Attorney's fees. In the event SJSRMLS claims that Firm, Sales Licensee Party, or Consultant has violated the SJSRMLS Policies, SJSRMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the SJSRMLS Policies, provided SJSRMLS does not also base a claim that Firm, Sales Licensee Party, or Consultant has breached this Agreement on the same facts. Except as set forth in the preceding sentence, any controversy or claim to which Consultant is not a party arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of New Jersey located in Atlantic County (or U.S. District Court nearest to Atlantic County) or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to SJSRMLS's disciplinary procedures or to arbitration. If any party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

23. Indemnification. Subject to Paragraph 21, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

24. Notice. All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.

25. No Waiver. No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by the party who is alleged to have waived its rights or to have agreed to a modification.

26. No Assignment. No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

27. Entire Agreement. Subject to SJSRMLS Policies, this Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same.

28. Relationship of the Parties. The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of SJSRMLS or have any authority to make any agreements or representations on the behalf of SJSRMLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

29. Severability. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision. In the event any provision of the limitation of liability, exclusion of warranties, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.

South Jersey Shore Regional Multiple Listing Service, Inc. Participant Data Access Agreement

Under this Agreement, FIRM AND SALES LICENSEE PARTY ARE PERMITTED TO WORK ONLY WITH THE CONSULTANT NAMED HERE. If Firm or Sales Licensee Party chooses to engage a different consultant or additional consultants, Firm must enter into a new version of this Agreement with SJSRMLS and each such consultant. Under this Agreement, CONSULTANT IS PERMITTED TO WORK ONLY WITH THE FIRM AND SALES LICENSEE PARTY NAMED HERE. Consultant may not use data obtained under this Agreement to provide any services to Participants other than Firm, or with Sales Licensees affiliated with Firm except the Sales Licensee Party. Consultant must enter into a new version of this Agreement with SJSRMLS and each additional Participant or amend this Agreement with SJSRMLS to add additional Sales Licensees affiliated with Firm as Sales Licensee Parties.

If Firm or Sales Licensee Party will perform its own technical work and there is no Consultant party to this Agreement, Firm should cross out the Consultant signature box. If this Agreement is for services to Firm only, and there is no Sales Licensee Party, Firm should cross out the Sales Licensee Party signature box.

This Agreement is for the following uses (check all that apply): IDX VOW Firm Internal Use.

<p>FIRM <u>Weichert Realtors MARLTON</u> Firm name <u>[Signature]</u> Signature of owner or officer <u>Deborah J. Allen</u> Name of owner or officer Date: <u>10/21/10</u> Contact for notices and operations matters Name: <u>DEBBIE ALLEN</u> Phone: <u>856-596-0008</u> Email: <u>DAllen@weichertrealtors.net</u> Mailing: <u>6 W. Rt 70</u> <u>MARLTON, NJ 08053</u> 2nd or 3rd Level Domain: <input checked="" type="checkbox"/> IDX <input type="checkbox"/> VOW (If more than one will be used, specify each in Exhibit A.)</p>	<p>Sales Licensee PARTY (If more than one, have each named and sign on Exhibit A.) Sales Licensee Party name Signature of Sales Licensee Party Date: _____ Contact for notices and operations matters Name: _____ Phone: _____ Email: _____ Mailing: _____ 2nd or 3rd Level Domain: <input type="checkbox"/> IDX <input type="checkbox"/> VOW (If more than one will be used, specify each in Exhibit A.)</p>
<p>SJSRMLS: South Jersey Shore Regional Multiple Listing Service, Inc. Signature _____ Name _____ Date: _____ (effective date of this Agreement) Contact for notices and operations matters Name: _____ Phone: _____ Email: _____ Mailing: _____</p>	<p>CONSULTANT <u>LPS Real Estate Group, Inc.</u> Consultant name <u>[Signature]</u> Signature of owner or officer <u>Larry Ross</u> Name of owner or officer Date: _____ Contact for notices and operations matters Name: <u>LARRY ROSS</u> Phone: <u>949-681-4793</u> Email: <u>Larry.Ross@lpsvls.com</u> Mailing: <u>2600 Michelson St. #200</u> <u>Irvine CA 92612</u></p>

**South Jersey Shore Regional Multiple Listing Service, Inc.
Participant Data Access Agreement**

Exhibit A – Additional Requirements

1. **Additional Domains.** In addition to the 2nd and 3rd level domains specified on the signature page Firm, Sales Licensee Party, and Consultant may display SJSRMLS Data subject to the terms of this Agreement at the following 2nd and 3rd level domains (attach additional pages if necessary):

_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW
_____	<input type="checkbox"/> IDX	<input type="checkbox"/> VOW

2. **Additional Sales Licensee Parties:** If there are two or more Sales Licensee Parties, each Sales Licensee Party after the first is identified by name here, and each must sign this Agreement. Each Sales Licensee Party listed here consents to SJSRMLS making communications and notices under this Agreement to Firm only. (Attached additional pages if necessary.)

_____	_____
Name	Signature
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Name	Signature
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