

YOU ARE STILL BOUND BY THIS AGREEMENT IN ITS ENTIRETY EVEN WITHOUT READING IT IN ITS ENTIRETY

EMAIL SERVICES AGREEMENT

This Agreement is by and between: Web Candy Design Inc. ("Web Candy") and THE CUSTOMER receiving this message("Customer").

WHEREAS Web Candy provides email services as more particularly defined below NOW, THEREFORE, in consideration of these mutual promises, Web Candy and Customer, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

- (a) "API" means the set of technical specifications making up the Application Program Interface; the application program being C-panel.
- (b) "Agreement" means this document, and all its schedules and other documents incorporated by reference.
- (c) Anti-Virus and Anti-Spam Filtering means the use of certain detection rules and techniques, to be selected and implemented by Web Candy, to determine if a message, or any inbound attachment, is "junk" or "spam" email or contains a virus.
- (d) "Bulk email" means unsolicited email sent en masse, is deemed to include a group of approximately five hundred (500) or more emails with substantially similar content; however, Web Candy retains the right, acting in good faith, to determine whether any particular transmission is a Bulk email.
- (e) "Content" means any information, data, text, software, music, sound, photographs, video, messages or other materials transmitted using the Email Service;
- (f) "Effective Date" shall mean the later of the two dates on the signature page below;
- (g) "Email Service" means the email service offered by Web Candy that will allow Customer to sell to its Users an email service that incorporates provisioning services, email administration capabilities, the email application itself; all more particularly described in Section 2 below and any additional service agreed to by the parties from time to time (which may include, if so agreed, and upon the terms to be agreed);
- (h) "Fee(s)" mean the monies payable for the Email Service selected by Customer in accordance with Section 4 herein;
- (i) "Junk email" means unsolicited commercial email, a.k.a. spam email or unsolicited bulk email;
- (j) "Mailbox" means the electronic storage area addressed by a unique email identifier having the form <user@yourdomain.com>.
- (k) "Mail Forwarding" means the direction of email intended for a Mailbox created by Web Candy to another email account specified by the Customer.
- (l) "Prohibited Use" means those actions outlined in Section 3.2 below.
- (m) "Term" has the meaning outlined in Section 5 of this Agreement;



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- ▶ Online marketing strategies
- ▶ E-commerce
- ▶ Website development

(n) “User” means an individual or entity employing an email address that contracts with Customer to receive any one or more components of the Email Service and who, in either case, acquires the Email Service for its own internal use, rather than for resale or redistribution;

(o) “Virus” means a piece of program code, including a self replicating element, usually disguised as something else that causes an unexpected and undesirable event and which is designed so that it may infect other computer systems.

2. SERVICES PROVIDED

2.1 Web Candy Email Service is available as the following offering:

(a) The Email Service includes (i) mailbox accounts, accessible by either or both the IMAP and POP mail protocols, through desktop mail clients or web-based applications (ii) optional email forwarding accounts; and/or (iii) optional Filtering-Only mailboxes (as described below). The Email Service enables a mailbox (i.e., email address) to send and receive email. The Email Service enables a User to use features of the mailbox to personalize settings (e.g., auto-responder, mail folders, address book folders, mailbox aliases, domain catch-all, etc.) through a web-based interface. The Email Service includes email forwarding accounts that allow mail to be forwarded from this email address to another email address.

(b) Each mailbox storage space can be set by the CUSTOMER, total storage space is based on hosting package purchased. Additional storage is available as a service upgrade.

(c) Mailboxes include Anti-Virus and Anti-Spam filtering, for both inbound and outbound messages sent through the Web Candy Email Service. Messages quarantined by the Anti-Virus and Anti-Spam filters will be stored by Web Candy for a period of seven (7) days, after which the messages will be deleted. Virus filtering may not be able to scan certain email attachments, which are under the direct control of the sender (such as password protected and/or encrypted attachments).

(d) Filtering-Only mailboxes provide Anti-Virus and Anti-Spam filtering for remote mail servers hosted by Customer. These mailboxes provide storage only for messages quarantined by the Anti-Virus and Anti-Spam filters. Messages quarantined by the Anti-Virus and Anti-Spam filters will be stored by Web Candy for a period of seven (7) days, after which the messages will be deleted. Filtering-Only mailboxes provide inbound filtering only.

(e) Filtering-Only mailboxes are available to Customers and Users who have email servers and systems connected directly and permanently to the Internet and which have a fixed Internet Protocol (“IP”) address. Web Candy reserves the right to modify the quarantine period for specific domains, or for the entire Email Service with or without prior notice, to avoid space capacity or system performance issues which jeopardize the technical or economic viability of the services offered, or the system used to implement the services, so long as notice is provided within a reasonable time after the modification.



Web Candy Design Inc.

638-16th Avenue NW, Calgary, Alberta, Canada, T2M 0J7

Tel: (403) 457-3499 | Toll Free: 1-888-595-9932 | Fax: (403) 457-5014

Email: info@webcandy.ca

webcandy.ca

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(f) Email Forwarding Accounts include spam & virus filtering, but do not include a spam quarantine. All mail detected as spam/virus will be rejected.

(g) The Email Service includes an administration tool that provides certain account configuration tools for the use of the Customer and/or users and mail administrators. Administration through web-based interface (Cpanel) enables an administrator to manage user accounts and their settings. Administration through a programmatic API (APP) enables a command line interface that is accessible over the network and an external program to manage user accounts and their settings.

(h) Web Candy may from time to time provide enhancements to the Email Service, or its' associated administration tools, at no additional charge to Customer. These changes can be viewed through the Web Candy client interface

2.2 Web Candy may provide to Customer, a set of technical specifications making up the Application

Web Candy may from time to time make modifications to the API licensed hereunder that will enhance functionality or otherwise improve its functionality. All rights not specifically granted to Customer are reserved by Web Candy, including all intellectual property and moral rights.

2.3 Web Candy will not give, sell, lease, license or rent the User lists to any third party (unless required by law), to allow such third party to directly market other services or products to Users, without the Customer's consent, not to be unreasonably withheld or delayed.

3. CUSTOMER OBLIGATIONS

(a) Customer shall be responsible for setting up all required e-mails and e-mail forwards.

(b) Customer shall be responsible for configuring e-mail programs to download e-mails from The Web Candy server.

3.2 Customer shall comply with, and shall ensure that its Users agree to comply with, all generally applicable policies of Web Candy that may be established from time to time to assure sound, safe and legal operation regarding the use of the Email Service (hereafter, "Web Candy Acceptable Use Policy for Email").

Without limitation, Customer agrees, and shall ensure that each and every User agrees, not to:

(i) send any Content that is unlawful, harmful, threatening, abusive, vulgar, invasive of another's privacy or otherwise objectionable,

(ii) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content.



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(iii) transmit any Content that User does not have a right to make available,
(iv) transmit through the Email Service any Junk email, Viruses or Bulk email; (ii) allow its systems to serve as an Open Relay;
(v) interfere with or disrupt the Email Service or any networks connected to the Email Service;
(vi) transmit obscene or pornographic material;
(vii) take any action that imposes an unreasonable or disproportionately large load on Web Candy' infrastructure providing the Email Service; (vi) impersonate any person or entity or falsely state or otherwise misrepresent an affiliation with a person or entity;
(viii) use the Email Service for any purpose that is in violation of any applicable law or is otherwise an infringement on the rights of any person or entity;
(ix) modify, decompile, reverse engineer, disassemble or reproduce any of Web Candy' licensed or owned software, systems, applications or components used in providing the Email Service; or
(x) use deceptive, misleading or unethical practices that are or might be detrimental to Web Candy or Users or the general public.

3.3 Customer acknowledges and agrees that each User must agree to be bound by the terms and conditions of an EULA no less protective of Web Candy than the form Web Candy shall make available in its online knowledge base.

3.4 Customer agrees it will not give, sell, lease, license or rent the User lists to any third party (unless required by law), to allow such third party to directly market other services or products to Users, without the User's prior specific consent.

3.5 Customer acknowledges that Web Candy may supply any or all of the Software, API, Email Services on its own behalf, or as a sublicensor or customer on behalf of a third party supplier, and may substitute such third party suppliers without notice. Customer acknowledges termination by Web Candy of the Email Services, or any component thereof, may result in a termination under **5.1**, but not under **5.2**.

3.6 Customer agrees to permit, and agrees the EULA shall permit, Web Candy to modify any domain and User settings with no notice, including without limitation, altering filtering settings, to avoid space capacity and system performance issues that jeopardize the technical or economic viability of the services offered, or the system used to implement the services, so long as notice is provided within a reasonable time after the modification.

3.7 Customer will, at its sole cost and expense, obtain any and all permits and licenses necessary in connection with its performance of this Agreement, and will comply with all applicable laws and regulations.

3.8 Customer will have the right to advertise, promote and distribute the Web Candy Email Service under the Web Candy Trademarks (as defined below). Web Candy hereby grants to Customer a license to use the Web Candy Trademarks solely in connection with its advertising, promotion and distribution of the Web Candy Email



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Services which it is entitled to offer under this Agreement. Customer's use of the Web Candy Trademarks must comply with any guidelines issued by Web Candy with respect thereto.

3.9 "Web Candy Trademarks" means all names, marks, logos, designs, trade dress and other brand designations used by Web Candy in connection with its products and services that Customer has a right to offer pursuant to this Agreement. In performing its obligations hereunder, Customer may refer to the Web Candy Email Service it is entitled to offer, (and associated Web Candy products and services or features), by the associated Web Candy Trademarks, provided that such reference is not misleading and complies with any guidelines issued by Web Candy from time to time. Except as set forth in this Section

3.9, Customer is granted no right, title or license to, or interest in, any Web Candy Trademarks. Customer acknowledges and agrees that any use of the Web Candy Trademarks by Customer will ensure to the sole benefit of Web Candy. If Customer acquires any rights in any Web Candy Trademarks by operation of law or otherwise, it will immediately, at no cost or expense to Web Candy, assign such rights to Web Candy along with all associated goodwill.

4. FEES

4.1 Customer shall pay to Web Candy the non-refundable amounts set forth in the selected hosting package. Fees will be payable at the end of a yearly cycle which begins the date that the service was purchased.

4.2 If there are insufficient funds in Customer's account at the time of withdrawal, Web Candy may decline future order. Web Candy may send a request (e.g. a daily request) for payment to the Customer's billing contact for a period (e.g. a five (5) day period). If Customer has not replenished its account to allow for the outstanding payment within said period, Web Candy may suspend the Customer's Users' Email Service. If Customer's account balance is fully depleted at any time, Customer shall not be permitted to purchase Email Services or any other Web Candy service until Customer's account balance has the necessary funds available.

4.3 Customer bears all risk and responsibility associated with billings to and collections from Users, and bad debt.

4.4 Payment may be submitted by Customer in the following manners:

(a) Via Online Payment processing system online payment gateway, which can be accessed via the Web Candy website at www.webcandy.ca.

(b) Via Web Candy Client Portal cut and paste link below into your browsers URL to get to the Client portal <http://www.webcandy.ca/client/>

(c) Via cheque made payable to Web Candy Design Inc and delivered to
Web CandyDesign Inc
638 16 Ave NW
Calgary, AB T3M 0J7



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5. TERM OF AGREEMENT

5.1 This Agreement shall commence on the Hosting Account set up date and continue until the earlier of the following: (i) termination by either party upon thirty (30) days written notice, (ii) termination for cause, as defined more fully in this Section 5; (iii) Web Candy' election to terminate its Email Service offering, or any component thereof, in which case Web Candy shall endeavour to provide Customer with reasonable notice of same and use commercially reasonable efforts to service all existing Users for a commercially reasonable transition period, but shall in no event be obliged beyond the User's unexpired term for which Web Candy has been paid; or(v) failure to make payment for services provided.

5.2 If: a) either Party (or, in the case of Customer, an agent of Customer) materially breaches any term of this Agreement, and such breach is not cured within thirty calendar days after written notice thereof is given by the other Party, or b) Customer has not replenished its account to Web Candy' satisfaction, by the end of any calendar month in which Email Service was suspended, in whole or part, pursuant to 4.2; then the nonbreaching Party may, by giving written notice thereof to the other Party, terminate this Agreement as of the date specified in such notice of termination.

5.3 In addition to the foregoing termination rights, if Web Candy, in its reasonable discretion, determines that Customer has breached any provision of this Agreement, is in violation of any Email Service policy or regulation as amended from time to time, has failed to provide adequate support to Users, or is engaging in conduct that breaches or may put Web Candy in breach of any law or regulation, Web Candy may suspend Customer's or Customer's Users' access to the Email Service, pending the cure of such breach or violation, or change of such conduct, to the Web Candy' satisfaction acting reasonably. Web Candy may require Customer to terminate any User in breach of its EULA or Web Candy' policies, regarding the Email Service, or both.

5.4 Upon termination, Customer's access to the Email Service shall cease and Customer shall not be able to renew any User accounts. Customer acknowledges Web Candy shall be entitled to directly communicate with Users to minimize disruption in service, including transition to an alternate Customer.

6. SUPPORT SERVICES

6.1 Web Candy shall provide telephone, website and email support for the Email Service for Customer only. Customer shall bear sole responsibility for providing support to Users with respect to the Email Service.

7. MAINTENANCE AND SUSPENSION OF SERVICES



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7.1 Customer shall employ all necessary employees, contractors, or agents with sufficient technical training and experience to respond to and fix all technical problems concerning the use of the Email Service within their company systems. Web Candy may from time to time perform maintenance on or otherwise suspend and temporarily shut down the Email Service or both. Web Candy will make commercially reasonable efforts to minimize any disruption of the Email Service.

7.2 Notwithstanding the foregoing, Web Candy may, in its unilateral discretion, immediately suspend the Email Service if Web Candy deems it necessary to terminate Prohibited Use, hacking attempts, service attacks or any other malicious activities either directed at or originating from Customer's or any User's domains or servers.

8. SECURITY

8.1 Although information transmitted to Web Candy is stored in operating environments which Web Candy believe are within industry standards for security, Customer agrees, and shall ensure that its Users are advised and agree, that no data transmission over the Internet can be guaranteed 100% secure. Web Candy is not responsible for any interception or interruption of any communications through the Internet. Customer agrees that it and its Users are responsible for maintaining the security of access codes, and will ensure its Users are so advised and agree.

9. CONFIDENTIALITY

9.1 In the normal operation of the Email Service, email messages are processed electronically, and the content is not reviewed by Web Candy' personnel. However, Web Candy reserves the right to review and utilize any content of an email or its attachments to observe, study, test, maintain or improve the functioning or performance of the Email Service, or to ascertain whether or how a breach of this Agreement or violation of applicable policy has occurred. In addition, some information may be shared on an aggregate basis only as a part of a larger set of statistics (e.g. statistics indicating amount of traffic, success rates, and size of Web Candy (customers). Web Candy may store User name, access codes, and application settings to ease site navigation processes.

10. THIRD PARTY INFORMATION

10.1 Independent third parties may supply some or all of the software and information used in one or more components of the Email Service. While Web Candy makes every effort to ensure the accuracy of all information, Web Candy makes no warranty as to the accuracy of any such information.

11. REPRESENTATIONS AND WARRANTIES



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11.1 Customer acknowledges and agrees that Web Candy does not guarantee that the API, or Email Service will meet the requirements of Customer or its Users. The API, and Email Service are provided “as is” without any warranty of any kind.

11.2 Customer acknowledges that: a) as Viruses are frequently created and distributed, the anti-virus component of the Email Service is intended to detect only specific known Viruses and some unknown Virus behavior patterns. Web Candy does not warrant that the Email Service will detect all Viruses present on a User’s computer system, network or email server; CUSTOMER IS ADVISED TO ENSURE IT, AND ITS USERS, HAVE SUFFICIENT CONTENT BACK-UP IN PLACE; and b) purveyors of Bulk Email and Junk Email, are constantly seeking to evade systems designed to block Bulk Email and Junk Email, and that a User may not wish all Bulk Email and Junk Email to be blocked, and that the Bulk Email and Junk Email component of the Email Service will not detect or block all Bulk Email or Junk Email, and may additionally block email which the User did not wish to have blocked. Web Candy does not warrant that the Email Service will block all Bulk Email or Junk Email, or only block Bulk Email and Junk Email.

11.3 WITH REGARD TO THE API, EMAIL SERVICES AND SUPPORT THEREFORE, AND RIGHT TO PROVIDE SAME, WEB CANDY (AND EACH OF ITS SUPPLIERS):
(**A**) EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, TITLE, NON-INFRINGEMENT, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS;
(**B**) DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE API OR EMAIL SERVICE WILL MEET THE CUSTOMER’S REQUIREMENTS, OR THAT THE OPERATION OF THE API OR EMAIL SERVICE, WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE API OR EMAIL SERVICE WILL BE CORRECTED; AND
(**C**) NEITHER WARRANTS NOR MAKES ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF API OR EMAIL SERVICE, OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, OR OTHERWISE. SHOULD ANY OR ALL OF THE API OR THE EMAIL SERVICE, PROVE DEFECTIVE IN WHOLE OR PART, THE CUSTOMER ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

11.4 WEB CANDY AND ITS SUPPLIERS, SHALL NOT BE LIABLE FOR ANY MISREPRESENTATION, BREACH OF ANY IMPLIED OR EXPRESS WARRANTY OR CONDITION, OR BREACH OF ANY OTHER TERM (INCLUDING A FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM), OR BE OTHERWISE LIABLE IN CONTRACT, TORT, OR OTHERWISE FOR:



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- (A) INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES
- (B) LOSS OF REVENUE
- (C) LOSS OF PROFITS
- (D) LOSS OF BUSINESS OR GOODWILL
- (E) LOSS OF, DAMAGE TO OR CORRUPTION OF DATA, SOFTWARE OR HARDWARE;
- (F) LOST EMAIL OR
- (G) PUNITIVE DAMAGES; EVEN IF WEB CANDY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE SOLE REMEDY BELOW FAILS OF ITS ESSENTIAL PURPOSE.

11.5 CUSTOMER'S SOLE REMEDY IN THE CASE OF ANY LOSS OR DAMAGE RESULTING FROM ANY MISREPRESENTATION, BREACH OF CONTRACT, NEGLIGENCE, ERROR OR DEFECT IN THE PRODUCTS OR SERVICES PROVIDED BY WEB CANDY HEREUNDER SHALL BE TERMINATION OF THIS AGREEMENT, AND THE RETURN OF ANY UNUSED DEPOSIT.

12. INDEMNITY

12.1 Customer, at its own expense, will indemnify, defend and hold harmless Web Candy and its employees, directors, officers, representatives, agents, affiliates and third party beneficiaries (including Web Candy' suppliers), against any claim, suit, action, or other proceeding brought against Web Candy based on or arising from any claim or alleged claim (i) relating to any product or service of Customer, including, but not limited to, Customer's advertising, systems and other processes, fees charged, billing practices and customer service; or (ii) relating to any agreement with any User of Customer. Customer will not enter into any settlement or compromise of any such indemnifiable claim without Web Candy' prior written consent, which consent shall not be unreasonably withheld. Customer will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by Web Candy in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

12.2 If Web Candy is threatened with suit by a third party, it may seek written reiteration of Customer's indemnification obligations; any failure by Customer to provide said written assurance may result in suspension or termination of its account.

13. MISCELLANEOUS.

13.1 This Agreement:



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(a) shall be governed and construed in accordance with the Provincial Laws of Alberta, and the Federal laws of Canada, should the need for litigation arise the venue shall be in Calgary, Alberta;

(b) may be executed in two or more counterparts, each deemed an original, and all of which together shall constitute one and the same contract;

(c) may be modified by Web Candy without the written consent of Customer, so long as the amendment or modification is generally applicable to all Customers;

(d) binds and benefits only the parties and their respective successors as permitted Customer shall not assign this Agreement without the prior written consent of Web Candy, such consent not to be unreasonably withheld.

13.2 Each Party agrees:

(a) it has had the opportunity to obtain independent legal advice for the review and negotiation hereof, and so ambiguity will not be presumptively construed against Web Candy;

(b) all restrictions in this Agreement are reasonable and valid, and waives all defenses to strict enforcement thereof to the fullest extent permitted by law;

(c) a violation of any intellectual property usage, confidentiality, non-solicit or policy related provisions of this Agreement will result in immediate and irreparable damage to the other party which shall then, in addition to any other rights to relief, be entitled to temporary and permanent injunctions and such other relief as any court of competent jurisdiction may deem just and proper, without posting of any security or proof of actual damage;

(d) neither shall be liable for any delay or failure to perform hereunder if such delay or failure is due to any contingency beyond its reasonable control including acts of God, war, explosion, fire, flood or civil disturbance, or failure of a supplier to fulfill its obligations;

(e) section headings are for ease of reference only, and have no interpretive value;

(f) expiration or termination will not relieve either party from its obligations arising hereunder prior to such expiration or termination. Rights and obligations which by their nature would ordinarily be expected to survive expiration or termination will remain in effect, including but not limited to Sections 5, 8, 10, 11, 12;

(g) to execute such further documents reasonably requested by the other party to achieve the intent of this Agreement;

(h) the Agreement is the entire agreement between the parties, superseding all prior understandings, oral or written, relating to the subject matter of this Agreement.

(i) Nothing herein creates an agency, partnership, joint venture, employment, franchise, distributorship, dealership or other similar or special relationship between the parties, who hereby intend to establish the relationship of independent contractors.

(j) No provision hereof shall be deemed waived by any act, delay, omission or



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acquiescence on the part of either party or their respective employees or agents, nor shall any waiver by either party of a breach or default of a provision by the other, constitute a change in the terms hereof or waive any subsequent breach.

(k) All notices shall be in writing and either sent via facsimile, registered mail, courier, or by electronic mail. Notices shall be deemed received: upon actual receipt, if couriered; on the date indicated in the return receipt, if sent by registered mail; upon confirmation, as evidenced by a fax transmittal sheet; or upon confirmation, as evidenced by proof of sending, if sent electronically. All notices should be sent to the attention of the General Counsel, if to Web Candy, with a copy to Email Services Product Manager and to the attention of the President, if to Customer, the address on file in the customer's account.

(l) that it is the customers sole responsibility to ensure that their account details especially contact e-mails and address, are current and up to date, Web Candy is not responsible for ensuring accurate customer account information. Information on account will be deemed current by Web Candy and Web Candy will assume that all messages sent to the account information on file have been delivered as per the information on the account.



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