

Effective date – 1/9/20

1. Application of Conditions

(a) The following conditions constitute all the terms and conditions under which the Supplier trades and supplies its services and related products to the exclusion of any other terms and conditions on which any other documentation from the Customer may have been submitted or subject to which any Order Form or other proposal is accepted or purported to be accepted by the Customer. These Conditions, in conjunction with the details shown on the Order Form represent the entire agreement between the parties and form a binding contract between the Supplier and the relevant Customer, subject to Clause 6(b).

(b) No amendment will be made to these Conditions without the agreement in writing of both parties. Any agreed amendments will not invalidate the remainder or the whole of these Conditions which shall continue in full force and effect.

2. Definitions and Interpretation

In the Contract, unless the context otherwise requires, the following terms shall have the following meanings:

“Conditions” the conditions contained on these pages and on the face of the Order Form together with any other conditions stipulated in writing by us;

“Connected Carrier” means an owner, occupier or operator of any physical infrastructure used by the Supplier in the delivery of the service;

“Contract” means the contract between the Supplier and the Customer incorporating these Conditions, the Order Form and the Standard Charges;

“Contract Term” means the period during which the Supplier is contracted to provide the Service as specified in the Order Form and detailed in Clause 3.2;

“Customer” means the person identified on the Order Form as the Customer which shall be a party to this Contract and for which an authorised signature appears. The Supplier shall be entitled to rely on the signature on behalf of the Customer of a person reasonably appearing to the Supplier to act with the Customer’s authority;

“Equipment” means equipment which is supplied by or on behalf of the Supplier to the Customer or placed at or on Site(s) for the purpose of providing the Service;

“Indemnify” means indemnify and hold harmless in respect of all costs, claims, liabilities, damages, costs and expenses (including but not limited to legal costs on a solicitor and client basis) incurred directly or indirectly out of the breach or event specified;

“Internet” means the global data network comprising interconnected networks using TCP/IP (Transmission Control Protocol/Internet Protocol) “Internet Standards” means the protocols and

standards defined in the following Internet documents : RFC 1009, 1122, 1123 and 1250 and any future such protocols and standards as appropriate;

“Name” means any name specifically allocated to or requested by the Customer including but not limited to any domain name or mailbox name;

“Order Form” means the Supplier’s order form for the provision of the Service to which these Conditions are attached which sets out details of the nature and scope of the Service;

“Provider” means any organisation or person providing goods or services to the Supplier;

“Resold Services” means the Customer allowing access to the Service by third parties in the terms set out in Clause 3;

“Service” means the service provided by the Supplier whereby the Customer may gain access to the Internet or telephone services via a telecommunications system and where applicable any means or facilities provided to the Customer (including but not limited to the Equipment and the Software) in connection with the Service, all as more particularly described in the Order Form;

“Site(s)” means the premises or location at which the Service is used or is to be used by the Customer under this Contract;

“Software” means and any all software provided by the Supplier which is required to use the Service, whether or not proprietary to the Supplier;

“Standard Charges” means the Supplier’s current published prices for products and services as amended by the Supplier from time to time;

“Supplier” means Scotnet.co.uk Ltd, registered in Scotland, Company Number SC212981 with its registered office at Scotnet Operations Centre, Mackintosh Road, Inverness, IV2 3TX;

“Supplier’s Network” means the network of computers connected to the Internet operated by the Supplier;

“User Documentation” means any and all user documentation, instructions and/or manuals supplied by the Supplier to aid the use of the Service by the Customer;

References to Clauses shall mean the clauses of these Conditions and headings are for ease of reference only and shall not affect interpretation. The singular shall include the plural and vice versa.

3. The Service

3.1 Provision of Service

(a) Connection to the Service shall be via a fixed telecommunications link, radio transmission or Public Switched Telephone Network only. The customer is responsible for obtaining all computers and other equipment or services necessary to use the Service except for those specified in the Order Form.

(b) The accessing of information and services provided by third parties via the Service may be subject to those third parties’ terms and conditions (including but not limited to conditions regarding payment). The Customer is responsible for compliance with those terms and conditions and shall indemnify the Supplier in respect of any breach of this Clause 3.1(b);

(c) Communications from the Customer relating to the provision of the Service shall, unless otherwise agreed, be made or confirmed in writing or by electronic mail;

(d) The Supplier will use its reasonable endeavors to adhere to any dates proposed by either the Supplier or (with the Supplier’s agreement) the Customer for the commencement of the provision of the Service. However any such dates are estimates only and the Supplier accepts no liability for failure to meet such dates;

(e) The Supplier will use its reasonable endeavors to provide the Service without material interruption during the Contract Term. However, it is not practicable to provide such a Service free of faults and the Supplier does not undertake to do so. In the event of a fault in the Service, the Customer shall report the fault by telephone or electronic mail to the Supplier’s technical support desk during its usual working hours at that time (currently 9am to 6.00pm GMT Monday to Friday) at the appropriate numbers or addresses given to the Customer for that purpose (or such other numbers or addresses as the Supplier may from time to time provide). As soon as reasonably practicable after receipt of each fault report, the Supplier will take all reasonable steps without undue delay to correct (or advise the Customer how to correct) the fault in question where this is capable of correction by the Supplier or the Customer;

(f) The Customer shall remain liable for any and all charges for the Service notwithstanding that the Customer is unable to use the Service for any period of time unless the reason that the Customer is unable to use the Service is wholly attributable to the Supplier’s negligence or willful default or omission;

(g) Where the Service is provided by means of an authenticated connection, the Supplier shall allocate a password to the Customer to enable it to use the Service. The Customer shall be responsible and liable for all use of the Service through the Customer’s password (including without limitation all charges incurred and any breaches of the terms of this Agreement) even where the Service is not actually used by the Customer but by some other person or organisation using the Customer’s password;

(h) The Customer will keep its password confidential and will immediately notify the Supplier if any unauthorised third party becomes aware of that password;

(i) The Supplier may at any time, at its discretion:

- (1) temporarily suspend or restrict access to the Service for the purpose of repair, maintenance or improvement or implementation of new facilities or data archival;
- (2) give or update instructions to the Customer regarding the use of the Service which in the Supplier's reasonable opinion are necessary in the interests of safety, or to maintain or improve the quality of the Service to customers (which the Customer shall comply with) and any such instructions shall whilst they are in force, be deemed to form part of this Contract; and/or
- (3) vary the technical specification of the Service for operational reasons, However, in relation to Clauses 2.1(i)(i) and 2.1(i) (iii) set out above, the Supplier undertakes that prior to carrying out such activities the Supplier will give as much on-line, written or oral notice to the Customer as is reasonably practicable in the circumstances and the Supplier will use reasonable endeavours to restore the Service as soon as reasonably practicable after any suspension in the terms outlined above;
- (j) The Customer shall allow any person accredited by the Supplier, on production of appropriate authorisation, free and safe access to the Site (and to all personnel reasonably necessary to enable the Supplier to perform the Service) at all reasonable times for the purposes of providing, repairing, maintaining and/or disconnecting the Service. The Customer shall provide all other information that the Supplier may reasonably require in order to facilitate the performance of the Service by the Supplier. In relation to cabling and other installation work required, the Customer shall be responsible for obtaining all consents, servitudes, rights of way and other similar rights required in connection with such cabling and installation.
- (k) The Customer may allow access to the Service by third parties as part of the services it provides on its own account to such third parties provided that it has paid the reseller price set out in the Standard Charges. The Customer shall only provide Resold Services on its own account and not in any respect as agent for the Supplier and that provided always that it shall not sell a bandwidth or speed of Service greater than that which it has contracted to purchase from the Supplier, except in circumstances where the Customer is dual homed and this has been approved in advance in writing by the Supplier. To avoid any doubt, the Supplier shall have no responsibility of any nature to any third party in relation to any such Resold Services. At all times, the Customer shall not purport nor claim that Resold Services are a resale of the Service or in any other way provided by the Supplier and the Customer shall at all times state clearly to its customers that it is providing such connections or bandwidth from its own network. The Customer will indemnify the Supplier against any and all claims from all parties to whom the Customer provides Resold Services and will ensure that its own terms and conditions in any contract for the provision of Resold Services include and comply with the provisions of this Contract including but not limited to Clause 5.
- (l) Other than as part of authorised Resold Services, the Customer shall ensure that the Service is not, without the Supplier's consent, used by or on behalf of any person other than the Customer or any employee, agent or sub-contractor of the Customer's organisation authorised to use the Service by the Customer.
- (m) The Customer grants to the Supplier a royalty-free, perpetual, irrevocable, non-exclusive right to use, copy, modify, adapt, translate, publish and distribute worldwide any and all material transmitted by the Customer via the Service (for the purposes only of providing the Service to the Customer) save where such messages are transmitted by way of private correspondence. Subject to this grant, the Customer retains any and all rights which it may have in and to any such material.
- (n) Title, ownership rights and intellectual property rights in and to the content accessed using the Service is the property of the applicable content owner and may be protected by applicable copyright or other law. This Contract gives the Customer no rights to such content.

3.2 Commencement and Minimum period of Service

The Service shall be provided (and the Contract shall last) for the minimum period specified in the Order Form or for a minimum period of twelve months if no minimum period is specified. Such minimum period shall commence upon connection. Connection shall be deemed to be effected when the link is first live from the Site (or from such other point as is requested by the Customer) to the Supplier's Network, as confirmed by the Supplier.

3.5 Name and Customer's Details

(a) The Customer represents and warrants to the Supplier that it is the owner of or that it has been and is duly authorised by the owner to use any trade mark or name requested or allocated as its Name and that the use of any such trade mark or name does not conflict with or infringe the rights of any third party.

(b) The Customer acknowledges that the Supplier cannot guarantee that any Name requested by the Customer will be available or approved for use.

(c) The Supplier may require the Customer to select a replacement Name and may suspend the Service if, in the Supplier's opinion, there are reasonable grounds for the Supplier to believe that the Customer's current choice of name is, or is likely to be, in breach of the provisions of Clause 2.5(a).

(d) Any and all internet addresses allocated by the Supplier to the Customer will at all times remain the sole property of the Supplier and the Customer will have a non-transferable licence only to use such address during the Contract Term. On termination or expiry of the Contract, for whatever reason, the Customer's licence to use the internet address shall automatically terminate and thereafter the Customer will not use such address.

4. Third Party Services

The Customer may use the Service to link into other networks on the Internet and to obtain services from other parties on the Internet. However, the obligations of the Supplier extend only to the provision of the Service by means of the Supplier's Network and the Supplier shall not be responsible in any way for any other services accessed by the Customer or in relation to the existence, maintenance or availability of any other networks whether forming part of the Internet or otherwise. The Supplier may terminate or suspend the Service summarily without prior notice and without liability to the Customer if the provision of any part of the Service which is operated or controlled by any third party is terminated or suspended, but only in relation to that part of the Service and any other part of the Service which is affected.

5. Content and Mis-Use.

(a) The Customer will use its reasonable endeavours to ensure that the Service is used or includes content that conforms to the laws of the Customer's country and any other country to which such content may be sent and will not knowingly permit any illegal use or any other use that will bring the Supplier into disrepute or result in any other claim against the Supplier (whether for defamation, obscenity or otherwise);

(b) Without prejudice to the foregoing, the Customer undertakes not to use or permit anyone else to use the Service;

(i) to send or receive any material which is offensive, abusive, indecent, obscene or menacing or in breach of confidence, copyright, rights of personality, publicity, privacy or any other third party rights;

(ii) to cause annoyance, inconvenience or needless anxiety; or

(iii) to intercept or attempt to intercept any communications transmitted by way of a telecommunications system; or

(iv) in any illegal or unlawful manner or for any illegal or unlawful purpose or in any way which is contrary to law; and/or

(v) does not conform with the acceptable use policies of all connected networks and the Internet Standards.

(c) The Supplier shall be entitled without penalty (and without any rebate of charges payable by the Customer) to suspend the Service if the Customer permits any use as detailed in Clause 5(b) or if after due warning (such warning being in terms determined by the Supplier) the Customer continues to permit any such use. The Supplier shall be entitled to refuse to restore the Service until it receives assurances acceptable to the Supplier from the Customer that there will be no further contravention. Any assurances given will be without prejudice to any other rights and remedies the Supplier may have against the Customer in that respect. If assurances acceptable to the Supplier are not given within timescales specified, the Supplier shall be entitled to terminate the Contract by written notice with immediate effect.

(d) The Customer shall indemnify the Supplier in respect of any breach by the Customer of the terms of this Clause 5.

6. Charges for the Service

(a) The Customer is responsible for and shall pay on demand the charges specified in the Order Form in accordance with the timescales detailed in the Order Form. If not specified in the Order Form

(i) all setup and installation charges shall be payable on acceptance of the Order Form by the Customer;

(ii) all recurring charges (including but not limited to annual, quarterly or monthly charges) are payable in advance of the period to which they relate and after the first such payment, are payable on the same date in the subsequent period (eg for annual charges, on the anniversary of the first date on which payment was due);

(b) Notwithstanding any acceptance issued by the Supplier or any other act or omission of the Supplier or Customer, the Supplier shall not be bound to supply the Service until receipt by the Supplier of cleared funds of all charges payable in advance under the Order Form or under these Conditions. If such payment is not received accordingly, the Supplier reserves the right immediately to withdraw, suspend or limit the Service until payment is received and without prejudice to any other right or remedy the Supplier may have, may charge the Customer a failure fee of 3% of the amount overdue per month as a genuine pre-estimate of the Supplier's losses in that regard.

(c) Unless specifically stated otherwise, all charges are exclusive of Value Added Tax and any other applicable taxes, however designated, which will be added where appropriate to Customer invoices and shall be paid by the Customer.

(d) Subject to Clauses 6(a) and 6(b) payment shall be due within 30 days of the Supplier's invoice and cleared funds in the amount of the sums invoiced must be received from the Customer on or before the due date.

(e) Without prejudice to any other right or remedy the Supplier may have in connection with any late

payment, the Supplier will be entitled to charge interest (both before and after judgement) on a daily basis on all sums overdue at the rate of 4% per annum above the base rate from time to time of Bank of Scotland plc from the date such sum(s) became due until paid in full. The Customer shall reimburse to the Supplier all costs and expenses (including legal costs on a solicitor and client basis) incurred in the collection of overdue amounts, without prejudice to any other right or remedy the Supplier may have.

(f) All residential services must be paid for by Direct Debit, collected monthly in advance and will be debited from the customer's bank account on the first working day of each month. It is the Customer's responsibility to ensure that a valid Direct Debit remains in place at all times. Failure to maintain or honor a Direct Debit instruction may result in an administrative charge being levied.

7. Responsibility for Equipment at the Site

(a) The Customer shall at its own expense provide reasonable assistance and facilities to the Supplier in the installation of Equipment, any electricity required for the proper functioning of the Equipment and shall provide or procure suitable accommodation, facilities and environmental conditions for housing the Equipment and all necessary electrical and other installations and fittings.

(b) The Supplier shall be free to remove or change the Equipment at any time and the Customer shall allow access to the Site on the same terms to Clause 3.1(j) for that purpose..

(c) The Customer shall be responsible for the Equipment while it is at the Site (whether or not in operation) and the Customer shall not, in the absence of express written instructions from the Supplier add to, modify, repair or in any other way interfere with the Equipment. The Customer shall be liable to the Supplier for any loss or damage to the Equipment, except in so far as any such loss or damage is attributable to the negligent or wilful act or omission of the Supplier, its agents or subcontractors.

(d) The Customer is responsible for the costs of returning the Equipment to the Supplier immediately upon termination of the Contract and any delay caused by the Customer or its agent for its return may (without prejudice to any other right or remedy the Customer may have) be charged by the Supplier to the Customer on the basis of 10% of its new value per month or part thereof of the delay and such charges shall be payable by the Customer on demand as a genuine pre-estimate of the Supplier's losses in that regard.

(e) The Customer shall be responsible, unless expressly stated otherwise, for all costs relating to the importation and transport of the Equipment to the Site. Such costs may include but shall not be limited to importation licences and taxes and delivery and warehousing costs.

(f) All Equipment leased, lent or otherwise provided to the Customer in conjunction with the Service shall be properly insured and secured by the Customer and the Customer will on request provide evidence of such cover (including but not limited to copy policies and premium receipts). The Customer undertakes to notify to its insurers the Supplier's ownership of and interest in the Equipment and have the Supplier's interest endorsed on the relevant insurance policy accordingly. The Customer shall ensure that in addition to any usual risks such insurance shall include compensation for loss of business to the Customer and the Supplier due to an Equipment failure or as a result of theft or damage.

(g) In the event of theft or damage to the Equipment the Customer will pay for replacement equipment or repairs (in each case approved by the Supplier) within 30 days of the occurrence of the relevant event and will be responsible for the costs incurred in the provision of alternative or provisional equipment, its installation and configuration, whether or not the insurance referred to above covers such costs.

8. Liability.

(a) In performing any obligation under this Contract, the Supplier's duty is only to exercise the reasonable

care and skill of a competent telecommunication service provider.

(b) The Customer acknowledges that the Supplier does not have the capability and does not purport to control information accessed or transmitted using the Service; that it has no control over the information transmitted via the Service and that the Supplier does not examine the use to which customers put the Service or the nature of the information they are sending or receiving and that the Supplier is not a publisher of any such information. The Supplier reserves the right to block access to and/or edit or remove any material which in its reasonable opinion may give rise to a breach of Clause 5.

(c) The Supplier hereby excludes all liability of any kind for the transmission or reception of information of any nature and undertakes no liability whatsoever for the acts or omissions of other providers of telecommunications services or for faults in or failures of their apparatus.

(d) Except insofar as liability cannot be lawfully excluded, the Supplier shall not be liable in contract, delict, tort or otherwise for loss (whether direct or indirect) of business, revenue or profits, goodwill, anticipated savings or wasted expenditure, corruption or destruction of data or for any other indirect or consequential loss whatsoever.

(e) In any event, the liability of the Supplier under the Contract shall be limited to the total price paid by the Customer for the provision of the Service in aggregate in relation to any and all claims of any nature under the Contract.

(f) The Supplier does not warrant and excludes all liability in respect of the accuracy, completeness, fitness for purpose or legality of any information accessed using the Service and excludes all liability of any kind for the transmission or the reception or failure to transmit or to receive any material of any nature.

(g) The Customer may enter into or seek to enter into transactions with third parties in relation to the sale, rental or provision of goods and services via the Service. The Supplier will not be a party to such transactions and will not be liable whether in contract, tort or delict (including liability for negligence), or otherwise for any loss, cost or damage incurred by the Customer arising out of or in relation to the transaction or attempt to enter into a transaction (including but not limited to failure to transmit or distortion or corruption of any messages sent via the service.

(h) Nothing in these Conditions purports to restrict or exclude the Supplier's liability for death or personal injury arising directly out of the Supplier's negligence.

(i) The exclusions and limitations on liability in these Conditions apply equally to and for the benefit of any agents or contractors of the Supplier and such agents and contractors' duty of care to the Customer is limited accordingly.

9. Default

(a) If the Customer :

(i) does not pay any or all sums due in accordance with this Contract or breaches this Contract in any other way; or

(ii) is subject to bankruptcy or insolvency proceedings;

(iii) commits a breach of any of the provisions of this Agreement and in the case of a breach of any provision which is capable of remedy, fails to remedy the same within seven days after receipt of a notice giving particulars of the breach requiring to be remedied;

(iv) is suspected on reasonable grounds by the Supplier of committing or be committing any fraud against the customer or the Supplier or any third party; and/or

(v) provides the Supplier with any false inaccurate or misleading information for the purposes of obtaining the Service. the Supplier shall be entitled (without penalty and without prejudicing, losing or reducing any other right or remedy)

(i) to suspend the Service, including partially, without notice and without rebate of any charges payable during the suspension or

(ii) to terminate this contract by written notice effective immediately;

Bankruptcy or insolvency proceedings for these purposes shall mean bankruptcy proceedings or in Scotland sequestration proceedings; becoming insolvent; making any composition or arrangement with creditors or an assignment for their benefit; any execution, distress, diligence or seizure;

or if

the Customer is a Company, being the subject of proceedings for the appointment of an administrator; going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed;

(b) To avoid any doubt, the Customer shall continue to be liable to pay all charges which are due for the Service during any period in which the Customer does not comply with this Contract whether or not the Supplier elects to suspend or terminate the Contract as above.

10. Termination of Service.

This Contract may be terminated by either party as follows;

(a) Small business customers with 10 staff or fewer – by giving at least 90 days notice to the other to expire at the end of the minimum term. The Customer's notice does not avoid any other liability for the Service already provided.

(b) Residential customers - by giving at least 30 days' notice to the other to expire at the end of the minimum term. The Customer's notice does not avoid any other liability for the Service already provided.

(c) Business customers with 11 or more staff - by giving at least 90 days' notice to the other, prior to the 12 month anniversary of the contract start date or renewal. The contract will automatically renew for a period of 12 month annually, if no notice is given. The Customer's notice does not avoid any other liability for the Service already provided.

11. Consequences of termination

(a) Termination or expiry of the Contract for any reason shall not affect any right or remedy of either party as at the date of termination or expiry nor shall it affect any term or condition which due to the nature thereof is intended to survive such termination or expiry, including but not limited to Clauses 3.1(k), 3.5(a), 5(d), 7(g), 8 and 16.

(b) On termination or expiry, the Customer shall make available the Equipment for collection by the Supplier on reasonable notice being given (the Equipment remaining at the Customer's risk pending collection per Clause 7);

(c) Termination of service will incur an administration charge of £40 in-line with wholesale costs.

12. Giving Notice.

Notices given under this Contract shall be delivered by hand or sent by recorded delivery as follows:

The Supplier: to the address shown on the Order Form or on the last invoice rendered by the Supplier or any alternative address of which the Supplier notifies the Customer at any time.

The Customer: to the address to which the Customer asks the Supplier to send invoices from time to time, the address of the Customer's premises, or if the Customer is a limited Company,

13. Matters beyond the Supplier's reasonable control.

The Supplier is not liable for any breach of this Contract or liable for any delay or failure in performance of any part of these Conditions and its commitments when caused as a result of force majeure, war, disorder, industrial disputes, inclement weather, acts of local or central government or other competent authorities, failure by Connected Carriers or warehouse services or any other cause beyond its reasonable control.

14. Assignment

The Customer shall not assign all or part of this Contract to any other party without the prior written agreement of the Supplier which shall not be unreasonably withheld or delayed. The Supplier reserves the right to assign all or part of this Contract at any time to any subsidiary or associate company of the Supplier without requiring consent or to any other party with the Customer's consent, not to be unreasonably withheld or delayed.

15. Law

This Contract shall be interpreted in accordance with Scots Law and the parties submit to the jurisdiction of the Scottish courts.

16. Data Protection

(a) The Supplier may use any information supplied by the Customer for its own administrative and customer services purposes or for any purpose required by law.

(b) The Supplier may store and use data about the Customer, as necessary to enable them to deliver services, and to ensure the Customer is receiving the best services for their needs. This may include primary contact details, bank details and historical information about the services used.

(c) The Supplier may have to share the Customer's information with third-party Providers to enable the provision of services. The Supplier may also use the Customer's information to help improve its services.

(d) The Supplier will always store the Customer's data in-line with recommended data security protocols, with banking and other sensitive details being encrypted at source. Similar appropriate controls are implemented with respect to third-party Providers.

(e) The Customer has the right to see what data the Supplier stores about them, and to whom they disclose information. If they wish to see this information, they must write to the supplier at Scotnet Operations Centre, Mackintosh Road, Inverness, IV2 3TX. The Supplier reserves the right to request information necessary to confirm the Customer's identify before disclosing information.

(f) The Supplier may send the Customer information in relation to new and improved services which they offer from time to time, which relate to the Service already provided. The Customer may unsubscribe from such communications at any time by e-mailing unsubscribe-request@scotnet.co.uk.

17. General

(a) The relationship between the parties is as described in this Contract and no employment, partnership, joint venture or agency relationship shall be deemed to subsist and neither shall have the power to bind the other.

(b) Contracts formed between a Provider and the Supplier that are renewed automatically for periods of longer than 1 month will only be accepted if explicitly stated on the appropriate Supplier purchase order.

(c) Any omission by either party to exercise any available right or remedy shall not be construed as a waiver thereof or of the future exercise of any such right or remedy or of any future right or remedy.

(d) Any provision(s) of this Contract which in any way contravene the law of any state or region in which this Contract is effective shall in such state or region to the extent of such contravention of law be deemed severable and shall not invalidate any other provision or provisions of this Contract. Without prejudice to the foregoing, where practicable, the parties hereto shall negotiate with a view to replacing any such severed provisions with enforceable provisions to the satisfaction of both parties.

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