

ADVANCENET LIMITED ABN: 16 097 482 187
GENERAL SERVICE TERMS & CONDITIONS

1. DEFINITIONS

In this Agreement, unless the context otherwise requires: **ACA** means the Australian Communications Authority or any successor.

Act means the *Telecommunications Act (Cth) 1997*.

Agreement means our agreement with you for the provision of the Services, comprising in their order of precedence, these General Service Terms and Conditions, the Service Schedule(s) and all appendices annexed thereto (with the exception of the Service Levels), the Application for Service, the Service Levels and any other document incorporated by reference or agreed in writing by the parties.

Application for Service means the application document requesting the Services and setting out the information required by AdvanceNet to provision the relevant Service.

Charges means all fees and charges payable by you under this Agreement including, without limitation, all Setup Charges, Recurring Charges and Usage Based Charges, and any other charges set out in the Application for Service.

Commencement Date means you sign the date the Application for Service.

Confidential Information means all information and all other knowledge relating to us, our products or Services, which comes into your possession from any source, or information which is treated by us as confidential regardless of its form, or which is designated by its nature as confidential, but excluding information that is in the public domain.

Customer, you, your, yourself means the person or entity specified as the customer in the Application for Service and that party's successors and permitted assigns.

Equipment means any equipment or other material provided to you or installed at your Site by us in connection with this Agreement.

Force Majeure Event means any event specified in clause 17.1.

GST and GST Law have the same meaning as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time.

Insolvency Event means, in respect of a party:

- (a) the party is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt;
- (b) a receiver or a liquidator or provisional liquidator or an administrator is appointed to the party;
- (c) the party enters into an arrangement with its creditors;
- (d) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; or
- (e) anything analogous or having a substantially similar effect to any of the events described in (a) through (d) above, occurs under the law of any applicable jurisdiction.

Installation Charge means a once-off charge for labour, equipment, number connection and associated cabling for initial installation of the Services set out in the Application for Service.

Minimum Term means the minimum contract term specified in the Application for Service, which commences on the Service Start Date.

OnNet means our network and facilities owned by us in Australia;

OffNet means any extended access tails or network or facility supplied by an Other Supplier (including international terrestrial or satellite links) and used to extend the reach of our network to complete supply of the Services to you.

Other Supplier means a Carrier, a telecommunications carriage service provider or an equipment supplier other

than us, as the case may be, and includes Current Suppliers.

AdvanceNet, we, us, our means AdvanceNet Limited ABN 16 097 482 187

Planned Outage means a period of time, as reasonably determined by us, that we may interrupt our supply of the Services to you for routine maintenance, upgrading or other similar activities, after giving you reasonable prior written notice.

Ready For Service Date means the date that we expect to supply the Services, which may or may not be the same as your Requested Delivery Date.

Recurring Charge means a monthly recurring charge set out in the Application for Service. **Requested Delivery Date** means your preferred date for the installation of the Services specified in the Application for Service.

Service Delivery Point means:

- (a) the port;
- (b) fibre termination panel; or
- (c) electrical interface,

at the Access Site as we determine necessary for interconnection to our network.

Service Levels means the service levels for the OnNet component of the Services as published by us from time to time or customised and agreed in writing and signed by the parties and set out in the relevant Service Schedule.

Service Schedule(s) means the service schedule(s) annexed to these General Service Terms and Conditions which provide a detailed description of the Services that may be supplied by us to you, the relevant Charges, Service Levels and any Service specific terms and conditions upon which we will supply those Services during the term of this Agreement.

Service Start Date means the actual date from which we commence initial supply of the Services to you.

Services means the relevant telecommunication services identified in the Application for Service.

Taxes means any fees, charges, taxes or other levies imposed by any Federal or State government or municipal council (other than the tax on our income or capital gains).

Usage Based Charge means a monthly usage charge for utilisation of minutes or capacity including any minimum usage charge set out in the Application for Service.

Variation means any change, addition, increase or reduction in respect of the Services including a relocation or increase in bandwidth, and **Vary** has a corresponding meaning.

Your Premises means the Access Site and any other premises occupied by you to which we may require access in order to install, maintain or remove Equipment or the Services.

2. PROVISION OF SERVICES

2.1 **Offer and Acceptance:** In an unexecuted format, this Agreement constitutes an invitation by us. By signing the Application for Service, you make an irrevocable offer to us, which may be accepted in whole or in part by us.

2.2 **Provision of Services:** We agree to supply and you agree to acquire the Services in accordance with the terms of this Agreement. You acknowledge that we may provide the Services using a combination of OnNet and OffNet facilities.

(a) **Requested Delivery Date:** We will use reasonable endeavours to meet your Requested Delivery Date for initial supply of the Services to you but we do not represent or warrant that we will deliver the Services by that date. Upon acceptance of the Application for Service by us, if reasonably possible, AdvanceNet provisioning will confirm by written notice to your contact identified in the Application for Service.

2.4 **Variations:** You may at any time request in writing a Variation to the Service but we will be under no

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- obligation to vary the Service unless and until we accept such request.
- 2.5 **Suspension of Services:** We reserve the right to suspend the provision of the Services, without liability:
- (a) if you are in default of any payment or other obligation under this Agreement;
 - (b) if we are required to comply with a request from a government agency or emergency service organisation; or
 - (c) as an alternative to the exercise of our rights of termination under this Agreement.
- 2.6 If we suspend the Services pursuant to clause 2.5(a) or (c) you acknowledge and agree that:
- (a) we may charge you a re-connection fee;
 - (b) while the Services are suspended, we will continue to incur costs of supply associated with keeping those Services in a suspended state; and
 - (c) except in the case of Usage Based Charges, all Charges in relation to the Services will continue to accrue while suspended and will be payable by you.
- 3. SERVICE LEVELS**
- 3.1 **Service Levels:** We do not guarantee that the Services will be continuous or fault free but will use reasonable endeavours to meet the Service Levels for the OnNet component of the Services only. Subject to clause 3.2, if we fail to achieve the relevant Service Levels in any one month, you will be entitled to a rebate of the Recurring Charge for that month, calculated by reference to the percentage rate rebates specified in the relevant Service Level.
- 3.2 **Exemptions:** Notwithstanding any other provision of this Agreement, you will not be entitled to a rebate pursuant to clause 3.1:
- (a) where failure to achieve the Service Levels is caused directly or indirectly:
 - (i) by a Force Majeure Event;
 - (ii) as a result of a Planned Outage ; or
 - (iii) as a result of suspension of the Services pursuant to clause 2.5.
- 4. PERIOD OF AGREEMENT**
- 4.1 **Term:** This Agreement commences on the Commencement Date and will continue for the Minimum Term and then on a month to month basis unless otherwise determined in accordance with the terms of this Agreement.
- 4.2 **Commencement of Services:** You acknowledge and agree that before commencing supply of the Services we may, as reasonably determined by us, need to modify or install equipment and make arrangements with Other Suppliers for the provision of the Services.
- 5. TERMINATION**
- 5.1 **Termination by Us:** We may without liability terminate this Agreement or any part of this Agreement with immediate effect from the date of service of a notice to you (or with effect from such later date as we may specify in such notice) if:
- (a) you fail to pay any Charges by the due date and do not remedy such failure within 7 days of written notice from us requiring you to do so;
 - (b) you fail to comply with any licence, permit or authorisation relating to the connection of equipment to the Service Delivery Point or the use of the Services and do not remedy such failure within 14 days of written notice from us requiring you to do so; or
 - (c) we reasonably suspect fraud or misuse of the Services on your part.
- 5.2 **Termination by Affected Party:** Either party (“**Affected Party**”) may without liability terminate this Agreement, with immediate effect from the date of service of a notice (or with effect from such later date as the Affected Party may nominate in such notice), if an Insolvency Event occurs with respect to the other party.
- 5.3 **Termination with notice:** After the expiration of the Minimum Term, either party may terminate this Agreement by giving 30 days written notice to the other, effective 30 days from the date when that written notice is delivered to that other party, or upon such later date as is specified in that notice.
- 5.4 **Liability Until Termination:** You will remain liable for all Charges up to the time of termination.
- 5.5 **Accrued Rights Unchanged:** Termination of this Agreement is without prejudice to the rights of each party against the other which have accrued up until the time of termination.
- 5.6 **Termination Fee:** If:
- (a) you wish to terminate this Agreement at any time prior to expiry of the Minimum Term, you may do so by paying to us an amount calculated by multiplying the Recurring Charge, payable by you under this Agreement, by the remaining months (or part thereof) of the Minimum Term; or
 - (b) we elect to exercise any right to terminate this Agreement prior to expiry of the Minimum Term pursuant to clause 5.1 or clause 5.2, you must pay to us, by way of liquidated damages, the fee referred to in clause 5.6(a), which the parties acknowledge is a genuine pre-estimate of the losses which we will suffer as a result of early termination of this Agreement.
- This clause 5.6 does not otherwise limit your liability to us on termination.
- 5.7 **Charges Immediately Payable:** On termination for any reason, all Charges (including the fee referred to in clause 5.6) and other amounts owing by you, shall become immediately due and payable.
- 5.8 **Continuing Obligations:** The obligations expressed in clauses 6 to 16 shall survive termination of this Agreement.
- 6. INVOICING AND BILLING**
- 6.1 **Invoicing:** We will endeavour to invoice you monthly but reserve the right to bill at different intervals. We will provide you with a breakdown of the fees and Charges payable in each invoice. Our records and/or any relevant Other Supplier’s records are sufficient evidence of the amounts payable by you as stated in each invoice unless those records are shown to be incorrect.
- 6.2 **Billing Method:** We will invoice for, and you will be liable for all Charges in respect of the Services commencing on and from the Service Start Date whether or not you use the Services from that date:
- (a) in advance for Installation and Recurring Charges; and
 - (b) in arrears for Usage Based Charges.
- 6.3 **Continuing Liability:** You are liable for all Charges whether or not you authorised the particular use of the Services by another person and you will continue to be liable for the Charges if you allow another person to occupy Your Premises or use the Services.
- 6.4 **Set off:** We will be entitled to set off in whole or in part any amounts due and payable by us to you, against the whole or a proportionate part of any amount due and payable by you to us under this Agreement.
- 7. CHARGES**
- 7.1 **Price:** After expiry of the Minimum Term, the relevant Charges will continue on a monthly basis, subject to change upon 30 days prior written notice or publication of new rates.

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- 7.2 **Minimum Usage Charge:** Where a minimum Usage Based Charge is provided for in the Application for Service, that amount will apply even if you have incurred lower Usage Based Charges or no Usage Based Charges in that calendar month.
- 7.3 **Payment Terms:** You must pay all fees and Charges within 30 days of the date of invoice.
- 7.4 **Interest:** We reserve the right to charge interest on any part of the Charges or GST not paid to us by the due date. Interest will be charged from the due date until payment at a rate equal to 3% above the Commonwealth Bank Corporate Overdraft Reference Rate or such other comparable rate chosen by us most recently published before that date. You will be liable to pay to us all expenses (including reasonable legal costs and expenses and the fees of our debt recovery agents) incurred by us in relation to recovering payments due under this Agreement.
- 7.5 **Discounts:** We reserve the right to withdraw any discounts that you receive from us in connection with the supply of the Services where payment is not received within the terms of Clause 7.3.
- 7.6 **Taxes:**
- (a) Subject to clause 7.6(b), the Charges are inclusive of all Taxes, with the exception of GST and any stamp or transaction duty on this Agreement and any related interest, expense, fine, penalty or other charge relating to these taxes, which must be paid by you.
- (b) Where we become liable to pay any Taxes, you must pay to us the Charges plus an amount equal to the Taxes payable by us. We must identify the Taxes to be paid on each invoice.
- 7.7 **GST:** We may charge an additional amount equal to the amount of our GST liability, at the time of invoice (unless the consideration for the supply is expressed in this Agreement to be GST inclusive). Where GST is charged, we will provide a tax invoice, which will enable us, where permitted, to claim a credit or refund of GST.
- 7.8 Where we become liable to any penalties or interest as a result of the late payment of GST or any stamp or transaction duty (whether the relevant tax is included in an amount of consideration expressed in this Agreement or not), due to your failure to comply with the terms of this Agreement (including this clause) or your obligations under the GST Law, then an additional amount equal to those penalties and interest will be payable to us.
- 7.9 Should the GST amount recovered by us from you in connection with any supply made differ to the GST liability either due to an amendment in the GST Law or an adjustment to the consideration under this Agreement, the parties will adjust the amount of GST and make any payments necessary to give effect to the adjustment.
- 7.10 If the rate of GST increases from that applying as at the date of this Agreement, we may increase the consideration by the amount necessary to ensure that the economic benefit to us of this Agreement remains the same whatever the rate of GST is.
- 8. CREDIT ASSESSMENT**
- 8.1 **Consent:** Subject to the *Privacy Act 1988* and the Act, for the purposes of assessing your Application for Service, establishing and managing your account, assess your creditworthiness and collect overdue payments:
- (a) you consent to the disclosure by us to a credit reporting agency, of your personal information in our possession, including but not limited to:
- (i) your name and address;
- (ii) details of your Application for Service and/or other services supplied to you;
- (iii) credit limits on your accounts;
- (iv) the amount of any payments which are overdue for at least 60 days;
- (v) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
- (vi) cheques or credit card payments which have been dishonoured;
- (vii) information that, in our reasonable opinion, you have committed a serious credit infringement; and
- (viii) information that we have ceased to provide Services to you,
- in order to obtain a consumer credit report about you or to allow the credit reporting agency to create or maintain a credit information file about you;
- (b) you consent to the disclosure by us of a credit report about you to any credit provider, debt collecting agency or Other Supplier;
- (c) you authorise us to obtain information about you from any business which provides information about commercial credit-worthiness;
- (d) you must provide to us, or any independent person nominated by us, within 10 business days of our request, any information (including your financial accounts) or any consent you are capable of giving, which is necessary for a person to comply with any request from us to confirm your credit-worthiness.
- 8.2 We may refuse to supply the Services to you on the basis of our credit assessment of you, after consultation with you to confirm the accuracy of the assessment.
- 9. PRIVACY**
- 9.1 The Customer agrees to AdvanceNet collecting, using and disclosing information about you for:
- (a) the purpose of assessing creditworthiness as set out in clause 8;
- (b) all purposes associated with the provision of products and services to you and the management of your account;
- (c) the purposes of communicating with you about products and services which AdvanceNet or partners or affiliates of AdvanceNet may provide to you;
- (d) the purpose of implementing this Agreement; and
- (e) the purpose of complying with legal requirements.
- 9.2 We will provide you with access to any of your personal information held by us, at your request. We reserve the right to charge a reasonable fee for the provision of this information. We agree to correct or amend any of your personal information held by us which is inaccurate or out of date, at your written request.
- 9.3 We will handle your personal information in accordance with the requirements of relevant laws and industry standards.
- 9.4 Subject to compliance with this clause 9, we may, at any time in our absolute discretion:
- (a) intercept the Services or the data being transmitted over the Services, for the purpose of complying with our obligations at law;
- (b) monitor use of the Services.
- 10. ACKNOWLEDGEMENTS**
- 10.1 You acknowledge that:
- (a) you have relied on your own judgement to evaluate the suitability of the Services for the purpose for which you require the Services; we may at our discretion pay commissions to any of our agents, representatives or retailers who introduce you to us.

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11. CUSTOMER USE & INDEMNITY

11.1 **Use of Services:** You will not use or allow others to use the Services to:

- (a) distribute material that is defamatory, offensive, abusive, obscene, menacing, threatening, harassing, or illegal under any law at any place where transmissions are sent from, viewed or received;
- (b) copy or distribute material where it has no right to do so (for example, someone else's copyrighted works or confidential information);
- (c) commit a crime or in the course of committing a crime or for an unlawful purpose or do any act that may damage the network or systems or cause the quality of the Service to be impaired;
- (d) to engage in any activities in such a manner as to expose us or an Other Supplier to liability; or
- (e) to do any act that may damage the network or systems or cause the quality of the Services to be impaired.

11.2 **Indemnity:** You will indemnify us against all costs, losses, damages, liabilities and expenses (including all reasonable legal costs, fees and expenses) incurred or suffered by us as a result of any personal injury to, or death of, any person or any loss of, or damage to, any personal property (including without limitation the Equipment) caused by your breach of this Agreement or the negligent or unlawful act or omission of you or your agents, employees, invitees or contractors.

12. YOUR EQUIPMENT & WARRANTIES

12.1 **Your Equipment:** You must ensure that any equipment that you use in connection with the Services:

- (a) has all necessary regulatory approvals;
- (b) is not prohibited by the ACA;
- (c) complies with all applicable regulatory standards;
- (d) is approved by us; and
- (e) is capable of operating with the Services. If there are faults with the equipment causing interference with the Services, we may require you to stop using and disconnect the equipment until the problem is fixed.

12.2 **Installation of Equipment:** You will assist us to ensure that any equipment necessary for you to receive the Services and access our network is installed and programmed so that calls to destinations nominated by us from time to time are, so far as possible, carried by our managed network services team.

12.3 **Authorisation:** You authorise us or our agents to disconnect, install or make amendments to any services at Your Premises in order for us to provide the Services.

12.4 **Environment:** You will provide a suitable physical environment at Your Premises for the storage and operation of the Equipment including supplying an adequate power supply for the operation of the Equipment.

12.5 **Access:** You will ensure that AdvanceNet (or where relevant the lessor or licensor of the Equipment to AdvanceNet) is provided with such access to the Equipment and Customer Premises during normal business hours as AdvanceNet may request and at such other times as Customer and AdvanceNet mutually agree. This right of access will not end until all the Equipment is returned to AdvanceNet, even if this Agreement has terminated. After termination of this Agreement, the Customer must allow AdvanceNet to retake possession of the Equipment. The Customer must ensure that AdvanceNet's personnel are provided with a safe working environment while at Customer Premises. AdvanceNet will ensure that its personnel comply with the Customer's reasonable directions while on the Customer Premises.

13. ADVANCENET EQUIPMENT AND SERVICES

13.1 **Property:** Except as expressly provided by this Agreement:

- (a) you will bear the risk of loss or damage to any Equipment used or located on Your Premises;
- (b) the Equipment always remains our property (or where relevant the lessor or licensors of the Equipment to us);
- (c) you will ensure that, you have all necessary consents and approvals (including landlord approval where applicable) necessary or desirable for us to deliver, install and maintain the Equipment at the Access Site; and
- (d) you will not part with possession of the Equipment except to us and will comply with all our reasonable directions relating to our rights of ownership of the Equipment;
- (e) you will only use the Equipment in accordance with the manufacturer's specifications or our written directions.

13.2 **Change of Service or Equipment:** We may at any time and from time to time change, modify Services or Equipment.

13.3 **Interference:** You will ensure that the Equipment will not be altered, repaired, serviced or moved except by service personnel approved by us. You must take good care of the Equipment while it is in your possession. You will be liable to us for all loss of or damage to the Equipment while at Your Premises, apart from fair wear and tear.

13.4 **Software Licence:** Where we, without obligation to do, elects at our discretion to supply you with the Products, you agree and accept the supply of the Products on the following terms:

- (i) For the purpose of this clause,
 - (A) **End User** means any person that you have authorised to use the Products;
 - (B) **Software** means the software provided by us to you for the purpose of the specific use specified in the product selection;
 - (C) **Products** means the Software and related Products documentation;
- (ii) We grant to you a non-exclusive and non-transferable licence ("**Licence**") to use the Products. A single End User, on a single computer, may only use the Products at any one time. You must notify us if you wish to increase the number of End Users, in which case you will be required to obtain additional licences from us at an extra charge to be agreed;
- (iii) You will be entitled to make up to a maximum of three (3) copies of the Software for back up purposes only and must include on each copy, all copyright and other notices included on the original. With the exception of the rights granted above, no right, title or interest in the Products will pass to you;
- (iv) You agree not to sub-licence, assign, transfer, alter, decompile, disassemble, reverse engineer, create derivative works from or recreate the software in whole or in part;
- (v) This Licence will terminate immediately upon:
 - (A) you ceasing to be a customer of ours in respect of the Services; or
 - (B) your breach of the terms of this Licence.Upon termination of this Agreement, you must return to us, or delete and destroy, all copies of the Products;

14. SERVICES

14.1 If we use the services of an Other Supplier in providing the Services, you agree to comply with any reasonable

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direction given by us necessary to avoid causing any breach by us of the relevant Other Supplier's terms and conditions of supply applicable to that service.

15 LIABILITY

15.1 Except as expressly provided to the contrary in this Agreement and to the full extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Services supplied under this Agreement or our obligations under this Agreement are excluded.

15.2 Where any Act of Parliament implies in this Agreement any term, and that Act of Parliament voids or prohibits provisions under a contract which exclude or modify the operation of such term, the term is deemed to be included in this Agreement.

15.3 To the extent permitted by law, our liability for breach of an express term or implied term of this Agreement in contract, negligence or any other tort under any statute or otherwise, is limited to one of the following remedies at our discretion:

- (a) if the breach relates to services, the re-supply of the Services or the payment of the cost of re-supplying the Services; or
- (b) if the breach relates to goods, the replacement of the goods or the supply of equivalent goods, the payment of the cost of such replacement, the repair of such goods or the cost of such repair.

15.4 To the extent permitted by law, we exclude all liability to you in connection with this Agreement for consequential loss, indirect loss, loss of profits of any kind, loss or corruption of data, interruption to business, loss of revenue and economic loss of any kind, whether in contract, negligence or any other tort under any statute or otherwise.

15.5 To the extent permitted by law, the rebate provided under clause 3.1, will be your sole remedy in respect of any event giving rise to our failure to achieve any Service Level and we exclude any other liability to you in connection with this Agreement in respect of our failure to achieve any Service Levels, whether in contract, negligence or any other tort, under any statute or otherwise.

15.6 To the extent permitted by law, our aggregate liability to you in connection with this Agreement in respect of all claims, whether in contract, negligence or any other tort, under any statute or otherwise, will not exceed the amount paid to us by you during the Minimum Term.

16. CONFIDENTIALITY

16.1 Confidential Information: We retain all rights in the Confidential Information.

16.2 Non-Disclosure: You will:

- (a) keep all Confidential Information confidential;
- (b) not disclose or allow any Confidential Information or the terms of this Agreement or Application for Service (including pricing) to be disclosed to any third party without our prior written consent; and
- (c) return all Confidential Information (including all copies) to us within 7 days of request by us.

16.3 Use of Confidential Information: You will not use Confidential Information or the terms of this Agreement, which you acquire from us for any purpose other than use of the Services or as otherwise expressly permitted by us and, in particular, will not use Confidential Information in any way which may cause us loss, whether by way of damage to our reputation, financial loss, or otherwise.

17. FORCE MAJEURE

17.1 We are not liable for any failure to perform, or for any delay in performing any of its obligations under this Agreement where the failure or delay is occasioned by:

- (a) strike or other industrial action;
- (b) any act or omission of the Customer or any third party;
- (c) failure or delays by Other Suppliers;
- (d) legislative or governmental prohibitions, restrictions, or delays in the granting of approvals, consents, permits, licences or authorities;
- (e) fire, flood, war or cable cut;
- (f) unscheduled maintenance in cases of emergency; or
- (g) any other cause beyond AdvanceNet's reasonable control.

18. GENERAL

18.1 This Agreement is governed by and construed in accordance with the laws of New South Wales. The parties submit to the jurisdiction of the Courts of New South Wales and any court hearing appeals from those Courts.

18.2 This Agreement contains the whole understanding of the parties to the exclusion of any prior Agreement, representation or understanding relating to the Services.

18.3 You may not assign or otherwise deal with your rights under this Agreement without our prior written consent.

18.4 A notice, approval or consent, to be issued under this Agreement must be in writing and in the absence of evidence to the contrary will be taken to be received:

- (a) if left at the address of the addressee, at the time it was left;
- (b) if sent by ordinary post, on the third day after posting;
- (c) if sent by express post, on the next day; and
- (d) if sent by facsimile, at the time recorded on a transmission report from the machine from which the facsimile was sent.

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