

# my.WAGILE.pro MASTER SERVICE AGREEMENT for Cloud Version

between

<b>Customer:</b>  According to the details provided during the registration to the Service	<b>Provider:</b>  WAGILE.PRO c/o Eberhardt & Partner SARL Grand Rue 34 1436 Treycovagnes Switzerland
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This agreement governs the use of the my.WAGILE.pro Services as a cloud version in a Software as a Service mode, the maintenance of the Service, the storage of related data as well as the related terms and conditions.

By entering in this Agreement, the Customer declares to know and to accept the terms and conditions within this Agreement and in the related or referenced documents. These documents comprise of, but are not limited to:

- my.WAGILE.pro Master Service Agreement
  - Annex 1 Product Description (latest version to be requested via email),
  - Annex 2 Support & Email Form (latest version to be requested via email),
  - Annex 3 Pricing (according to website),
- my.WAGILE.pro DATA & PRIVACY POLICY
- my.WAGILE.pro GDPR Commissioned Processing Document.
  - Annex A
  - Annex B

The latest and actual version of my.WAGILE.pro Data & Privacy Policy and my.WAGILE.pro GDPR Commissioned Processing Document are always available online on wagile.pro.

Acceptance of the Agreement is indicated either by checking the box during the registration, order, purchase or set up process, or alternatively upon signature of a relevant Customer / Provider Contract. By providing this indication the Customer unconditionally agrees to the terms of this Agreement and accepts this Master Service Agreement and all related documents which are part of or referenced to this Agreement.

If the Customer does not agree with these terms and conditions or wishes some modifications, the Customer (you) may not register, order, purchase, set up or use our services.

If you register, order, purchase, set up or use the service on behalf of a company or other legal entity, you represent that you have the authority to enter in such agreement and to bind such entity and its affiliates to this master service agreement.

The Provider reserves the right to amend or change this master service agreement at any time. The latest version is available on the website WAGILE.pro and shall become effective at the moment of publication on the website.

In case you are our competitor, you may not access the Service, except with our prior consent in written form.

## 1. Definitions

“WAGILE” means the methodology for project management, portfolio management or program management as describe on the website wagile.pro. A certification program is available.

“WAGILE.pro” means the website operated by the Provider, hosting the different information related to WAGILE or the service my.WAGILE.pro

“Service” means the different products and services including the different features, functionalities, the frontend solution, the backend solution and support possibilities provided as a Software as a Service as a whole.

“Purchased Service” means the ordered Service as a selection of the Services, based on the selection and order of the Customer for which the Customer will pay a fee.

“Free Service” means the ordered Service as a selection of the Services, based on the selection and order of the Customer for which the Customer will not pay a fee for the granted period of time. It is possible that after the granted period of time provided free of charge (“free test” or “free trial”), the Service is prolonged automatically with a “Purchased Service”. In this case, this is indicated accordingly.

“Provider” means Eberhardt & Partner SARL, legally registered in Grand-Rue 34, 1436 Treycovagnes, Switzerland as the owner of WAGILE, WAGILE.pro and the Provider of the Service as a Software as a Service.

“Customer” means the individual or the legal entity entering in this agreement with the Provider. Alternatively, “you” could be used.

“User” means any person having received a username and password to access the Service on behalf of a specific Customer. Users may include, for example, your employees, consultants, contractors and agents, and third parties with which you transact business and which you grant access to the Service.

“Agreement” means this Master Service Agreement and the referenced annexes and documents.

“Documentation” means the description of the Service, the user guides and policies or the online help as attached to the Agreement or as available online. The latest version of the Documentation is available online.

“Partner” means an authorized partner of the Provider being eligible to apply the WAGILE methodology and to support customers with the use of the Service. The official list of Partners can be requested from the Provider.

## 2. Content, Scope and Agreement for the Service

- a. The Service is a business software for project management, portfolio management and program management. The Service is available as a Software as a Service in the Cloud accessible via the Internet on my.wagile.pro (or another domain if used via a premium partner) or as a Software as a Service on premise of the Customer. This Agreement governs the terms and conditions for the Cloud version.
- b. The Service is based on the methodology of WAGILE, a project-, portfolio- and program delivery methodology – described on the website WAGILE.pro. This methodology is highly flexible and compatible with **waterfall** and **agile** delivery methodologies.
- c. The Provider shall make the Purchased Service, in its latest version of the ordered scope, available to the Customer for use of the Customer via the Internet. The use of the Purchased Service is limited to the duration of the Agreement and can be restricted by the Provider under certain circumstances.
- d. The Provider may further develop the service and improve the service through ongoing updates and upgrades. The definition and scope of upgrades and updates is in the sole responsibility of the Provider.
- e. The current generic service description with its features and functionalities can be found on the Provider’s website (wagile.pro).
- f. The Provider receives a fee from the Customer according to the published conditions of the selected subscription type on the website wagile.pro or according to an individual side letter to this agreement. The Customer shall pay the fee in accordance with this Agreement for the Purchased Service. The conditions of the subscriptions specify the duration of the Agreement (e.g. 12 month) and the scope of the Purchased Service (e.g. max. number of activities / projects, included features and functionalities, Service Package).

### 3. Software as a Service (SaaS) for Cloud Version

- a. The Provider shall provide the Service to its Customer as a Software as a Service over the Internet in the cloud. For this purpose, the Provider will store the Software on a Server to provide the Service to the Customer and make it accessible via the Internet for the Customer.
- b. The Provider has the right to change the Service at any time.
- c. For the duration of the Agreement, the Provider shall make the Service in its latest version, available to the Customer for use via the Internet, for a fee.
- d. Due to high flexibility and configuration options of the service, it can be possible that the information uploaded is displayed in different ways, which may, or may not, reflect the expected view of the User.
- e. The Provider will provision the Purchased Service for the use over the Internet.
- f. The Provider will securely store the Customer data (data hosting) as per this Agreement.
- g. The Customer will only have access to its own data.

### 4. Use of the Service

#### 4.1. In general

- a. The Customer is only allowed to use the Service for its own purpose and for the legal entity which entered into this Agreement. The use of the Service for any subsidiary of the Customer is not allowed without any prior written notice from the Provider. The Provider will make the Purchased Service available for the Customer for the duration of the Agreement.
- b. The Customer receives a non-exclusive and non-transferable right to use the Service for the duration of the Agreement and within the purchased scope.
- c. The Customer is not entitled to make any copy or documentation available to other parties, either for a fee or for free. The Customer is also not entitled to enable any 3rd party to use the Service or Software for free or for a fee.
- d. The Customer may not copy or edit the Service. It is also prohibited to temporarily or permanently download or store the Service on data carriers on the hardware used by the Customer with the exception of the RAM.
- e. The Customer grants the Provider the right to host the Customer data and to display them to the Customer.
- f. The Provider has the right to restrict the access to the Service, in partial or full, for good cause. Such good cause are, for example, the use of the Service against the intention of the Service, the overload of the System or the use of the Service to compromise any law.
- g. The use of the Service is determined by the duration of the Agreement depending on the purchased subscription. The subscription will be automatically prolonged with the same duration of the initially selected subscription if not cancelled in advance as per Section 8 – Duration of the Agreement.
- h. The scope of the Purchased Service is determined by the selected subscription and the included service (e.g. number of activities) and functionalities for the duration of the Agreement. Upgrades of subscriptions are possible at any time while downgrades of subscriptions are only possible at the end of the Agreement.
- i. The Purchased Service is restricted in accordance to the selected subscription and in accordance to the description of the subscription. In case of reaching such restrictions, some actions or functionalities may, partially or in full, be limited. The Provider may notify the Customer and/or user in such case or propose upgrades of the subscriptions as necessary.

#### 4.2. Responsibilities

- a. The Customer is accountable and responsible for the Users compliance with this Agreement, the documentation and the order forms. Next to this, the Customer is responsible for the quality, accuracy and legality of its data.
- b. The Customer must prevent unauthorized access to the Service or any content stored by putting in place the necessary measures for the different Users.
- c. The use of the Service must comply with any applicable law, this Agreement, the Documentation or any other relevant conditions.
- d. The Customer will restrict the access to the Service to those Users who need to use the Service.
- e. It is in the responsibility of the Customer to prevent any other usage of the Service which is not aligned with this Agreement like selling, renting, licencing, sub-licencing, distributing, making available or leasing the Service to any other party.

- f. The Customer is responsible to not submit any malicious code or data to the Service which could affect the Service in what ever matter.
- g. The Customer shall support the Provider in every respect in the fulfillment of the contractual performance obligations.
- h. The Customer is accountable for the stored Customer data and is responsible for uploading, entering or maintaining the data.
- i. The Customer is personally responsible for entering the required data to the order form, updating and maintaining the data and information required in this Agreement to use the Service. In case of any changes of these data, e.g. change of address of the legal entity who entered into this Agreement, the Customer shall update information and/or inform the Provider accordingly.
- j. All generated User IDs and related passwords must be protected to the Customer and shall only be made available to those for whom they are intended. Any access to unauthorized people must be prohibited.
- k. The Customer shall immediately inform the Provider in case of any unauthorized access or use of the Service. In such case, the Provider shall undertake all necessary measures to resolve the issue and could even restrict or make unavailable the Service for the Customer. In case of a general or wider impact, not only on one specific Customer, the Service may be interrupted for any Customer if this is needed to protect the stored data or to protect the Service.
- l. To improve the security of the data, the Customer and User shall change the password on a regular basis but at least every 45 days. Note that passwords must be 8-16 characters long and may contain only the following characters: **A-Z, a-z, 0-9, ! % - \_ + = [ ] { } : , . ? < > ( )** with the minimum requirement of at least one capital letter, one lower case, one number and one special character.

### 4.3. Data storage / hosting

- a. The Provider grants access to a defined storage space for storing the data. Any other use of the granted storage space, except for the Service or for any other 3<sup>rd</sup> party is not allowed.
- b. The Provider makes available an interface to upload the Customer data.
- c. The stored data will be accessible via the Internet within the format of the Service and as described in the Service / Product description.
- d. The Customer is responsible for any backup of the data stored on the Service by ensuring a backup of the upload data or by regular dumps (download of the data stored within the Service).
- e. The stored content must comply with this Agreement and any other potentially applicable law.
- f. To prevent unauthorized access to and against data loss of Customer data, the provider, within economically and technically reasonable possibilities, is obliged to take appropriate and reasonable precautions. For this purpose, the Provider shall back up the data on a regular basis, install firewalls, use SSL encryption and check data for viruses. Only the data, at the moment of backup, will be stored, any previous backup data will be automatically deleted or overwritten.
- g. In any case, the Customer shall remain solely entitled to their own data. In case the Customer deletes its data, the data will be unavailable and entirely deleted with the next back up.
- h. With the termination of the Agreement, any data will be automatically removed from the system on the last day of the Agreement at 23:59:59 and therefore also deleted from the back up afterwards..

## 5. Maintenance for the Service

The Provider shall monitor the availability of the Service as well as the functionality of the Service.

The elimination of any Service errors will be done according to the technical and economically reasonable possibilities. A Service error exists if the Service is not functioning as described in the latest version of the Product Description, or the use of the Service is impossible or considerably restricted.

The Provider assumes responsibility for the maintenance and support for the Service. The Customer assumes responsibility for the maintenance and support of any Customer internal systems and or hardware used to access the Service.

The scope and content of the concrete maintenance services are specified in the following service categories.

Provided that nothing to the contrary has been agreed upon between the parties, the maintenance services may be carried out exclusively by employees of the Provider or third parties commissioned by the Provider.

## 5.1. Service Availability

The Provider shall make commercially reasonable efforts to provide the Service 98% on a yearly basis but aiming for 24 hours a day, 7 days a week except for planned outages, for updates or upgrades, or any unavailability which is not caused by the Provider.

The execution of maintenance services, the handling of operations-restricting problems, upgrades, updates, adjustment, changes, modifications, or additions to the Service, as well as any measures to detect and rectify malfunctions, shall only lead to a temporary impairment or interruption of the availability if this is needed for technical reasons.

In general, execution of planned maintenance services or the handling of operations-restricting problems shall normally take place between 04:00 to 06:00 on Monday to Friday (local time: Switzerland) as well as on Sunday (full day). The impact on the Service will be limited as much as possible. In case of urgency or serious errors, the maintenance work can be fulfilled at any time. It could be possible, that the Service is degraded or temporarily not available during the maintenance work.

Maintenance work will be announced beforehand on the website.

## 5.2. Service information

### Source Code

The source code for Service remains the property of the Provider and is protected under Intellectual Property Rights.

### Supplying of Features or Functionalities (Upgrade)

As soon as Features or Functionalities have been created and released, they shall be provided to the Customer for use in accordance with the Agreement provisions agreed upon between the parties. In case the new Features or Functionalities are included in the selected subscription, the Customer will be able to benefit from them at no extra charge. In case the new Features or Functionalities are not included in the selected subscription, the Customer will have to change the subscription to be able to benefit from these Features or Functionalities. The conditions for changing a subscription applies.

### Supplying of Improvements (Update)

As soon as improvements have been created and released for the Purchased Service, these will be available to the Customer for use in accordance with the Agreement provisions agreed upon between the parties.

### Support, Response and Restoration Timeframe for Disruptions in the Productive System

Reproducible problems in the current Service version which are determined to be defects by the Provider shall, to the extent possible, be rectified or eliminated, through the provision of alternative solutions, within the response time selected by the Provider.

In this context, the following defect classes and response times are defined:

Class	Description	Time to Resolution
Minor Defect	Use of Service is impacted for 1 or more users but does not impact the Customer business.	10 working days
Major Defect	Use of Service is impacted for 1 or more Users and Customer business is impacted.	5 working days
Critical Defect	The Service is not available.	2 working days

The resolution time mentioned before are indications and not a commitment. The Provider will do its best to achieve the times and if possible resolve the time in a short period of time. Nevertheless, in exceptional cases, it could also take more time. The standard response time for these defects, i.e. the time from the notification of the disruption to the start of the event analysis by the expert shall amount to 48 hours. No restoration time period is specified. The restoration shall be made at the earliest with the next planned support package.

The stated response and restoration periods shall apply for the duration of this Agreement.

### Services Not Including Software Maintenance

Compensation shall be separately provided for services which do not belong to the scope of services in software maintenance (e.g., general consulting or configuration of upload files for the Service). In the event that such services are needed, then the Provider shall notify the Customer of this before the rendering of services. The Customer may then decide whether it would like to avail itself of this service and notify the Provider of how best to proceed.

### 5.3. Hotline in case of general Service impacts

For the duration of the Agreement, an assistance service (hotline) is available. The hotline is available for the Customer to report any disruptions or degradation of the Service which could occur during the use of the Service. The hotline is reachable via a webform on the website. The hotline is manned from Monday to Friday from 09:00 to 17:00 (Timezone: Switzerland/Germany).

In case of any unauthorized access to the Service which has been detected by the Customer, the Premium Hotline can be reached free of charge (see next section).

### 5.4. Premium Service Hotline in case of Customer specific impacts

For the duration of the Agreement, a premium assistance service ("Premium Service") is available for those Customers who purchased the additional Premium Service package. This email and telephone information line supports the Customer through telephone consulting and recommendation regarding eliminations of wrong configurations, disruptions, prevention of disruptions and circumvention of disruptions which could occur during the use of the Service.

The hotline is manned from Monday to Friday from 09:00 to 17:00 (Timezone: Switzerland/Germany).

Outside of normal hotline times (17:00 to 09:00, Saturdays, Sundays and public holidays), stand-by service is available at extra charge according to Annex 3 Pricing Schedule. Customers who did not purchase the Premium Service can also call the hotline at any time and will be charged as per the Annex 3 Pricing Schedule.

The contact details of the hotline are mentioned in Annex 2 Support & Email Form:

## 6. Remuneration, Fee & payment terms

- a. The Customer pays the Provider the fees in accordance to this Agreement and as stated in the offer or selected subscription plus the VAT for the Purchased Service and for the duration of the Agreement. The Conditions at the moment of purchase apply.
- b. The fees for the subscriptions are published on the website and are defined in detail within Annex 3 Pricing Schedule of this Agreement.
- c. The Provider sends the invoice via email including a summary of the Purchased Service and a payment link for online payment to the registered emails of the relevant contact person. Alternatively, a payment via bank transfer in advance is possible. The provision of the Service will only be done after a received payment.
- d. In the case of a prolongation of a subscription, the Customer will receive the same information as for a new Customer with the current applicable conditions at least 60 weeks before the termination date of the Agreement. The payment shall be done latest 30 days before the last day of the Agreement. In case of partial payment, non payment or late payment, the access to the Service can be restricted and the Agreement can be cancelled by the Provider with immediate effect.
- e. The Customer shall pay the fee in full amount upfront for the duration of the Agreement.
- f. The Provider is entitled to adjust the fees of the subscriptions at any time. The new pricing applies as of the moment of publication. Currently ongoing Agreements will only be impacted from the moment of renewal.
- g. Upgrades of the selected subscription are possible at any time. In this case, the Customer shall inform the Provider of the desired upgrade at least 14 days in advance. The provision of the upgrade will happen as fast as possible from the moment of received notice and payment, to cover the difference in fees, at the Provider by the Customer. The Provider shall send an invoice / statement to the Customer with the difference owed by the Customer until end of the currently ongoing Agreement. From the moment of provision, the new subscription type is considered as the reference for any further changes.
- h. Downgrades of the selected subscription are only possible at the end of the Agreement respectively at the renewal time and not during the relevant subscription term.

- i. Payment obligations are non-cancelable and fees paid are non-refundable – even in case of early termination for whatever reason or in case of downgrades.
- j. The cancellation of the Agreement shall be done latest 30 days before the last day of the Agreement.
- k. Our fees do not include any VAT. VAT will be invoiced to Swiss based Customers. Any other Customers are responsible for paying all taxes associated with your purchases hereunder and to comply with their local tax regulations.

## 7. Liability & Warranty

- a. The Provider shall warrant the operational and functional readiness of the Service in accordance with the provisions of the Agreement.
- b. The Customer indemnifies the Provider against all 3rd party claims based on the data stored by Customer and to reimburse the Provider for all costs incurred by the Provider due to possible infringements of rights.
- c. In case of a justified reason to suspect that the stored data infringes any rights of third parties and/or is illegal, the Provider is entitled to immediately block the storage space. Especially in case courts, authorities and/or other third parties inform the Provider of such situation, a justified reason to suspect illegality and/or infringement of rights shall exist.
- d. The Provider shall immediately inform the Customer of the removal and the reason for this. The block shall be lifted as soon as the suspicion is completely invalidated.
- e. Within the framework of the legal provisions, the Provider shall exclude any liability towards the Customer (or any third party), in particular for the fulfillment of its contractual and non-contractual obligations and for the loss of data and loss of profits (including negligence). This exclusion of liability shall also apply to damage caused, directly or indirectly, by the use of the Service or the non-availability of the Service.
- f. In all cases, irrespective of the liability basis, the mutual liability of the contracting parties shall be limited to the amount of the monthly access fees in the last six months prior to the occurrence of the damage.

## 8. Duration of the Agreement

The Agreement starts, unless otherwise indicated within the Agreement, at the point of one of the following dates:

- a) date of Contract (Agreement) signature
- b) date of the order of the Service via the Order form or via the registration to the Service
- c) the Provision of the Service by the Provider for the Customer.

The duration of the Agreement depends on the selected subscription and is indicated during the order of the Service, in the Customer / Provider Contract as well as on the invoice. The subscriptions are concluded for an indefinite period of time and may be terminated by either party by giving a minimum of 30 days notice period before the end of the Agreement.

The termination of the Agreement can be executed online in the Customers account or via email to [support@wagile.pro](mailto:support@wagile.pro) from the Customers representative. The termination must be confirmed by the Provider for validation.

Once the termination has been confirmed, the Customer Account and all stored data will be deleted on the last date of the Agreement at 23:59:59. Afterwards, no further access will be possible.

In case of good cause, the parties shall be eligible to cancel the Agreement with immediate effect. A good cause shall exist in particular in the following cases:

- Bankruptcy of the Customer or opening of bankruptcy proceeding has been stopped for lack of assets
- Late or partial payments of the Customer especially as specified in Section 6
- The Customer infringes against this Agreement or is in breach of the Agreement.
- The Customer uses the Services for the purpose of unlawful or ethically questionable actions or for promoting criminal actions



- The Customer interferes with industrial or intellectual property rights, naming rights or copyrights of 3<sup>rd</sup> parties or violates legal regulations when using the Service

## 9. Confidentiality

The Provider shall not disclose any confidential Customer Information which have come to its knowledge during the preparation, implementation or the fulfillment of the Agreement to external 3<sup>rd</sup> parties without prior Customer authorization. Confidential Information means all information disclosed by a party to the other party, whether in writing or orally, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes, but is not limited to, Customer data, Customer processes, Customer rules, Customer business or trade secrets and all information related to the Service of the Provider including documentations, this Agreement, subscription information or terms and conditions of the Agreement. Confidential Information also extends to the marketing and communication plan, technology or technical information, Product descriptions, Service descriptions, special side-letters or Agreements.

The Provider shall a) keep the Customer Confidential Information strictly confidential; b) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own Confidential Information of a similar nature, being at least a reasonable degree of care; c) not disclose the Customer Confidential Information to any person without the Customer's prior written consent d) not use any of the Customer Confidential Information for any purpose other than for the fulfillment of the Agreement and e) act in good faith at all times in relation to the Customer Confidential Information.

The Provider may disclose the Customer Confidential Information to the Provider's employees, professional advisers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

Confidential Information are not such information if the information a) is or becomes publicly known through no act or default of the Provider; b) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality; or c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.

The restrictions in this section do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.

The provisions of this section shall continue in force indefinitely following the termination of this Agreement.

Vice versa, the same conditions apply for the Customer related to all Confidential Information of the Provider.

The Customer authorizes the Provider to use general information about this Agreement in an appropriate manner for communication, marketing and sales purposes and to name and display the logo of the Customer publicly as a reference in presentations or on the website.

## 10. Data Protection

Both parties shall comply with "General Data Protection Regulation" (GDPR) and treat each others data as they treat their own data. By entering in this Agreement, the Customer simultaneously declares its agreement with the Providers Data & Privacy Policy as well as the GDPR Commissioned Processing Document in its latest and actual version as provided or available on the Providers website. The Customer declares to know and accept both documents and the related provisions.

## 11. The role of a Partner

The Provider is working together with specialised Partners in different regions as well as for different industries. These Partners can support interested parties with the configuration and use of the Service. It is up to the interested parties to select the right Partner.



In case that the interested parties select a Partner to use the Service, the following shall apply:

- In general, the Provider considers the Partner as the Customer
- The Service is provided towards the Partner.
- The Partner shall request the creation of a Partner Customer account.
- The Partner is accountable for the data stored in my.WAGILE.pro and shall ensure compliancy with a contractual relationship with the Partner Customer.

In this case, the Provider recommends that in the contract between the Partner and the interested party certain obligations of the Provider are passed through to the interested party.

## 12. Final provisions

The Provider remains the owner of all intellectual property rights, the Service, the methodology, the website, the trademarks and the documentation related to the Service.

Any notification shall be sent in writing to the approved addresses provided by the Customer during the registration (or updated at a later point according to the Customer obligation on the Provider's Service) unless another form is required by law or this Agreement. Transmission by email shall always be sufficient to meet written form. Emails sent by the Provider shall always be deemed to be written notifications.

In case individual provisions of this Agreement or in the referenced documents are invalid, partially or in whole, any invalid provisions shall be reinterpreted, supplemented or replaced in such a way that the commercial purpose pursued by the invalid provision is achieved. The same shall apply in the event of that the Agreement contains any loopholes.

Zurich is agreed as the exclusive place of jurisdiction for all disputes arising in connection with this Agreement and shall be governed by the law of the Swiss Confederation to the exclusion of the provisions of Private International Law (PIL) and the UN Convention on Contracts for the International Sale of Goods (CISG).

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