

TERMS AND CONDITIONS

END USER LICENSE AGREEMENT (“EULA”)

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SOFTWARE LICENSE TERMS AND CONDITIONS

BY INSTALLING OR USING THE LICENSED SOFTWARE FROM CODA OCTOPUS, YOU ARE AGREEING TO BE BOUND BY THIS SOFTWARE LICENSE AGREEMENT (“AGREEMENT”).

IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MAY NOT INSTALL, RUN OR USE THE LICENSED SOFTWARE OR CODA OCTOPUS ENHANCEMENTS.

THE “EFFECTIVE DATE” FOR THIS AGREEMENT IS THE DAY YOU INSTALL THE SOFTWARE (INCLUDING ANY DERIVATIVE THEREFROM SUCH AS UPDATES AND/OR UPGRADES).

AGREED TERMS

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in this Agreement (unless the context requires otherwise).

Activation Key: means collectively the specific Serial Number, code and authorization for each copy of the Licensed Software issued by Coda Octopus to You.

Agreement or License: means this agreement, referred to as EULA or License, under which the Licensor licenses the Product (as is defined hereinafter) to the authorized User.

Coda Octopus: Coda Octopus Products Limited a Scottish company with its place of business 38 South Gyle Crescent, South Gyle Business Park, Edinburgh, EH12 9EB, United Kingdom and is also referred to as “we”, “us” and “our” as the context requires.

Coda Octopus Enhancements: means files or enhancements to files in which the copyright is owned by Coda Octopus or distributed by Coda Octopus from time to time. Coda Octopus Enhancements are not defined as Software (“Enhancements”).

Coda Octopus Website: means www.codaoctopus.com

Documentation: means the user manuals and supporting documentation in electronic form (or otherwise) provided by Coda with the Licensed Software and/or Enhancements under this Agreement.

Dongle: means the hardware device on which license key is loaded and which carries a unique Serial Number.

Initial Warranty Period: means the period which we warrant that the Product will be free from material defects and work in accordance with our specification provided in the Documentation.

Licensor: means Coda Octopus.

Licensee: means You and “Your” is also a reference to You.

Licensed Software: means the specific software licensed to You under the terms of this Agreement (as specified in the LAAK or LAD (defined in Clause 2 of this Agreement) including any Updates or Upgrades but excludes Coda Octopus Enhancements.

Product: means the Licensed Software including, if applicable, any Updates and Upgrades but excluding any Coda Octopus Enhancements, which is the subject matter of this Agreement.

Serial Number: means a unique set of characters associated with a specific copy of the Licensed Software issued by Coda Octopus (based on the specific configuration and release of the Licensed Software and the license type and term).

TEAM: means Coda Octopus technical support program. Terms and Conditions for TEAM can be accessed from Coda Octopus Website.

Temporary License: means a temporary License of the Licensed Software which Coda Octopus may supply to you for either trial purposes or such specific purpose as Coda Octopus may agree with you from time to time.

Third-Party Software: means certain software supplied by third parties that Coda Octopus provides access to as part of the Licensed Software.

Through-Life-Support ("TLS"): an agreement between Coda Octopus and Licensee to support the Licensed Software for a fixed period of time (3 or 5 years according to the terms of the TLS agreement) and under which Coda Octopus provides post-sale technical support of the Licensed Software and free upgrades, whether major or minor releases.

Update: means a revision or patch to the Licensed Software that improves the functionality of the Licensed Software and may contain new features or enhancements, which is not an Upgrade.

Upgrade: means a subsequent version of the Licensed Software that Coda Octopus designates as a new release and makes generally commercially available or a different variant of the Licensed Software that Coda Octopus makes generally commercially available.

1.2. The headings in this Agreement are inserted for convenience only and shall not affect its construction.

1.3. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4. A reference to one gender includes a reference to the other gender.

1.5. Any schedule to this agreement forms part of (and is incorporated into) this agreement.

AGREEMENT

This "License" is a legal agreement between the Licensor and the Licensee for the use of the Licensed Software and the Documentation. This may include associated media, printed materials, and other components and software modules including but not limited to drivers that Licensor or its authorized agents may provide to You or make available to You either at the time of the License or thereafter ("Product"). We have licensed the Product to You and not sold it. The terms of the License are set out in this Agreement.

The Product is protected by copyright laws as well as other intellectual property laws.

2. LICENSE, DONGLE AND ACTIVATION KEY.

2.1. Coda Octopus shall issue You a "License and Activation Key ("LAAK)" via electronic delivery or courier (e.g. FedEx, UPS, DHL) or a "License and a Dongle (LAD)" via post or courier. The LAAK or LAD, as the context requires, are incorporated herein by reference into this Agreement.

2.2. Single –User License Grant. Subject to the terms and conditions of this Agreement, Coda Octopus grants to You a non-assignable, non-transferrable license and non-exclusive License of the Product without the right to sublicense, to use the Licensed Software in object-code form only and solely for Your business.

- 2.3. All Upgrades and Updates or Temporary License pertaining to this Product are licensed to You on these terms and conditions also and the grant of the License for such Upgrades or Updates are on a non-assignable, non-transferrable and non-exclusive basis. Unless otherwise agreed, all Updates and Upgrades are released to You on these terms and conditions.
- 2.4. If you have a License for a LAAK you may install and run on a single computer.
- 2.5. If you have a LAD you may install on multiple computers but may only run the said Licensed Software on a single computer at any one time.
- 2.6. You may transfer the Licensed Software from one computer to another owned by You.
- 2.7. During the Warranty Period, which is one year from the date we License You the Product, we will provide You with a TEAM subscription under which we will provide technical support for the Product including provision of minor releases of the Licensed Software and bug fixes.
- 2.8. Unless You renew Your TEAM subscription after the first year, Your Product will be classified as unsupported by Coda Octopus.
- 2.9. All rights not expressly granted to You are retained by the Licensor.

3. SINGLE USER LICENSE CODA OCTOPUS SOFTWARE AND ENHANCEMENTS

- 3.1. Subject to the terms and conditions of this Agreement including the Licensee's continuous compliance with this compliance with this EULA and payment of applicable fees (License Fees), Coda Octopus grants You a personal , non-assignable, non-transferrable, non-exclusive and non-sublicensable license to download, install, activate and use one (1) copy of the Licensed Software and any Enhancements. In addition, Coda Octopus grants a non-assignable, non-transferrable and non-exclusive license to modify, reproduce and distribute the Coda Octopus Enhancements to create Your enhancements solely for use with the Licensed Software.
- 3.2. The License is to be used by one (1) end user (a Licensed User) in accordance with the terms of the EULA. If the Licensee is an organization, company, entity, partnership or other non-natural person, Licensed Users are limited to employees or duly authorized agents or independent contractors of the Licensee.
- 3.3. Certain features of or functionality available in connection with the Software (collectively, the "Optional Features") may be subject to additional terms and conditions.
- 3.4. THE CODA OCTOPUS ENHANCEMENTS ARE PROVIDED TO YOU ON AN "AS IS" AND "WHERE IS" BASIS AND WITHOUT WARRANTY OF ANY TYPE OR KIND. CODA OCTOPUS AND ITS THIRD-PARTY LICENSORS HEREBY EXPRESSLY DISCLAIM AND EXCLUDE ALL WARRANTIES AND CONDITIONS, WHETHER STATUTORY, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE CODA OCTOPUS ENHANCEMENTS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY ON FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY'S RIGHTS.

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 - (b) reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code of the Licensed Software or in any way ascertain, decipher or obtain the communications protocols for accessing the Licensed Software or the underlying ideas or algorithms of the Software (example, in an effort to develop other applications or services that provide similar or substitute or complimentary functionality to the Licensed Software) except where such activity is permitted by applicable law;

- (c) remove, modify, or obscure any copyright notices or other proprietary notices or legends appearing on or in the Licensed Software, Temporary License or Coda Octopus Enhancements or any portion thereof; or
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- (e) embed the Licensed Software in any third-party application unless otherwise authorized in writing in advance by an authorized officer of Coda Octopus; or
- (f) make unauthorized copies of the Licensed Software, Coda Octopus Enhancements or Temporary License (as the context requires); or
- (g) apply any new release of software released to You under our TEAM program to any other Licensed Software which does not have the benefit of an active Coda Octopus TEAM subscription.

5. THIRD PARTY SOFTWARE

5.1. The Third-Party Software is subject to various other terms and conditions imposed by the licensors of such Third-Party Software. A list of the applicable Third-Party Software license terms is provided in Exhibit A of this Agreement and on Coda Octopus website. Your use of the Third-Party Software is subject to, and governed by, the specified Third-Party license terms. You agree to comply with such Third-Party license terms (as are in force from time to time). It is the Licensee's responsibility to make himself aware of the Third-Party Licensor's terms and conditions as in force from time to time.

6. DOCUMENTATION

6.1. Subject to the terms and conditions of this Agreement, Coda Octopus grants to You a non-assignable, non-transferrable and non-exclusive license, without right to sublicense, to use the Documentation in connection with Your authorized use of the Licensed Software. You may not reproduce or distribute the Documentation in any manner, whether physically or electronically, without the express written permission of Coda Octopus. You may not use the Documentation to file patents around our products including our Licensed Software.

7. TECHNICAL SUPPORT (CODAOCTOPUS® TEAM PROGRAM) AND THROUGH LIFE SUPPORT (TLS) PROGRAM

7.1. The Product comes with a twelve (12) months warranty (Initial Warranty Period).

7.2. During the Initial Warranty Period, you will have the benefits of a TEAM membership under which we will provide You with the support set forth in the terms and conditions for TEAM membership. A summary of these terms and conditions are set out in Clause 8. The full TEAM membership terms and conditions can be found on Coda Octopus Website. In the event of a conflict between the TEAM membership terms and conditions and these terms, this Agreement shall prevail.

7.3. Upon the expiry of the Initial Warranty Period Your Product will only benefit from the TEAM support set out in Clause 8 below, if You pay the membership fee quoted to You by the Licensor.

7.4. If you have purchased Through Life Support, your Product will be covered for technical support and software upgrades (and any other rights provided for) during the Through Life Support period.

8. CODA OCTOPUS® TEAM SUPPORT MEMBERSHIP

8.1. Subject to having an active TEAM membership or your Product is covered by Through Life Support and following our recommendations concerning the use of the Product, we will provide You with the following Support:

- (a) The Licensor will provide email and telephone support to You for the current and the immediately preceding versions of the Product.
- (b) The Licensor will investigate problems or questions that You have relating to the Product promptly.
- (c) You agree to provide adequate information to us to assist in the investigation and to confirm that any problems have been resolved.
- (d) The Licensor does not provide guaranteed response time but will make good faith effort to answer emails and voice mails promptly.
- (e) We will supply to You, at no additional charge, any improvements or modifications to the Product that we make generally available as a minor release including bug fixes. Any such improvements or modifications shall become part of the Product for all purposes of this Agreement.

8.2. You acknowledge and agree that the Support to be provided by us hereunder is limited to the most current version of the Product and the immediately preceding version.

8.3. If You lose Your Dongle (which is your Key to operate and use the Licensed software) we will be unable to replace this unless You pay the full License Fee for this. During the Initial Warranty Period or where You renew Your TEAM membership or if you have purchased our Through Life Support package, we will replace damaged dongles (but not lost Dongles).

9. EXCLUSIONS.

9.1. The Licensor's obligation to provide Support is contingent upon proper use of the Product and full compliance with this Agreement. The Licensor shall be under no obligation to provide Support should such services be required due to (a) failure to operate the Product within the systems requirements provided for the Product; (b) any modification or attempted modification of the Product by You or any third party; or (c) Your failure or refusal to implement Product changes recommended by the Licensor; (or) where you have rented or purport to transfer the Licensed Software in contravention of the terms of this EULA.

9.2. Unless You have purchased our Through Life Support package to receive Updates and Upgrades (which are not minor releases) You must pay the applicable fee and agree to our standard terms and conditions governing the use of the Updates and Upgrades.

10. INTELLECTUAL PROPERTY RIGHTS.

10.1. Subject to the license granted herein, the Licensed Software, Updates, Upgrades, Coda Octopus Enhancements and the Documentation contain copyrighted material and other proprietary material and information of Coda Octopus and/or its licensors. Coda Octopus and/or its licensors shall retain all right, title and interest, including all intellectual property rights in and over the Licensed Software, Updates, Upgrades, Coda Octopus Enhancements and Documentation. The Licensee will not remove, alter, or destroy any form of copyright notice proprietary markings, or confidential legends placed upon or contained within the Licensed Software, Updates, Upgrades, Coda Octopus Enhancements, Documentation or any component or part thereof.

11. WARRANTY.

11.1. The Licensor warrants that for a period of twelve (12) months from the date of delivery ("Warranty Period"), under normal use, the Product will perform substantially in conformance with the specifications published in the Documentation.

11.2. During the Warranty Period, the sole obligation of the Licensor (and Your sole remedy under the warranty in this Section), if You provide written notice of the Licensor's failure to comply with the above Warranty, is that the Licensor will use reasonable commercial efforts to correct such nonconformity in the Product in accordance with Coda Octopus terms and conditions. In addition, if the Licensor determines it is not commercially reasonable to correct the nonconformity, the Licensor may elect to terminate the license to the Product. In the event of such termination, the Licensee will promptly return the Product to the Licensor. Upon receipt of the Product from Licensee, the Licensor will return to Licensee all license fees (and any unused support fees) paid to the Licensor by You for the Product.

11.3. The Warranty set forth above in Clause 11.1 does not apply to, and the Licensor shall have no obligation with respect to, any non-conformity arising as a result of (i) use of the Product other than as specified under this Agreement and the related Documentation; (ii) any modification or alteration of the Product performed other than by the Licensor or its agents, or (iii) transfer of the Product to any computer system other than the ones on which the Product is authorized to be installed, except as permitted in this Agreement.

11.4. Nothing in this Clause affects the Licensee's statutory rights.

12. DISCLAIMER.

12.1. Other than the Warranty set forth in Clause 11 herein, and to the maximum extent permitted by applicable law, the Licensor, its authorized resellers and their subsidiaries provides the Product and any support services related to the Product ("Support Services") AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, either express, implied or statutory, including, but not limited to, any implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the Product, and the provision of or failure to provide support services.

13. LIMIT OF LIABILITY AND EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES.

13.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE LICENSOR, ITS AUTHORIZED RESELLERS OR THEIR SUBSIDIARIES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE LICENSED SOFTWARE OR DOCUMENTATION, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS LICENSE.

14. LIMITATION OF LIABILITY AND REMEDIES.

14.1. Notwithstanding the foregoing, any damages that You might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of the Licensor, its resellers and their subsidiaries under any provision of this License and Your exclusive remedy for all of the foregoing shall be limited to the amount actually paid by You for

the Product. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

15. GENERAL.

15.1. You may not assign this Agreement or any right or interest hereunder, by operation of law or otherwise, without the express prior written consent of the Licensor. Any attempt to assign this Agreement, without such consent, will be null and void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

15.2. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

15.3. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

15.4. You shall be bound by and comply with the provisions set forth in Exhibit A to this Agreement. If this Agreement contradicts with Exhibit A, Exhibit A shall prevail.

16. COMPLIANCE WITH LICENSES.

16.1. You agree that upon request from the Licensor or its authorized representative You will within thirty (30) days fully document and certify that the use of any and all of the Licensor's Products at the time of the request is in conformity with Your valid licenses from the Licensor.

17. DISCONTINUING OR MODIFYING SERVICES.

17.1. You acknowledge that the Licensor has the right to discontinue the manufacture and development of any of the Product and the support for that Product, in its sole discretion at any time, including the distribution of older Product versions, provided that the Licensor agrees not to discontinue the support for that Product during the current annual term of this Agreement, subject to the termination provisions herein.

17.2. Notwithstanding the foregoing of this clause, if the Licensor discontinues the manufacture and support for a particular Product, Support for any remaining Products covered by this Agreement shall not be adversely affected.

17.3. The Licensor reserves the right to alter the Support, in its sole discretion but in no event shall such alterations result in (a) diminished support from the level of support set forth herein; (b) materially diminished obligations for the Licensor; or (c) Your rights being materially diminished.

18. GOVERNING LAW AND JURISDICTION

18.1. The formation, existence, construction, performance, validity and all aspects of Agreement shall be governed by the laws of Scotland and the parties submit to the exclusive jurisdiction of the Scottish Courts.

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EXHIBIT A

THIRD PARTY TRADEMARK ACKNOWLEDGEMENT

Fluent is a trademark of Microsoft Corporation and the Fluent user interface is licensed from Microsoft Corporation.

SHOULD YOU HAVE ANY QUESTIONS CONCERNING THIS LICENSE, PLEASE CONTACT CODA OCTOPUS AT THE ADDRESS GIVEN BELOW.

Coda Octopus Products Ltd,

38 South Gyle Crescent,
South Gyle Business Park,
Edinburgh, EH12 9EB,
United Kingdom

Email: support@codaoctopus.com

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MICROSOFT SQL SERVER 2008 EXPRESS WITH ADVANCED SERVICES EDITION
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for this software unless other terms accompany those items. If so, those terms apply.

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If you comply with these license terms, you have the rights below.

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- b. Included Microsoft Programs. The software contains other Microsoft programs. These license terms apply to your use of those programs.

2. ADDITIONAL LICENSING REQUIREMENTS AND/OR USE RIGHTS.

a. **Distributable Code.** You are permitted to distribute the software in programs you develop if you comply with the terms below.

i. Right to Use and Distribute. **The software is “Distributable Code.”**

- Distributable Code. You may copy and distribute the object code form of the software. You may not modify the software, and your programs must include a complete copy of the software, including set-up.
- Third Party Distribution. You may permit distributors of your programs to copy and distribute the Distributable Code as part of those programs.

ii. Distribution Requirements. **For any Distributable Code you distribute, you must**

- add significant primary functionality to it in your programs;
- require distributors and external end users to agree to terms that protect it at least as much as this agreement;
- display your valid copyright notice on your programs;
- indemnify, defend, and hold harmless Microsoft from any claims, including attorneys’ fees, related to the distribution or use of your programs; and
- if the software is Microsoft SQL Server 2008 Express with Tools, distribute it with either:
 - Microsoft SQL Server 2008 Express Edition or
 - Microsoft SQL Server 2008 Express with Advanced Services Edition.

iii. Distribution Restrictions. **You may not**

- alter any copyright, trademark or patent notice in the Distributable Code;
- use Microsoft’s trademarks in your programs’ names or in a way that suggests your programs come from or are endorsed by Microsoft;
- distribute Distributable Code to run on a platform other than the Windows platform;
- include Distributable Code in malicious, deceptive or unlawful programs; or
- modify or distribute the source code of any Distributable Code so that any part of it becomes subject to an Excluded License. An Excluded License is one that requires, as a condition of use, modification or distribution, that
 - the code be disclosed or distributed in source code form; or
 - others have the right to modify it.

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- reverse engineer, decompile or disassemble the software, except and only to the extent that applicable law expressly permits, despite this limitation;
- make more copies of the software than specified in this agreement or allowed by applicable law, despite this limitation;
- publish the software for others to copy; or
- rent, lease or lend the software.

5. BACKUP COPY. You may make one backup copy of the software. You may use it only to reinstall the software.

6. DOCUMENTATION. Any person that has valid access to your computer or internal network may copy and use the documentation for your internal, reference purposes.

7. TRANSFER TO A THIRD PARTY. The first user of the software may transfer it and this agreement directly to a third party. Before the transfer, that party must agree that this agreement applies to the transfer and use of the software. The first user must uninstall the software before transferring it separately from the device. The first user may not retain any copies.

8. EXPORT RESTRICTIONS. The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users and end use. For additional information, see www.microsoft.com/exporting.

9. SUPPORT SERVICES. Because this software is “as is,” we may not provide support services for it.

10. ENTIRE AGREEMENT. This agreement, and the terms for supplements, updates, Internet-based services and support services that you use, are the entire agreement for the software and support services.

11. APPLICABLE LAW.

- a. United States. If you acquired the software in the United States, Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort.
- b. Outside the United States. If you acquired the software in any other country, the laws of that country apply.

12.LEGAL EFFECT. This agreement describes certain legal rights. You may have other rights under the laws of your country. You may also have rights with respect to the party from whom you acquired the software. This agreement does not change your rights under the laws of your country if the laws of your country do not permit it to do so.

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14. LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES. YOU CAN RECOVER FROM MICROSOFT AND ITS SUPPLIERS ONLY DIRECT DAMAGES UP TO U.S. \$5.00. YOU CANNOT RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES.

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- claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.

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