

Data Sharing/Use Agreement

Between

Jefferson County Board of Education

And

NCS Pearson, Inc.

This Data Sharing/Use Agreement ("Agreement") between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools ("JCPS"), and *NCS Pearson, Inc.*, and its subsidiaries and affiliates (Pearson)c organized under the laws of the state of Delaware ("Services Provider") describes the services to be provided to JCPS by Services Provider, and the means to be used by Services Provider to ensure the confidentiality and security of information and data exchanged between JCPS and Services Provider in connection with the provision of the services.

A. PERIOD OF THE AGREEMENT

This Agreement shall be effective as of February 12, 2020 and will terminate when the services contract between the parties terminates, unless terminated earlier by either party pursuant to Section H.

B. SCOPE OF THE AGREEMENT AND INTENDED USE OF THE DATA

1. Services Provider will provide the following services to JCPS under the terms of a services contract between JCPS and Services Provider:

Q-global scoring subscriptions along with Q-global reports usages. Q-global is used by ECE teachers to administer assessments, generate scores and produce reports that assist with determining appropriate placement and interventions for students.

2. JCPS and Services Provider agree that Services Provider is an organization to which JCPS can disclose, upon written request, personally identifiable information from an education record of a student, as defined in 34 CFR 99.3, under the "school official exception" of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g) and 34 C.F.R. 99.31 (a)(1) ("FERPA"), because the disclosure is to a contractor to whom JCPS has outsourced institutional services or functions for which JCPS would otherwise use employees; the contractor is under the direct control of JCPS with respect to the use and maintenance of education records; and the contractor is subject to the requirements of 34 CFR 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

3. JCPS shall disclose to Services Provider, upon written request, confidential, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3, under the "school official exception" of FERPA, 34 C.F.R. 99.31 (a)(1), when the disclosure is within such exception as stated in Paragraph B.2 above and Services Provider has a legitimate educational interest for access to such education records. The confidential data including student and non-student information to be disclosed is described in a document attached to this agreement as **Attachment A**. Services Provider shall use personally identifiable information from education records and other records in order to perform the services described in Paragraph B.1 above. Services Provider shall notify JCPS and JCPS shall provide written consent, if approved, of any changes to the list of disclosed data necessary for the services or any changes to the scope, purpose or duration of the services themselves. Any agreed upon changes to the data disclosed shall be reduced to writing and included in an update to Attachment A to this Agreement. Any agreed upon changes to the scope, purpose or duration of the services shall be reduced to writing and included in an amendment to the services contract described in Paragraph B.1 above.
4. Services Provider and JCPS shall work cooperatively to determine the proper medium and method for the transfer of confidential data between each other. Services Provider shall confirm the transfer of confidential data and notify JCPS as soon as practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol shall apply to any transfer of confidential data from Services Provider to JCPS.

C. CONSTRAINTS ON USE OF DATA

1. Services Provider agrees that the services shall be provided in a manner that does not permit personal identification of parents and students by individuals other than representatives of Services Provider that have legitimate interests in the information.
2. Services Provider will not contact the individuals included in the data sets without obtaining advance written authorization from JCPS.
3. Services Provider shall not re-disclose any individual – level data with or without identifying information to any other requesting individuals, agencies, or organizations without prior written authorization by JCPS.
4. Services Provider shall use the data only for the purpose described in Paragraph B.1 above. The data shall not be used for personal gain or profit.

D. DATA CONFIDENTIALITY AND DATA SECURITY

Services Provider agrees to the following confidentiality and data security statements:

1. Services Provider acknowledges that the data is confidential data and proprietary to JCPS, and agrees to protect the data from unauthorized disclosures and to comply with all applicable JCPS, Local, State and Federal confidentiality laws and regulations including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.
2. If the performance of this Agreement involves the transfer by JCPS to Services Provider of any data regarding any JCPS student that is subject to FERPA, Services Provider agrees to:
 - a. In all respects comply with the provisions of FERPA.
 - b. Use any such data for no purpose other than to fulfill the purposes of the services contract described in Paragraph B.1 above, and not share any such data with any person or entity other than Services Provider and its employees, contractors and agents, without the prior written approval of JCPS.
 - c. Require all employees, contractors and agents of Services Provider to comply with all applicable provisions of FERPA with respect to any such data.
 - d. Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes of the services contract described in Paragraph B.1 above.
 - e. Provide the services under the services contract described in Paragraph B.1 above in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agent of Services Provider having a legitimate interest in knowing such personal identification.
 - f. Destroy or return to JCPS any such data obtained under this Agreement, provided that the end user is not able to utilize the services to destroy its own data and Services Provider receives written notification to destroy or return data , within 60 days, after the date within it is no longer needed by Services Provider for the purposes of the services contract described in Paragraph B.1 above.
3. Services Provider shall not release or otherwise reveal, directly or indirectly, the data to any individual, agency, entity, or third party not included in this Agreement, unless such disclosure is required by law or court order. If Services Provider becomes legally compelled to disclose any confidential and otherwise personally identifiable data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then Services Provider shall use all reasonable efforts to provide JCPS with prior notice before disclosure so that

JCPS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure JCPS's compliance with the confidentiality requirements of federal or state law; provided, however, that Services Provider will use all reasonable efforts to maintain the confidentiality of confidential and otherwise personally identifiable data. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, Services Provider will only disclose that portion of confidential and otherwise personally identifiable data that Services Provider is legally required to disclose.

4. Services Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the data.
5. Services Provider shall not use data shared under this Agreement for any purpose other than the services contract described in Paragraph B.1 above. Nothing in this Agreement shall be construed to authorize Services Provider to have access to additional data from JCPS that is not included in the scope of this Agreement (or addenda). Services Provider understands that this Agreement does not convey ownership of the data to Services Provider.
6. Services Provider shall take reasonable security precautions and protections to ensure that persons not authorized to view the data do not gain access to the data. Reasonable security precautions and protections include, but are not limited to:
 - a. Creating, distributing, and implementing data governance policies and procedures which protect data through appropriate administrative, technical and physical security safeguards, and outline staff responsibilities for maintaining data security;
 - b. Encrypting all data carried on mobile computers/devices;
 - c. Encrypting data before it is transmitted electronically;
 - d. Requiring that users be uniquely identified and authenticated before accessing data;
 - e. Establishing and enforcing well-defined data privilege rights which restrict users' access to the data necessary for this to perform their job functions;
 - f. Ensuring that all staff accessing data sign a nondisclosure statement, attached as **Attachment B**, and maintain copies of signed statements;
 - g. Securing access to any physical areas/electronic devices where sensitive data are stored;
 - h. Installing a firewall to permit or deny network transmissions based upon a set of rules; and

- i. Installing anti-virus software to protect the network.
- 7. If Services Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), Services Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:
 - a. "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
 - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
 - v. A passport number or other identification number issued by the United States government; or
 - vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
 - b. As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."
 - c. Services Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.

- d. Services Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
 - e. Services Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
- 8. If Services Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person or entity other than an educational institution that operates a cloud computing service"), Services Provider agrees that:
 - a. Services Provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Services Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."
 - b. With a written agreement for educational research, Services Provider may assist an educational institution to conduct educational research as permitted by FERPA.
 - c. Pursuant to KRS 365.734, Services Provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
 - d. Pursuant to KRS 365.734, Services Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.
 - e. Pursuant to KRS 365.734, Services Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).
- 9. If Services Provider believes that Student PII may have been subject to unauthorized access, Services Provider shall advise JCPS promptly. If JCPS determines that actions must be taken to comply with applicable law, Services Provider and JCPS shall reasonably cooperate, coordinate and consult with each other to achieve such compliance, recognizing that unauthorized access may be caused in whole or in part by either or neither party.
- 10. For purposes of this agreement and ensuring Services Provider's compliance with the terms of this Agreement and all application of the state and Federal laws, Services Provider will designate a temporary data custodian (or an alternative designee specified in writing) as the temporary custodian ("Temporary Custodian") of the data that JCPS shares with Services Provider. JCPS will release all data and information under this Agreement to Temporary Custodian. Temporary Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the return or destruction of the data as described below. JCPS or its agents may, upon request, review the records Services Provider is required to keep under this Agreement.
- 11. Services Provider acknowledges that any violation of this Agreement and/or the provisions of FERPA or accompanying regulations related to the nondisclosure of protected student information constitutes just cause for JCPS to immediately terminate this Agreement.

E. FINANCIAL COSTS OF DATA-SHARING

Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to JCPS are costs associated with the compiling of student data requested under this agreement and costs associated with the electronic delivery of the student data to Services Provider.

No payments will be made under this Agreement by either party. Any payments to Services Provider will be made under services contract described in Paragraph B.1 above.

F. OBLIGATIONS OF JCPS

During the term of this Agreement, JCPS shall:

1. Prepare and deliver student demographic and academic data as defined in **Attachment A – Data File Description**. All items will be keyed to a “proxy” student identifier that is different from the official student ID. The link between the official and proxy IDs will not be disclosed by JCPS. No personally identifiable information will be provided to Services Provider.
2. After the initial data is provided for the requested student population, JCPS will not provide supplementary data for additional students.
3. Provide Data Stewardship training for data custodian.

G. LIABILITY

Services Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from or relate to Services Provider's intentional or negligent release of personally identifiable student, parent or staff data ("Claims"). Services Provider agrees to hold harmless JCPS and pay any costs incurred by JCPS to the extent that the loss or damage is attributable to the fault or negligence of Service Provider, subject to Service Provider's receiving prompt notice of any claim in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this Agreement.

H. TERMINATION

1. This Agreement may be terminated as follows, after notification via the United States Postal Service (certified mail or registered mail) or recognized overnight delivery service (e.g., UPS, DHL, or FedEx):
 - a. By either party immediately in the event of a material breach of this Agreement by another party.
 - b. By either party after thirty (30) days advance written notice to the other party, for any reason or no reason.
2. The confidentiality provisions of this Agreement shall survive the termination of this Agreement. If this Agreement is terminated by either party for material breach or for any other reason with thirty (30) days written notice, the confidential information shall be returned or destroyed, within 60 days of termination. If this Agreement terminates at the end of the term described in Section A, Services Provider shall return or destroy all confidential information when it is no longer needed for the study.
3. Destruction of the confidential information shall be accomplished by utilizing an approved methods of confidential destruction, including shredding, burning or certified/witnessed destruction for physical materials and verified erasure of magnetic media using approved methods of electronic file destruction.

I. PUBLICATIONS AND COPYRIGHTS

Both parties recognize that each organization may have extant work that predates this agreement. If those materials and/or data are used in the course of this work, they remain the property of the original developer or researcher. If new materials are developed during the term of the services contract described in Paragraph B.1 above, ownership and copyright of such will be governed by the terms of the services contract.

J. MODIFICATION

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.

K. QUALITY OF SERVICES

JCPS reserves the right to review Services Provider's performance under this Agreement for effectiveness in serving the specific purposes as outlined in Paragraph

B.1. Failure of Services Provider to perform in a manner that meets or exceeds the quality standards for JCPS shall serve as grounds for termination of this Agreement.

L. BREACH OF DATA CONFIDENTIALITY

Services Provider acknowledges that the breach of this agreement or its part may result in irreparable and continuing damage to JCPS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this agreement by Services Provider, JCPS, in addition to any other rights and remedies available to JCPS at law or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach. If the United States Department of Education's Family Policy Compliance Office determines that Services Provider has violated paragraph 34 C.F.R. 99.31(a)(6)(iii)(B), JCPS may not allow Services Provider access to personally identifiable information from education records for at least five (5) years.

M. CHOICE OF LAW AND FORUM

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the parties expressly waive the right to bring any legal action or claims in any other courts.

N. WAIVER

No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.

O. SEVERABILITY

If any part of this Agreement is held to be void, against public policy or illegal, the balance of this Agreement shall continue to be valid and binding.

P. NOTICES

Any notices or reports by one party to the other party under this Agreement shall be made in writing, to the address shown in the signature portions of this Agreement, or to such other address as may be designated in writing by one party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

Q. RELATIONSHIP OF PARTIES

JCPS is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor JCPS shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.

R. ENTIRE AGREEMENT; ASSIGNMENT

This Agreement, together with any attachments hereto and any amendment or modifications that may hereafter be agreed to, constitute the entire understanding between the parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral and written, relating hereto. Services Provider shall not assign this Agreement or any portion thereof to a subcontractor or other third party without the prior written consent of JCPS, and any attempted assignment without such prior written consent in violation of this section R shall automatically terminate this Agreement.

AGREED:

NCS Pearson, Inc.
2510 North Dodge Street,
Iowa City, IA 52245

BY: Arthur Valt

Name: Arthur Valentine

Title: Managing Director, Clinical Assessment, a division of NCS Pearson, Inc.

Date: January 29, 2020

AGREED:

Jefferson County Board of Education
3332 Newburg Road
Louisville KY 40218

BY: _____

Name: _____

Title: _____

Date: _____

Attachment A

CONFIDENTIAL INFORMATION TO BE DISCLOSED

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	
	Other application technology meta data- Please specify:	
Application Use Statistics	Meta data on user interaction with application	
Assessment	Standardized test scores	X
	Observation Data	X
	Other assessment data- Please specify:	X (student responses, raw scores, standard scores, T-scores, composites)
Attendance	Student school (daily) attendance data	
	Student class attendance data	
	Online communication	

Conduct	Conduct or behavioral data	X
Demographics	Date of Birth	X
	Place of Birth	
	Gender	X (see list below)
	Ethnicity or race	X (see list below)
	Language information (native, preferred or primary language spoken by student)	X (see list below)
	Other demographic information- Please specify:	X (see list below)
	Student school enrollment	
	Student grade level	
	Homeroom	
	Guidance counselor	
Enrollment	Specific curriculum programs	
	Year of graduation	
	Other enrollment information- Please specify:	
Parent/Guardian	Address	
	Email	

Parent/ Guardian ID	Parent ID number (created to link parents to students)	
Parent/ Guardian Name	First and/or Last	
Schedule	Student scheduled courses	
	Teacher names	
Special Indicator	English language learner information	(See list below)
	Low income status	
	Medical alerts /health data	
	Student disability information	
	Specialized education services (IEP or 504)	
	Living situations (homeless / foster care)	
	Other indicator information- Please specify:	
Student Contact	Address	
	Email	(See list below)

	number	
	State ID number	
	Provider/App assigned student ID number	
	Student app username	
	Student app passwords	
Student Name	First and/or Last	X
Student In App Performance	Program/appli- cation performance (typing program- student types 60 wpm, reading program- student reads below grade level)	
Student Program Membership	Academic or extracurricula r activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
	Student generate	

	work data - Please specify:	
Transcript	Student course grades	
	Student course data	
	Student course grades/perfor- - mance scores	
	Other transcript data -Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	

	Other transport ation data - Please specify:	
Other	Please list each additional data element used, stored or collected by your application	(see list below)

OTHER: Use this box, if more space needed.

No Student Data Collected at this time

*Provider shall immediately notify LEA if this designation is no longer applicable.

• Name - user's name is required; examinee name is optional • Address – Q-global never collects nor stores addresses for users or examinees • Phone number(s) - user's phone number and account contact phone number; never for examinee • Email address - required for users; optional for examinee - only used when sending an ROSA to an examinee/rater • Pearson qualification level - account owner's qual level is associated to the account • Log-in ID and password - username and password for users (password is encrypted); never for an examinee • Examinee ID - only required if examinee name is not provided • Date of birth - required for every examinee • Gender - only required for some assessments if gender norms are applicable • Race and ethnicity - only required for some assessments if ethnicity norms are applicable • Handedness - optional for some assessments • Home language- optional for some assessments • Clinical history - optional • Education history and issues - optional • Work and employment status, history and issues - optional • Health conditions - optional • Medications - optional • Marital status - may be required for some assessments • Family information and history - optional • Living arrangements - optional • Names of parents or guardians - if sending a parent rater form, then the parent name and email are required to send the remote on screen assessment • Test results and raw scores – Q-global does not store scored data; only item entry/raw score entry are stored

Attachment B

SERVICE PROVIDER'S EMPLOYEE NONDISCLOSURE STATEMENT

I understand that the performance of my duties as an employee or contractor of NCS Pearson ("Services Provider") involve a need to access and review confidential information (information designated as confidential by the Jefferson County Board of Education, and that I am required to maintain the confidentiality of this information and prevent any redisclosure prohibited under applicable federal and state law. By signing this statement, I agree to the following:

- I will not permit access to confidential information to persons not authorized by Services Provider.
- I will maintain the confidentiality of the data or information.
- I will not access data of persons related or known to me for personal reasons.

I will report, upon discovery of, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site to my immediate supervisor.

- I understand that procedures must be in place for monitoring and protecting confidential information.
- I understand that the Family Educational Rights and Privacy Act ("FERPA") protects information in students' education records that are maintained by an educational agency or institution or by a party acting for the agency or institution, and includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
- I understand that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing of federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. 3571) or imprisonment for not more than five years (under 18 U.S.C. 3559), or both.

- I understand and acknowledge that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq)(NSLA) or Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.)(CNA) and the regulations implementing these Acts, is confidential information.

- I understand that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal as provided in the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq)(NSLA) or Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.)(CNA) and the regulations implementing these Acts, specifically 7 C.F.R 245.6. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

- I understand that KRS 61.931 also defines "personal information" to include an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- f) An account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;

- g) A Social Security number;

- h) A taxpayer identification number that incorporates a Social Security number;

- i) A driver's license number, state identification card number, or other individual identification number issued by any agency;

- j) A passport number or other identification number issued by the United States government; or

0 Individually identifiable health information as defined in 45 C.F.R. sec. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. sec. 1232g.

- I understand that other federal and state privacy laws protect confidential data not otherwise detailed above and I acknowledge my duty to maintain confidentiality of that data as well.

- I understand that any personal characteristics that could make the person's identity traceable, including membership in a group such as ethnicity or program area, are protected.

In addition, I understand that any data sets or output reports that I may generate using confidential data are to be protected. I will not distribute to any unauthorized person any data sets or reports that I have access to or may generate using confidential data. I

understand that I am responsible for any computer transactions performed as a result of access authorized by use of sign on/password(s).

Employee signature:

Date:

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