

FILED
10-06-2020
CIRCUIT COURT
DANE COUNTY, WI
2020CV001054

EXHIBIT 1

ASSUMPTION AGREEMENT

This **ASSUMPTION AGREEMENT** (this “Agreement”) is made as of October 1, 2020, by and among Time Insurance Company, a Wisconsin domestic insurance company (“TIC”) and Assurity Life Insurance Company, a Nebraska domestic insurance company (“ALIC”). TIC and ALIC are each hereinafter referred to as a “Party” and collectively as the “Parties”.

WHEREAS, on or about April 1, 1996, TIC and Woodmen Accident and Life Company (“WALC”) entered into an Agreement of Reinsurance and Assumption of Risks relating to TIC’s group and individual disability income insurance policies, including a coinsurance agreement for policies not assumed (the “Coinsurance Agreement”) and an Administrative Services Agreement, (the “Administrative Services Agreement”, and together with the Coinsurance Agreement, the “Business Agreements”) by which ALIC agreed to assume and/or fully reinsure on a 100% coinsurance basis and administer the Disability Business (as defined below);

WHEREAS, effective October 1, 2003, WALC was merged into ALIC and all the policy owners/members of WALC on the effective date became policy owners/members of ALIC;

WHEREAS, on May 18, 2020, the Commissioner of Insurance of Wisconsin, the domiciliary state of TIC, filed a Petition for Order for Rehabilitation of TIC (the “Petition”), with the consent of TIC, requesting such order be entered by the Dane County Circuit Court with respect to TIC;

WHEREAS, the Order for Rehabilitation was entered on July 29, 2020;

WHEREAS, in the interest of protecting the policyholders currently covered by policies included in the Disability Business, to the fullest extent possible, each of the Parties desires that all of TIC’s rights, title, interests and obligations with respect to the Disability Business be assumed by ALIC, as of the Assumption Date and as set forth in this Agreement; and,

WHEREAS, it is the intent of the Parties to transfer all rights and liabilities under the Disability Coinsurance Agreement from TIC to ALIC, leaving ALIC with all of the benefits and all of the burdens associated with those agreements and relieving TIC of all obligations.

NOW THEREFORE, in consideration of the mutual promises contained herein, each of the Parties hereby agree as follows:

1. Definitions

1.1 Assumed Liabilities. As used in this Agreement, “Assumed Liabilities” shall include New Claims, Existing Claims and other liabilities with respect to the Disability Business as more fully set forth in Section 2.2, below.

1.2 Assumption Date. As used in this Agreement, the “Assumption Date” shall be the date set forth in an order issued by the Dane County Circuit Court in the State of Wisconsin on which ALIC must assume the Disability Business in accordance with this Agreement. Notwithstanding the foregoing, in the event an applicable state regulatory body in any state in which the Disability Business is in force requires approval of the assumption set forth herein, then the Assumption Date with respect to such state shall be

the first quarter-end date (March 31, June 30, September 30 or December 31) after the date on which ALIC has obtained the required approval from such state regulatory body. It is the expectation of the Parties that within six (6) months following the date of this Agreement, as set forth above, the Disability Business in its entirety will have been assumed by ALIC as set forth in Section 2 below.

1.3 Extra Contractual Damages. As used in this Agreement, “Extra Contractual Damages” means all liabilities and obligations relating to policies and certificates included in the Disability Business, but not arising under the express terms and conditions of such policies and certificates, whether to Policyholders, Governmental Authorities or any other person, including any liability for fines, penalties, forfeitures, punitive, special, exemplary or other form of extra-contractual damages, including all legal fees and expenses relating thereto, which liabilities or obligations arise from any act, error or omission, whether or not intentional, negligent, in bad faith or otherwise, relating to: (i) cancellation or administration of the Disability Business; (ii) the investigation, defense, trial, settlement or handling of claims, benefits, or payments under the Disability Business; or (iii) the failure to pay, the delay in payment, or errors in calculating or administering the payment of benefits or claims under or in connection with the Disability Business.

1.4 Governmental Authority. As used in this Agreement, “Governmental Authority” means any federal, state or local domestic or foreign governmental, regulatory or self-regulatory authority, agency, court, tribunal, commission or other governmental, regulatory or self-regulatory entity.

1.5 Administrative Services Agreement. As used in this Agreement, “Administrative Services Agreement” shall have the meaning ascribed to it in the recitals above.

1.6 Disability Business. As used in this Agreement, “Disability Business” shall mean the disability income insurance policies subject to the Coinsurance Agreement. For the avoidance of doubt, no insurance policies issued by TIC that are not currently reinsured by ALIC pursuant to the Coinsurance Agreement shall constitute “Disability Business” under this Agreement.

1.7 Business Agreements. As used in this Agreement, “Business Agreements” shall have the meaning ascribed to it in the recitals above.

1.8 Coinsurance Agreement. As used in this Agreement, “Coinsurance Agreement” shall have the meaning ascribed to it in the recitals above.

1.9 Law. As used in this Agreement, “Law” means any domestic or foreign federal, state or local statute, law, ordinance or code, or any rules, regulations, administrative interpretation or orders issued by any Governmental Authority pursuant to any of the foregoing, and any order, writ, injunction, directive, judgment or decree of a court of competent jurisdiction applicable to the parties hereto.

1.10 Policyholder. As used in this Agreement, “Policyholder” shall mean with respect to each policy included in the Disability Business, the named primary insured.

2. Assumption and Transfer

2.1 Business Assumed. Subject to the terms and conditions of this Agreement, TIC shall, as of the Effective Date, transfer, convey and absolutely assign to ALIC all of its rights and obligations in and

to the Disability Business, and ALIC shall be substituted in TIC's place with respect to all of the Disability Business as if it had originally issued the Disability Business. ALIC shall, with respect to the Assumed Liabilities, perform all contractual promises made by TIC and shall be entitled to all rights of TIC, under the policies and certificates that constitute the Disability Business.

2.2 ALIC Obligations Regarding the Business Assumed.

2.2.1. Rights and Obligations. ALIC's rights and obligations governed by this section regarding the Disability Business assumed include, but are not necessarily limited, to the following as of the Assumption Date:

- a. *New Claims.* ALIC hereby assumes TIC's contractual obligation to pay claims incurred with respect to the Disability Business on or after the Assumption Date. TIC specifically transfers to ALIC the right to impose any defense, claim, set-off, recoupment or the like which would have been available to TIC against any claims, taxes, fees or other obligations under the Disability Business, and ALIC shall have the right to do so without further documentation.
- b. *Existing Claims.* ALIC shall assume the contractual obligation for claims that have been incurred on the Disability Business prior to the Assumption Date, including claims that have been so incurred but not reported as of the Assumption Date.
- c. *Premium.* TIC hereby assigns to ALIC TIC's right to any premiums due for the Disability Business, accruing either before or after the Assumption Date. TIC specifically grants ALIC all necessary authority to collect, receive, give receipt for, endorse, sell, assign, and to institute, maintain and defend any and all actions necessary or desirable arising from its rights and obligations hereunder. ALIC assumes the risk that such premiums on the Disability Business may be uncollectible.
- d. *Premium Refunds.* ALIC hereby assumes TIC's obligation to refund any premium attributable to periods either before or after the Assumption Date on the Disability Business which shall become refundable with respect to the Assumed Liabilities.
- e. *Premium Taxes and Assessments.* ALIC shall pay all premium taxes and guaranty fund and other assessments levied on premium attributable to periods on or after the Assumption Date, including any tax, fee, charge, expense or other cost charged or assessed by or arising directly or indirectly from any mandate or requirements of a Governmental Authority, taxing body, guaranty fund, public or private risk spreading institution including assigned risk pools or other residual market mechanisms.
- f. *Extra Contractual Damages.* ALIC assumes the obligation to pay all Extra Contractual Damages arising from ALIC's acts, errors or omissions occurring before or after the Assumption Date.
- g. *Reserves.* ALIC shall establish and maintain proper statutory reserves as required by law on the Assumed Liabilities.

- h. *Commissions and Fees.* ALIC shall be financially responsible for payment of all commissions and service fees payable to producers with respect to premiums attributable to periods either before or after the Assumption Date.
- i. *Administration.* ALIC is responsible for administering and servicing the Assumed Liabilities and shall bear all expenses resulting from such administration and service for periods either before or after the Assumption Date.
- j. *Subrogation.* ALIC shall have the right of subrogation for payments made by ALIC on claims that are incurred either before or after the Assumption Date.
- k. *Taxes and Assessment Accruing Prior to the Assumption Date.* To the extent already paid by TIC and not reimbursed by ALIC prior to the Assumption Date, ALIC shall promptly reimburse TIC for the actual amount of state premium taxes attributable to premiums collected for periods prior to the Assumption Date that are received by or transferred to ALIC. For assessments on the Disability Business accrued or charged for periods prior to the Assumption Date, including any fee, charge, expense, tax or other cost charged or assessed by or arising directly or indirectly from any mandate or requirement of a federal, state, local or other governmental or regulatory authority, taxing body, guaranty fund, public or private risk-spreading institution including assigned risk pools or other residual market mechanisms, ALIC will either pay such assessments directly to the applicable governmental or regulatory authority, or reimburse TIC to the extent that TIC has either paid or otherwise economically borne the cost of any such assessments.

2.2.2 General Assumption. The list in paragraphs 2.2.1 (a) through (k) may not be an exhaustive statement of the rights and obligations assumed by ALIC under this Section 2. The intent of this Agreement is that ALIC shall be deemed substituted to all of TIC's rights and obligations with respect to the Assumed Liabilities on or after the Assumption Date, unless expressly stated otherwise in this Agreement. This Agreement shall in no event cause TIC to be responsible for any obligation or liability that is currently the contractual obligation of ALIC under the Business Agreements, or the documents and agreements executed in connection therewith.

2.2.3 Securing Approvals. TIC shall be responsible for securing all regulatory or other approvals from Government Authorities required for the transactions contemplated by this Agreement, at TIC's sole cost and expense. ALIC agrees to cooperate on a commercially reasonable basis with TIC to secure regulatory approvals and ALIC shall have the right to approve in advance any regulatory filing to be submitted by ALIC to an applicable Government Authority, such approval not be unreasonably withheld.

2.2.4 Assumption Certificates. No later than thirty (30) days after Assumption Date, or within such other timeframe as required by applicable Law, ALIC shall prepare and issue to each policyholder a Certificate of Assumption in substantial conformity with Exhibit A. It is understood that Exhibit A is attached hereto is for illustrative purposes only and that there may be variations of this Exhibit on a state by state basis if state regulatory approval of the assumption is required. ALIC shall send such Certificates of Assumption and other assumption related information to

Policyholders and certificate holders by first class mail or as otherwise required by applicable Law, at ALIC's cost and expense.

2.3 TIC's Obligations Regarding the Business Assumed.

2.3.1 TIC Continuing Obligations. TIC shall pay all premium taxes and assessments, levied on premium attributable to periods prior to the Assumption Date, including any tax, fee, charge, expense, or other cost charged or assessed by or arising directly or indirectly from any mandate or requirements of any Governmental Authority, taxing body, guaranty fund, public or private risk-spreading institution including assigned risk pools or other residual market mechanisms. For the avoidance of doubt, this Section 2.3.1 shall be limited to those taxes, fees, charges, expenses or other charges that are not otherwise payable or reimbursable by ALIC pursuant to the Coinsurance Agreement, as in effect prior to the date hereof without giving effect to the transactions contemplated hereby.

2.3.2 TIC Transfers. As the intent is to transfer all open and unpaid expenses to ALIC as of the Assumption Date, TIC shall promptly after the Assumption Date transfer to ALIC all of the funds relating to the Disability Business (if any), including:

- a. Advanced premiums and unearned premiums; and
- b. Funds held in claims or premium accounts associated with the Disability Business.

3. **Mutual Representations and Warranties**

The Parties represent and warrant to each other, the following:

3.1 Organization and Standing. Except as otherwise disclosed by the Parties, it is an insurance company duly organized, validly existing and in good standing under the Laws of its state of domicile and it has all requisite authority necessary to carry on its business as now conducted, to own and operate its assets, properties and business, and to enter into and carry out the terms and conditions of this Agreement.

3.2 Authorization. It has properly taken, or will take prior to the Assumption Date, as applicable, all actions required to be taken by it in order to authorize it to enter into and carry out this Agreement, including obtaining any necessary approvals which it is responsible to obtain under the terms of this Agreement. This Agreement has been executed and delivered on its behalf by its duly authorized and acting officer and is a valid obligation, enforceable in accordance with its terms.

3.3 Compliance. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not:

3.3.1 Result in a breach of the terms or conditions of, or constitute a default under, or violate, as the case may be, its charter, articles or bylaws.

3.3.2 Result in a breach of the terms or conditions of, or constitute a default under, or violate as the case may be, any agreement, option, treaty, license or other document or undertaking, oral or written, to which it is a party or by which it is bound.

3.3.3 Violate any order, rule, regulation, writ, injunction or decree of any court, administrative or government agency.

3.4 Due Diligence. It has satisfactorily conducted all due diligence that it desires in connection with the transactions to be consummated hereunder.

3.5 Complete. The representations and warranties contained in this Section 3 are true, correct and complete to the best of its knowledge and belief.

4. Indemnification

4.1 Indemnification of ALIC. TIC hereby agrees to defend and indemnify ALIC and its respective directors, officers, employees, representatives, affiliates, successors and permitted assigns (collectively, the "ALIC Indemnified Parties") against, and agrees to hold each of them harmless from, any and all third party actions, claims, losses, liabilities, damages, costs, expenses (including court costs, alternative dispute resolution costs, settlement costs and reasonable attorney's fees), interest and penalties (collectively referred to in this Section 4 as "Loss" or "Losses") incurred or suffered by any ALIC Indemnified Party arising out of (i) any material inaccuracy or breach of any representation or warranty made by TIC pursuant to this Agreement, (ii) the violation of any Law by TIC relating to the Disability Business or (iii) the gross negligence or intentional or willful misconduct by TIC.

This Section 4.1 does not extend to any Loss to the extent that it was caused by the acts or omissions of any of the ALIC Indemnified Parties.

4.2 Indemnification of TIC. ALIC hereby agrees to defend and indemnify TIC and its directors, officers, employees, representatives, affiliates, successors and permitted assigns (collectively, the "TIC Indemnified Parties") against, and agrees to hold each of them harmless from, any and all third party Losses (as defined in Section 4.1 above) incurred or suffered by any TIC Indemnified Party arising out of (i) any material inaccuracy or breach of any representation or warranty made by ALIC pursuant to this Agreement, (ii) Assumed Liabilities, except as otherwise provided in this Agreement, (iii) ALIC's violation of any Law relating to the Disability Business, or (iv) ALIC's own gross negligence or intentional or willful misconduct.

This Section 4.2 does not extend to any Loss to the extent that it was caused by the acts or omissions of any of the TIC Indemnified Parties.

4.3 Indemnification Procedures for Third Party Claims

4.3.1 The indemnitee must notify the indemnitor in writing as soon as reasonably practicable, but in no event later than thirty (30) calendar days, after the indemnitee becomes aware of circumstances which may lead to the indemnitee seeking indemnification hereunder, including a pending or threatened claim or demand asserted by a third party against the indemnitee (a "Third Party Claim"). If such notice is not provided within the time frame required by the previous sentence, the indemnitee shall still be entitled to indemnification by the indemnitor except to the extent that the indemnitor is actually prejudiced by the late receipt of notice (except that the indemnitor shall not be liable for any defense or other expense incurred during the period in which the indemnitee failed to give such notice).

4.3.2 The indemnitee must allow the indemnitor to make any investigations or defense the indemnitor feels is appropriate with respect to Third Party Claims. The indemnitee must cooperate, at the indemnitor's expense, with such investigations and defense, including, without limitation, by furnishing records, information and testimony and attending any conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested in connection therewith. The indemnitee shall have the right to participate (but not control), at its own expense, with the indemnitor in the defense of any Third Party Claim.

4.3.3 No Third Party Claim may be settled or otherwise compromised without the consent of both the indemnitor and the indemnitee, which consent shall not be unreasonably withheld, delayed or conditioned, if the settlement or compromise by its terms (a) obligates the indemnitor to pay the full amount of the liability in connection with such Third Party Claim, (b) releases the indemnitee of any further liability associated therewith, and (c) does not impose any equitable remedy or penalty upon the indemnitee or involve any restriction or condition which could reasonably be expected to have an adverse effect on the indemnitee or its affiliates or on any business of the indemnitee or its affiliates.

5. Arbitration

5.1. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between the parties. The disputing party shall give the other party written notice of the dispute. Within twenty (20) days after receipt of such notice, the receiving party shall submit a written response. The parties shall meet (in person or by videoconference) thereafter within thirty (30) days of the date of the disputing party's notice and attempt to resolve the matter.

5.2. Any dispute arising out of this Agreement that has not been resolved within sixty (60) days of the disputing party's notice submitted in accordance with Subsection 5.1 above, and that is not otherwise still being negotiated in good faith, may be submitted to the decision of a board of arbitration composed of two arbitrators and an umpire, meeting at a destination reasonably chosen by the party not requesting arbitration, unless otherwise agreed.

5.3 The members of the board of arbitration shall be active or retired disinterested officials of health insurance or reinsurance companies. Each party shall appoint its arbitrator and the two arbitrators shall choose an umpire before instituting the hearing. If the respondent fails to appoint its arbitrator within thirty (30) days after being requested to do so by the claimant, the latter shall also appoint the second arbitrator. If the two arbitrators fail to agree upon the appointment of an umpire within four weeks after their nominations, each of them shall name three, of whom the other shall decline two and the decision shall be made by drawing lots.

5.4 The claimant shall submit its initial brief within twenty (20) days from appointment of the umpire. The respondent shall submit its brief within twenty (20) days after receipt of the claimant's brief and the claimant may submit a reply brief within ten (10) days after receipt of the respondent's brief.

5.5 The board shall make its decision with regard to the custom and usage of the insurance and reinsurance business. The board shall issue its decision in writing based upon a hearing in which evidence may be introduced without following strict rules of evidence but in which cross examination and rebuttal

shall be allowed. The board shall make its decision within sixty (60) days following the termination of the hearings unless the Parties consent to an extension. The majority decision of the board shall be final and binding upon all parties to the proceeding. Judgment may be entered upon the award of the board in any court having jurisdiction thereof.

5.6 Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the umpire. The remaining costs of the arbitration proceedings shall be allocated by the board.

5.7 It is agreed that the arbitrators do not have the jurisdiction to authorize any punitive, exemplary or consequential damage awards between the parties hereto.

6. Records

6.1 Assumed Liabilities. TIC shall direct the transfer to ALIC of any and all active files with respect to the Disability Business (which are not already in the possession of either ALIC or its affiliates), including but not necessarily limited to applications, authorizations to issue, policies and policy forms, certificates and certificate forms, endorsements, declaration pages, underwriting and administrative files and related correspondence, and any other files or documentation owned by and in the possession or control of TIC (which are not already in the possession of either ALIC or its affiliates) the day after the Assumption Date, or as soon thereafter as reasonably possible, which are reasonably necessary to assist ALIC in the assumption of the Disability Business. TIC's obligations under this section shall extend to both paper (hard) copy, and any form of magnetic or film storage of data.

7. Offset

Any undisputed debts or credits, matured or unmatured, liquidated or unliquidated, in favor of or against, either ALIC or TIC, with respect to this Agreement, may be offset or only the balance may be allowed or paid.

8. Reinsurance Treaties

Prior to the Assumption Date in any given state, ALIC will continue to reinsure and administer the policies issued to residents in those states in accordance with the terms of the Business Agreements. On the date on which the Assumption Date has occurred for the last state which has a Policyholder, the Business Agreements shall be cancelled as between TIC and ALIC if no breach of this Agreement and the Business Agreements then exists.

9. Miscellaneous

9.1 Amendments. This Agreement may be amended or modified only by a written amendment signed by each of the Parties hereto which refers to this Agreement.

9.2 Governing Law. This Agreement shall be governed by the Laws of the State of Wisconsin.

9.3 Waiver. The failure to exercise any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or condition herein contained. No

term or condition of this Agreement shall be deemed to have been waived unless such waiver shall be in writing and signed by the Party charged therewith.

9.4 Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization and the parties shall be returned to the status quo with respect to the Assumed Liabilities affected thereby without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

9.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same Agreement.

9.6 Execution. Each of the Parties hereto shall make, do or cause to be done such further acts, and shall execute, acknowledge and deliver such instruments and documents, as another Party may reasonably request or require to effectuate fully the purpose and intent of this Agreement.

9.7 Assignments. This Agreement, and the terms, conditions and covenants contained herein, shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns. This Agreement is not assignable by any Party without the written consent of the other Parties.

9.8 Headings. The headings of the provisions contained herein are for convenience only and do not define, limit or construe the contents of such paragraphs.

9.9 Entire Agreement. This Agreement states the entire understanding between the Parties with respect to the transactions contemplated herein and there are no understandings between the Parties related to the transactions contemplated herein other than as expressed in this Agreement.

9.10 Notices. Any notice regarding this Agreement shall be deemed sufficiently given if it is in writing and hand delivered or mailed by certified or registered United States mail, return receipt requested, to the other Parties at the address set forth below the respective Party's signature or such other address as furnished by the other Party in writing.

9.11 No Third-Party Beneficiaries. This Agreement is solely between ALIC and TIC. It is intended solely for the benefit of the Parties hereto and their permitted successors and assigns, and it is not the intention of ALIC or TIC to confer any rights as a third-party beneficiary to this Agreement upon any other person or party.

9.12 Cooperation. The parties shall assist and cooperate with each other by making all reasonable efforts to obtain approvals from state regulatory bodies as applicable and take such other action as may be reasonably required to carry out effectively the intent of this Agreement.

9.13 Exhibits. All Exhibits are hereby incorporated by reference into this Agreement.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by their respective duly authorized officers, on the dates shown below.

ASSURITY LIFE INSURANCE COMPANY

Kevin Falter

By: Kevin Falter

Its: VP, CFO

Date: 10/5/2020

TIME INSURANCE COMPANY

Mark H Fernald

By: Mark H Fernald

Its: Special Deputy Commissioner

Date: 10/6/2020

EXHIBIT A**Assumption Certificate****ASSURITY LIFE INSURANCE COMPANY**

[ADD ADDRESS]

Policyholder:

Policy Number:

Policy Type:

Effective Date of Assumption: [date]

Policy Issue State: [state]

CERTIFICATE OF ASSUMPTION

This will certify that Assurity Life Insurance Company does hereby assume all rights, liabilities and obligations under the Policy of insurance to which this Certificate of Assumption is attached, such Policy heretofore issued by Time Insurance Company. This assumption is effectuated by a court order issued by the Dane County Circuit Court in the State of Wisconsin, which was issued pursuant to the Order for Rehabilitation entered against Time Insurance Company on July 29, 2020.

This means that Assurity Life Insurance Company is substituted for Time Insurance Company in all matters and documents relating to claims incurred on and after the Effective Date of Assumption, including the rights, liabilities and obligations originally held by Time Insurance Company under the Policy. Assurity Life Insurance Company will pay all Policy benefits for claims incurred in strict accordance with the terms of the Policy.

Your rights, liabilities and obligations remain in full force and effect. Your rights and obligations run to, and are enforceable against Assurity Life Insurance Company, and not Time Insurance Company, with respect to claims incurred on and after the Effective Date of Assumption, in strict accordance with the terms of the Policy.

All premiums due for such assumed rights, liabilities and obligations after the Effective Date of Assumption are to be paid to Assurity Life Insurance Company in accordance with the current method for such payment.

This Certificate of Assumption forms a part of Your Policy. Please keep it with the Policy documents.

IN WITNESS WHEREOF, this instrument has been signed on behalf of Assurity Life Insurance Company.

[insert signature]

President

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