# Responsiv Software Licence Agreement

for the provision by Responsiv Software, embedded and stand-alone third-party software, including Responsiv Unity, and Responsiv Digital products.

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In this agreement, clause, Schedule and paragraph headings shall not affect its interpretation; words in the singular include the plural and the opposite applies; a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;  a reference to one gender shall include all others; person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns and the Schedules and Annexes form part of this licence.

1. **LICENSE GRANT**

    1.1. By downloading, installing, copying, accessing, clicking on an "accept" button, or otherwise using the program, licensee agrees to the terms of this agreement. If you are accepting these terms on behalf of licensee, you represent and warrant that you have full authority to bind licensee to these terms. If you do not agree to these terms then you must not download, install, copy, access, click on an "accept" button, or use the program; and promptly return the unused media, documentation, and proof of entitlement to the party from whom it was obtained for a refund of the amount paid. If the program was downloaded, destroy all copies of the program.

    1.2. The Program is owned by Responsiv or a Responsiv supplier, and is copyrighted and licensed, not sold. Provided that You the Licensee have lawfully obtained the Program and comply with the terms of this Agreement, Responsiv grants You a nonexclusive license to:

       1.2.1. use the Program up to the Authorized Use specified in this licence agreement,

       1.2.2. make and install copies to support such Authorized Use, and

       1.2.3. make a backup copy (the backup copy does not execute unless the backed-up Program cannot execute)

    1.3. Licensee agrees to reproduce all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;

    1.4. Licensee ensures that anyone who uses the Program (accessed either locally or remotely)

       1.4.1. does so only on Licensee's behalf,

       1.4.2. complies with the terms of this Licence and

       1.4.3. for the purpose of processing the Licensee's data for the normal business purposes of the Licensee (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Licensee);

    1.5. Licensee will not

       1.5.1. use, copy, modify, or distribute (sub licence) the Program except as expressly permitted in this Licence;

       1.5.2. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Program, except as expressly permitted by law without the possibility of contractual waiver;

       1.5.3. use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or

       1.5.4. sublicense, rent, or lease the Program; and if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this Licence.

    1.6. Third-Party "Supporting Programs" shall be deemed to be incorporated within the Software for the purposes of this licence (except where expressly provided to the contrary) and use of the Third-Party Software shall be subject to the Third-Party Additional Terms. Supporting Programs cannot be used separately from the products explicitly purchased under this agreement.

    1.7. You shall indemnify and hold Responsiv harmless against any loss or damage which it may suffer or incur as a result of Your breach of any Third-Party Additional Terms howsoever arising.

    1.8. We may treat Your breach of any Third-Party Additional Terms as a breach of this licence.

    1.9. For purposes of this Item a "Supporting Program" is a Program that is part of another Responsiv Program ("Principal Program") and identified as a Supporting Program in the Principal Program's licence terms.  (To obtain a separate license to a Supporting Program without these restrictions, Licensee should contact Responsiv). This license applies to each copy of the Program that Licensee makes.

    1.10. When Responsiv Software is provided on Responsiv Cloud, or our 3rd Party Cloud Provider, the terms detailed in RL0002O Responsiv Cloud Solution Agreement and any solution specific Product Description will apply.

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## 2. CHARGES, TAXES, MONEY-BACK GUARANTEE

2.1. Charges are based on Authorized Use obtained, which is specified in the terms of this Licence. Responsiv does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement. If Licensee wishes to increase its Authorized Use, Licensee must notify Responsiv in advance and pay any applicable charges.

2.2. For Programs We provide to Licensee in tangible form Responsiv is deemed to have fulfilled its shipping and delivery obligations upon the delivery of such Programs to the Responsiv-designated carrier, unless otherwise agreed to in writing by Licensee and Responsiv.

2.3. Responsiv may vary any Fee (including, without limitation, annual Support and Subscription Fees) from time to time.

2.4. Time for payment shall be of the essence and no payment shall be deemed to have been received by Responsiv until it has received cleared funds.

2.5. The Licensee shall make all payments due under the Confirmation without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

2.6. Responsiv reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998, as amended from time to time.

2.7. If any authority imposes on the Program a duty, tax, levy, or fee, then Licensee agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Licensee is responsible for any personal property taxes for the Program from the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed.

2.8. If Licensee is dissatisfied with the Program for any reason and is the original Licensee, Licensee may terminate the license and obtain a refund of the amount Licensee paid for the Program, provided that Licensee returns the Program and this Licence to Responsiv within 30 days of the date the Licence was issued to Licensee. If the license is for a fixed term that is subject to renewal, then Licensee may obtain a refund only if the Program and this Licence are returned within the first 30 days of the initial term. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

## 3. TERMINATION

3.1. The Contract (including this Licence) may be terminated,

3.1.1. immediately by Responsiv if the Licensee commits any material breach of any term of the Licence and which (in the case of a breach capable of being remedied) shall not have been remedied within 14 days of a written request to do so from Responsiv;

3.1.2. in the case of rental, at the end of any rental period, unless the Licensee has exercised any purchase option set out in the relevant Confirmation or order;

3.1.3. immediately by either party if the other party suffers an Insolvency Event;

3.1.4. by either party giving the other one month's notice, but (in such circumstances) no refund of any prepaid fees shall be payable by Responsiv.

## 4. LICENSEE DATA AND DATABASES

4.1. To assist Licensee in isolating the cause of a problem with the Program, Responsiv may request that Licensee a) allow Responsiv to remotely access Licensee's system or b) send Licensee information or system data to Responsiv. However, Responsiv is not obligated to provide such assistance unless Responsiv and Licensee enter a separate written agreement under which Responsiv agrees to provide to Licensee that type of support, which is beyond our warranty obligations in this Licence.

4.2. In any event, Responsiv uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. Licensee remains responsible for

4.2.1. any data and the content of any database Licensee makes available to Responsiv,

4.2.2. the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data),

4.2.3. backup and recovery of any database and any stored data.

4.3. Licensee will not send or provide Responsiv access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that Responsiv may incur relating to any such information mistakenly provided to Responsiv or the loss or disclosure of such information by Responsiv, including those arising out of any third party claims.

## 5.  INTELLECTUAL PROPERTY AND COPYRIGHT

5.1.  For the purposes of this licence Intellectual Property Rights are defined as patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

5.2.  You may not use any such information provided by Responsiv or obtained by You to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

5.3.  The Licensee acknowledges that all Intellectual Property Rights in the Software and any modifications or improvements (whether made at the request of the Licensee or not) belong and shall belong to Responsiv or the relevant third-party owners (as the case may be), and the Licensee shall have no rights in or to the Software other than the right to use it in accordance with the terms of this licence.

## 6.  CONFIDENTIALITY AND PUBLICITY

6.1.  Confidential Information is information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of either party, trade secrets including, without limitation, technical data and know-how relating to the business of either party or any of their suppliers, customers, agents, distributors, shareholders, management or business contacts, including in particular (by way of illustration only and without limitation) business plans, details of suppliers, customers, pricing schemes, pricing, terms of business, strategic intentions, company marketing plans, sales forecasts, financial details, regulatory results, employee details, invention details, intellectual property, product plans and designs and including (but not limited to) information created, developed, received or obtained in connection with a Contract, whether or not such information (if in anything other than oral form) is marked confidential.

6.2.  Each party shall, during the term of this licence and thereafter, keep confidential all Confidential Information, and shall not use for its own purposes (other than implementation of this licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence, or subsequently comes lawfully into the possession of such party from a third party.

6.3.  Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

6.4.  Responsiv shall be entitled to make a public announcement concerning this agreement and to include the Licensee in its client list without the prior written consent of the Licensee.

## 7.  EXPORT

7.1.  Licensee agrees to comply with all applicable export and import laws and regulations, including E.U and U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

7.1.1.  Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("Export Control Laws"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

7.1.2.  Each party undertakes: a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

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## 8. GENERAL TERMS

8.1. This Licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and shall be referred to the exclusive jurisdiction of the English courts.

8.2. This licence, the schedules and the documents annexed as appendices to this licence or otherwise referred to contain the whole agreement between the parties relating to the subject matter of this agreement and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

8.3. This Licence may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Licence.

8.4. No variation of this Licence shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

8.5. If any provision or part-provision of this Licence is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

8.6. In entering into this Licence, neither party is relying on any representation (whether it was made negligently or innocently) not specified in this Licence, including but not limited to any representation concerning: a) the performance or function of the Program, other than as expressly warranted in (Warranty and Exclusions); b) the experiences or recommendations of other parties; or c) any results or savings that Licensee may achieve.

8.7. The license and intellectual property indemnification terms of Licensee's other agreements with Responsiv (such as any Services Agreements) do not apply to Program licenses granted under this Licence.

8.8. Nothing in this Licence is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

8.9. No right or cause of action for any third party is created by this Licence, nor is Responsiv responsible for any third party claims against Licensee, except as permitted in (14.2 Items for Which Responsiv May Be Liable).

8.10. A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

8.11. Nothing in this Licence affects any statutory rights of consumers that cannot be waived or limited by contract.

8.12. Each party confirms it is acting on its own behalf and not for the benefit of any other person or legal entity.

8.13. Neither Licensee nor Responsiv is responsible for failure to fulfil any obligations due to causes beyond its control.

8.14. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation:

8.14.1. neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and

8.14.2. upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.

8.15. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Licence. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Licence.

8.16. Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this licence.

## 9. THIRD PARTY NOTICES

9.1. The Program may include third party code that Responsiv, not the third party, licenses to Licensee under this Licence. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's information only. These notices can be found in the Program's file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices Responsiv identifies third party code as "Modifiable Third Party Code, " Responsiv authorizes Licensee to a) modify the Modifiable Third Party Code and b) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging Licensee's modifications to such third party code. Responsiv's service and support obligations, if any, apply only to the unmodified Program.

9.2. Responsiv software may contain IBM software and You agree to be bound to the terms contained in the specific IBM Program Licence Document ("LI") and other licencing files, including NOTICES files that accompany or are included in these Programs.

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## 10. NOTICES

10.1. Any notice (other than for or in court proceedings) given to a party under or in connection with this contract shall be in writing and shall be a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or b) sent by email to its main contact.

10.2. Any notice shall be deemed to have been received: a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service and c) if sent by email, immediately on transmission (provided no error message is generated).

## 11. WARRANTY AND EXCLUSIONS

11.1. Warranty Period is one year, starting on the date the original Licensee is granted the license.

11.2. Responsiv owned components supplied under perpetual licences include an encrypted archive of the Responsiv developed source code.

11.2.1. In the event that you have a current Support and Subscription agreement, Responsiv ceases to trade, and support has not transferred to any other business in a reasonable time, you will be given a key to the archive, and provided with the right to use the software and make derivative works for the purpose and according to the limitations of the original Responsiv perpetual software licence. In addition, IBM has a mechanism (for which there may be a charge) by which the embedded IBM components of the solution can be transferred to the IBM Passport Advantage programme.

11.3. Limited Warranty

11.3.1. Responsiv warrants that the Program, when used in its specified operating environment, will conform to its specifications. The Program's specifications, and specified operating environment information, can be found in documentation accompanying the Program (such as a read-me file) or other information published by Responsiv. Licensee agrees that such documentation and other Program content will only be supplied in the English language.

11.3.2. The warranty applies only to the unmodified portion of the Program. Responsiv does not warrant uninterrupted or error-free operation of the Program, or that Responsiv will correct all Program defects. Licensee is responsible for the results obtained from the use of the Program.

11.3.3. If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available from Responsiv, Licensee may return the Program to Responsiv and receive a refund of the amount Licensee paid and provided the Licensee provides all the information that may be necessary to assist Responsiv in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Responsiv to re-create the defect or fault.

11.3.4. After returning the Program, Licensee's license terminates. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

11.3.5. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality or fitness for purpose.

11.4. Exclusions

11.4.1. These warranties are licensee's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to, any implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, title, and any warranty or condition of non-infringement.

11.4.2. The warranties in this section 11 (warranty and exclusions) are provided solely by Responsiv. The disclaimers in this subsection 11.4 (exclusions), however, also apply to Responsiv's suppliers of third party code. Those suppliers provide such code without warranties or condition of any kind. This paragraph does not nullify Responsiv's warranty obligations under this agreement.

11.4.3. The Licensee accepts responsibility for (a) testing its IT system and components and ensuring their compatibility with the Software and (b) the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Licensee.

## 12. HIGH RISK DISCLAIMER

12.1. The software may not be used in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines or any other application in which the failure of the software could lead directly to death, personal injury or environmental or property damage (collectively, "High-Risk Activities")

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13. **GENERAL DATA PROTECTION**

13.1. Business Contact Information is business-related contact information disclosed by Licensee to Responsiv, including names, job titles, business addresses, telephone numbers and email addresses of Licensee's employees and contractors.

13.2. Business Contact Personnel are Licensee employees and contractors to whom the Business Contact Information relates.

13.3. Licensee authorizes Responsiv to process and use Business Contact Information within Responsiv and its partners in support of Licensee including the provision of support services, and for the purpose of furthering the business relationship between Licensee and Responsiv, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing Responsiv products and services (the "Specified Purpose").

13.4. Responsiv agrees that all Business Contact Information will be processed in accordance with the GDPR and will be used only for the Specified Purpose.

13.5. To the extent required by the GDPR, Licensee represents that (a) it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable Responsiv to process and use the Business Contact Information for the Specified Purpose.

13.6. Licensee authorizes Responsiv to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

13.7. For purposes of this Item "Personal Data" has the meaning set out in the Data Protection Law and relates only to personal data, or any part of such personal data, in respect of which the Licensee is the Data Controller and in relation to which Responsiv is providing services under this Contract. In the context of GDPR the term means any information relating to an identified or identifiable natural person ("Data Subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person. The following provisions apply in the event that one party makes Personal Data available to the other:

13.7.1. Neither party will request Personal Data beyond what is necessary to fulfil the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.

13.7.2. Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.

13.7.3. Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.

13.7.4. Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.

13.8. Additional or different services required to comply with the Laws will be deemed a request for new services.

13.9. Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfil the purpose(s) for which it was made available.

13.10. Access Requests

13.10.1. Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.

13.10.2. Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.

13.10.3. Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

13.10.4. Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfil the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.

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## 14. LIMITATION OF LIABILITY

14.1. The limitations and exclusions in this Section 14 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

14.2. Items for Which Responsiv May Be Liable

14.2.1. Responsiv's entire liability for all claims in the aggregate for any damages and losses that may arise as a consequence of the fulfilment of its obligations under or in connection with this Licence or due to any other cause related to this Licence is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfilment of such obligations (if Responsiv is at fault) or of such cause, for a maximum amount equal to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that has caused the damages. This limit also applies to any of Our Program developers and suppliers. It is the maximum for which Responsiv and its Program developers and suppliers are collectively responsible.

14.2.2. The above limitation will not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Responsiv is legally liable.

14.3. Items for Which Responsiv Is Not Liable

14.3.1. Under no circumstances is Responsiv or any of its staff or associates liable for any of the following, even if informed of their possibility:

14.3.1.1. loss of, or damage to, data;

14.3.1.2. incidental, exemplary or indirect damages, or for any economic consequential damages;

14.3.1.3. special, incidental, exemplary, or indirect damages or consequential damages; or

14.3.1.4. wasted management time or lost profits, business, revenue, goodwill, or anticipated

14.3.1.5. lost profits, business, revenue, goodwill, or anticipated savings, even if they arise as an immediate consequence of the event that generated the damages.

14.3.2. The limitation and exclusion of liability herein agreed applies not only to the activities performed by Responsiv but also to the activities performed by its suppliers and staff, and represents the maximum amount for which Responsiv as well as its suppliers and Program developers are collectively responsible.

14.3.3. No right or cause of action for any third party is created by this Licence or any transaction under it, nor is Responsiv responsible for any third party claims against Licensee except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by Responsiv's negligence for which Responsiv is legally liable to that third party.

14.4. Nothing in this clause shall limit or exclude any liability for fraud.

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