



ATLAS TOWNSHIP, MI

TOWNSHIP BOARD

AGENDA • JULY 20, 2017

Special Meeting

Township Hall

12:00 PM

7386 S. Gale Rd, Grand Blanc, MI 48439

1. CALL MEETING TO ORDER

2. ROLL CALL

3. STAFF PRESENT

4. PUBLIC COMMENTS

5. NEW BUSINESS

1. APPROVE SOFTWARE LICENSE AGREEMENT BETWEEN HART INTERCIVIC, INC., AND ATLAS TOWNSHIP

6. PUBLIC COMMENTS

7. ADJOURNMENT

- Note: 1) Each person addressing the board is asked to voluntarily state their name and address for the record.
2) Three (3) minutes will be allowed for an individual addressing the board. Each individual present will be allowed an opportunity to address the board.
3) Please refrain from being redundant.
4) All comments are to be directed to the chair.

PHYSICALLY CHALLENGED PERSONS NEEDING ASSISTANCE OR AID AT ANY PUBLIC MEETING OR PUBLIC HEARING SHOULD CONTACT THE ATLAS TOWNSHIP CLERK AT 810-636-2548 DURING REGULAR OFFICE HOURS, NOT LESS THAN SEVENTY-TWO (72) HOURS PRIOR TO THE PUBLIC MEETING OR PUBLIC HEARING.



SCHEDULE B LICENSE AGREEMENT
Hart InterCivic, Inc.

VERITY

SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("Agreement"), entered into effective as of _____, 201__ ("the Effective Date") by and between Hart InterCivic, Inc., a Texas corporation ("Hart") and the Customer set forth below ("Customer"), sets forth the terms and conditions pursuant to which Customer may procure or license from Hart certain software ("Software") for use in connection with certain hardware ("Hardware"). Hart will provide Software support services ("Software Support Services"), and/or design, engineering, software development, project management, operational training, election event support, and/or other services ("Professional Services"), from time to time pursuant to that certain Standard Contract Terms dated as of the Effective date between Hart and Customer ("Contract"). Hardware and Software may be referred to as "Products" and Software Support Services and/or related services and/or Professional Services may be referred to as "Services." Products may be "Hart Hardware," and "Hart Proprietary Software," (i.e. "Hart Products") or "Third Party Hardware" and "Sublicensed Software" (i.e. "Third Party Products"). The foregoing may be referred to together as the "Verity system." Capitalized terms not otherwise defined herein have the meanings assigned to them in the Contract.

Hart agrees to sell or provide to Customer Software and Services according to this Agreement and the Contract, which includes all Schedules, Attachments and Exhibits hereto and thereto. Customer agrees to all terms and conditions of this Agreement and the Contract, which includes all Schedules, Attachments and Exhibits hereto and thereto.

Agreed and Accepted:

Customer

Hart

Jurisdiction: ATLAS TOWNSHIP

Executed By: _____

Name: KATHERINE VICK

Phillip W. Braithwaite

Title: CLERK

CEO

This Agreement is not effective until executed by both parties.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement.

1. **RESERVED.**
2. **PRICING AND PAYMENT**
 - 2.1. **Software Subscription and License Fee:** The "License Fee" is the fee for licensing (in the case of Hart Proprietary Software), sublicensing (in the case of Sublicensed Software, if any) and support (a "License and Support Subscription") for the Term (defined below). Pricing for the License Fee is included within the Schedule C Cost Tables. Pricing for subsequently ordered License and Support Subscriptions beyond the Term shall be mutually agreed between the parties.
 - 2.2. **Other Services.** Pricing and payment for Professional Services for custom software development shall be set forth in the Contract or if not specified, as agreed between Hart and Customer.
 - 2.3. **Payment.** The License Fee is due upon receipt of Deliverables and the EMS Software.
3. **RESERVED.**
4. **SOFTWARE SPECIFIC TERMS**
 - 4.1. **License.** Subject to the terms and conditions of this Agreement, during the Term, Hart grants to Customer (i) a personal, nonexclusive, nontransferable and limited license to use the Hart Proprietary Software (which includes firmware, meaning the Hart Proprietary Software embedded in any Verity system device that allows execution of the software functions) and (ii) a personal, nonexclusive, nontransferable and limited sublicense to use the Sublicensed Software, if applicable. With this right to use, Hart will provide Customer, and Customer will be permitted to use, only the run-time executable code and associated support files of the Software for Customer's internal data processing requirements as part of the Verity system. The Software may be used only at the Licensed Location specified as the jurisdiction on the signature page of this Agreement and only on the hardware or other computer systems authorized by Hart in writing. Customer's use of the Software will be limited to the number of licenses specified in the applicable quotation or as set forth in a Statement of Work executed as part of the Contract. Only Customer and its authorized employees, agents or contractors may use or access the Software. For applicable components, Voters are also authorized to interact with the Software, in a manner consistent with user instructions, for the sole purpose of producing a Cast Vote Record during the course of an election. To the extent Hart Proprietary Software contains embedded third party software, third party licenses may apply. Such embedded third party software is distinguished from "Sublicensed Software" which is stand-alone software not part of Hart Proprietary Software. See Exhibit B for a listing of Sublicensed Software, if any
 - 4.2. **Records and Audit.** Customer shall keep clear, complete and accurate books of account and records with respect to the usage of Software and access to the Software licensed hereunder, including without limitation with respect to access thereto. Customer agrees that during the Term, Hart, the licensors of any Sublicensed Software, and their representatives may periodically inspect, conduct, and/or direct an independent accounting firm to conduct an audit, at mutually agreed-upon times during normal business hours, of the computer site, computer systems, and appropriate records of Customer to verify Customer's compliance with the terms of the licenses and sublicenses granted to Customer. If any such examination discloses unauthorized usage, then Customer, shall make such payment then due, including appropriate historical payments without limiting Hart's remedies.
 - 4.3. **Restrictions:**
 - 4.3.1. The Hart Hardware and Hart Proprietary Software are designed to be used only with each other and/or the agreed-upon Sublicensed Software (if any) and Third Party Hardware. To protect the integrity and security of the Verity system, Customer shall comply with the following practices and shall not deviate from them without the express written consent of Hart: (i) Customer shall use the Software and Hardware only in connection with the Verity system, and Customer may only use Hart branded or approved peripherals and consumables with the Verity system.; (ii) Customer shall not install or use other software on or with the Hardware or Software or network the Hardware or Software with any other hardware, software, equipment, or computer systems; (iii) Customer shall not modify the Hardware or Software and (iv) Customer shall not attempt to access or derive any source code. If Customer does not comply with any provisions of this Section 5.3, then (i) the Limited Warranties under Section [31] of the Contract and the licenses and sublicenses granted under Section 3.1 will automatically terminate; (ii) Hart may terminate its obligation to provide Software Support Services under the Contract; (iii) Hart will have no further installation obligations. Furthermore, if



Customer uses the Software and Hardware in combination with other software and equipment (other software or equipment being those not provided by Hart or its designees), and the combination infringes Hart proprietary patent claims outside the scope of the software license granted to Customer under Section 4.1, Hart reserves its rights to enforce its patents with respect to those claims.

- 4.3.2. Customer shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Software. Customer shall not use any Software for application development, modification, or customization purposes, except through Hart.
- 4.3.3. Customer shall not assign, transfer, sublicense, time-share, or rent the Software or use it for facility management or as a service bureau serving others outside of the jurisdiction. This restriction does not preclude or restrict Customer from contracting for election services for other local governments located within Customer's jurisdictional boundaries. Customer shall not modify, copy, or duplicate the Software. All use of software and hardware on which the software resides shall take place and be for activities within Customer's jurisdictional boundaries, except for in cases of joint elections conducted cooperatively with neighboring jurisdictions. All copies of the Software, in whole or in part, must contain all of Hart's or the third-party licensor's titles, B, copyright notices, and other restrictive and proprietary notices and legends (including government-restricted rights) as they appear on the copies of the Software provided to Customer. Customer shall notify Hart of the following: (i) the location of all Software and all copies thereof and (ii) any circumstances known to Customer regarding any unauthorized possession or use of the Software.
- 4.3.4. Customer shall not publish any results of benchmark tests run on any Software.
- 4.3.5. The Software is not developed or licensed for use in any nuclear, aviation, mass transit, or medical application or in any other inherently dangerous applications. Customer shall not use the Software in any inherently dangerous application and agrees that Hart and any third-party licensor will not be liable for any claims or damages arising from such use.

5. DOCUMENTATION

Hart will provide Customer with one (1) electronic copy of the standard user-level documentation and operator's manuals and where applicable, environmental specifications for the Product installed at the Customer's location before the first election for which the Product will be used, following installation. Customer may make unlimited hard copies for internal business purposes.

6. PROPRIETARY RIGHTS

- 6.1. **Reservation of Rights.** Customer acknowledges and agrees that the design of the Products, and any and all related patents, copyrights, trademarks, service marks, trade names, documents, logos, software, microcode, firmware, information, ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, equipment architecture, improvements, bug fixes, updates, trade secrets and material are the property of Hart and its licensors. Customer agrees that the sale of the Hardware and license of the Software does not, other than as expressly set forth herein, grant to or vest in Customer any right, title, or interest in such proprietary property. All patents, trademarks, copyrights, trade secrets, and other intellectual property rights, whether now owned or acquired by Hart with respect to the Products, are the sole and absolute property of Hart and its licensors. Customer shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Product(s), or copy, reproduce, modify, sell, license, or otherwise transfer any rights in any proprietary property of Hart. Further Customer shall not remove any trademark, copyright, or other proprietary or restrictive notices contained on any Hart user documentation, operator's manuals, and environmental specifications, and all copies will contain such notices as are on the original electronic media. All ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, firmware, equipment architecture, software, improvements, bug fixes, updates, and trade secrets developed by Hart personnel (alone or jointly with others, including Customer) in connection with Hart Confidential Information, Verity system, and Hart Proprietary Software will be the exclusive property of Hart. For the purposes of this Agreement and the Contract, Hart Confidential Information includes, without limitation, all Software, the Documentation and support materials, and the terms and conditions of this Agreement and the Contract.
- 6.2. **Customer Suggestions and Recommendations.** Customer may propose, suggest, or recommend changes to the Products at any time. For purposes of clarity, Hart agrees to make modifications required pursuant to Section 1.5 (D) in the Statement of Work in accordance with the Contract. Such proposals, modifications, suggestions, or recommendations will become Hart's property and are hereby assigned to Hart. Hart may include any such proposals, modifications, suggestions, or recommendations, solely at Hart's option, in subsequent periodic Product updates, without



restriction or obligation. Subject to Section 1.5(D) in the Statement of Work, Hart is under no obligation to change, alter, or otherwise revise the Products according to Customer's proposals, suggestions, or recommendations.

- 6.3. **License Back** If Customer possesses or comes to possess a licensable or sub-licensable interest in any issued patent with claims that read upon the Verity system, its method of operation, or any component thereof, Customer hereby grants and promises to grant a perpetual, irrevocable, royalty-free, paid-up license, with right to sublicense, of such interest to Hart permitting Hart to make, have made, use, and sell materials or services within the scope of the patent claims, unless prohibited under Michigan law.

7. SOFTWARE SUPPORT SERVICES

- 7.1. **Description of Software Support Services.** Subject to the terms and conditions of this Agreement, Hart will provide Customer the Software Support Services described in Section 1.6 in the Statement of Work. Software Support Services under this Section do not cover any of the exclusions from warranty and support coverage as described under Section 8. If Hart, in its discretion, provides Software Support Services in addition to the services described under this Section, Customer will pay Hart for such services on a time-and-materials basis at Hart's then-prevailing rates, plus expenses, and for replacements at Hart's list prices, unless otherwise agreed in writing by Hart and Customer.

8. WARRANTY

- 8.1. **Limited Warranties.** The Hart Products carry the limited warranties set forth in Section [31] of the Contract, subject to any disclaimers or exclusions set forth therein.

- 8.2. **Exclusions from Warranty and Software Support Services.** The warranties under this Section and Software Support under Section 7 do not cover defects, errors, or malfunctions that are caused by any external causes, including, but not limited to, any of the following: (a) Customer's failure to follow operational, support, or storage instructions as set forth in applicable documentation; (b) the use of incompatible media, supplies, parts, or components; (c) modification or alteration of the Verity system, or its components, by Customer or third parties not authorized by Hart; (d) use of equipment or software not supplied or authorized by Hart; (e) external factors (including, without limitation, power failure, surges or electrical damage, fire or water damage, air conditioning failure, humidity control failure, or corrosive atmosphere harmful to electronic circuitry); (f) failure to maintain proper site specifications and environmental conditions; (g) negligence, accidents, abuse, neglect, misuse, or tampering; (h) improper or abnormal use or use under abnormal conditions; (i) use in a manner not authorized by this Agreement or use inconsistent with Hart's specifications and instructions; (j) use of software on Equipment that is not in good operating condition;; (l) servicing or support not authorized by Hart; or (m) Force Majeure. In any case where Hart Proprietary Software interfaces with third party software, including but not limited to, the Customer's voter registration system, non-Hart election management system, early voting validation system, non-Hart election systems, absentee envelope management systems, or other like systems, Hart will not be responsible for proper operation of any Software that interfaces with the third party software should such third party software be updated, replaced, modified, or altered in any way. Hart will also not be responsible for the proper operation of any Software running on Customer's computer equipment, should Customer install a new computer operating system on said equipment without advising Hart of such changes and receiving Hart's written approval. Hart will not be responsible for the proper operation of any Software should it be configured or operated in any manner contrary than that described herein. Professional Services and associated costs may be required in those situations where the Customer requests Hart's review and approval of any system changes outside the original system specifications within this Contract. Hart reserves the right to charge for repairs on a time-and-materials basis at Hart's then-prevailing rates, plus expenses, and for replacements at Hart's list prices caused by these exclusions from warranty and support coverage.

9. RESERVED.

10. CUSTOMER RESPONSIBILITIES

- 10.1. **Cooperation.** Customer agrees to cooperate with Hart and promptly perform Customer's responsibilities hereunder for the purposes of facilitating customer service. Customer will (a) provide adequate working and storage space for use by Hart personnel near the applicable Hardware; (b) provide Hart full access to the Hardware and Software and sufficient computer time, subject to Customer's security rules; (c) follow Hart's procedures for placing hardware warranty or software support service requests and determining if warranty remedial service is required; (d) follow Hart's instructions for obtaining hardware and software support and warranty services; (e) provide a memory dump and additional data in machine-readable form if requested; (f) reproduce suspected errors or malfunctions in Software; (g) provide timely

access to key Customer personnel and timely respond to Hart's questions; and (h) otherwise cooperate with Hart in its performance under this Agreement.

- 10.2. **Site Preparation.** Customer shall prepare and maintain the installation site in accordance with instructions provided by Hart. Customer is responsible for environmental requirements, electrical interconnections, and modifications to facilities for proper installation, in accordance with Hart's specifications. Any delays in preparation of the installation site will correspondingly extend Hart's delivery and installation deadlines.
- 10.3. **Site Maintenance; Proper Storage.** Customer shall maintain the appropriate operating environment, in accordance with Hart's specifications, for the Products and all communications equipment, telephone lines, electric lines, cabling, modems, air conditioning, and all other equipment and utilities necessary for the Products to operate properly. Customer shall properly store the Products when not in use.
- 10.4. **Use.** Customer is exclusively responsible for supervising, managing, and controlling its use of the Products, including, but not limited to, establishing operating procedures and audit controls, supervising its employees, making timely data backups, inputting data, ensuring the accuracy and security of data input and data output, monitoring the accuracy of information obtained, and managing the use of information and data obtained. Customer will ensure that its personnel are, at all times, educated and trained in the proper use and operation of the Products and that the Hardware and Software are used in accordance with applicable manuals, instructions, and specifications. Customer shall comply with all applicable laws, rules, and regulations with respect to its use of the Products.
- 10.5. **Backups.** Customer is solely responsible for timely data backups, and Customer will maintain backup data necessary to replace critical Customer data in the event of loss or damage to data from any cause. Hart is not liable for data loss.

11. TERM AND TERMINATION

11.1. Term.

The term of this Agreement is 10 years from the date of purchase, and any extension thereof by the State or Authorized User.

- 11.2. **Renewals.** Authorized Users' may renew License and Support Subscriptions for successive periods of one (1) year following the end of the Term upon mutual agreement of the parties. In such event, the parties will mutually agree to an addendum to this Agreement with respect to the terms and conditions applicable to such renewal term(s). Customer must pay the Annual Fee invoiced by Hart for such renewals. Each renewal License and Support Subscription term will be one (1) year, commencing on the expiration of the prior term and expiring on the immediately following anniversary date.
- 11.3. **Effect of Expiration and Termination.** Sections 4.2-4.3, 6, 8.2, 11.3, and 12-13 shall survive any termination or expiration of this Agreement. All other rights and obligations (including licenses) shall be of no further force or effect.

12. DISCLAIMERS AND LIMITATIONS OF LIABILITY

- 12.1. **Disclaimer of Warranty.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES APPLICABLE TO THE PRODUCT(S) AND/OR SERVICES REFERENCED IN SECTION 8 OF THIS AGREEMENT (WHICH REFERENCES SECTION 31 OF THE CONTRACT), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (A) THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE UNDER THIS AGREEMENT. FOR PURPOSES OF CLARITY, THE DISCLAIMERS SET FORTH IN SECTION 31(E) OF THE CONTRACT ALSO APPLY TO THIS AGREEMENT.
- 12.2. **Limitations of Liability.** THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 25 OF THE CONTRACT APPLY TO THIS AGREEMENT AND ARE HEREBY INCORPORATED BY REFERENCE HEREIN. FOR PURPOSES OF CLARITY, CLAIMS OF ANY KIND (WHETHER BASED IN CONTRACT, INDEMNITY, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE MADE OR ALLEGED UNDER THIS AGREEMENT WILL BE DEEMED TO BE CLAIMS UNDER THE CONTRACT (AND CLAIMS OF ANY KIND UNDER THE CONTRACT WILL BE DEEMED TO BE CLAIMS UNDER THIS AGREEMENT) AND PAYMENTS WITH RESPECT THERETO WILL COUNT TOWARD A PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER THIS SECTION 12.2 AND SECTION 25 OF THE CONTRACT. THE PARTIES AGREE THAT THE LIABILITY AND WARRANTY LIMITATIONS SET FORTH IN THIS AGREEMENT AND THE CONTRACT ARE A REASONABLE ALLOCATION OF RISK AND LIABILITY CONSIDERING THE RESPECTIVE

BENEFITS OBTAINED HEREUNDER. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.

13. GENERAL PROVISIONS

- 13.1. **Entire Agreement.** This Agreement is considered Schedule B of the Contract, and it, along with all other Schedules, Exhibits and Attachments to the Contract are the entire agreement between the parties with respect to the subject matter contemplated herein, and supersede all prior negotiations and oral agreements with respect thereto. Hart makes no representations or warranties with respect to this Agreement or its Products or Services that are not included herein. The use of preprinted Customer forms, such as purchase orders or acknowledgments, in connection with this Agreement is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. If any conflict exists between this Agreement, the Contract and any terms and conditions on a Customer purchase order, acknowledgment, or other Customer preprinted form, the terms and conditions of the Contract will govern; provided that Sections 4 and 6 of this Agreement will govern in the event of any such conflict. This Agreement may not be amended or waived except in writing signed by an officer of the party to be bound thereby.
- 13.2. **Interpretation.** This Agreement will be construed according to its fair meaning and not for or against either party. Headings are for reference purposes only and are not to be used in construing the Agreement. All words and phrases in this Agreement are to be construed to include the singular or plural number and the masculine, feminine, or neuter gender as the context requires.
- 13.3. **GOVERNING LAW.** THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF MICHIGAN, WITHOUT REGARD TO ITS CONFLICT OF LAW PROVISIONS.
- 13.4. **Severability.** Whenever possible, each provision of this Agreement will be interpreted to be effective and valid under applicable law; but if any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof will be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, or unenforceable provision. If it is not possible to modify the provision to render it legal, valid, and enforceable, then the provision will be severed from the rest of the Agreement and ignored. The invalidity, illegality, or unenforceability of any provision will not affect the validity, legality, or enforceability of any other provision of this Agreement, which will remain valid and binding.
- 13.5. **Compliance with Laws.** Customer and Hart shall comply with all federal, state, and local laws in the performance of this Agreement, including those governing use of the Products. Products provided under this Agreement may be subject to U.S. and other government export control regulations. Customer shall not export or re-export any Products.
- 13.6. **Trademarks.** Verity Election Office™, Verity Voting™, Verity Scan™, Verity Touch™, Verity Controller™, Verity Access™, Verity vDrive™, Verity Touch Writer™, Verity Ballot™, Verity Layout™, Verity Build™, Verity Count™, Verity Relay™, Verity Key™, and Verity Central™, and such other Product names indicated as trademarked names of Hart are trademarks of Hart.



Exhibit A

Definitions

"Hart" means Hart InterCivic, Inc., a Texas corporation.

"Verity Access™" means the audio tactile interface (ATI) CONTROLLER created by Hart as an add-on component to a Verity Touch™ that facilitates the performance of voting activities by disabled voters, for example, by providing an audio ballot presentation and/or accepting inputs from adaptive switch mechanisms that facilitate interaction with disabled voters, as needed.

"Verity Print™" means the device created by Hart for purposes of on-demand ballot printing; this device creates a blank paper ballot from the poll worker's selection of the voter's ballot style or precinct on the Verity Print interface.

"Verity Controller™" is a polling place management console capable of interacting with one or more Verity Touch™ devices by transmitting and receiving signals that manage an election, e.g., by opening and closing the polls, providing or recording an audit trail of system events during an election, storing cast ballot data, and applying data security and integrity algorithms.

"Verity Scan™" means the Verity Scan™ device created by Hart, consisting of an in-person digital ballot imaging device. The single-feed scanner transports and scans both sides of a ballot simultaneously, and it is securely attached to a ballot box that provides for secure ballot storage and transport.

"Verity Election Office" means Hart InterCivic's software platform that can accommodate a variety of election administration applications and is designed for interoperability with Verity Voting Hardware and Software.

"Verity Touch™" means the Verity Touch™ electronic voting device created by Hart. Verity Touch devices consist of hardware including an electronically configurable voting station that permits a voter to cast votes by direct interaction, which voting station in its present configuration created by Hart comprises an electronically configurable touchscreen liquid crystal display (LCD) panel for use in displaying ballot images, and options for tactile input buttons that facilitate voter options for selecting ballot choices and casting a ballot.

"Verity Touch Writer™" means the device created by Hart for ballot-marking functions. Touch Writer creates a paper marked ballot from the voter's selections on the electronic interface or the Verity Access ATI controller.

"Verity Voting" means Hart InterCivic's family of voting system components designed to conform to federal voting system standards.

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Exhibit B

HART PROPRIETARY AND SUBLICENSED SOFTWARE

Hart Proprietary Software Licensed to Customer via annual subscription:

ITEM NUMBER	DESCRIPTION	NUMBER OF LICENSES
Verity Scan	Ballot scanner	5
Verity Touch Writer	Ballot marking device	4

Licensed Location is the jurisdiction named on the signature page of this Agreement.

Software Sublicensed to Customer via annual subscription:

None

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