



## **CENTERS FOR MEDICARE & MEDICAID SERVICES COORDINATION OF BENEFITS AGREEMENT (COBA)**

This agreement for coordination of health insurance benefits (hereinafter referred to as "Agreement") is entered into by and between the "Trading Partner" (as provided in Article IX) and the Centers for Medicare & Medicaid Services (CMS) Contractor (as provided in Article IX).

In order to secure data that reside in a CMS Privacy Act System of Records (SOR) and data maintained by a Trading Partner for coordination of benefit payments, to ensure the integrity, security, and confidentiality of the aforesaid data, and to permit appropriate disclosure and use of such data as permitted by law, the CMS Contractor and the Trading Partner enter into this Agreement to address the conditions under which data will be exchanged for the purpose of coordinating health insurance benefits and facilitating the proper payment of claims for Medicare beneficiaries.

Whereas the Trading Partner may contract with an entity to perform some or all the functions associated with this Agreement, the Trading Partner must require any entity with whom it contracts, and any subcontractors thereof, to comply with all applicable requirements and terms of this Agreement. The Trading Partner will obtain satisfactory assurance and documentation thereof, as required under 45 CFR §164.502(e), from any entity with whom it contracts, and any subcontractor thereof, that it will appropriately safeguard the protected health information/individually identifiable health information covered by this agreement.

### **I. DEFINITIONS**

For the purpose of this Agreement:

- A. The term "Centers for Medicare & Medicaid Services (CMS)," formerly the Health Care Financing Administration, means a component of the U.S. Department of Health and Human Services (HHS) responsible for administration of the Medicare Program.

- B. "CMS Contractor" means the Coordination of Benefits Contractor (COBC) that has been designated to administer CMS' COBA activities.
- C. "Trading Partner" is defined as an issuer of an insurance policy that supplements Medicare or a State agency responsible for administration of Title XIX of the Social Security Act. It is also defined as a federal agency, or contractor thereof, that administers and provides health care benefits for its eligible beneficiaries or an entity working under contract with a self-insured employer plan or an insurer to adjudicate claims and perform other insurance functions, including those required for coordination of benefit activities. A Trading Partner does not include entities that merely receive, route, and/or translate files, such as health care clearinghouses, network service vendors, data transmission services, and billing services.
- D. The "Eligibility File" is the data file provided by the Trading Partner containing the records required to identify Medicare beneficiaries for purposes of receiving Medicare Part A and B crossover claims and for reporting existing prescription drug coverage by the Trading Partner.
- E. The "Claims File" is the data file provided by the CMS Contractor containing Medicare adjudicated claims information.
- F. The term "Line of Business" refers to a type of insurance product or policy or benefit program. Lines of business are defined in detail in Section I of the Attachment.
- G. The term "Trading Partner Contractor" refers to entities that merely receive, route, and/or translate files that contain protected health information on behalf of the Trading Partner. Such entities include healthcare clearinghouses, network service vendors, data transmission services, and billing services.
- H. "Protected Health Information/Individually Identifiable Health Information," as defined in 45 CFR § 160.103, refers to any information, whether oral or recorded in any form or medium, that: 1) is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and 2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and 3) identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual. Specific examples of what constitutes protected health information/individually identifiable health information are found at 45 CFR § 164.514.
- I. "Individually Identifiable Information" is a term derived from Public Law 93-579 (the Privacy Act of 1974), as codified at 5 USC 552(a) and 5 USC 552(a)(4). This term is used within the context of maintaining the confidentiality of records with individual identifiers that are stored within a system of record, as defined in 5 USC 552(a)(4).

- J. With limited exceptions, “Medicare Contractors” are defined as intermediaries that perform bill processing functions and benefit payment functions for the Part A, Hospital Insurance under section 1816 (a) of the Social Security Act and carriers that perform claim processing and benefit payment functions for the Part B, Supplemental Medical Insurance under section 1842 (a) of the Social Security Act. Regional Home Health Intermediaries (RHHIs) are included under the definition of intermediary. Medicare Administrative Contractors (MACs) perform bill processing functions and benefit payment functions for both Part A and Part B Medicare claims. Durable Medical Equipment Medicare Administrative Contractors (DMACs) perform bill processing functions and benefit payment functions for Part B Medicare claims, including National Council for Prescription Drug Program claims.
- K. “Drug eligibility record” is the record containing prescription drug coverage information.
- L. “Voluntary Data Sharing Agreement (VDSA)” refers to the quarterly exchange of files between VDSA partners and CMS for the purpose of obtaining Medicare eligibility data and coordination of benefits information.

## **II. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to facilitate the transfer of eligibility data, where applicable, and Title XVIII Medicare processed claims data to coordinate benefits for Medicare beneficiaries.

## **III. TERMS AND CONDITIONS**

### **A. FUNCTIONS TO BE PERFORMED BY THE TRADING PARTNER OR ITS CONTRACTOR**

The Trading Partner or its contractor, as designated in the Attachment, shall perform the following functions:

1. Provide, at least monthly, an updated Eligibility File. The most current readable file will be used by the CMS Contractor to select claims information for the crossover process. (Note: Does not apply to Medigap claim-based Trading Partners.)
2. All Eligibility Files must be prepared in accordance with CMS’ file layout and specifications as outlined in the COBA Implementation User Guide.<sup>1</sup> (Note: Does not apply to Medigap claim-based Trading Partners.)

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<sup>1</sup> The COBA Implementation User Guide is located at [www.cms.hhs.gov/COBAgreement](http://www.cms.hhs.gov/COBAgreement).

3. Provide a separate eligibility file for its Medicare supplemental (otherwise termed “complementary”) and Medigap lines of business. Note: CMS and the COBA Trading Partner will mutually agree upon the need for providing additional separate eligibility files for other lines of business for which a COBA Trading Partner provides coverage or benefits. (Note: Trading Partners with a Medigap claim-based line of business are not required to provide an eligibility file for that line of business.
4. Select claims options in Section IV of the Attachment to indicate the types of COBA claims to be transferred. Provide fifteen (15) calendar days advanced written notice to the CMS Contractor contact identified in Section II of the Attachment for subsequent changes to the COBA claims options selected in Section IV of the Attachment.
5. Use the CMS Contractor-assigned unique COBA Identification Number (COBA ID) in the prescribed Eligibility File layout (not applicable to Medigap claim-based Trading Partners) and on all correspondence relating to this Agreement.
6. Cancel current Trading Partner Agreement(s) with the CMS’ Medicare contractor(s) and address the termination of the crossover process with the Medicare contractor(s). This action should not occur until testing is completed and a production date is scheduled. Unless mutually determined otherwise by CMS, the CMS Contractor, and the Trading Partner, a production date will be scheduled when all activities listed under “Implementation Timeline” in the COBA Implementation User Guide are completed. From the production date forward, Medicare processed claim data may be used by the COBA Trading Partner to determine its claim liability.
7. As appropriate, complete all sections of the Attachment. If applicable, in Section V of the Attachment provide the requested information (i.e., name of Trading Partner Contractor) about all entities that have a contract with the Trading Partner to perform some or all of the functions associated with this Agreement.
8. Article III.A.1 and 2 do not apply to Medigap claim-based Trading Partners that will not provide the CMS Contractor with an Eligibility File yet will receive an electronic Claims File. Article III.A.3 and 5 may not apply in their entirety to Medigap claim-based Trading Partners. However, all other provisions of this Agreement apply.
9. If the Trading Partner provides prescription drug coverage, it shall:
  - a. Provide the drug eligibility record, in accordance with the specifications found in the COBA Implementation User Guide, to the CMS Contractor. The only exception is when the Trading Partner also has executed a Voluntary Data Sharing Agreement (VDSA) and elects, in Section III.A

(Part 2) of the Attachment to this Agreement, to submit such a file through the alternative VDSA process.

- b. The Trading Partner shall begin submitting the drug eligibility record no later than the date specified in Section III.A (Part 2) of the Attachment to this Agreement.

## **B. FUNCTIONS TO BE PERFORMED BY THE CMS CONTRACTOR**

The CMS Contractor shall perform the following functions:

1. Provide a unique assigned COBA ID, instructions, and specifications regarding such matters as installation procedures, file layout requirements, data transfer specifications, as necessary, for a timely and efficient test, implementation, and transfer of information under this Agreement.
2. Upon receipt of an Eligibility File update, populate the Common Working File (CWF) Beneficiary Other Insurance (BOI) auxiliary record. Only records that successfully pass all edits will be used to prospectively select Medicare claims to be transferred. (Note: Does not apply to Medigap claim-based Trading Partners.)
3. Provide an electronic acknowledgment report and response file for each Eligibility File update, including details of why eligibility file updates were not accepted as long as the file is not damaged and is readable. An example of the report layouts will be provided in the COBA Implementation User Guide. (Note: Does not apply to Medigap claim-based Trading Partners.)
4. Provide, at least monthly, a Claims File in the layout as outlined in the COBA Implementation User Guide. This file will include COBA claims data as specified on the Claims Selection Options in Section IV of the Attachment. The frequency of data transfer will be outlined in Section III of the Attachment.
5. Inform the Trading Partner of any pertinent changes in the system used by the CMS Contractor that may impact the eligibility data or the claims data transferred. Such changes may include data set names, file format, points of contact, address changes, change in protocol, etc. When possible, the CMS Contractor will provide 120 calendar days advance notice of such change. CMS and the CMS Contractor shall not be held liable for any cost incurred by the Trading Partner associated with or resulting from such change.
6. Article III.B.2 and 3 do not apply to Medigap claim-based Trading Partners that will not provide the CMS Contractor with an Eligibility File yet will receive an electronic Claims File. However, all other provisions of this Agreement apply.
7. Schedule a production date for the Trading Partner when CMS, the CMS Contractor, and the Trading Partner conclude that testing is completed. Assist

the Trading Partner in scheduling a termination date to cancel or amend its current Trading Partner Agreement with the CMS' Medicare contractor(s).

8. Process the Trading Partner's drug eligibility record and return a drug response file containing Medicare eligibility information, per the format provided in the COBA Implementation User Guide.

### **C. RECREATION OF LOST OR INDECIPHERABLE DATA**

1. Eligibility Files (Note: Does not apply to Medigap claim-based Trading Partners.)

Electronic transmissions: If the Eligibility File is not readable, the receiving party agrees to notify the sender within seven (7) business days from receipt of the file by telephone. The sender shall send a replacement Eligibility File to the receiving party. Until receipt of the replacement Eligibility File, the CMS Contractor will transfer claims based on the last transmitted Eligibility File that was readable and was posted to CMS' Common Working File.

If the sender does not receive a COBA Eligibility File Acknowledgement (EFA) and Eligibility Response File (ERF) within the timeframes described in the COBA Implementation Guide, the sender shall contact the CMS Contractor by telephone as listed in Section II.B of the Attachment.

2. Claim Files

Electronic transmissions: The receiving party shall have seven (7) business days from the expected date of transmission to notify the sender by telephone that a Claim File was not received. The receiving party shall have seven (7) business days from the date of transmission to notify the sender by telephone that a Claim File is not readable. The sender shall send a duplicate Claim File to the receiving party, at no additional cost, within five (5) business days from the date of notification by the receiver that the previously transmitted Claim File was not received or not readable.

NOTE: While the receiving party has seven (7) business days from the expected date of transmission to notify the sender that a Claim File was not received to avoid being invoiced for the missing Claim File, the receiving party may notify the sender of the non-receipt of a Claim File no later than the invoice due date. However, a delay in notification until the invoice due date may result in submission of a claim for reimbursement from the provider.

### **D. FEES, PAYMENT TERMS, AND INVOICING**

1. Fees:

- a) The standard per claim rates for routine COBA claims information transfers where the Trading Partner provides the CMS Contractor with an Eligibility File and for Medigap claim-based crossovers (where the Trading Partner does not provide the CMS Contractor with an Eligibility File) may be accessed at [www.cms.gov/COBAgreement/](http://www.cms.gov/COBAgreement/) as a download document entitled, "Crossover Fees."
- b) Special requests by the Trading Partner that require the CMS Contractor to provide claims information, other than as provided for under Paragraph 1.a of this Article, must be made in writing by the Trading Partner to the CMS Contractor. CMS will consider these requests and evaluate separately for costs. If CMS agrees it can fulfill the request, it will determine fees prior to the initiation of the requested activity.

2. Payment Terms:

- a) Charges will be billed monthly by the CMS Contractor. Payment is expected within 30 calendar days from the date of the invoice. Trading Partners may launch claim disputes prior to their receipt of an invoice. Disputed claims are expected to be reported to the CMS Contractor prior to the payment due date. An unpaid invoice becomes delinquent on the 31<sup>st</sup> calendar day from the date of the invoice.
- b) CMS may terminate this Agreement if any invoice remains delinquent for a period of 90 calendar days.

NOTE: The fees established under 1a and the provisions under Payment Terms above apply when a Trading Partner moves from a test environment to the production environment. These fees do not apply to State Medicaid Agencies and are subject to change with notice from CMS.

3. Invoicing:

- a) The Trading Partner will be invoiced for all claims that are transferred to the Trading Partner in the formats described in Section III.B.1 of the Attachment.
- b) The CMS Contractor will review documented evidence from the Trading Partner of erroneous crossover claims. If the CMS Contractor determines that the Trading Partner was charged for erroneous crossover claims, it will adjust invoices related to the disputed crossover claims. Erroneous crossover claims are defined as cases where the covered member's eligibility data were posted inaccurately to CMS' Common Working File; a transfer error occurred and a duplicate file was not transferred; the claim was not consistent with the selection criteria or the covered members coverage dates; duplicate claims were sent by the CMS Contractor; claims received were not for the Trading Partner's covered members; or HIPAA errors that were agreed upon

by CMS' Division of Medicare Billing Procedures (DMBP). The Trading Partner may also inform the CMS Contractor of any of these situations prior to receiving an invoice.

Visit the following CMS web sites for a regularly updated list of HIPAA compliance issues and decisions by DMBP regarding Medicare claim HIPAA compliancy:

<http://www.cms.hhs.gov/COBAgreement/Downloads/COBAdisag.pdf>

<http://www.cms.hhs.gov/COBAgreement/Downloads/COBAagree.pdf>

#### **IV. PRIVACY AND USE OF INFORMATION**

A. The protected health information/individually identifiable health information and individually identifiable information described in this agreement are being furnished by the CMS Contractor and the Trading Partner for use in the coordination of health insurance benefits between the Medicare Program and the COBA Trading Partner, as defined in Article I.C. The CMS individually identifiable information is confidential and subject to the provisions of 5 USC §552a (i) (3) under the Privacy Act of 1974. Furthermore, the privacy rule under HIPAA (Standards for Privacy of Individually Identifiable Health Information) applies to all health plans, health care clearinghouses, and health care providers that transmit protected health information/individually identifiable health information in electronic transactions. To assure that no records held confidential under the Privacy Act of 1974 and/or the HIPAA privacy rule are improperly used or disclosed, the CMS Contractor and the Trading Partner agree that any information furnished by the other party will be used only as authorized under the terms and conditions of this Agreement and may not be further disclosed. No party shall be permitted to disclose or use information that is of a proprietary nature, except as permitted by the terms of this Agreement.

The Trading Partner agrees to the following conditions:

1. When it provides information for an individual, that individual is covered by the Trading Partner in its role as an insurer, an entity working under contract with a self-insured employer plan or an insurer to adjudicate claims and perform other insurance functions, or benefit program that pays after Medicare.
2. It will utilize the information solely for the purpose of determining liability following Medicare's payment or determination.
3. It will safeguard the confidentiality of and prevent unauthorized access to the Medicare data.
4. CMS retains all ownership rights to the Claims File.
5. It does not obtain any right, title, or interest in any of the data furnished by CMS.

The CMS Contractor agrees that, pursuant to the Privacy Act of 1974, the HIPAA privacy rule, and the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 (Public Law 106-102, codified at 15 U.S.C. 6801), it shall maintain the



confidential nature of all nonpublic personal information obtained from the Trading Partner on behalf of its customers—namely, Medicare beneficiaries. This provision extends to all coverage data provided by the COBA Trading Partner on its eligibility file for the purpose of coordination of benefits for Medicare beneficiaries.

- B. The Trading Partner, CMS, and the CMS Contractor shall establish appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized use or access to the data. The safeguards should provide a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III – Security of Federal Automated Information Systems (<http://www.whitehouse.gov/omb/circulars/a130/a130.html>), which sets forth guidelines for security plans for automated information systems in Federal agencies. The Trading Partner agrees to the establishment of the following procedures:
1. Limit access to the data to only those employees, agents, and officials who need it to perform their duties in connection with the authorized use.
  2. Store and process the Claims File in such a manner that unauthorized persons cannot retrieve information by any means, including computers, remote terminals, or other means.
  3. Instruct all personnel and agents who will have access to the data regarding the confidential nature of the information, the safeguards required, and the criminal sanctions. Web-based training and other non-classroom alternatives are acceptable means for providing this instruction.
- C. The Trading Partner agrees that in the event CMS determines or has a reasonable belief that the Trading Partner has made or may have made disclosure of the Claims File information that is not authorized by this Agreement or other written CMS authorization, CMS, in its sole discretion, may require the Trading Partner to: (a) promptly investigate and report to CMS the Trading Partner's determinations regarding any alleged or actual unauthorized disclosure; (b) promptly resolve any problems identified by the investigation; (c) submit a formal written response to an allegation of unauthorized disclosure; (d) submit a corrective action plan with steps designed to prevent any future unauthorized disclosures; and/or (e) return data files to CMS. The Trading Partner understands that as a result of CMS' determination or reasonable belief that unauthorized disclosure(s) has or have taken place, the CMS Contractor may refuse to release further CMS data to the Trading Partner, report the unauthorized disclosure(s) to the proper government authority, and terminate this Agreement.
- D. The Trading Partner will obtain satisfactory assurance and documentation of that assurance, as required in 45 CFR §164.502(e), from any entity with whom it contracts (e.g., clearinghouse, billing service, data transmission service, or network service vendor) to ensure that the Trading Partner Contractor (identified in Section V

of the Attachment) will appropriately safeguard the protected health information/individually identifiable health information covered by this Agreement.

## **V. PENALTIES FOR UNAPPROVED USE OR DISCLOSURE OF DATA**

- A. The Trading Partner hereby acknowledges that criminal penalties under §1106 of the Social Security Act {42 U.S.C. §1306(a)} may apply to disclosures of information that are covered by §1106 and that are not authorized by regulation or by Federal law.
- B. The Trading Partner acknowledges that criminal penalties under the Privacy Act {5 U.S.C. §552a (i) (3)} may apply if it is determined that the Trading Partner, or any individual employed or affiliated therewith, knowingly and willfully obtained the individually identifiable information under false pretenses.
- C. The Trading Partner acknowledges that criminal penalties may be imposed under 18 U.S.C. §641 if it is determined that the Trading Partner, or any individual employed or affiliated therewith, has taken or converted to its own use data file(s), or received the file(s) knowing that (it) they were stolen or converted.
- D. The Trading Partner acknowledges that civil and criminal penalties under HIPAA (Public Law 104-191) may apply if it is determined that a person wrongfully discloses protected health information/individually identifiable health information.

## **VI. LIMITATION OF LIABILITY**

The CMS Contractor shall use reasonable efforts to assure that the information, data, electronic files and documents supplied hereunder are accurate. However, CMS or its Contractor shall not be liable to the Trading Partner or any other party for any damages or expenses, including, without limitation, direct or indirect, special, incidental, consequential or punitive damages, court costs, and attorney fees or for damages in any amount incurred as a result of inaccuracies in any of the information, data, electronic files, or documents supplied hereunder.

## **VII. NOTICES**

Any notice and informational mail pertaining to this Agreement from either party to this Agreement shall be given in writing and mailed to the appropriate parties identified in Section II.A or Section II.B of the Attachment under contact information and shall be deemed duly given when personally delivered or sent by overnight carrier or by certified mail, return receipt requested, postage prepaid. If either party to this Agreement changes its address during the term of this Agreement, that party shall provide notice of such change of address to the other party, pursuant to this paragraph. Alternatively,

notices and informational mail pertaining to this Agreement may be conveyed via e-mail or other electronic notice if both parties agree to the use of this medium. Such notices are deemed as given based on the date of receipt within the electronic system used by the receiving party.

## **VIII. TERMS OF AGREEMENT**

- A. This Agreement may not be further assigned and functions herein described may not be further delegated.
- B. This Agreement, together with all sections within the Attachment, constitutes the whole agreement between the Trading Partner and CMS and shall not be altered or varied by oral understanding or agreement or by any other means not contemplated herein.
- C. This Agreement shall be effective upon the date of its execution by the Trading Partner and the CMS Contractor and shall automatically renew for successive periods of one (1) year, unless superseded or terminated.
- D. Either the Trading Partner or the CMS Contractor may terminate this agreement by giving at least sixty (60) calendar days advanced written notice to the other party. The termination of this agreement will be performed in accordance with guidelines specified in Section 4.0 of the COBA Implementation User's Guide. The provisions of Articles IV - VIII shall survive the expiration, cancellation, or termination of this Agreement.
- E. The Trading Partner may change data in the Attachment only without re-executing Article IX of this Agreement.

**IX. QUESTIONS OF INTERPRETATION OF THE AGREEMENT OR PRINCIPLES OF REIMBURSEMENT**

The Trading Partner shall refer questions of interpretation of this Agreement or principles of reimbursement to the contact listed in Section II.B of the Attachment.

IN WITNESS WHEREOF, the CMS Contractor and the Trading Partner have executed this Agreement on the date indicated below.

ON behalf of the Trading Partner, the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

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Name (Print)	Title (Print)
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Company/Organization (Print)	TIN/EIN
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Street Address
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City, State, Zip
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Telephone Number	E-mail Address
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Signature	Date
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ON behalf of the CMS Contractor, the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

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James Brady	Project Director
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Name (Print)	Title (Print)
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Medicare-COB/Group Health Incorporated "GHI"
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Company/Organization (Print)
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25 Broadway, 12 <sup>th</sup> Floor
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Street Address
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New York, NY 10004-1056
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City, State, Zip
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646-458-6682	jim@ghimedicare.com
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Telephone Number	E-mail Address
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Signature	Date
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