

APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A PASSENGER TRACK ACCESS AGREEMENT, OR AMENDMENT TO A PASSENGER TRACK ACCESS AGREEMENT UNDER SECTIONS 17-22A OF THE RAILWAYS ACT 1993

1. Introduction

Please use this form to apply to the Office of Rail and Road (ORR) for:

- directions under section 17 of the Railways Act 1993 for a new track access contract. Section 17 allows companies who want the right to use a railway facility (including Network Rail's network) to apply to ORR for access if they are not able (for whatever reason) to reach agreement with the facility owner.
- approval under section 18 of the Railways Act 1993 for a new track access contract. Section 18 allows companies to apply for approval if they have agreed terms with the facility owner.
- approval of a proposed amendment (agreed by both parties) under section 22 of the Railways Act 1993 to an existing track access contract.
- directions under section 22A of the Railways Act 1993 for an amendment to an existing track access contract. Section 22A allows anyone seeking an amendment to an existing track access contract which allows the operation of more extensive services to apply for a compulsory amendment if they are not able (for whatever reason) to reach agreement with the facility owner.

If it is the facility owner, Network Rail will carry out a pre-application consultation. In this case fill in this form up to section 7.3. You should fill in the rest of the form after the consultation and before applying to ORR. If you are unhappy with the facility owner carrying out the consultation, you should ask ORR to do so. If this is the case, you should complete this form in full before submitting it to us.

The form sets out ORR's standard information requirements for considering applications. It cross-refers throughout to our [criteria and procedures](#) (C&Ps)¹. The C&Ps explain the process, timings and the issues we will expect to consider. You should use the published [model passenger track access contract](#) as your starting point when drafting the contract or amendments you want. Please read the C&Ps and the Code of Practice before applying.

We are happy to talk to you before you apply. Please contact us [here](#).

You can download a copy of this form, and of ORR's model track access contract, from the ORR website: www.orr.gov.uk

¹ Please note that our C&Ps document has been replaced by a set of [track access guidance modules](#). This application form will be updated in due course. In the meantime please refer to the relevant sections of the new guidance modules.

2. The application

2.1 Title of proposed contract or supplemental agreement (please also include the section of the Railways Act 1993 under which you are applying):

Section 18 application for a Track Access Contract (Passenger Services – Interim charging Framework) between MTR Corporation (Crossrail) Limited and Rail for London Infrastructure.

2.2 Contact details (Company and named individual for queries):

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Rail for London Infrastructure (RfL(I))	Company: MTR Corporation (Crossrail) Limited (MTR)
Contact individual: Stephen Hatch	Contact individual: Jonathan James
Job title: CCOS Regulation Manager	Job title: Head of Contract Management
Address: 5 Endeavour Square, London E20 1JN	Address: 63 St Mary Axe, London, EC3A 8NH
Telephone number: 07595066528	Telephone number: 07901 115202
Fax number:	Fax number:
E-mail address: stephenhatch2@tfl.gov.uk	E-mail address: jonathan.james@mtrel.co.uk

2.3 Licence and railway safety certificate: please state whether you intend to operate the services yourself or have them operated on your behalf.

Does the proposed operator of the services (a) hold a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, **and** (b) hold a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006. If the answer to (a) **or** (b) is no, please state the point reached in obtaining a licence, exemption and/or safety certificate.

C&Ps paras 3.9-3.15

MTR intends to operate the proposed services itself and holds a valid train operating licence under section 8 of the Railways Act 1993 and holds a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

3. The proposed contract or amendment

3.1 Executive summary: please provide an executive summary of the proposed contract or amendment. This should cover the services, the commercial terms, and the reasons for making the application in the terms proposed. This information should be laid out clearly and concisely, and fully highlight the changes from the previous version of the contract (in the case of an amendment). **C&Ps para 3.22-3.28**

Please also explain any important safety risks that have been identified arising from the proposal and how these will be controlled (by reference to the facility owner's safety authorisation and the train operator's safety certificate). **C&Ps paras 4.9-4.11**

Please also state the commencement and end dates for the proposal, and for new agreements or extensions to existing agreements, provide justification for the proposed length of the application, with reference to the [Railways Infrastructure \(Access and Management\) Regulations 2005](#). If you are a franchised operator, please state the expiry date of your franchise. **C&Ps paras 4.72-4.79**

Date of commencement: means a date to be populated or a later date as RfL(I) and MTR agree in writing.

RfL(I) and MTR note that Trial Operations are underway on the CCOS, which is new railway infrastructure. It is expected that revenue-earning passenger services will commence on the CCOS in the first half of 2022, but the precise date is not yet known. Whilst RfL(I) and MTR accept it is unusual not to precisely specify the Commencement Date for the purposes of the consultation there may be more visibility of the proposed Commencement Date prior to the formal submission of this application to the ORR, with the flexibility to change this date still being needed in case anything should emerge prior to the opening of the CCOS to revenue-earning passenger services. In the context of the opening of this new railway, RfL(I) and MTR believe this is a sensible and proportionate approach to adopt for this first revenue-earning track access contract.

End date: Principal Change Date occurring in December 2023

The proposed Track Access Contract for passenger operation covers access rights between London Paddington (CCOS) and Abbey Wood on the Crossrail Central Operating Section (CCOS) only.

The proposed agreement has been based upon the template track access contract published by RfL(I). The template was published following industry consultation having been developed through discussions with the ORR over a number of years. The template access agreement is based upon Network Rail's "model clause" template track access agreement adapted for the specific circumstances of the CCOS as appropriate. In this Form P, references to amendments or modifications are from the template track access contract position.

The proposed agreement has been modified for consistency with the Interim Charging Framework for the CCOS established by the ORR, pending further discussions concerning the establishment of a Charging Framework for the CCOS which is intended to replace the Interim Charging Framework. It is acknowledged that the Interim Charging Framework has been established without prejudice to a proposed application to the ORR for the Charging Framework and to the determination of that application by the ORR.

RfL(I) proposes that such a Charging Framework include charges pursuant to paragraph 3 of Schedule 3 of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 to enable it to recover the full long term operating costs and an element of the historic long-term costs of construction of the CCOS. A Supplemental Agreement or a replacement track access agreement will give effect to the Charging Framework established by the ORR.

The imminent completion of Trial Operations will enable the commencement of revenue earning passenger services on the CCOS, which will be provided by MTR under its Concession Agreement with Rail for London Limited (RfL).

This Track Access Contract includes Access Rights to support the initial timetable between Paddington (Crossrail) and Abbey Wood. A Supplemental Agreement will be progressed at a future date when passenger services on the CCOS are connected to Network Rail infrastructure at Westbourne Park Junction Connection Point and Pudding Mill Lane Junction Connection Point and extended through to Shenfield, Heathrow Airport and Reading.

The Crossrail project will improve journey times across London, ease congestion and offer better connections, changing the way people travel around the capital. It will offer crowding relief on the Underground and DLR networks, as well as at congested stations. Crossrail (Elizabeth line) services will connect Reading and Heathrow in the west of London with Shenfield and Abbey Wood to the east of London, running through a new 13 mile (21km) twin-bore tunnel under central and east London. The tunnel under London (and associated infrastructure) will be the CCOS. The CCOS has been designed to facilitate high capacity metro passenger rail services, moving large numbers of people more easily, more quickly and more directly across London.

RfL(I) has been established to be the infrastructure manager of the CCOS, and has been established as a separate, independent entity from Transport for London (TfL) and any railway undertaking. RfL(I) will make decisions (in particular, but not limited to, capacity allocation and charging decisions) independently as the infrastructure manager of the CCOS.

The CCOS runs from Westbourne Park Junction (exclusive) in the west to Abbey Wood Siding in the south-east (including Plumstead sidings) and Pudding Mill Lane Junction (exclusive) in the east.

The business case which supported the decision to proceed with the Crossrail project was predicated on its use of the CCOS for high capacity metro passenger rail services with a peak frequency of 24 trains per hour in each direction between Paddington and Whitechapel. The CCOS has been designed, funded, and is being constructed, to deliver this output. In recognition of this, following a consultation RfL(I) has designated the CCOS as Specialised Infrastructure for the provision of high capacity metro passenger rail services.

3.2 Terms not agreed with the facility owner (for applications under sections 17 or 22A only): please set out here any areas of the application which have ***not*** been agreed, the reasons for the failure to agree and the reasons for seeking these provisions. ***C&Ps para 3.102***

Not applicable for this application.

3.3 Departures from ORR's model passenger track access contract: please set out and explain here any:

- areas where the drafting of the application changes ORR's published template passenger track access contract (as appropriate, cross-referencing to the answers below). Please also explain why these departures have been made. **C&Ps paras 2.34-2.37**
- instances where the proposal departs from the charging and/or performance regimes established by ORR's latest periodic review (or subsequent interim reviews) as reflected in ORR's model passenger track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate). **C&Ps paras 5.1-5.44**
- new processes (e.g. a self-modification provision) which have been added. Please also demonstrate fully how this new process is robust and complete. **C&Ps paras 6.2-6.3**

This Track Access Contract for Passenger Services – Interim Charging Framework has been developed from the template Track Access Contract published by RfL(I).

This section therefore summarises the differences between the template Track Access Contract and the Passenger Services – Interim Charging Framework:-

- The Agreement has been amended for consistency with the Interim Charging Framework established by the ORR. As noted above RfL(I) proposes that the Charging Framework includes the template charges to recover the full long term operating costs and an element of the historic long-term costs of construction of the CCOS. The Interim Charging Framework has been established by the ORR without prejudice to its determination of an application by RfL(I) for the Charging Framework. Once the application has been determined by the ORR and the Charging Framework has been established, either a Supplemental Agreement or a replacement track access agreement will be agreed to ensure consistency with the Charging Framework and the template track access contract published by RfL(I). A specific provision has been included in Schedule 7 of the Track Access Contract for Passenger Services – Interim Charging Framework, to record this position.
- Sustained poor performance provisions (including poor performance notices, which draw upon the sustained poor performance regime) have not been populated/included. This is due to insufficient data being available to set the SPP Threshold, as the CCOS is a new railway. It is proposed that when sufficient data is available, SPP, poor performance notices provisions and any provisions/drafting ancillary thereto will be enacted by means of a Supplemental Agreement and in a form to ensure consistency with the template track access contract published by RfL(I).

4. The expression of access rights and the use of capacity

4.1 Benefits: please set out what specific benefits the proposal will achieve, including a justification for requiring the rights and their characteristics. Please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Please also describe any significant changes in the pattern of services, their benefits to passengers and any impact on other operators, including freight operators. Where appropriate, please provide a fully marked-up version or document comparison of any tables in Schedule 5 which are being modified as a result of this application. **C&Ps paras 4.26-4.35**

The Crossrail project is jointly sponsored by the Department for Transport and TfL. It is projected to bring both substantial economic benefits to London and the United Kingdom generally, as well as social inclusion benefits such as house-building, wider regeneration, job creation and business opportunities

across the UK. This Passenger Services – Interim Charging Framework contract supports delivery of the realisation of these benefits.

The Crossrail project business case, which encompasses circa £18 billion in investment, is predicated on the assumed service of 24 trains per hour at 2.5 minute intervals during the peak.

The benefits of the project will begin to accrue with the commencement of the initial passenger service between Paddington (CCOS) and Abbey Wood and more substantially realised when the full Elizabeth line timetable, with through running between Shenfield / Abbey Wood and Heathrow / Maidenhead / Reading, is implemented at a later date.

The proposed train slots for Passenger Services – Interim charging Framework purposes are detailed in Schedule 5 (table 2.1) as follows:-

Table 2.1: Passenger Train Slots

1						2					
Service Group: EX85 Paddington (CCOS) – Abbey Wood											
Service description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Peak times ¹		Off-Peak times ¹	Weekday ²	Saturday	Sunday
						AM Peak	PM Peak				
Paddington (CCOS)	Abbey Wood	Tottenham Court Road	Stopping	21382001	345	36	36	141	213	213	170
Abbey Wood	Paddington (CCOS)	Tottenham Court Road	Stopping	21382001	345	36	36	141	213	213	170
Paddington (CCOS)	Whitechapel	Tottenham Court Road	Stopping	21382001	345	0	0	4	4	4	4
Whitechapel	Paddington (CCOS)	Tottenham Court Road	Stopping	21382001	345	0	0	4	4	4	4

Bond Street station will open during the course of the timetable, in summer 2022.

4.2 Adequacy: please set out how you have satisfied yourself that there is enough network capacity for the services in the proposal. Please also set out whether there are any implications for overall network performance and the facility owner's maintenance and renewal activities. **C&Ps paras 4.12-4.45**

Quantum rights for the duration and purpose of Passenger Services – Interim Charging Framework services on the CCOS only have been included in the track access contract. The timetable developed and validated will be specific for this purpose.

4.3 Flexing rights: please provide a general description of the extent of any limitations on the facility owner's flexing rights in the proposal. Please provide the rationale for the extent of any limitation on the

flex provided, including any changes to pre-existing services, and the extent to which the provisions have been agreed with the facility owner. **C&Ps paras 2.27-2.33**

No flexing of other services is proposed in order to accommodate these proposals. The facility owner's flexing rights are not impacted by this proposal (as quantum rights only, for particular periods, are being sought).

4.4 Journey time protection: please describe whether the proposed contract gives journey time protection to any services (by establishing maximum journey times, fastest key journey times or maximum key journey times), and explain the reasons for this, with reference to ORR's criteria. **C&Ps paras 8.90-8.103**

Not applicable.

4.5 Specified equipment: please give full details of any changes to specified equipment (rolling stock), including timescales, and how much of the vehicle and route acceptance procedure in the Network Code (Part F) has been completed. Please explain whether you have, or will have, the rolling stock necessary to exercise the rights being sought. **C&Ps paras 8.87-8.90**

The services contained within this track access contract provide MTR with firm rights to operate Class 345 railway vehicles (Bombardier Aventura Model LV-BXR-13 (Class 345)).

4.6 Franchise obligations: please explain whether the proposed services are necessary to fulfil obligations under a franchise or concession agreement. **C&Ps paras 4.3-4.4**

These rights and services are required to enable delivery of MTR's obligations under its Concession Agreement with RfL.

4.7 Public funding: please state whether (and if so to what extent) the proposed services are subject to financial support from central or local government (other than the Department for Transport or Transport Scotland), including Passenger Transport Executives. Please also provide a point of contact at that body. **C&Ps paras 3.52, 4.25, 4.35-4.39**

These rights and services are subject to financial support under a Concession Agreement with RfL.

4.8 Passenger Focus and, where applicable, London TravelWatch: please state whether (and if so to what extent) the proposed services have been discussed with these bodies. Please also provide copies of any relevant correspondence. **C&Ps para 4.39**

Extensive consultation took place on the Elizabeth line services as part of the passage of the Crossrail Bill. London TravelWatch, amongst other industry stakeholders, was also consulted on the CCOS access documentation, including the template version of this Track Access Contract.

4.9 Route utilisation strategies (RUSs): if applicable, please state which RUSs (including the Freight RUS) are considered relevant to this application and whether the proposed rights are consistent with that RUS. If the proposed rights are not consistent, please explain the reasons for this. **C&Ps paras 4.5-4.8**

The Crossrail project is mentioned in many of the Route Utilisation Strategies to varying degrees. Such coverage tends to focus on the project as a single scheme, in its completed/final form, with train services (operated by a new rolling stock fleet) running through the CCOS linking east and west London. The Crossrail project is a key component of delivering the London Mayor's Transport Strategy.

5. Incentives

5.1 Train operator performance: please describe any planned projects associated with the operation of the proposed services aimed at improving your performance. **C&Ps paras 4.26-4.36**

There are no specific train operator projects associated with the proposed services.

5.2 Facility owner performance: please describe any planned projects associated with the operation of the proposed services aimed at improving the facility owner's own performance. **C&Ps paras 4.26-4.36, 5.1**

Not applicable

5.3 Monitoring of services: would all proposed services be monitored for performance throughout their journeys, consistent with our policy in paragraph 5.50 of the criteria and procedures? If not, please state the reasons for this is in line with the permissible circumstances described in paragraph 5.51 of the criteria and procedures. **C&Ps paras 5.50-5.56**

All of the proposed services will be monitored for performance throughout their journeys.

5.4 Performance regime changes (for applications under sections 17 or 22A only): where applicable, please provide justification for any changes to Schedule 8 of the track access contract in

the proposal. If necessary, please provide any relevant information in support of the changes proposed.
C&Ps para 5.38-5.40

Not applicable

6. Enhancement

6.1 Enhancement details: where the proposal provides for the delivery of any network enhancements, or the services in the proposal are subject to any planned network enhancements, please give full details of the relevant enhancement schemes, including a summary of outputs from the scheme, timescales and the extent to which the network change procedure in the Network Code (Part G) has been completed (where appropriate, by reference to submissions made under ORR's enhancement reporting framework). **C&Ps paras 4.80**

Crossrail is being built under powers granted by Parliament in the Crossrail Act 2008. Initial construction started in May 2009 with the start of work at Canary Wharf station followed by enabling works at sites within central London. Crossrail tunnelling began in the summer of 2012 and ended at Farringdon in 2015 with the breakthrough of the final tunnel boring machine.

The focus of the project since, has been on the fit out of tunnels and stations, as well as ongoing preparation for the phased introduction of services, including in particular on the CCOS from the first half of 2022, with a full service across London and the Elizabeth line route expected at a later date.

When fully delivered, Crossrail will play a vital role in meeting London's current and future transport needs and in turn help to secure the future economic growth of the UK. Crossrail (Elizabeth line) will facilitate easier, faster, and direct journeys by public transport from Heathrow to Canary Wharf, as well as better links to London's other central business areas, helping to improve London's international links.

Crossrail will deliver the capacity needed to support increased employment across London including in growth areas such as the Thames Gateway. London is expected to continue to grow rapidly with an additional 3.1 million people and 1.4 million jobs by 2050 adding further strain to a transport network that is already under pressure. Much of this growth will be located in areas that will be served by Crossrail.

Crossrail will add 10 per cent to the overall capacity of London's rail network through the provision of twenty four high capacity trains per hour in each direction in the central section during peak periods. Crowding relief will result on the Underground and DLR networks as well as at congested stations. Through the provision of step free access across the Crossrail network accessibility to and from Central London will be transformed for passengers with mobility impairments.

6.2 Enhancement charges: please confirm that the arrangements for the funding of any network enhancements are consistent with ORR's [Policy Framework for Investments](#), and summarise the level and duration of payments, and the assumed rate of return (see chapter 3 of the Conclusions document).
C&Ps paras 5.6, 5.12-5.14

In addition to the "costs directly incurred charge" where revenue-earning passenger services operate on the CCOS, an "investment recovery charge" and "fixed costs charge" has also been proposed by

RfL(I), consistent with the requirements of paragraph 3 of Schedule 3 of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.

This is subject to further discussions with ORR, and an application by RfL(I), as part of establishing the Charging Framework. As noted above, the Interim Charging Framework (with which the track access contract is consistent) has been established by the ORR without prejudice to RfL(I)'s application for – and ORR's establishment of – that Charging Framework, which will replace the Interim Charging Framework.

7. Other

7.1 Associated applications to ORR: please state whether this application is being made in parallel with, or relates to, any other current or forthcoming application to ORR (e.g. in respect of track, station or light maintenance depot access contracts). **C&Ps paras 3.18-3.19**

No directly related track access applications are being made in parallel, although further supplemental agreements will be required when future stages of the project commence and/or the Charging Framework (to replace the Interim Charging Framework) and/or there is sufficient information available to establish the sustained poor performance regime at a future date.

7.2 Supporting information, side letters and collateral agreements: please:

- state here any relevant information in support of the proposal, including a list and explanation of any other material being submitted (and supply copies with the application). **C&Ps para 4.33**
- confirm here that the whole of the proposal between the parties has been submitted with this application and that there are no side letters or other documents which affect it. **C&Ps paras 6.12-6.16, 6.21**

There are a number of collateral agreements in place that are relevant to this application as shown below:

- A usage agreement between (1) MTR and (2) London Underground Limited granting MTR permission to use the following stations: Farringdon; Liverpool Street (LUL); Tottenham Court Road; and Whitechapel; and

- An access agreement between (1) MTR and (2) RfL(I) granting the Train Operator permission to use the following stations: Canary Wharf; Custom House; Paddington (CCOS); and Woolwich. (This will be subject to ORR approval under section 18 of the Railways Act 1993).

As already noted, the services are provided pursuant to a Concession Agreement between (1) MTR and (2) RfL.

MTR are a party to the Claims Allocation and Handling Agreement.

A usage agreement between (1) MTR and (2) London Underground Limited granting MTR permission to use Bond Street, will be progressed later in 2022, when this station is ready to open.

7.3 Confidentiality exclusions: please list any parts of your application which you have excluded on the grounds of confidentiality, from the version of the proposed contract sent to consultees for any pre-application consultation process, and provide reasons. If there has been no pre-application consultation, you should state any parts of the application and proposed contract you want us to exclude from publication. ***C&Ps paras 3.29-3.34***

Schedule 8 Appendix 1
Names of representatives signing the contracts

Note: Where a pre-application consultation is to be undertaken in line with the Code of Practice, the remainder of this application should not be completed until after that consultation has been completed

8. Pre-application consultation

8.1 The consultation: has a pre-application consultation been carried out in line with the Code of Practice? If yes, please:

- state who conducted the consultation;
- list all train operators, franchising authorities and any other parties that were consulted, stating which parties responded and attach their responses and any associated documentation to this form; and
- state the period allowed for the consultation. If this was less than one calendar month please explain the reasons for this.

If a pre-application consultation has not been carried out, please explain the reasons and whether any informal discussions have been held with any third parties who might be affected by this application and the nature of any concerns which they raised. **C&Ps paras 3.62**

The proposed Track Access Contract (Passenger Services – Interim charging Framework) has been based upon the template form published by RfL(l). The template and other documentation were published following wide industry consultation and having developed them in discussions with the ORR for a number of years. Having discussed their development with the ORR from the outset, the structure is based upon Network Rail's "model clause" template track access agreement albeit that the template is bespoke to the CCOS.

A pre- application consultation has been carried out by RfL(l) in line with the Code of Practice. [This section will be updated upon completion of the consultation]

8.2 Resolved issues: please set out any issues raised by consultees which have been satisfactorily resolved. You may wish to refer to responses attached to this form. Please explain any changes as a result of the consultation.

[To be updated on completion of consultation]

8.3 Unresolved issues: please set out any issues raised by consultees which have ***not*** been satisfactorily resolved, including any correspondence with that consultee. You may wish to refer to responses attached to this form. Please explain why you think these issues should not stop ORR approving the application.

9. Certification

*Warning: Under section 146 of the Railways Act 1993, any person who, in giving any information or making any application under or for the purposes of any provision of the Railways Act 1993, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and so liable to criminal prosecution **C&Ps para 3.40***

In the case of agreed applications under section 18 or 22, Network Rail should fill in the required information in the box below. For disputed applications under section 17 or 22A, the applicant should fill in the required information.

I certify that the information provided in this form is true and complete to the best of my knowledge

Signed Date

Name (in caps) Job title

For (company) Rail for London (Infrastructure) Limited

10. Submission

10.1 What to send: please supply, in hard copy, the signed application form, one copy of the proposed contract or amendment, with copies of any documents incorporated by reference (other than established standard industry codes or other documents) and any other attachments, supporting documents or information. **C&Ps para 3.39**

Please also supply the application form, the proposed contract or amendment and, where possible, any other supporting information, in electronic form, by e-mail or on disc, **in plain Microsoft Word format** (i.e. excluding any macros, auto-para or page numbering, or other auto-formatting). **C&Ps para 3.37-3.38**

10.2 Where to send it:

Manager, Track Access Team
Directorate of Railway Markets and Economics
Office of Rail and Road
25 Cabot Square
London
E14 4QZ

or

OFFICE OF RAIL AND ROAD
25 Cabot Square, London
Switchboard 020 7282 2000 • Website www.orr.gov.uk

Form **P**

433399

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