



IAITAM ACE

May 7-9, 2024 The M Resort  Las Vegas, NV

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Contract Negotiation: Best Practices for the Best Deals

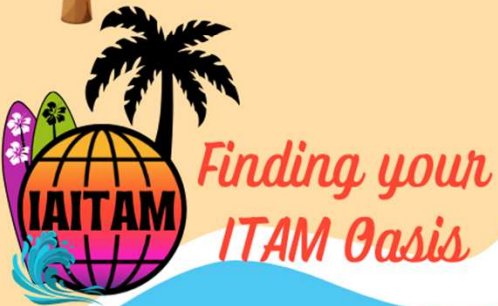
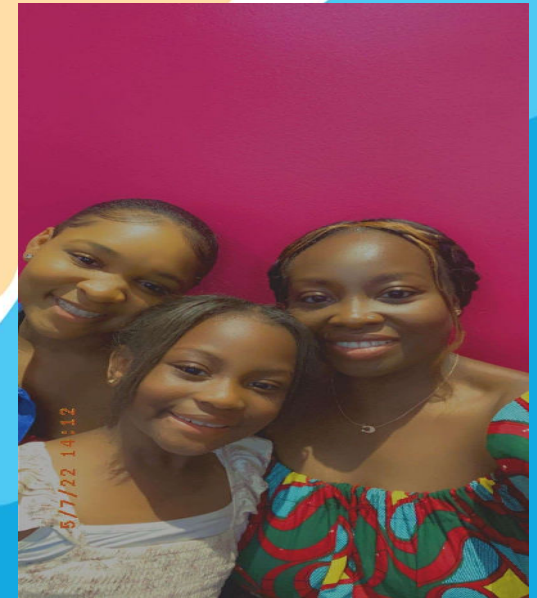


Finding your IAITAM Oasis

Who is Alheri?



- Over 15 years experience in IP and Contract Law in the chemical industry, formerly a Senior Operational Buyer at SABIC leading the Technical Innovation and Automotive team, and IP Contracts Administrator at Kraton.
- ABA Certified Paralegal, Business Management Degree, Masters Degree in Law, and currently a Doctoral Candidate pursuing a PhD in Law and Public Policy Administration.
- Currently working as an IT Contracts and Compliance Specialist for Chevron Phillips Chemical Company LP.



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What is Negotiation?

Negotiation in contract management is the process by which two or more parties attempt to resolve their opposing interests in a contract regarding the terms, conditions, and obligations outlined in the contract.

Which requires:

- Clear Communication
- Strategic Thinking
- Willingness to Compromise

What is the Goal?

To achieve a fair and beneficial outcome while maintaining positive relationships.

The parties negotiate by choice! We negotiate because we think we can improve the outcome or result, compared with not negotiating or simply accepting what the other side offers.



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Software Contract LifeCycle Management

Contract lifecycle management (CLM) is a method to manage all the contracts that are being used by an organization. CLM helps in managing the entire contract life cycle, right from the initial stages of contract design, drafting, and negotiation to its termination. Not managing software contracts can lead to poor software audits, over or underspend on software agreements renewals, and not having a transparent view of the organization's software assets.

AMENDMENT /RENEWAL

- Contracts will be altered and renewed, and the cycle will begin

COMPLIANCE

- Meets all criteria for reporting, searching and government requirements

OBLIGATIONS

- Ensure that the contract is concluded by both parties and contractual obligations are met.

EXECUTION

- Once approved the contract is sent for implementation.



REQUEST

- Business request for contract creation or renewal.

REVIEW & REDLINING

- Reviewing and making edits or revisions to a contract.

NEGOTIATION

- Terms and conditions are negotiated and agreed between parties.

APPROVAL

- Final legal review and approval between parties to ensure no oversights.



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Explore Win-Win Solutions

- Exploring the concept of win-win solutions in contract negotiation involves seeking mutually beneficial outcomes that address the interests and concerns of both parties involved (Fisher, Ury, & Patton, 2011). This approach prioritizes collaboration and problem-solving to create agreements that satisfy the needs and objectives of all stakeholders.
- The benefits of finding creative alternatives that address the interests of both parties are multifaceted. Firstly, it fosters positive relationships between the parties, as it demonstrates a willingness to understand and accommodate each other's perspectives (Lewicki, Barry, & Saunders, 2015).

This can lead to enhanced trust and cooperation, which are essential for successful long-term partnerships. Additionally, by considering diverse alternatives, negotiators can uncover innovative solutions that may not have been apparent initially, resulting in more robust and effective agreements.



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Best Practices for Win-Win Solutions

In IT contracts, incorporating contingency clauses is essential to address potential risks or uncertainties that may arise during the agreement. One example of incorporating contingencies in an IT contract is including a service level agreement (SLA) with uptime guarantees and penalties for downtime.

For instance, let's consider a cloud computing service agreement between a company and a cloud service provider. The agreement includes a contingency clause specifying uptime guarantees for the cloud services. In the event of downtime exceeding a certain threshold, the cloud service provider agrees to provide service credits or compensation to the company.

The contingency clause may outline specific parameters, such as:

1. **Uptime Guarantee:** The cloud service provider guarantees a certain level of uptime (e.g., 99.9%) for the cloud services.
2. **Downtime Threshold:** If the actual uptime falls below the agreed threshold due to factors within the cloud service provider's control (e.g., server outages, network issues), the company is entitled to compensation.
3. **Compensation Mechanism:** The agreement specifies the compensation mechanism, such as service credits applied to future invoices or monetary compensation.
4. **Notification Procedures:** Procedures for reporting downtime incidents and requesting compensation are outlined to ensure timely resolution and compensation.
5. **Exceptions:** The clause may also include exceptions for planned maintenance, force majeure events, or downtime resulting from the company's actions.



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cont. Best Practices for Win-Win Solutions

Identifying Interests:

In negotiating an IT contract between a software development company (Vendor A) and a client (Company B), identifying interests beyond surface-level positions is crucial for achieving a mutually beneficial agreement. Instead of focusing solely on the price and delivery timeline, both parties should delve into their underlying interests to uncover shared goals and areas of potential collaboration.

Brainstorming:

During the negotiation process, Vendor A and Company B engage in brainstorming sessions to generate a wide range of potential solutions. By encouraging open-mindedness and creativity, they explore innovative alternatives that address not only their immediate needs but also their long-term interests. For example, Company B expresses a keen interest in receiving ongoing technical support and updates for the software beyond the initial deployment phase. Meanwhile, Vendor A seeks opportunities to showcase their expertise and develop a long-term partnership with Company B.

Trade-offs:

Recognizing that not all interests can be satisfied equally, Vendor A and Company B engage in trade-offs to reach a balanced outcome. While Company B may prioritize cost-effectiveness, Vendor A may prioritize maintaining a high level of service quality. Through collaborative problem-solving and open communication, they negotiate flexible terms that accommodate changing circumstances and unforeseen events. This includes incorporating contingency clauses to address potential risks or uncertainties, such as software bugs or compatibility issues.

Ultimately, by seeking creative solutions and maintaining flexibility throughout the negotiation process, Vendor A and Company B can establish a mutually beneficial IT contract that meets their respective interests while fostering a strong and collaborative partnership.



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Leveraging Information and Options

In contract negotiation, gathering relevant information is crucial for negotiating from a position of strength. By leveraging information and options effectively, negotiators can enhance their ability to achieve favorable outcomes. Here are some tips for researching and gathering information:

1. **Conduct Thorough Research:** Before entering negotiations, take the time to research the other party's background, interests, and priorities (Fisher, Ury, & Patton, 2011). Understanding their perspective will enable you to tailor your negotiation strategy accordingly.
2. **Identify Key Decision-Makers:** Determine who holds decision-making authority on the other side and gather information about their preferences, goals, and constraints (Lewicki, Saunders, & Barry, 2015). This insight will help you tailor your negotiation approach to resonate with their interests.
3. **Assess Market Trends and Benchmarks:** Stay informed about market trends, industry standards, and benchmark data relevant to the negotiation (Cohen, 2005). This information can provide valuable context and support your position during discussions.
4. **Anticipate Potential Objections:** Anticipate potential objections or concerns that the other party may raise during negotiations (Thompson, 2011). Prepare responses and supporting evidence to address these objections effectively.
5. **Explore Alternatives and Options:** Consider alternative solutions or options that may be acceptable to both parties (Shell, 2006). Having multiple options at your disposal increases your flexibility and bargaining power during negotiations.

By proactively gathering relevant information and options, negotiators can position themselves for success and maximize the value of the negotiated agreement.



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Knowing Your Organizations Value

Understanding the value you bring to the table is essential in contract negotiation, as it empowers you to advocate for your interests effectively. Here are some strategies for identifying and articulating your value proposition:

1.Assess Your Strengths and Unique Selling Points: Take stock of your strengths, expertise, and unique selling points that distinguish you from competitors (Porter, 2008). Understanding what sets you apart enables you to articulate your value proposition with clarity and confidence.

2.Quantify Tangible Benefits: Identify tangible benefits or outcomes that you can deliver to the other party, such as cost savings, increased efficiency, or enhanced performance (Fisher, Ury, & Patton, 2011). Quantifying these benefits strengthens your negotiating position and demonstrates the value of your proposal.

3.Highlight Past Successes and Achievements: Showcase your track record of success and past achievements relevant to the negotiation (Lewicki, Saunders, & Barry, 2015). Case studies, testimonials, or references can serve as compelling evidence of your value proposition.

4.Understand the Other Party's Needs: Tailor your value proposition to align with the other party's needs, goals, and priorities (Cohen, 2005). Demonstrating a clear understanding of their objectives enhances the relevance and persuasiveness of your value proposition.

5.Communicate Clearly and Confidently: Articulate your value proposition with clarity, confidence, and conviction during negotiations (Thompson, 2011). Effective communication fosters trust and credibility, increasing the likelihood of reaching a mutually beneficial agreement.

By knowing your value and effectively communicating it during negotiations, you can strengthen your position, build rapport with the other party, and maximize the value of the contract agreement.



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Being Flexible, Yet Firm

Negotiating requires a delicate balance between flexibility and firmness to achieve favorable outcomes while preserving relationships. Here's how you can strike that balance:

1. **Adapting to Changing Circumstances:** Flexibility entails being open to adjusting your approach or concessions based on new information or changing circumstances (Lax & Sebenius, 2015). For example, if market conditions shift during negotiations, being flexible allows you to explore alternative solutions without compromising your core objectives.
2. **Exploring Creative Solutions:** Flexibility also involves considering creative solutions or compromises that address the interests of both parties (Mnookin et al., 2020). For instance, if a certain term is non-negotiable for the other party, being flexible may involve proposing alternative terms or trade-offs that still meet your objectives.
3. **Maintaining Clear Boundaries:** While being flexible, it's essential to maintain firmness regarding your non-negotiables or core objectives (Raiffa, 2015). Clearly communicate your bottom lines and areas where you cannot compromise to prevent misunderstandings or concessions that undermine your interests.
4. **Using Objective Criteria:** Firmness can be reinforced by relying on objective criteria or standards to support your positions (Fisher et al., 2011). Referencing market benchmarks, industry standards, or past precedents can provide legitimacy to your firm stance while still allowing for flexibility in negotiations.
5. **Seeking Win-Win Outcomes:** Strive for win-win outcomes where both parties feel satisfied with the agreement (Lewicki et al., 2015). Being flexible in exploring mutually beneficial solutions fosters a collaborative atmosphere and builds trust, enhancing the likelihood of reaching a successful negotiation outcome.

By balancing flexibility with firmness, negotiators can navigate complexities effectively, maintain constructive relationships, and achieve optimal results in contract negotiations.



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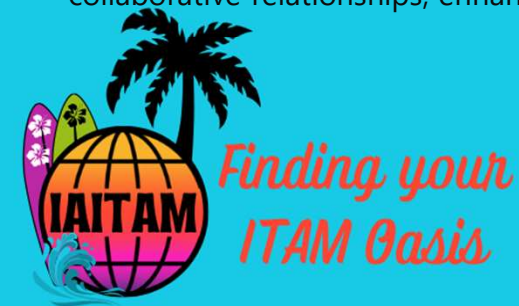


Building and Maintaining Relationships

Effective negotiation extends beyond the bargaining table; it hinges on cultivating and preserving positive relationships with counterparts. Here's how you can foster strong relationships during negotiations:

1. **Effective Communication:** Emphasize the importance of clear and transparent communication throughout the negotiation process (Lewicki et al., 2015). Actively listen to the concerns and perspectives of the other party while articulating your own interests and objectives clearly and respectfully.
2. **Active Listening:** Encourage active listening to demonstrate empathy and understanding towards the other party's needs and preferences (Fisher et al., 2011). Paraphrase and validate their viewpoints to foster rapport and build trust, which are essential for productive negotiations.
3. **Empathy:** Cultivate empathy by putting yourself in the shoes of the other party and considering their motivations and constraints (Mnookin et al., 2020). Acknowledge their perspectives and demonstrate a willingness to collaborate towards mutually beneficial solutions.
4. **Transparency:** Be transparent about your intentions, priorities, and constraints to build credibility and trust (Lax & Sebenius, 2015). Transparency fosters an atmosphere of openness and reduces the likelihood of misunderstandings or conflicts during negotiations.
5. **Relationship Building:** Invest in relationship-building efforts beyond the negotiation table, such as networking events or informal meetings (Raiffa, 2015). Building rapport and trust outside of formal negotiations can facilitate smoother communication and collaboration during the negotiation process.

By prioritizing effective communication, active listening, empathy, and transparency, negotiators can lay the foundation for strong and collaborative relationships, enhancing the likelihood of reaching mutually beneficial agreements.



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Tricks and Tips to Solidify a Good Deal

Securing a favorable deal requires strategic negotiation tactics, persuasive techniques, and effective closing strategies. Here are some practical tips to solidify a good deal in contract negotiations:

1. **Anchoring:** Begin negotiations with a strong opening offer or anchor point to influence subsequent discussions and shape the negotiation range (Tversky & Kahneman, 1974). DO NOT SHOW ALL YOUR CARDS!
2. **Bundling:** Bundle concessions or offers to create value and incentivize agreement on multiple aspects of the contract simultaneously (Rao et al., 2015).
3. **BATNA:** Determine your Best Alternative to a Negotiated Agreement (BATNA) and leverage it to assess the value of proposed deals and strengthen your negotiating position (Fisher et al., 1991).
4. **Deadline Pressure:** Use time constraints strategically to create urgency and compel the other party to make concessions or finalize agreements (Thompson, 2012).
5. **Silence:** Embrace moments of silence during negotiations to encourage the other party to fill the void with additional concessions or favorable terms (Kennedy et al., 2019).
6. **Emotional Appeals:** Employ emotional appeals judiciously to appeal to the other party's emotions and motivations, fostering goodwill and facilitating agreement (Carnevale & Isen, 1986).
7. **Closing Techniques:** Utilize effective closing techniques, such as summarizing key points, reiterating mutual benefits, and clarifying next steps, to solidify agreement and conclude negotiations on a positive note (Shell, 2006).



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Let's Wrap it Up.....

In conclusion, today's session has equipped you with valuable insights and strategies for successful contract negotiations. By applying the best practices discussed, you can navigate negotiations with confidence and achieve favorable outcomes. Remember:

1. Explore win-win solutions to address the interests of both parties.
2. Leverage information and options to negotiate from a position of strength.
3. Know your value and emphasize it during negotiations.
4. Be flexible, yet firm in pursuing your objectives.
5. Build and maintain relationships through effective communication and empathy.
6. Employ practical tricks and tips to solidify a good deal.

My hope is to encourage you to apply these principles in your future contract negotiations to achieve mutually beneficial agreements and strengthen your professional relationships. Thank you for your participation, and best of luck in your negotiations ahead!



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Savings from Contracts Negotiations

- ✓ Adjusting the volume of the purchase, to cover growth and receive a better price
- ✓ Avoiding or negotiating locked-in software prices for long periods of time
- ✓ Managing automatic renewals and notification requirements
- ✓ Evaluating the need for support, at what level
- ✓ Consolidating agreements to obtain volume pricing
- ✓ Renegotiate vendor contracts to assist in paying for only what we are currently using (reduce “shelfware” software licenses)



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Negotiation Dilemmas

- Should you make the first offer in a negotiation?
- You're negotiating a software licensing agreement with a vendor, and they're insisting on including restrictive terms in the contract that limit your organization's ability to customize or modify the software. How would you negotiate to ensure flexibility and future scalability while still meeting the vendor's requirements?
- Your organization needs a cloud computing service, and you're negotiating with a provider who offers competitive pricing but lacks a proven track record in data security and compliance. How would you address concerns about data privacy and ensure adequate safeguards are in place?
- During negotiations with an IT service provider, they propose a long-term contract with fixed pricing, but your organization anticipates changes in technology and business needs that may require adjustments to the service scope. How would you negotiate contract terms to allow for flexibility and adaptation to future changes?
- In a negotiation with a software vendor, they offer a bundled package of products and services at a discounted rate, but some of the included services are unnecessary or redundant for your organization. How would you negotiate to tailor the package to your specific needs and avoid paying for unused services?
- You're negotiating a contract for IT infrastructure support with a vendor who has a reputation for poor customer service and slow response times. How would you address concerns about service quality and ensure that the vendor meets your organization's service level expectations?



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Should you make the first offer in a negotiation?

Making the first offer can set the tone for the negotiation and influence the direction of the discussion. However, making the first offer also carries the risk of anchoring, where subsequent offers are influenced by the initial proposal. If the first offer is too low or too high, it can constrain the negotiation range and limit potential concessions from the other party. By allowing the other party to make the first offer, you gain insight into their preferences and priorities, which can inform your counteroffer and negotiation strategy.



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You're negotiating a software licensing agreement with a vendor, and they're insisting on including restrictive terms in the contract that limit your organization's ability to customize or modify the software. How would you negotiate to ensure flexibility and future scalability while still meeting the vendor's requirements?

In negotiating restrictive terms in a software licensing agreement, it's crucial to understand the vendor's concerns and your organization's needs while proposing compromise solutions. Here's a summary of key strategies:

1. **Understand Vendor Concerns:** Recognize the vendor's worries about intellectual property protection, supportability, and software integrity.
2. **Highlight Business Needs:** Clearly articulate your organization's needs for flexibility and scalability, stressing how software customization is vital for strategic objectives and efficiency.
3. **Propose Compromise Solutions:** Instead of rejecting restrictive terms outright, suggest compromises like limited customization with IP safeguards.
4. **Negotiate Flexibility Clauses:** Include clauses for future modifications or scalability based on changing business needs, technological advancements, or market conditions.
5. **Offer Incentives:** Consider incentives such as long-term commitments or volume discounts to align with both parties' interests.
6. **Explore Alternatives:** If negotiations stall, explore alternatives like other vendors or open-source software with greater flexibility.
7. **Consult Legal and Technical Experts:** Seek advice from legal and technical experts to ensure proposed modifications comply with legal requirements and industry standards.



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Your organization needs a cloud computing service, and you're negotiating with a provider who offers competitive pricing but lacks a proven track record in data security and compliance. How would you address concerns about data privacy and ensure adequate safeguards are in place?

To ensure data security and privacy when negotiating with a cloud computing provider:

- 1. Define Requirements:** Clearly outline your organization's data security needs, considering industry regulations like GDPR.
- 2. Assess Provider's Security Measures:** Scrutinize the provider's security protocols, including encryption, access controls, and vulnerability management.
- 3. Negotiate SLAs:** Discuss service level agreements (SLAs) specifying data security requirements, breach response, and penalties for non-compliance.
- 4. Request Audits and Certifications:** Demand third-party audits to validate the provider's security practices.
- 5. Implement Privacy Controls:** Negotiate additional privacy measures such as encryption, multi-factor authentication, and access controls.
- 6. Include Termination Clauses:** Insert clauses allowing contract termination without penalty in case of severe data breaches.
- 7. Define Data Ownership:** Clarify ownership rights and procedures for data transfer or termination.
- 8. Require Incident Response Plans:** Ensure the provider has effective incident response procedures for timely breach notification and remediation.



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During negotiations with an IT service provider, they propose a long-term contract with fixed pricing, but your organization anticipates changes in technology and business needs that may require adjustments to the service scope. How would you negotiate contract terms to allow for flexibility and adaptation to future changes?

1. **Flexible Service Scope Clause:** Include provisions allowing for adjustments to service scope based on evolving technology and business needs.
2. **Periodic Review Meetings:** Implement regular review meetings to assess performance and align services with current requirements.
3. **Change Management Process:** Establish a clear process for initiating and implementing changes, ensuring transparency and minimal disruption.
4. **Adjustable Pricing Mechanism:** Incorporate mechanisms for adjusting pricing based on changes in service scope or technology requirements.
5. **Exit Clause:** Include an exit clause allowing for termination or renegotiation if the service no longer meets organizational needs.
6. **Benchmarking:** Introduce benchmarking clauses to compare service levels and pricing against industry standards periodically.
7. **Technology Updates:** Ensure provisions for integrating new technologies or upgrades without incurring substantial additional costs.



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In a negotiation with a software vendor, they offer a bundled package of products and services at a discounted rate, but some of the included services are unnecessary or redundant for your organization. How would you negotiate to tailor the package to your specific needs and avoid paying for unused services?

To negotiate a tailored package with a software vendor:

1. **Identify Needs:** Clearly outline your organization's specific requirements and which services are unnecessary.
2. **Request Customization:** Ask the vendor to customize the package to include only essential services, removing redundant ones.
3. **Negotiate Pricing:** Negotiate a discounted rate based on the removal of unnecessary services, ensuring you're not paying for unused features.
4. **Explore Alternatives:** Consider alternative packages or a la carte options to build a customized solution that meets your needs.
5. **Emphasize Value:** Highlight the value of a tailored package that aligns precisely with your organization's requirements.
6. **Seek Flexibility:** Request flexibility in the contract to adjust services as needed in the future, avoiding lock-in to unnecessary features.



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You're negotiating a contract for IT infrastructure support with a vendor who has a reputation for poor customer service and slow response times. How would you address concerns about service quality and ensure that the vendor meets your organization's service level expectations?

1. **Clarify Concerns:** Diplomatically express your concerns about the discrepancies or misrepresentations you've identified.
2. **Seek Explanation:** Request clarification from the other party to understand their perspective and the reasons behind the discrepancies.
3. **Provide Evidence:** Present evidence or documentation supporting your claims of misrepresentation to substantiate your concerns.
4. **Express Impact:** Clearly communicate the potential impact of the misrepresentation on the negotiation process and the relationship between the parties.
5. **Propose Resolution:** Suggest solutions to address the misrepresentation, such as revisiting the terms of the agreement or renegotiating specific aspects to align with accurate information.
6. **Emphasize Trust:** Reinforce the importance of honesty and transparency in the negotiation process and express your commitment to maintaining trust and professionalism.



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THANK YOU!!!



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