

Last Updated: July 1, 2022

DATA SERVICES AGREEMENT

THIS DATA SERVICES AGREEMENT (“**DSA**”), TOGETHER WITH ANY APPLICABLE ORDER (COLLECTIVELY, THE “**AGREEMENT**”) CONTAINS THE TERMS GOVERNING THE BRIGHTCLOUD SERVICE.

IF AN INDIVIDUAL IS DOWNLOADING, INSTALLING, OR CONFIGURING THE BRIGHTCLOUD SERVICE ON BEHALF OF PARTNER, SUCH INDIVIDUAL REPRESENTS AND WARRANTS THAT HE OR SHE IS AT LEAST 18 YEARS OLD AND HAS THE FULL RIGHT, POWER, AND AUTHORITY TO ENTER INTO THE AGREEMENT ON BEHALF OF PARTNER, THAT THE AGREEMENT HAS BEEN AUTHORIZED BY PARTNER, AND THAT THE AGREEMENT WILL CONSTITUTE THE LEGAL, VALID, AND BINDING OBLIGATION OF PARTNER, ENFORCEABLE AGAINST PARTNER IN ACCORDANCE WITH ITS TERMS.

THE AGREEMENT IS EFFECTIVE ON THE EFFECTIVE DATE OF THE INITIAL ORDER. BY ENTERING INTO AN ORDER OR BY OTHERWISE MANIFESTING ASSENT TO THE TERMS AND CONDITIONS OF THE AGREEMENT, PARTNER ACKNOWLEDGES THAT IT HAS READ THE AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY IT. IF PARTNER DOES NOT AGREE, PARTNER IS NOT AUTHORIZED TO USE THE BRIGHTCLOUD SERVICE FOR ANY PURPOSE.

1. Defined Terms. All defined terms in the Agreement have the meanings given to them in this Section 1 or in the Section in which such terms are first defined. Definitions denoting the singular have a comparable meaning when used in the plural, and vice versa.

- 1.1.** “**Affiliate**” means an entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a Party; where “control” means ownership of 50% or more of the outstanding voting securities (but only as long as such entity meets these requirements).
- 1.2.** “**API**” means Company’s application programming interface that may be called or invoked to receive Classifications.
- 1.3.** “**BrightCloud Service**” means Company’s hosted threat intelligence service that: (a) is offered on a subscription basis; (b) is accessed via one or more Delivery Mechanisms; and (c) provides Classifications of one or more Data Types.
- 1.4.** “**Channel Partner**” means an authorized distributor or reseller of Partner that, pursuant to a written agreement with Partner, has the limited right to distribute or resell Integrated Products.
- 1.5.** “**Classification**” means Company’s classification, categorization, or scoring of a Data Type, or statistical or contextual information relating to a Data Type.
- 1.6.** “**Company**” means the signing entity identified on one or more Orders that is providing the BrightCloud Service on behalf of itself or one or more of its Affiliates.
- 1.7.** “**Company Indemnitees**” means Company, its Affiliates, and its and their officers, directors, employees, shareholders, and permitted successors and assigns.
- 1.8.** “**Company Properties**” means the BrightCloud Service and resulting Classifications.
- 1.9.** “**Confidential Information**” means non-public information that is exchanged between Partner or its Affiliates and Company or its Affiliates, provided that such information: (a) is identified as confidential at the time of disclosure by the disclosing Party (“**Discloser**”); or (b) should reasonably be understood by the Party receiving such information (“**Recipient**”) to be confidential to Discloser based on the nature of the information or the circumstances of its disclosure, except that in the case of Company, all non-public aspects of the BrightCloud Service are Company’s Confidential Information, and in the case of Partner, all non-public aspects of Partner Products are Partner’s Confidential Information, regardless of how disclosed. Confidential Information does not include information that Recipient can demonstrate: (x) was rightfully known to Recipient without restriction on use or disclosure prior to such information being disclosed or made available to Recipient in connection with the Agreement; (y) was or becomes generally known by the public other than through the fault of Recipient, including Recipient’s breach of the Agreement; or (z) was or is received by Recipient on a non-confidential basis from a third party that, to Recipient’s knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality.
- 1.10.** “**Data Type**” means a category of threat intelligence information identified in an Order. A Data Type may consist of IP addresses, URLs, apps, files, or other data types.
- 1.11.** “**Delivery Mechanism**” means the API, SDK, Local Database, or some combination of the foregoing, depending on Partner’s subscription to the BrightCloud Service. Delivery Mechanisms form part of the BrightCloud Service.

- 1.12. “**Documentation**” means the written or electronic user documentation pertaining to use of the BrightCloud Service that is provided by Company to Partner.
 - 1.13. “**Effective Date**” means the effective date set forth in an Order or, if no effective date is specified in an Order, the date of the last signature to such Order.
 - 1.14. “**End User**” means an end user customer of an Integrated Product who is granted a right to use an Integrated Product for its internal purposes, and not for resale, pursuant to an End User Agreement.
 - 1.15. “**End User Agreement**” means an enforceable written agreement between Partner and an End User governing the End User’s access to or use of the Integrated Product and Company Properties that is consistent with the requirements of the Agreement.
 - 1.16. “**Fees**” means those fees and charges set forth in an Order.
 - 1.17. “**Integrated Product**” means a Partner Product that is adapted to access Classifications of certain Data Types.
 - 1.18. “**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property right laws, and all similar or equivalent rights or forms of protection, in any part of the world.
 - 1.19. “**Local Database**” means a local copy of a database that contains Classifications of certain Data Types, and which is downloaded by Partner via the SDK.
 - 1.20. “**Order**” means any written order or quote, in electronic or paper form, executed by Partner and Company that (a) references this DSA, and (b) describes Partner’s subscription to the BrightCloud Service and the Fees owed in connection therewith.
 - 1.21. “**Partner**” means the signing entity identified on one or more Orders that is purchasing the BrightCloud Service on behalf of itself or one or more of its Affiliates.
 - 1.22. “**Partner Indemnitees**” means Partner, its Affiliates, and its and their officers, directors, employees, shareholders, and permitted successors and assigns.
 - 1.23. “**Partner Product**” means the Partner product or service that is identified on an Order.
 - 1.24. “**Party**” means Company or Partner, as appropriate, and “**Parties**” means Company and Partner.
 - 1.25. “**Representative**” means, as to a Party or its Affiliates, any of that Party’s or its Affiliates’ directors, officers, employees, contractors, consultants, and advisors.
 - 1.26. “**SDK**” means Company’s software development kit that may be provided to Partner, as identified on an Order. The term “SDK” also includes the code that governs and controls: (a) the access and caching of Classifications; and (b) updates to the Local Database, each as configured and implemented by Partner.
 - 1.27. “**Subscription Term**” means the amount of time set forth on an Order that Partner is authorized to exercise its rights under the Agreement.
2. **Orders.** PARTNER MAY SUBSCRIBE TO THE BRIGHTCLOUD SERVICE AND MAY SELECT DATA TYPES VIA AN ORDER. ACCEPTANCE OF AN ORDER IS EXPRESSLY LIMITED TO, AND CONDITIONED ON, THE TERMS CONTAINED IN THE ORDER, INCLUDING ANY REFERENCE TO THIS DSA THEREIN. COMPANY AND PARTNER EACH REJECT ANY TERMS THAT ARE ADDITIONAL TO OR DIFFERENT FROM THE TERMS OF THIS DSA AND THE APPLICABLE ORDER. IN THE EVENT OF A CONFLICT BETWEEN AN ORDER AND THIS DSA, THE ORDER WILL CONTROL.
 3. **Grant of Rights.** Subject to Partner’s compliance with Sections 6 (License Conditions), 12 (Confidential Information), and 15 (Fees and Payment), Company, to the extent applicable to an Order, hereby grants Partner a non-exclusive, non-sublicensable (except as expressly set forth below), non-transferable right and license during the Subscription Term to: (a) use, copy, or modify, as applicable, the SDK as necessary for the sole purpose of creating Integrated Products, which may include copying and embedding the Local Database in Partner Products to create Integrated Products; (b) allow Integrated Products to obtain Classifications from the Local Database; (c) call the BrightCloud Service through the API from Integrated Products to obtain Classifications; (d) distribute Integrated Products to End Users directly or through Channel Partners; in any case, solely (i) for use by End Users without any right of redistribution and (ii) pursuant to an End User Agreement between each End User and Partner; and (e) sublicense to End Users the right to use Integrated Products for internal business purposes only. For the avoidance of doubt, Company does not grant Partner a right to modify, adapt, translate, publicly display, publish, create derivative works of, or distribute the Documentation.
 4. **End User Requirements.** Each End User Agreement shall prohibit End Users from: (a) reproducing, modifying, renting, leasing, distributing, reselling, publishing, subleasing, sublicensing, or transferring any Integrated Product or Company Properties; (b) creating derivative works, or making, having made, selling, or distributing any derivative works, based

on any Integrated Product or Company Properties; (c) reverse engineering, disassembling, decompiling, or attempting to access the source code for any Integrated Product or Company Properties; and (d) disabling or attempting to disable any security features of any Integrated Product or Company Properties. Partner may not grant any rights to an End User in any Company Properties that exceed the licenses granted in the Agreement. Partner is solely responsible for each End User's use or inability to use an Integrated Product (or any portion thereof) or the Company Properties.

5. **Channel Partners.** Partner may distribute Integrated Products through Channel Partners. Partner will contractually require that each Channel Partner does not: (a) modify any Integrated Products; (b) use any Integrated Products to provide services; or (c) integrate any Integrated Products with any other products or services or otherwise itself license any Integrated Products as an OEM or VAR. Partner must enter into written agreements with Channel Partners containing restrictions substantially similar to those set forth in this Section 5. Partner shall be liable for its Channel Partners' compliance with such restrictions.
6. **License Conditions.** Except to the extent expressly set forth in the Agreement, it is a condition to the rights and licenses granted in Section 3 (Grant of Rights) that Partner must not, nor permit any third party to: (a) access or use the BrightCloud Service in a manner not specifically permitted by the Agreement and Documentation; (b) circumvent any license restrictions or mechanisms intended to limit use of the BrightCloud Service; (c) reverse engineer or ascertain the algorithms or logic underlying one or more Classifications, including via training any software using machine learning techniques; (d) create derivative works from the BrightCloud Service (or any feature or portion thereof) or any Classification beyond the rights already granted in Section 3 (Grant of Rights); (e) reverse engineer, disassemble, or decompile the BrightCloud Service (or any feature or portion thereof), or attempt to derive the source code of any feature or portion of the BrightCloud Service (other than the SDK), except to the extent the foregoing restrictions are prohibited by law; (f) access or use the BrightCloud Service for purposes of competitive analysis of the BrightCloud Service, or for benchmarking or stress testing of the BrightCloud Service; (g) publish, publicly display, or disclose any results produced by the BrightCloud Service, including any Classification, outside of the context of any Integrated Product; (h) place any Classifications or Data Types in a data feed (including RSS); (i) use the BrightCloud Service in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or other rights of any person or entity; (j) use the BrightCloud Service in violation of any applicable law, regulation, or order; or (k) use any aspect of the BrightCloud Service (including via caching, storing or using any Classification, or calling/invoking one or more APIs), to develop, market, or sell any product or service that competes with or offers functionality similar to the BrightCloud Service.
7. **Integrated Product Requirements.** Partner must ensure that each Integrated Product complies with the following prior to distributing each such Integrated Product: (a) each Partner Product must contribute substantial functionality to the resulting Integrated Product (as compared to the Classifications); (b) Classifications may not be accessed on a standalone basis but only through Integrated Products; and (c) Classifications must be refreshed in accordance with the Documentation or Company's published guidelines. At least 10 days prior to the general availability of any Integrated Product, upon Company's written request, Partner will give Company access to each such Integrated Product to review the architecture of each such Integrated Product and for purposes of ensuring the interoperability of the BrightCloud Service with each such Integrated Product. Company has no right to cancel or unreasonably delay the release of an Integrated Product.
8. **Trademarks and Marketing.**
 - 8.1. **Trademarks.** During the Subscription Term, and subject to the terms of the Agreement, each Party ("**Licensor**") hereby grants to the other Party ("**Licensee**") a non-exclusive, non-transferable, non-sublicensable license to use and reproduce Licensor's trademarks, trade names, and logos (collectively, the "**Marks**") solely in connection with and in accordance with the terms of the Agreement. Licensee will conform its use of the Marks to Licensor's standards that have been provided to Licensee in advance. For the avoidance of doubt, Licensee may in its marketing materials and on its websites disclose Licensor as a technology partner of Licensee and use the Marks in connection therewith. All goodwill arising from the use of the Marks will vest in and inure to the benefit of Licensor and, to the extent Licensee gains any rights in such goodwill, such goodwill is hereby assigned by Licensee to Licensor. Licensee acknowledges that: (a) as between Licensor and Licensee, the Marks are the sole and exclusive property of Licensor; and (b) Licensor retains all right, title, and interest in and to the Marks, including all improvements, modifications, adaptations, copies, or derivative works of the Marks. Licensee agrees not to take any action inconsistent with Licensor's exclusive ownership of the Marks. Licensee will cease using the Marks upon the expiration or termination of the Agreement.
 - 8.2. **Marketing.** Upon Company's written request: (a) the Parties may develop and complete a mutually agreed-upon marketing plan within six months of the Effective Date, pursuant to which Partner may promote and market Integrated Products; (b) subject to the Parties' mutual agreement (which may be withheld in a Party's reasonable discretion), Partner may use reasonable commercial efforts in the issuance of a joint press release ("**Press Release**") regarding the Parties and Integrated Products on a mutually agreed-upon date, and each Party will have the right to approve the Press Release in writing in advance, but any such approval may not be unreasonably delayed or withheld; and (c) subject to Partner's consent, which consent may be reasonably withheld, Partner may be the subject of a video and/or written partner case study produced by Company, which may focus on the mutual success of the partnership,

and Partner may be able to approve the case study material before publication, but any such approval may not be unreasonably delayed or withheld.

9. Changes to the BrightCloud Service. Company may at any time without notice discontinue or modify any aspect of the BrightCloud Service, so long as the functionality of the BrightCloud Service is not substantially decreased during the Subscription Term. Furthermore, Company reserves the right to end-of-life (“EOL”) any aspect or version of the BrightCloud Service by providing 120-day prior written notice to Partner. If Partner has prepaid fees for the BrightCloud Service and is impacted by such EOL decision, then Company will use commercially reasonable efforts to transition Partner to a substantially similar version of the BrightCloud Service.

10. Partner’s Obligations.

10.1. No Representations. Partner will not make any representations, guarantees, or warranties of any type: (a) with respect to the specifications, features, capabilities or otherwise concerning the BrightCloud Service that are in addition to or inconsistent with those set forth in the Documentation delivered by Company to Partner hereunder; or (b) on Company’s behalf. Partner shall not engage in any acts or omissions that will diminish the reputation or goodwill of Company or the BrightCloud Service.

10.2. Compliance with Laws.

(a) **General.** Partner shall, and shall cause its Channel Partners to, comply with all applicable federal, state, local, and foreign laws, rules, and regulations (including laws related to data protection and privacy) while integrating, distributing, marketing, licensing, and supporting any Integrated Product.

(b) **FCPA.** With regard to its obligations under the Agreement, Partner: (a) shall comply with the United States Foreign Corrupt Practices Act; and (b) shall not make any payments or gifts or any offers or promises of payments or gifts of any kind, directly or indirectly, to any official of any foreign government or any agency or instrumentality thereof.

(c) **Export.** The BrightCloud Service is subject to U.S. export control laws and regulations and may be subject to foreign export or import laws or regulations. Partner shall strictly comply with all such applicable laws and regulations and shall not use or transfer the BrightCloud Service (or any feature or component thereof) for any use relating to missile technology or nuclear, chemical, or biological weapons.

10.3. Enforcement. Partner shall use commercially reasonable efforts to assist Company in the enforcement of Company’s rights, including where Company has determined that an End User or Channel Partner is using the BrightCloud Service in a manner not expressly permitted under the Agreement.

10.4. Records and Audit. Company or its agents may, at its expense and no more often than annually, upon 30 days written notice and during Partner’s normal business hours, inspect and audit any portion of Partner’s books and records that are relevant for the purpose of verifying Partner’s compliance with the Agreement and the accuracy of any reports, information or payments provided by Partner under the Agreement. In the event any material understatement (5% or more) of payments due hereunder is found, Partner shall, in addition to paying the understated amounts, pay Company’s reasonable costs of the audit. Partner shall maintain all records required under the Agreement for at least three years following the expiration or termination of the Agreement.

11. Account Password and Security. The BrightCloud Service requires authentication credentials or license keys (the “Credentials”). Partner is solely responsible for maintaining the confidentiality of Partner’s Credentials and is fully responsible for all use of such Credentials, whether by Partner or other third parties. Partner agrees to promptly notify Company if Partner becomes aware of any unauthorized use of Partner’s Credentials or any other breach of security relating to Partner’s account. Partner hereby forever releases Company and its Affiliates from all liabilities, damages, losses, and costs incurred by Partner arising from or relating to the unauthorized disclosure of Partner’s Credentials.

12. Confidential Information. During the Subscription Term of the Agreement and for three years following the Subscription Term, Recipient must: (a) not access or use Confidential Information of Discloser other than as necessary to exercise its rights or perform its obligations under the Agreement; (b) disclose Confidential Information of Discloser only to those Representatives of Recipient who have a need to know such Confidential Information for purposes of the Agreement and who are bound by confidentiality obligations no less stringent than those of this [Section 12](#); (c) safeguard the Confidential Information of Discloser from unauthorized use, access, and disclosure using at least the degree of care Recipient uses to protect its own Confidential Information and in no event less than a reasonable degree of care; and (d) promptly notify Discloser in writing of any unauthorized use or disclosure of Confidential Information of Discloser and take all reasonable steps to prevent further unauthorized use or disclosure. Recipient may disclose Confidential Information of Discloser as required to comply with the binding orders of courts or governmental entities that have jurisdiction over it, on the condition that Recipient must: (x) give Discloser reasonable written notice prior to any such disclosure in order to allow Discloser to seek a protective order or other appropriate remedy; (y) disclose only such Confidential Information as is required by the court or governmental entity; and (z) use commercially reasonable efforts to obtain confidential treatment for any such Confidential Information disclosed. If one

or more Representatives of Recipient disclose or use Confidential Information of Discloser other than as authorized in the Agreement, Recipient will be liable to Discloser for that disclosure or use to the same extent that Recipient would have been had Recipient disclosed or used that Confidential Information.

13. Ownership.

- 13.1. The BrightCloud Service.** The BrightCloud Service, Classifications, and Documentation are licensed, not sold, and Partner will not have or acquire any ownership interest in the foregoing. As between Partner and Company, Company is and will remain the sole and exclusive owner of all right, title, and interest in and to the BrightCloud Service, Classifications, and Documentation, including all Intellectual Property Rights therein, subject only to the limited rights expressly granted to Partner under the Agreement. Company reserves all rights to the BrightCloud Service, Classifications, and Documentation not expressly granted to Partner in the Agreement.
- 13.2. SDK.** To the extent Partner makes any derivative works of the SDK, Partner hereby grants Company and its Affiliates a non-exclusive, perpetual, irrevocable, transferable, sublicensable, royalty-free license under all of Partner's Intellectual Property Rights to use, distribute, copy, create derivative works of, publicly perform, publicly display, make, have made, sell, offer for sale, import, and otherwise fully exploit such modifications and derivative works without restriction. For the avoidance of doubt, if Company makes any modifications to, or derivative works of, the SDK, whether or not upon the suggestion or request of Partner, Company and its licensors will own and retain all right, title, and interest in and to any such modifications or derivative works, including all Intellectual Property Rights therein.
- 13.3. Classifications and Partner Products.** Partner acknowledges that Classifications are protected by U.S. copyright laws and also comprise and contain the trade secrets of Company. As between the Parties, Partner and its licensors own and will retain all right, title, and interest in and to Partner Products, and all modifications and derivative works to Partner Products, including all Intellectual Property Rights therein.
- 13.4. Feedback.** Partner and its Affiliates may, at their sole discretion, provide Company with input, comments, or suggestions regarding the BrightCloud Service, Classifications, or Documentation (collectively "**Feedback**"). Partner and its Affiliates hereby grant to Company a non-exclusive, perpetual, worldwide, royalty-free license to use such Feedback in connection with improvements to the BrightCloud Service, Classifications, or Documentation. Further, Partner acknowledges and consents that the BrightCloud Service, including the Delivery Mechanisms, may be designed to provide certain feedback (collectively, "**Automatic Feedback**") to Company regarding Partner's use of the BrightCloud Service. Automatic Feedback may include, among other information, the identity (including IP address and/or URL) of the End User device and/or Integrated Product that accesses the BrightCloud Service, End User credentials, Partner credentials, and the time, type, and content of any request sent to the BrightCloud Service. If necessary, Partner shall cause its applicable Privacy Policy to disclose such collection and use to each applicable End User.

14. Support. Subject to the last sentence of this [Section 14](#), and the payment of any Fees identified in an Order, Company will provide Partner with support for the BrightCloud Service in accordance with the terms of [Exhibit A](#) (Backline Support Terms) attached hereto. For the avoidance of doubt, all such support is backline support to Partner only, and Partner is solely responsible for providing all support directly to End Users. Once the SDK is modified and compiled by Partner within an applicable Integrated Product, Partner is solely responsible for all support of each such Integrated Product, including the SDK.

15. Fees and Payment.

- 15.1. Fees.** Partner is responsible for paying Company the Fees without setoff or deduction. Unless otherwise stated in the applicable Order, Company will invoice Partner in advance for the Subscription Term. All Fees are guaranteed and non-refundable.
- 15.2. Invoices.** Unless otherwise set forth in an Order, Partner must make all payments to Company in USD within 30 calendar days of the date of Company's applicable invoice.
- 15.3. End User Pricing.** Partner will independently determine the pricing at which Partner offers Integrated Products to Channel Partners and End Users. Partner will be solely responsible for collecting all fees from Channel Partners and End Users. Partner is not relieved of Partner's obligation to pay Fees owed to Company due to any Channel Partner's or End User's non-payment.
- 15.4. Taxes.** The Fees exclude any taxes. Partner will be responsible for payment of all taxes applicable to the BrightCloud Service, including all federal, state, and local sales, use, excise, and value-added taxes, with the exception of those taxes based solely on Company's net income. Partner will make all payments of Fees to Company free and clear of, and without reduction for, any withholding taxes. Partner must reimburse Company for any interest or penalties assessed on Company as a result of Partner's failure to pay taxes in accordance with this [Section 15.4](#).
- 15.5. Interest.** All late payments will bear interest at the rate of 1.5% per month (or the maximum amount allowed by law, if less), calculated daily and compounded monthly. Partner must reimburse Company for

all of its reasonable fees and costs actually incurred in collecting any late payments, including attorneys' fees and court costs.

16. Term. The Agreement is effective on the Effective Date and continues for so long as any Subscription Term remains in effect.

17. Termination.

17.1. Termination for Cause. Either Party may terminate the Agreement immediately upon notice, if the other Party: (a) fails to cure any material breach of the Agreement within 30 calendar days after receipt of written notice of such breach; (b) misappropriates or infringes one or more of the terminating Party's Intellectual Property Rights; (c) ceases operation without a successor; or (d) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such Party (and not dismissed within 60 calendar days). Failure to pay Fees when due constitutes a material breach. Company may terminate the Agreement upon notice to Partner in the event that Partner develops any products or services that are competitive with the BrightCloud Service. Termination is not an exclusive remedy and the exercise by either Party of any remedy under the Agreement will be without prejudice to any other remedies it may have under the Agreement, at law, or otherwise.

17.2. Effect of Termination. If the Agreement is terminated for one of the reasons set forth in Section 17.1 (Termination for Cause), then on the effective date of termination: (a) all rights and licenses granted to Partner will immediately terminate and Partner must stop using the BrightCloud Service and must permanently erase all of Company's Confidential Information from devices and systems under Partner's control; provided however that the foregoing obligation to erase, subject to the terms and conditions set forth in the Agreement, shall not apply to: (i) any Classification that has been incorporated into a Partner Product or Integrated Product; (ii) any copies of Confidential Information required to be retained by applicable law, regulation, and/or audit requirements; or (iii) any copies created in the ordinary course of business pursuant to Partner's standard policies with respect to automated archiving or back-up procedures, so long as such copies cannot be deleted using commercially reasonable efforts; and (b) all Fees and other payments then outstanding will become immediately due and payable.

17.3. Effect of Expiration. If the Agreement expires, then on the effective date of expiration (the "**Expiration Date**"), Partner's right to distribute Integrated Products will terminate, provided that Partner may allow End Users for which Company has received prepaid subscription fees to continue to access Classifications, subject to the terms of the applicable End User Agreement, for the remainder of the term associated with such End User's purchase of the applicable Integrated Products, provided that such term may not exceed one year from the Expiration Date (the "**Transitional Term**"). On the Expiration Date, all payments then outstanding will become immediately due and payable. On the expiration of the Transitional Term: (a) all rights to Partner under the Agreement, including the right to sublicense to End Users the right to use Integrated Products, will terminate; and (b) Partner must permanently erase all of Company's Confidential Information from devices and systems under Partner's control; provided however that the foregoing obligation to erase, subject to the terms and conditions set forth in the Agreement, shall not apply to: (i) any Classification that has been incorporated into a Partner Product or Integrated Product; (ii) any copies of Confidential Information required to be retained by applicable law, regulation, and/or audit requirements; or (iii) any copies created in the ordinary course of business pursuant to Partner's standard policies with respect to automated archiving or back-up procedures, so long as such copies cannot be deleted using commercially reasonable efforts.

17.4. Survival. Sections 1 (Defined Terms), 6 (License Conditions), 10.3 (Enforcement), 10.4 (Records and Audit), 12 (Confidential Information), 13 (Ownership), 15 (Fees and Payment), 17.2 (Effect of Termination), 17.3 (Effect of Expiration), 17.4 (Survival), 18.3 (Disclaimers), 20 (Limitation of Liability), 21 (Open Source Software and Third-Party Software), 22 (Equitable Relief), 23 (Governing Law), 24 (Notice), and 25 (Miscellaneous) will survive expiration or termination of the Agreement for any reason.

18. Limited Warranty and Disclaimer of Warranties.

18.1. Limited Warranty. Company warrants to Partner that the BrightCloud Service will, during the Subscription Term, operate in material conformity with Company's applicable Documentation. Company does not warrant that the use of BrightCloud Service will be uninterrupted or error-free or protect against unauthorized access, loss, or alteration of data. Company's sole and exclusive liability (and Partner's sole and exclusive remedy) for any breach of this warranty will be, in Company's sole discretion: (a) to use commercially reasonable efforts to provide an error-correction or work-around that corrects the reported non-conformity, or (b) if Company determines such remedy to be impractical within a reasonable period of time, to refund any Fees (as designated in the applicable Order) prepaid by Partner to Company for the BrightCloud Service that are allocable to the period during which the BrightCloud Service was not in conformity with this warranty. Company will have no obligation with respect to a warranty claim unless notified of such claim in writing within the Subscription Term.

- 18.2. Exclusions.** The above warranty does not apply if a warranty issue arises as a result of: (a) the use of a Partner Product or any third-party hardware or software with the BrightCloud Service; (b) modifications made to the BrightCloud Service by any third party or any Party other than Company; (c) accident, abuse, or improper use of the BrightCloud Service; or (d) Partner code or other third-party code contained within, or delivered with, any Integrated Product.
- 18.3. Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 18, THE BRIGHTCLOUD SERVICE, CLASSIFICATIONS, AND DOCUMENTATION, ARE EACH PROVIDED “AS IS” AND COMPANY AND ITS LICENSORS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY. COMPANY DOES NOT AND CANNOT WARRANT THAT ANY CLASSIFICATION IS COMPLETE, ACCURATE, OR CURRENT. IN ADDITION, THE COMPONENTS, ALGORITHMS, AND MACHINE LEARNING UNDERLYING AND CONSTITUTING THE BASIS FOR ANY CLASSIFICATION ARE FREQUENTLY CHANGING AND COMPANY DOES NOT WARRANT THAT ANY CLASSIFICATIONS ARE CORRECT OR COMPLETE. COMPANY DOES NOT WARRANT THAT ACCESS TO THE BRIGHTCLOUD SERVICE WILL BE CONTINUOUS OR UNINTERRUPTED, MEET PARTNER’S REQUIREMENTS, ACHIEVE ANY INTENDED RESULT, OR BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES, INFORMATION, MATERIALS, OR OTHER MATTER (INCLUDING ANY SOFTWARE, HARDWARE, FIRMWARE, SYSTEM, OR NETWORK), OR BE SECURE, ACCURATE, COMPLETE, OR ERROR FREE. ALL OPEN-SOURCE SOFTWARE AND OTHER THIRD- PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN END USER AND THE APPLICABLE THIRD-PARTY COPYRIGHT OWNER(S) OF SUCH OPEN-SOURCE SOFTWARE OR OTHER THIRD-PARTY MATERIALS.

19. Indemnification.

- 19.1. Company’s Obligation.** Company shall indemnify, hold harmless, and defend each Partner Indemnitee against any and all losses, liabilities, judgments, damages, and costs (including reasonable attorneys’ fees) (collectively, “**Losses**”) arising out of any suit, action, proceeding, or claim initiated by an End User or another third party (“**Claim**”) that relates to an allegation that the BrightCloud Service infringes or misappropriates the Intellectual Property Rights of any third party, but excluding any Claim to the extent it alleges that any Partner Product alone infringes or misappropriates such Intellectual Property Rights.
- 19.2. Partner’s Obligation.** Partner shall indemnify, hold harmless, and defend each Company Indemnitee against any and all Losses arising out of any Claim: that relates to: (a) an allegation alleging that any Integrated Product infringes or misappropriates the Intellectual Property Rights of any third party, but excluding any Claim solely to the extent it alleges that the BrightCloud Service alone infringes or misappropriates such Intellectual Property Rights; (b) the use by Partner of Classifications other than as authorized under the Agreement; (c) any warranties, claims, or assurances Partner makes, or its Channel Partners make, to third parties beyond the scope of the Documentation; or (d) any breach of Section 4 (End User Requirements) or Section 10.2 (Compliance with Laws).
- 19.3. Conditions.** Each Party’s obligations in Section 19.1 (Company’s Obligation) and Section 19.2 (Partner’s Obligation), respectively, are conditioned on the Party seeking indemnification (the “**Indemnified Party**”): (a) notifying the other Party (the “**Indemnifying Party**”) in writing of any such Claim for which it seeks indemnification hereunder promptly after becoming aware of such Claim; (b) giving the Indemnifying Party the right to control the defense of the Claim and any related settlement that does not involve an admission of fault or liability on the part of the Indemnified Party; provided, however, that the Indemnified Party may, at its option and expense, participate in any such defense using counsel of its choice; and (c) cooperating and, at the Indemnifying Party’s reasonable request and expense, assisting in the defense of such Claim.
- 19.4. Mitigation.** Upon the occurrence of a Claim for which defense is or may be due under Section 19.1 (Company’s Obligation), or in the event that Company believes that such a Claim is likely, Company may, at its option: (a) appropriately modify the BrightCloud Service, or any feature or component of the BrightCloud Service, so that it or its applicable features or components become non-infringing, or substitute functionally equivalent subscription services to Partner; (b) obtain a license to the applicable third-party intellectual property rights so that Partner may continue to use the BrightCloud Service; or (c) terminate Partner’s subscription to the BrightCloud Service on written notice to Partner and refund to Partner that portion of the Fees pre-paid hereunder for the infringing portion of the BrightCloud Service, pro-rated for the remainder of the Subscription Term set forth on Partner’s most recent Order.
- 19.5. Limitations and Exclusions.** Company has no obligation under Section 19.1 (Company’s Obligation) or otherwise with respect to any Claim if: (a) the BrightCloud Service is modified by any third party or any Party other than Company, but solely to the extent the alleged infringement is caused by such modification; (b) the infringement arises from the BrightCloud Service being combined with a Partner Product or any product or process not expressly authorized under the Agreement or otherwise authorized in writing by Company in advance; (c) the infringement is caused by any unauthorized use of the

BrightCloud Service; or (d) the infringement results from any Partner code or other third-party code contained within, or delivered with, any Integrated Product. If an infringement Claim against Company is based on any of the exceptions, Partner will defend such Claim at Partner's own expense and will pay all damages and costs awarded against Company in connection with such Claim or agreed to in any monetary settlement thereof. Company will promptly notify Partner in writing of such Claim, give Partner sole control of the defense thereof and any related settlement negotiations, cooperate with Partner and, at Partner's request and expense, assist in such defense. Notwithstanding the foregoing, Partner shall regularly update Company regarding the infringement Claim and Company may, at its own expense, participate in the defense of the infringement Claim using counsel of its choice.

- 19.6. Sole Remedy.** THIS SECTION 19 SETS FORTH PARTNER'S SOLE REMEDY AND COMPANY'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS SUBJECT TO DEFENSE OR INDEMNIFICATION OBLIGATIONS. COMPANY HAS NO DEFENSE OR INDEMNIFICATION OBLIGATIONS TO PARTNER EXCEPT AS SET FORTH IN THIS SECTION 19.

20. Limitation of Liability.

- 20.1. EXCLUSION OF DAMAGES.** EXCEPT AS SET FORTH IN SECTION 20.3 (EXCEPTIONS), IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE UNDER THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (a) INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (b) LOSS OF GOODWILL OR REPUTATION; (c) LOSS, INTERRUPTION, OR DELAY OF THE BRIGHTCLOUD SERVICE; (d) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (e) COST OF REPLACEMENT GOODS OR SERVICES; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 20.2. CAP.** EXCEPT AS SET FORTH IN SECTION 20.3 (EXCEPTIONS), IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY AND ITS AFFILIATES ARISING OUT OF THE AGREEMENT, WHETHER ARISING UNDER OR RELATING TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL OF THE FEES PAID TO COMPANY UNDER THE AGREEMENT FOR THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 20.3. EXCEPTIONS.** THE LIMITATIONS IN SECTIONS 20.1 (EXCLUSION OF DAMAGES) AND 20.2 (CAP) WILL NOT APPLY TO: (A) ONE OR MORE OF A PARTY'S OBLIGATIONS UNDER SECTION 15 (FEES AND PAYMENT) OR SECTION 19 (INDEMNIFICATION); OR (B) ONE OR MORE BREACHES OF SECTION 6 (LICENSE CONDITIONS), SECTION 10.2 (COMPLIANCE WITH LAWS), OR SECTION 12 (CONFIDENTIAL INFORMATION).
- 21. Open Source Software and Third-Party Software.** The SDK may contain or be provided with components subject to the terms and conditions of third-party proprietary licenses ("Third-Party Software") or free/libre and open source software licenses ("Open Source Software"). All Open Source Software that is distributed as part of the SDK is disclosed in the SDK's source code. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of the Agreement with respect to such Open Source Software itself, including any provisions governing access to source code, modification, or reverse engineering. Partner acknowledges that Partner's use of each Open Source Software component is subject to the open source license applicable to such component. Company makes no representations or warranties with regard to such Open Source Software and assumes no liability that may arise from the use of Open Source Software. With respect to data licensed by Company regarding geographic information and other data associated with an IP address or URL ("GeolIP Databases"), Partner acknowledges that the limitations and disclaimers set forth in the Agreement apply to such GeolIP Databases and that the licensor of such GeolIP Databases has no liability in connection with the Agreement or Partner's use of the BrightCloud Service.
- 22. Equitable Relief.** Each Party acknowledges that breach by it of one or more of its obligations under Sections 6 (License Conditions) or 12 (Confidential Information) will cause the other Party to suffer immediate and irreparable harm for which money damages would be an inadequate remedy. Therefore, each Party agrees that if it breaches one or more of its obligations under Sections 6 (License Conditions) or 12 (Confidential Information), the other Party will be entitled to equitable relief as well as any additional relief that may be appropriate.
- 23. Governing Law.** Unless otherwise agreed in an Order, the Agreement shall be governed by the laws of the state of Delaware excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods. The Parties agree that the Uniform Computer Information Transaction Act, or any version thereof, adopted by any state located in the United States, in any form (the "UCITA"), will not apply to the Agreement.

24. Notice. All of a Party's notices required under the Agreement must be in writing and are considered effective: (a) one business day after a Party sends an email to: (i) the other Party's email address as listed on the applicable Order; and (ii) with respect to Company, SMBCLegal@opentext.com, each with proof of receipt; or (b) 5 days after mailing, when sent via certified mail, return receipt requested or postage prepaid to the applicable Party's address set forth on an Order, and with respect to Company, with a copy to 385 Interlocken Crescent, Suite 800, Broomfield, Colorado 80021 (Attention: Legal Department), if such address is not set forth on such Order. By providing Partner's email address on an Order, Partner agrees to receive all required notices from Company electronically to that email address. Either Party may update its email address or, with respect to Company, street address, for notices by providing the other Party with notice of any such change as set forth herein. It is Partner's responsibility to change or update Partner's email address in accordance with the notice provisions of this [Section 24](#).

25. Miscellaneous.

- 25.1. High Risk Activity.** Partner acknowledges and agrees that the BrightCloud Service is not intended for use with any high risk or strict liability activity, including air or space travel, technical building or structural design, power plant design or operation, or life support or emergency medical operations or uses, and Company makes no warranty regarding, and will have no liability arising from, any use of the BrightCloud Service in connection with any high risk or strict liability activity.
- 25.2. Force Majeure.** Neither Party will be liable to the other for any delay or failure to perform any obligation under the Agreement (except for a failure to pay Fees) if the delay or failure is due to events which are beyond the reasonable control of such Party, including any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.
- 25.3. Relationship.** The Parties are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the Parties. Neither Party will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent.
- 25.4. English Language.** Partner acknowledges that any translation of the English language version of the Agreement provided by Company to Partner is provided for Partner's convenience only, and that the English language version of the Agreement will take precedence over the translation in the event of any contradiction arising from translation.
- 25.5. Interpretation.** The words "include," "includes," and "including" means "include," "includes," or "including," in each case, "without limitation."
- 25.6. Third-Party Beneficiaries.** There are no third-party beneficiaries to the Agreement.
- 25.7. Severability.** If any provision of the Agreement is held unenforceable, that provision will be enforced to the extent permissible by law and the remaining provisions will remain in full force.
- 25.8. Assignment; Change of Control.** Partner may not assign the Agreement without the prior written consent of Company, which will not be unreasonably withheld; provided, however, that Partner may freely assign or transfer Partner's rights or obligations hereunder to any affiliate or any successor to Partner's business or assets to which the Agreement relates, whether by merger, sale of assets, sale of stock, reorganization, or otherwise. Company may assign the Agreement without Partner's consent, although Company may use commercially reasonable efforts to notify Partner of any assignment.
- 25.9. Waiver.** No provision of the Agreement will be deemed waived unless the waiver is in writing and signed by Company.
- 25.10. Modifications.** The Agreement may only be modified or amended pursuant to a writing signed by Company.
- 25.11. Entire Agreement.** The Agreement sets forth the entire, complete, and final understanding and agreement between Company and Partner with regard to the subject matter of the Agreement, and supersedes any prior oral or written agreements or understandings between Partner and Company with regard to such subject matter.

EXHIBIT A

BACKLINE SUPPORT TERMS

1. **Definitions.** For purposes of this Exhibit A, the following terms have the meanings set forth below. All capitalized terms not otherwise defined in this Exhibit A have the respective meanings given to them in the body of the Agreement.

- (a) **“Issue”** means any reproducible failure of the SDK to operate in all material respects in accordance with the Documentation.
- (b) **“Issue Category”** means one or more of the following:

Issue Category	Description
Critical	Total service failure (e.g., unavailability of management system, significant impact on operations).
Major	Significant reduction experienced in system performance or unavailability of specific business critical functions.
Medium	Failure of one or more system functions making use of the systems difficult (e.g., service still running and operational, but not to full capacity).
Low	A problem which is outside of the expected operation of the service but causes only minor inconvenience to the user, requests for information, service requests, or requests for enhancements.

- (c) **“Normal Working Hours”** means Monday through Friday (excluding Company’s holidays) from 8:00AM to 5:00PM Mountain Time for the U.S. and from 10:00AM to 7:00PM JST for Japan.
- (d) **“Out-of-Scope Support Services”** means any of the following: (i) Tier 1 Support or Tier 2 Support; and (ii) any Issues, errors, problems, or bugs associated with or determined by Company to result from the Partner Product.
- (e) **“Partner Support Employees”** means up to 2 of Partner’s Representatives designated in writing to Company who may contact Company for the purpose of obtaining support from Company in a manner consistent with this Exhibit A.
- (f) **“Tier 1 Support”** means the identification, diagnosis and correction of Issues raised by End Users or Channel Partners through the provision of the following support services by help desk technicians sufficiently qualified and experienced to identify and resolve such Issues: (i) telephone/e-mail/chat assistance; (ii) remote services; and (iii) access to technical information on Partner’s website for proper use of the Integrated Products.
- (g) **“Tier 2 Support”** means support service regarding the SDK that, due to its technical nature, cannot reasonably be provided by Tier 1 Support, which service consists of the identification of whether an Issue is a problem, error, or bug contained within the Local Database or provided through API calls, and if so, timely escalation of support inquiries to Tier 3 Support.
- (h) **“Tier 3 Support”** means assessing, and if commercially reasonable resolving, code-level Issues caused by the SDK that cannot be prevented, diagnosed, or corrected by Tier 1 Support or Tier 2 Support and are not related to the Partner Product.

2. **Support Services.**

- (a) **Overview.** Company will use commercially reasonable efforts to provide Tier 3 Support to Partner during Normal Working Hours through the Subscription Term. Partner (not Company) will provide all Tier 1 Support and Tier 2 Support to End Users and Channel Partners and Company will not interact or communicate with End Users or Channel Partners. Company will not provide Out-of-Scope Support Services.
- (b) **Escalation Process.** Partner Support Employees may submit queries on Tier 3 Support Issues to Company via e-mail or telephone as set forth below using a Company provided template. Company is only required to respond to Partner Support Employees. Partner Support Employees must raise queries through the following mechanisms:

Logging Method	Logging Mechanism	Support Cover
Email	support@brightcloud.com	24/7* for Tier 3 Support Issue Categories
Telephone	USA: 877-612-6009 Japan: 0120-633-601 (Japan Toll-Free) and (03)-4588-6561(Japan Long Distance)	24/7 for Critical and Major Tier 3 Support Issue Categories Normal Working Hours for Medium and Low Tier 3 Support Issue Categories

*Emails will be logged 24/7 but Company's responses will be only during Normal Working Hours.

- (c) **Response Times.** Company will use commercially reasonable efforts to respond to Tier 3 Support Issues within the following timeframes. Company will use commercially reasonable efforts to respond to Critical Tier 3 Support Issues reported to Company outside of Normal Working Hours. Company's compliance with the response times below is conditioned on Partner providing Company with immediate notice of all Tier 3 Support Issues and supporting documentation thereto, direct access to any code or functionality within an Integrated Product that could be causing the Tier 3 Support Issue, and remote access, if necessary, to any of Partner's systems necessary for Company to perform the Tier 3 Support.

Category	Support Cover	Target Response Time
Critical	24/7	< 2 Hours
Major	24/7	< 3 Hours
Medium	Normal Working Hours	< 8 Normal Working Hours
Low	Normal Working Hours	< 24 Normal Working Hours

3. **Company Support for Integrated Product Development.** Company will create and deploy patches, fixes, updates, and upgrades to the SDK at no additional cost or charge to Partner, except that Company's obligation to provide support for the SDK ceases once Partner begins modifying the SDK.
4. **Data Classification and Accuracy Support.** Partner shall make all requests for changes to Classifications pursuant to this [Section 4 of Exhibit A](#) and agrees that such requests are not Issues. Partner understands that Company will only make such changes if its Classifications are inaccurate.
- (a) **Preferred Change Request Vehicle: DbChange System.** Partner will utilize Company's DbChange system ("DbChange") as the primary mechanism for making change requests associated with the accuracy of Classifications.
- (b) **System Location and Branding.** DbChange provides access to all BrightCloud Threat Intelligence Tools including URL/IP Lookup, URL Categorization, or IP Reputation or Web Reputation Change Requests at:

<http://brightcloud.com/tools/change-request-url-ip.php>.

The specific URL may be updated from time to time at Company's sole discretion. At Company's option following Partner's request, Company will provide Partner with certain website source code to allow Partner to rebrand and host the site.
- (c) **Information Requirements.** The originator of any change request being entered into DbChange must provide the following: (i) a URL or IP address, (ii) one or more recommended categories or reputation index recommendations, (iii) the requestor's email address, and (iv) any comments or "integration" data that may be required (e.g., actual partner firewall or specific software / device in use).
- (d) **Response time.** DbChange will deliver an automated email response upon receipt of a change request (assuming a valid email address is provided in the change request), notifying the originator that the request has been received into the Partner's processing queue.

- (e) **Tracking and Resolution.** Requests are tracked in an internal DbChange database. Submitted requests are reviewed by Company's staff, and as necessary an update to the database is made and the request disposition is marked in the database (Change Made, No Change Made, Format Error, etc.). The originator is (optionally) emailed with a response indicating the disposition of the request. Requests are typically processed within 24 to 48 hours, depending on various factors.
- (f) **Alternative Methods for Making Data Classification and Accuracy Requests.**
 - (i) **Email.** Requests can be submitted directly to wr-DBchange@opentext.com or other relevant email address which will be provided to Partner by Company. While available, requests delivered via email do not receive automated responses. Requests sent via email will also typically have a longer turn-around time than those requests submitted via DbChange.
 - (ii) **BCTI.** As programmatic BCTI interface may be embedded into Partner's applications or processes, at Partner's sole discretion and expense. This BCTI method will enable applications to send Company a change request and email of the originator via a standard BCTI message.
- (g) **FAQ and Category Descriptions.** Partner agrees to publish links containing FAQ and category descriptions that document and describe categories, with examples for each.

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