

## **ARPA Terms And Conditions and Certifications and Representations for Purchases \$250,000 and above**

**THESE ARE REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS  
UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200 as  
Modified by Cherokee County 08 February 2022 FOR USE WITH APRP FUNDED PURCHASES**

**The following provisions are required if checked and apply to both the solicitation and any award resulting from this solicitation.**

Please note: Alpha paragraph references are for internal reference only.

### *Section I – Applies to all ARPA contracts*

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**[X] The following is required if checked:**

**(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.**

Pursuant to Federal Rule (A) above, when federal funds are expended, Cherokee County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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**[X] The following is required if checked:**

**(B) Termination for default and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000).**

Pursuant to Federal Rule (B) above, when federal funds are expended, Cherokee County reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Cherokee County also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if Cherokee County believes, in its sole discretion that it is in the best interest of Cherokee County to do so. The vendor will be compensated for work performed and accepted and goods accepted by Cherokee County as of

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the termination date if the contract is terminated for convenience of Cherokee County. Any award under this procurement process is not exclusive and Cherokee County reserves the right to purchase goods and services from other vendors when it is in the best interest of Cherokee County.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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**[X] The following is required if checked:**

**(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.**

Pursuant to Federal Rule (E) above, when federal funds are expended by Cherokee County, the vendor certifies that during the term of an award for all contracts by Cherokee County resulting from this procurement process, the vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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**[X]** The following is required if checked:

**(F) Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by Cherokee County, the vendor certifies that during the term of an award for all contracts by Cherokee County resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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**[X]** The following is required if checked:

**(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).**

Pursuant to Federal Rule (G) above, when federal funds are expended by Cherokee County, the vendor certifies that during the term of an award for all contracts by Cherokee County resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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**[X]** The following is required if checked:

**(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.**

Pursuant to Federal Rule (H) above, when federal funds are expended by Cherokee County, the vendor certifies that during the term of an award for all contracts by Cherokee County resulting from this procurement process, the vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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**[X]** The following is required if checked:

**(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the nonfederal award.**

Pursuant to Federal Rule (I) above, when federal funds are expended by Cherokee, the vendor certifies that during the term and after the awarded term of an award for all contracts by Cherokee County resulting from this procurement process, the vendor

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certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor.

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**[X] The following is required if checked:**

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### **RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS – 2 CFR § 200.333**

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When federal funds are expended for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

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Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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**[X] The following is required if checked:**

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### **PROCUREMENT OF RECOVERED MATERIALS, 40 CFR PART 247 SHALL APPLY FOR PROCUREMENTS IN EXCESS OF \$10,000.**

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When federal funds are expended for any contract resulting from this procurement process in excess of \$10,000, the vendor certifies that the vendor is in compliance with all applicable standards, orders, regulations related thereto.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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**[X] The following is required if checked:**

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### **CERTIFICATION OF COMPLIANCE WITH COMPLIANCE WITH EPA REGULATIONS APPLICABLE TO GRANTS, SUBGRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS IN EXCESS OF \$100,000 OF FEDERAL FUNDS**

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When federal funds are expended for any contract resulting from this procurement process in excess of \$100,000, the vendor certifies that the vendor is in compliance with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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**[X] The following is required if checked:**

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### **CERTIFICATION OF NON-COLLUSION STATEMENT**

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Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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### *Section II - Special Situations*

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► Construction [  ] An “X” in the box for this section indicate that the requirements associated with this section applied to all quotes, bids, proposals as well as awarded Purchase orders or contracts.

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**(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60- 1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”**

Pursuant to Federal Rule (C) above, when federal funds are expended by Cherokee County on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does vendor agree to abide by the above?

YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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NOTE: Davis-Bacon Act portion of this requirement does not apply to ARPA funds use.

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**(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The nonfederal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.**

Pursuant to Federal Rule (D) above, when federal funds are expended by Cherokee County, during the term of an award for all contracts and subgrants for construction or repair, the vendor will be in compliance with all applicable Davis-Bacon Act and Copeland Anti-Kickback provisions.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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### **USE OF VALUE ANALYSIS / VALUE ENGINEERING (VA/VE)**

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When federal funds are expended for any contract resulting from this procurement process, the vendor is strongly encouraged to evaluate the requirements identified in this procurement using value analysis and value engineering techniques to provide lower cost alternatives. Unless specifically directed by the County in writing, the vendor shall quote/bid/propose the items as listed herein and also provide the potential alternative(s) separately. VA/VE is also encouraged after contract award for ongoing or longer term projects.



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Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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► Transportation [  ] An "X" in the box for this section indicate that the requirements associated with this section applied to all quotes, bids, proposals as well as awarded Purchase orders or contracts.

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**(J) The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients' bid or request for proposal for federally funded contracts. Recipients can draw on the following language for inclusion in their federally funded procurements. Note that recipients are responsible for including the correct Buy America certification based on what they are acquiring. Recipients should not include both the rolling stock and steel, iron, or manufactured products certificates in the documents unless acquiring both in the same procurement. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in federally funded projects are produced in the United States, unless a waiver has been granted by the funding agency or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.**

The [bidder or offeror] must submit to [Recipient] the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

### Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

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Title: \_\_\_\_\_

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► Cargo [  ] An "X" in the box for this section indicate that the requirements associated with this section applied to all quotes, bids, proposals as well as awarded Purchase orders or contracts.

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**(K) The Cargo Preference Act of 1954 at 46 U.S.C. § 55305 and 46 C.F.R. part 381 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.**

The contractor agrees to:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the funding recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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► Telecommunications Equipment [ ] An “X” in the box for this section indicate that the requirements associated with this section applied to all quotes, bids, proposals as well as awarded Purchase orders or contracts.

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### **(L) Huawei Technology Ban - Section 889 of the 2019 National Defense Authorization Act (“NDAA”)**

- 889(a)(1)(A): directs that agencies may not “procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system.” This limitation was implemented by an amendment to the Federal Acquisition Regulation (“FAR”) published on August 13, 2019.
- 889(a)(1)(B) directs that agencies may not “enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or services that uses covered telecommunications equipment or services as a substantial or essential component of any system.” This limitation was implemented by an amendment to the FAR in July 2019, with an effective date of August 13, 2020.
  - Covered telecommunications equipment or services” falls into four categories:
    - Telecommunications equipment produced by Huawei Technologies Company, ZTE Corporation, or any subsidiary or affiliate of either.
    - When to be used for public safety, government facility security, security of critical infrastructure, or other national security purposes, “video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, . . . Dahua Technology Company” or any subsidiary or affiliate of the aforementioned.
    - Telecommunications or video surveillance services provided by any of the aforementioned entities.
    - Telecommunications or video surveillance equipment produced by or provided by an entity the Secretary of Defense ‘reasonably believes’ to be an entity connected to the government of the People’s Republic of China
- 889(a)(1)(B) directs that agencies may not “enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or services that uses covered telecommunications equipment or services as a substantial or essential component of any system.” This limitation was implemented by an amendment to the FAR in July 2019, with an effective date of August 13, 2020.

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The Contractor agrees to participate in AGENCY's ban established in compliance with Section 889 of the 2019 National Defense Authorization Act.

Vendor acknowledges agreement? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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### *Section III – Compliance Signatures (applies to all ARPA contracts)*

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**[X] The following is required if checked:**

**Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.**

Vendor's Name/Company Name: \_\_\_\_\_

Address, City, State, and Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Printed Name and Title of Authorized Representative: \_\_\_\_\_

Email Address: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_ Federal Tax ID #: \_\_\_\_\_

DUNS (9Digits) \_\_\_\_\_

CAGE Code (5 Digits): \_\_\_\_\_ Expiration Date: \_\_\_\_\_

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