

# Standard Terms and Conditions

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## TalenX Limited

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## STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS AND SERVICES

These Terms and Conditions (the "Conditions") govern the delivery and use of the Products and Services by the Client. These Conditions, together with the Agreement, constitute the valid, complete and binding contract between TalenX and the Client. Additional or alternative provisions apply for certain purchases/subscription and are included in the applicable purchase on the Agreement. If there is any conflict between the Conditions and the Agreement, the Agreement shall prevail. All capitalized terms are defined at the end of the Conditions in the INTERPRETATION section.

### 1. INTERPRETATION

1.1. In these conditions the following words have the following meanings:

**Agreement** the Sale Agreement that this Standard Terms of Use is attached to;

**Assessment** any of the questionnaires or tests made available by TalenX or the Client to a Candidate further to this Agreement;

**Benchmarks** aggregated data received, collected, analysed, and maintained by TalenX to improve its Products and/or Services.

**Candidate** any respondent or assessee to any Assessment;

**Client** the Client in the Agreement;

**Company (or TalenX)** TalenX Limited registered in Hong Kong under company number 2612364;

**Data Protection Laws** Personal Data (Privacy) Ordinance (Cap. 486) and other Hong Kong laws and regulations in relation to the collection, processing, use, and storage of Personal Data;

**Force Majeure** any event affecting the performance by TalenX of its obligations under the Agreement arising from acts, events or omissions beyond its reasonable control, including: acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, storm, earthquake, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials;

**Identification Data** any data relating to the Candidate collected during his interaction with any Assessment, or collected by TalenX during the Client's use of the Products used to identify a Candidate (including the Candidate's name, email address and other contact details);

**Intellectual Property Rights** TalenX's copyright, rights to inventions, related rights, trademarks, service marks, trade, business, domain names, patents, rights in trade dress or get-up rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, algorithms, database right, topography rights, moral rights, rights in confidential information (including know how and trade secrets), and any other intellectual property rights, in each case whether registered or unregistered and including all applications

for and renewals or extension of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Assessment Platform** the online assessment platform provided by TalenX to the Client upon presentation of a Recruitment Token;;

**Optional Data** any optional biographical data, Personal Data, Sensitive Personal Data, and other data, including all data, information and/or other materials provided by or on behalf of the Client to TalenX through surveys, assessments, or provided by the Client to TalenX (through software or other data collection activities) for assessment validation, research and benchmarking purposes and product development;

**Order** a request or order for the purchase and supply of the Products and/or Services placed by the Client with TalenX, which shall be subject to the Conditions unless otherwise agreed in writing and will contain: (i) the Product and/or Services purchased by the Client from TalenX, (ii) the prices for the Product and/or the fees for the Services, (iii) material terms of the Agreement, and (iv) any additional or alternative applicable provisions;

**Personal Data** shall have the meaning ascribed to it in the Personal Data (Privacy) Ordinance (Cap. 486) ;

**Privacy Policy** the privacy policy displayed on the Website;

**Products** any products or systems supplied to the Client by TalenX ;

**Restricted Products** any psychometric tests or materials (including: online assessments, question booklets, answer sheets, profile sheets, extracts and assessment reports) and the data collected from the Candidates who have accessed the Recruitment Platform;

**Services** any services provided by TalenX to the Client pursuant to the Agreement including but not limited to: i) the provision of access to or links to Products; iii) and/or training courses to be supplied to the Client by TalenX (including any part or parts of them); and/or iii) other services related to the Products;

**Website** [www.talenx.io](http://www.talenx.io);

- 1.2. Headings will not affect the construction of these Conditions. Use of the words include, including, in particular, or any similar expression are illustrative and do not limit the sense of the words following those terms. The singular tense of a defined term also includes the plural.
- 1.3. The additional terms and conditions set out in the appendices to these Conditions shall also apply according to the type of Service being provided to the Client.
- 1.4. If there is any conflict or inconsistency between a term in the main part of these Conditions and a term in any of its appendices, the term in the main part of these Conditions shall take precedence, unless the appendix, or term contained in such appendix, is expressly stated to take precedence over the main part of these Conditions.

## 2. CONDITIONS

- 2.1. The Agreement embodies the entire agreement between TalenX and the Client in respect of the matters referred to in it and supersedes any previous agreements between the parties.
- 2.2. If the Client places an Order, the Order shall only be deemed to be substantiated when the Agreement shall come into existence with the Purchase Price as set out therein fully paid by the Client.
- 2.3. If the Client requests the supply of Products or Services the Client will be deemed to have accepted these Conditions which shall be incorporated into the Agreement.
- 2.4. These Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, except to the extent that such terms cannot be excluded in accordance with applicable law.

### **3. DESCRIPTION**

The descriptions of the Products and/or Services are set out in any of TalenX's statement of work, quotation, brochure, Website or other applicable materials. All drawings, descriptive matter, specifications and advertising issued by TalenX are published for the sole purpose of giving an approximate idea of the Products and/or Services described in them. Such materials shall not form part of this Agreement.

### **4. DELIVERY**

- 4.1. TalenX shall deliver the Products and/or Services as set out in the Agreement at any time after TalenX notifies the Client that the Products and/or Services are ready.
- 4.2. Any dates quoted for delivery of the Products and/or Services are approximate only, and the time of delivery is not of the essence. TalenX shall not be liable for any delay in delivery of the Products and/or Services, regardless of whether such delay is caused by a Force Majeure event or the Client's failure to provide TalenX with adequate delivery instructions or any other instructions that are relevant to the supply of the Products and/or Services.
- 4.3. Subject to the Client meeting the Client's obligations under this Agreement, TalenX shall use all reasonable endeavours to ensure that the Recruitment Platform is available to the Client throughout the term as set out in the Agreement. TalenX will schedule downtime at a certain date and time that TalenX sees fit. Such downtime will be notified on TalenX Website or other such website as notified to the Client from time to time and via email to the project administrator, Registered User or other designated employee of the Client.

### **5. PRICE**

- 5.1. Unless otherwise agreed by TalenX in writing, the price for the Products and/or Services shall be those set out in the Agreement.
- 5.2. The price for the Products and/or Services shall be exclusive of any costs or charges relating to postage, packaging, insurance, transport, and/or any applicable import and/or export duties which shall be paid for by the Client.
- 5.3. All amounts payable by the Client under the Agreement are exclusive of amounts in respect of any Taxes chargeable from time to time. Where any Taxes are due on any taxable supply under the Agreement by TalenX to the Client, the Client shall pay to TalenX such additional amounts in respect of Taxes as are chargeable on the supply of the Products and/or Services at the same time as payment is due for the supply of the Products and/or Services. In any event, the Client shall bear its own tax obligations (if any) arising out of the Agreement.

### **6. PAYMENT**

- 6.1. Unless specified otherwise, invoices are due for payment within 30 days of the invoice date without any deductions including, but not limited to, bank charges. Time for payment shall be of the essence.
- 6.2. TalenX reserves the right to charge a reasonable fee for the settlement of amounts settled by credit card.
- 6.3. If the Client fails to pay TalenX any sum due, the Client will be liable to pay an administrative charge of 2% per month should the outstanding sums remain outstanding 30 days after due date.
- 6.4. TalenX shall be entitled to withhold delivery of any Products and/or suspend any of the Services or terminate the contract if the Client fails to pay to TalenX any sum by the due date. TalenX shall incur no liability in respect of such withholding of delivery or cancellation. Upon such cancellation and without prejudice to any other right that TalenX may have, the Client shall be liable to pay any outstanding sums owed to TalenX, damages for breach of contract and any costs incurred by TalenX associated with the recovery of such sums.

### **7. CANCELLATION OF ORDERS AND RETURN OF PRODUCTS**

- 7.1. There shall be no refunds or return of the Products or Services from the Client to TalenX after the execution of the Agreement and payment of the Purchase Price as set out therein.

7.2. Nothing in this Condition 8 shall prejudice any disclaimer of liability by a party elsewhere in the Agreement.

## 8. CLIENT'S OBLIGATIONS

8.1. The Client represents, warrants and undertakes that it shall:

- 8.1.1. not copy, reproduce, modify or adapt, translate, disassemble or, reverse engineer, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of Product and/or Services (as applicable) in any form or media or by any means, except as permitted in accordance with the Agreement;
- 8.1.2. administer the Products and/or any Services (including any related materials), in compliance with all relevant laws, procedures or guidelines applicable in the jurisdiction in which the assessment is being administered;
- 8.1.3. use the Assessment Platform responsibly. The Client shall not hold TalenX responsible for any damage loss or otherwise accountable for the Client's misuse of the Assessment Platform, TalenX's Products and Services and/or any information or data collected from the Client's business dealing with TalenX;
- 8.1.4. comply with applicable law with respect to the Agreement; and
- 8.1.5. that it enters into the Agreement as a business customer and is not a consumer for the purposes of any consumer protection regulation.

## 9. DISCLAIMERS

- 9.1. The Products and/or Service guide the Client as to the suitability and aptitude of the Candidates as part of an overall recruitment or development process. Any opinion given by TalenX regarding the results obtained from the Candidates represents TalenX's professional opinions based on information provided by TalenX by, or on behalf of the Client, its employees and the Candidates, together with any applicable assessment response(s) and must not be relied upon as statements of facts or as the sole basis for any employment related decision. TalenX does not recruit or select candidates and is not operating as a recruitment agency, nor is TalenX responsible for the acts or omissions of TalenX, including: (i) the Client's selection of Assessments without a specific written recommendation from TalenX and (ii) the Client's use of Assessments, its interpretation of the Assessment Report or its resulting decisions. The Client is not entitled to receive any raw data, including item-level responses, collected as part of the Services. The Client further acknowledges that compliance with any applicable employment or applicant records retention requirement, or any applicable governmental authority or regulatory body of any country remains the responsibility of the Client.
- 9.2. TalenX provides the Products and/or Services "as is" and disclaims, to the extent permitted by applicable law, all warranties either express or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose. TalenX does not warrant or guarantee that the Client will realize any results by virtue of the use of the provided Products or Services. **This disclaimer is integral to establishing pricing and constitutes an essential part of these conditions.** With respect to any services, TalenX does not warrant or guarantee the Client's use of any services will be free from error, omission, interruption, defect, delay in operation, technical inaccuracies, viruses or other harmful code.

## 10. LIMITATION OF LIABILITY

- 10.1. The following provisions set out the entire financial liability of TalenX (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of any breach of the Agreement and any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.
- 10.2. Except as set out in the Agreement, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by sections 14 to 17 of the Sale of Goods Ordinance (Cap. 26)) are, to the fullest extent permitted by law, excluded from the Agreement.
- 10.3. Subject to Conditions 10.2:

- 10.3.1. TalenX shall not be liable to the Client, in Hong Kong or elsewhere, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for loss of profit, loss of goodwill, loss of data or any indirect or consequential loss arising under or in connection with the Agreement;
  - 10.3.2. any liability of TalenX, in Hong Kong or elsewhere, for non-delivery, inability to fulfil an Order or defects of the Products and/or Services or non-compliance with these terms shall be limited to replacing the Products and/or Services within a reasonable time or issuing a credit note against any invoice raised for such Products and/or Services; and
  - 10.3.3. TalenX's total liability to the Client, in Hong Kong or elsewhere, in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the amount actually received by TalenX under this Agreement with the Client during the prior 12 months.
- 10.4. The Client shall not (except insofar as there is an absolute prohibition in the Control of Exemption Clauses Ordinance (Cap. 71) ) rely on any skill or judgement on the part of TalenX or any of its agents as regards the suitability of the Products and/or Services for any particular purpose and the Client shall use its own skill and judgement to satisfy itself that the Products and/or Services are of merchantable quality and suitable for the purpose of the Client. This Condition 10.4 shall apply notwithstanding that an employee of TalenX or its agent may at any time have made representations or given opinions, whether in writing or otherwise, as to the suitability of any Products and/or Services for any particular purpose.
- 10.5. TalenX gives no warranties and shall not be liable to either the Client or any third parties as to the appropriateness of the Products and/or Services including but not limited to the completeness or accuracy of any computer scored reports. TalenX excludes all liability for any disparate impact or disparate treatment and sexual or racial discrimination by the Client in connection with the use of any Products and/or Services provided by TalenX.
- 10.6. TalenX shall not be liable for any defect or failure in the performance of the web-based electronic assessment for reasons beyond TalenX's control including but not limited to link failures, power difficulties, telephone outages, network overload, issues related to Client systems, default or failure of a third party, government actions, failure in the supply of a third party's access line or any event of Force Majeure.
- 10.7. This Condition 10 shall survive termination of the Agreement.

## **11. INTELLECTUAL PROPERTY**

- 11.1. All Intellectual Property Rights arising out of or in connection with the Agreement (including any Intellectual Property Rights subsisting in the Identification Data, Optional Data and any other data created or collected in connection with the Agreement, material produced by TalenX in connection with the Agreement) are the absolute property of TalenX, except as otherwise expressly stated in the Agreement.
- 11.2. Subject to payment by the Client of all sums due under the Agreement, TalenX hereby grants to the Client an irrevocable, worldwide, royalty-free, non-exclusive, sub-licensable license to use the Assessment Report for the Client's own internal human resource management purposes for the period as set out in the Agreement.
- 11.3. All Intellectual Property Rights and other ownership rights in any material provided to TalenX by the Client shall be retained by and vest in the Client. All Intellectual Property Rights and other ownership rights in any materials provided to the Client by TalenX shall be retained by and vest in TalenX.
- 11.4. Upon written request by the Client provided such data has not already been anonymized, TalenX shall provide to the Client a copy of the Identification Data and/or Optional Data within a reasonable time period of such a request. On provision of the Identification Data and Optional Data, TalenX shall grant to the Client a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sub-licensable license of the Intellectual Property Rights subsisting in the Identification Data and Optional Data for the Client's own internal human resource management purposes. Such Identification Data and Optional Data will be made available to the Client for a period of 24 months from the date the Candidate completes the Assessment or

until the date the assessment is anonymized at the request of the Client, whichever is earlier. Reports may be run against this data subject to the fees determined and payable to TalenX.

11.5. This Condition 111 shall survive termination of the Agreement.

## 12. CONFIDENTIALITY

12.1. A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain ("**Confidential Information**"). The Receiving Party shall only disclose such Confidential Information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Condition as though they were a party to the Agreement. The Receiving Party may also disclose such of the Disclosing Party's Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

12.2. In the event of a legal or regulatory requirement on the Receiving Party to disclose the Disclosing Party's Confidential Information, the Receiving Party will (unless legally prevented from doing so) first inform the Disclosing Party of such requirement.

12.3. This Condition 12 shall survive termination of the Agreement for **two** years.

12.4. Confidential Information shall not include information which: (i) was already known by the Receiving Party at the time of the disclosure; (ii) becomes publicly available other than as a result of disclosure by the Receiving Party in breach of these Conditions; (iii) was disclosed to the Receiving Party on a non-confidential basis from a third party source other than the Disclosing Party, which the Receiving Party reasonably believes is not prohibited from disclosing such information; (iv) is developed by the Receiving Party independently; or (v) is required to be disclosed by law, regulation or court order to; provided that, the Receiving Party (a) so long as legally permissible, promptly notifies the Disclosing Party of such order and (b) at the written request of the Disclosing Party, diligently contests such order at the sole expense of the Disclosing Party.

## 13. DATA PROTECTION

13.1. Where Candidates provide TalenX with Personal Data about themselves in connection with these terms, TalenX shall use such Personal Data in the manner and for the purposes detailed in the [Privacy Policy](#).

13.2. TalenX warrants that it has made all necessary registrations of its particulars where required, in accordance with the Data Protection Laws.

13.3. The Client warrants that it has made all necessary registrations of its particulars where required, in accordance with the Data Protection Laws and/or any local applicable data laws to which the Client is subject.

13.4. In respect of any Personal Data that is processed in connection with the Agreement, TalenX and the Client agree that both parties shall be data controllers for the purposes of the Data Protection Laws and/or any local applicable data laws to which such party is subject and each party shall comply with its respective obligations required by the Data Protection Laws and/or any local applicable data laws to which such party is subject and shall only process such Personal Data in connection with the Agreement.

13.5. The Client warrants that all fair processing notices have been given to any Candidates and explicit consents obtained (as applicable) in accordance with the Data Protection Laws, and/or any local applicable data laws to which the Client is subject, for the Client to provide any Identification Data to TalenX and for TalenX to process such Identification Data for the purpose of providing the Products and/or Services.

13.6. To the extent that TalenX processes Personal Data as a data processor on behalf of the Client, and except to the extent that this Condition 13.6 conflicts with TalenX's obligations as a data controller and to the extent that Condition 13.7 allows, TalenX shall process such

Personal Data strictly in accordance with the instructions of the Client and shall undertake any other measures reasonably requested by the Client for the Client's compliance with the Data Protection Laws and/or any local applicable data laws to which the Client is subject.

13.7. Notwithstanding anything in these Conditions or any Order to the contrary, the Client is deemed to have obtained the authorisation from the Candidates so that TalenX is allowed and authorised to use the Optional Data for purposes including but not limited to creating or updating Benchmarks. TalenX will: (i) only use, aggregate and present the Optional Data or Benchmarks in any anonymous form; and (ii) not include (directly or by inference) any information identifying the Client or any identifiable Candidate or individual as the source of such data in the Optional Data or Benchmarks. Access to any Optional Data will be restricted to only those individuals of TalenX directly involved in research, supporting or related to the Products and/or Services. Benchmarks may be derived from the public information, assessment responses, survey data and best practices information that TalenX receives from their clients. Benchmarks are always presented in an aggregated and anonymized form that does not identify a particular individual or company.

13.8. The Client shall indemnify TalenX against all liabilities, costs, expenses, damages and losses (including any direct losses, all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by TalenX arising out of or in connection with the Client's breach of the Data Protection Laws and/or any local applicable data laws to which the Client is subject.

#### **14. ASSIGNMENT**

The Client shall not assign, novate, transfer, charge or subcontract the Agreement or any part of it without the prior written consent of TalenX except in the case of a corporate restructuring that does not result in a change of control of the Client. TalenX may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under the Agreement.

#### **15. TERMINATION OF CONTRACT**

15.1. Either party may terminate this Agreement immediately in the event that the other party:

15.1.1. is in breach of any of its obligations under this Agreement and either the breach is:

(a) not capable of remedy; or

(b) capable of remedy but the other has failed to remedy the breach within 30 days of being given written notice asking for it to be remedied;

15.1.2. acts in a way that is likely to bring the other party into disrepute or damage its reputation; (d) suspends or threatens to suspend its business;

15.1.3. is unable to pay its debts as they fall due in accordance with s. 178 of Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32), or similar event in any other jurisdiction;

15.1.4. offers to make any arrangement or composition with or for the benefit of its creditors (save for the purposes of solvent reconstruction or amalgamation);

15.1.5. has a petition filed or an order made for its winding up;

15.1.6. is the subject of a bankruptcy petition or order; or

15.1.7. has an application made or order made for the appointment of an administrator.

15.2. The Client shall indemnify TalenX against all liabilities, costs, expenses, damages and losses (including any direct losses, all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by TalenX arising out of or in connection with the Client's breach of this Agreement.

15.3. On termination of the Agreement for any reason:

15.3.1. the Client shall immediately pay to TalenX all of TalenX's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been

submitted, TalenX shall submit an invoice, which shall be payable by the Client immediately on receipt;

15.3.2. the Client shall return any materials for which TalenX owns the Intellectual Property Rights and which has not been fully paid for. If the Client fails to do so, then TalenX may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement; and

15.3.3. conditions which expressly or by implication have effect after termination shall continue in full force and effect.

15.4. The accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim for damages in respect of any breach of Agreement which existed at or before the date of termination or expiry.

## 16. GENERAL

16.1. Each right or remedy of a party under the Agreement is without prejudice to any other right or remedy whether under the Agreement or not.

16.2. If any provision (or part of any provision) of the Agreement is found by any court or tribunal to be void or unenforceable, that provision or part provision shall be deleted and the validity and enforceability of the other provisions shall continue in full force. If any invalid or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum changes to make it valid, enforceable and legal.

16.3. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

16.4. Nothing in the Agreement shall be deemed or construed to constitute a party or its employees, as the agent, partner, joint venture or legal representative of the other party for any reason whatsoever. Neither party is granted any right or authority to act for, or to incur, assume or create any obligation, responsibility or liability, express or implied, in the name of or on behalf of the other party or to bind the other party in any manner whatsoever.

16.5. A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.6. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

16.7. The Agreement is between the Client and TalenX. A person who is not a party to the Agreement shall not have any rights under or in connection with it. The application of the Agreements (Rights of Third Parties) Ordinance (Cap.623) is expressly excluded.

16.8. All communications between TalenX and the Client about this Agreement must be in writing and: delivered by hand; sent by first class post; sent by facsimile transmission; or sent by email, to the parties registered office or such address as notified by one party to the other.

16.9. TalenX reserves the right to defer the date of delivery or payment or to immediately terminate the Agreement if it is prevented from performing its obligations under the Agreement due to any Force Majeure event.

16.10. Any variation, including the introduction of any additional terms and conditions, to the Agreement shall only be binding when agreed in writing and signed by TalenX and the Client.

16.11. This Agreement and any dispute or claim arising out of or in relation to it is governed by the laws of Hong Kong and both TalenX and the Client irrevocably submit to the exclusive jurisdiction of the Hong Kong courts.



16.12. For the definitive and binding version, the English language version shall prevail in the case of any discrepancies between it and the translated versions (if any).