Empowered lives.
Resilient nations.

ANNEX I

SPECIAL CONDITIONS FOR SOFTWARE LICENSE

1. DEFINITIONS

1.1. **"Data"** means all information, whether in oral or written (including electronic) form, created by, collected, compiled or in any way originating with UNDP and/or the End-User (if the End-User is not UNDP), in the course of using and/or configuring the Software and the Services.

1.2. **"Documentation"** means all technical publications relating to the Software, such as reference, user, installation, systems administrator and technical guidelines, training materials, and all other information and documentation to be delivered by the Contractor to UNDP hereunder, as further specified in the Terms of Reference.

1.3. **"Effective Date"** means the date set forth in the Face Sheet.

1.4. **"End-User"** means Turkey Employment AGENCY (ISKUR)

1.5. **"Services"** means the support services, installation services and training to be provided by Contractor to or for the benefit of the End-User) hereunder as further specified in the Scope of Requirements of the ITB.

1.6. **"Software"** means all or any portion of the computer software programs and related Source Code to such software procured under this Contract and any subsequent amendments that may be added in the future. The term Software also includes any Updates, modifications and enhancements to the foregoing.

1.7. **"Source Code"** shall mean the source code to the Software and its Updates and to any modifications and enhancements to the foregoing.

1.8. **"Territory"** means Turkey

1.9. **"UN Convention"** shall mean the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations in 1946.

1.10. **"Updates"** shall mean those subsequent releases and upgrades of current releases of the Software and Documentation which are generally made available to licensees of the Software which are similarly situated to UNDP.

2. SOFTWARE SYSTEMS

2.1. The Software shall consist of a fully integrated set of computer software programs, which shall be the latest version of the Software that Contractor has made available to its customers as of the time of installation of the Software in accordance with this Contract.

2.2. The Software shall allow the End-User, to achieve the purposes for which the Software is procured, as further specified in the Scope of Requirements.

3. LICENSE

3.1. The Contractor grants UNDP a perpetual , non-exclusive, non-revocable, nontransferable, license to use the Software and the Documentation for the purposes specified in the Terms of Reference, for use in the Territory, and subject to the limitations contained in this Contract.

3.2. The right to use the Software granted under this Contract shall include, among others, the right to (i) provide authorized users access to the Software from various remote locations; (ii) modify or merge the Software with other software, and use such modified or merged software; (iii) make, modify and use an unlimited number of copies of the Documentation; and (iv) make a reasonable number of copies of the Software for testing, archival and backup purposes.

3.3. Within 45 days after the Effective Date of this Contract, the Contractor shall provide UNDP with the number of copies of the Software in a readable format as specified in the Scope of Requirements, and shall provide UNDP with an equal number of copies of the Documentation.

3.4. The Contractor acknowledges and agrees that the Software and the Services are procured by UNDP for the ultimate benefit of the End-User. The Contractor hereby expressly grants UNDP a non-revocable authorization to transfer the use of and sublicense the Software (including the Documentation) to the End-User, if the End User is not UNDP, in accordance with the terms of this Contract. The terms of such sublicense shall be in accordance with the terms of the license granted to UNDP under this Contract. The Contractor acknowledges and agrees that in the event that the license is transferred to an End-User that is not UNDP under this Article 3.4, UNDP shall not be responsible for the use of such license by the End-User, its employees, agents, contractors and/or representatives.

4. LICENSE LIMITATION

4.1. UNDP shall not:

(a) Access or use any portion of the Software not expressly licensed and paid hereunder;

(b) Cause or permit decompilation or reverse assembly of all or any portion of the Software, except as permitted by applicable law or this Contract;

(c) Delete, fail to reproduce or modify any copyright, trademark or other proprietary rights notices which appear on or in the Software or Documentation; nor

(d) Sublicense, relicense, or lease the Software or any portion thereof, for third party use, except as expressly authorized in this Contract.

5. ACCEPTANCE OF THE SOFTWARE

5.1. For a period of thirty (30) days after the installation of the Software (**"Acceptance Period"**), UNDP shall have the opportunity to load and run the Software in order to test that all Software licensed pursuant to this Contract operates substantially in accordance with the Contract Documents. UNDP shall provide to the Contractor a description of any deviation from the Contract Documents (**"Deviation List"**) prior to the expiration of the Acceptance Period in accordance with the notice requirements set forth in this Contract. Upon receipt of such notice, the Contractor shall have thirty (30) days to cure any such deviation listed on the Deviation List such that the Software operates in accordance with the Documentation (**"Cure Period"**).

5.2. Notwithstanding the foregoing, any deviation that occurs as a result of UNDP (and/or, as the case may be, the End-User, if the End-User is not UNDP) (i) not adhering to the guidelines and recommendations

contained in the Licensor's written guidelines provided hereunder; (ii) not having CPU capacity which is sufficient to run all of the Software loaded thereon, except where the Contractor has represented that CPU capacity would be sufficient to run the Software; (iii) modifying the Software or the database on which it was designed to run in a manner inconsistent with this Contract; or (iv) not using workstations that meet minimal standards set for the workstation configuration provided hereunder, will not be considered deviations for purposes of the non- acceptance of the Software.

5.3. In the event that: (i) UNDP provides notice to the Contractor that it has accepted the Software; or (ii) the Acceptance Period expires without UNDP providing the Contractor a Deviation List; or (iii) the Contractor is not able to reproduce any of the alleged deviations cited on the Deviation List; or (iv) the Contractor cures the deviations cited on the Deviation List within the applicable cure period, UNDP shall be deemed to have accepted the Software (**"Acceptance"**). If Acceptance has not occurred by the final day of the Cure Period (**"Final Date"**), UNDP, at its sole discretion, may postpone the final date for Acceptance. Otherwise, UNDP shall have the option of terminating the license for the Software pursuant to this Contract.

5.4. Software licensed pursuant to this Contract that fails to reach Acceptance may be terminated by UNDP by doing the following, on or before the Final Date: (i) providing notice of such decision to the Contractor; and (ii) uninstalling and returning all copies of the concerned Software and Documentation, at the cost of the Contractor. Immediately upon receipt of such Software by the Contractor, the Contractor shall return to UNDP any license fees paid for such Software.

6. WARRANTIES

6.1. In addition to the warranties set forth in Article 11.5 (Warranties) of the General Conditions, the Contractor warrants the following:

(a) The Software as delivered shall be free from defects, and, under normal use, the Software will perform in accordance with the Documentation; provided that UNDP uses the software in accordance with the guidance issued by the Contractor;

(b) The Documentation is accurate and conforms to the requirements of this Contract and corresponds to the functions of the Software;

(c) (i) The Contractor has full power and authority to grant the rights granted to UNDP under this Contract with respect to the Software, (ii) neither the performance of any Services or obligations by the Contractor in accordance with this Contract nor the license granted hereunder to use the Software and Documentation will in any way constitute an infringement or other violation of any rights of any third party, and that (iii) there is currently no actual or threatened violation of such right by Licensor.

(d) All Services to be provided by the Contractor hereunder shall (i) be performed in a timely and professional manner, (ii) by qualified professional personnel, (iii) shall conform to the standards generally observed in the industry for similar services, and (iv) be sufficient to enable the Software to perform in accordance with the specifications.

(e) The Software shall not contain any computer code (i) intentionally or unintentionally designed to disrupt, disable, harm, or otherwise impede in any manner the operation of the Software, or any associated software, firmware, hardware, computer system or network (sometimes referred to as viruses or worms), (ii) that would disable the Software or impair in any way its operation based on

the elapsing of a period of time, exceeding the authorized number of copies, or advancement to a particular date, or (iii) that would permit the Contractor to access the Software to cause such disablement or impairment, or any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such Software to cease functioning or to damage or corrupt data, storage media, software, equipment or communications, or otherwise interfere with operations.

(f) The storage media on which the Software is furnished will be free from defects under normal use for a period of thirty (30) days, commencing on the delivery date of the Software.

6.2. In case of a breach of the warranties hereunder, the Contractor shall:

(a) For Services, at the option of UNDP: (i) re-perform the Services which were not as warranted at no additional charge to UNDP, or (ii) promptly refund the fees paid to the Contractor for the Services which were not as warranted; and

(b) For Software, at the sole discretion of UNDP: (i) repair or replace the nonconforming Software within a commercially reasonable time period of receiving notice from UNDP of such nonconformance, or (ii) refund the amounts paid by UNDP for the nonconforming Software or Software module immediately upon return of the Software, and promptly execute with UNDP an amendment to the Contract for the nonconforming Software pursuant to which the license is terminated for the Software or Software module for which UNDP is receiving a refund.

6.3. The Contractor will pass through to UNDP, to the fullest extent possible, the warranties from the Contractor's licensors as they relate to third party software, if any.

6.4. UNDP shall be entitled to transfer all warranties provided under this Contract to the End-User under the same terms and conditions set forth hereunder.

7. INTELLECTUAL PROPERTY RIGHTS

7.1. The Contractor retains exclusive ownership of all intellectual property rights on the Software, including the Source Code and the Documentation. If UNDP creates an enhancement, modification or alteration to the Software or the Source Code that remains after the Software, Documentation and the physical media on which they are contained have been separated out from the enhancements, modifications or alterations ("UNDP Application"), UNDP shall have the intellectual property rights over the UNDP Application. UNDP does not acquire any rights, express or implied, in the Software and Documentation, except as specified herein.

7.2. The Contractor acknowledges and agrees that UNDP, an/or, as the case may be, the End-User if the End-User is not UNDP, retains full ownership and all intellectual property rights on the Data. The Contractor shall have no rights on the Data.

8. EXPORT CONTROL

8.1. Without prejudice to Article 11.10 (Export License) of the General Conditions, the Parties acknowledge that the Software may be subject to export control laws and regulations. As used in this Article, the term "Controlled Material" means (a) the Software, any Updates, Documentation and (b) any related proprietary information of the Contractor. The term "Controlled Material" does not include UNDP Applications to the extent that UNDP Applications do not contain the Software.

8.2. Pursuant to Article II, Section 7(b) of the UN Convention, the United Nations, including its subsidiary organs such as UNDP, is exempt from customs duties and prohibitions and restrictions on exports in

respect of articles imported or exported by the United Nations, including its subsidiary organs, for its official use. Accordingly, in light of the exemptions from export restrictions to which UNDP is entitled pursuant to the UN Convention, and without otherwise limiting or derogating from the privileges and immunities and exemptions of the United Nations, including its subsidiary organs, pursuant to the UN Convention, UNDP agrees and warrants that:

8.2.1   UNDP shall comply with all export control laws and regulations to the extent that such export control laws and regulations are applicable to UNDP;

8.2.2   UNDP shall not directly or indirectly export or transmit any Controlled Material to any country, at any time and in any manner, which would violate export control laws and regulations, to the extent that such export control laws and regulations are applicable to UNDP;

8.2.3   UNDP shall not export or re-export any Controlled Material other than for its official use; and

8.2.4   UNDP shall cooperate with the Contractor to determine a mutually acceptable solution should any Governmental authority fail to recognize the UNDP's exemption from export restrictions set forth in the UN Convention.

9. INFORMATION SECURITY STANDARDS

9.1. While performing its obligations under the contract, the Contractor shall comply with UNDP policy on Information Security, System Acquisition, Development and maintenance Standards available at [Information Security in System Acquisition, Development, and Maintenance Standards](#).