GLOBAL PARTNERSHIP for EDUCATION

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Meeting of the Board of Directors
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ALTERNATIVE PROVISIONS IN THE FINANCIAL PROCEDURES AGREEMENT WITH UNICEF ACTING AS SUPERVISING ENTITY USING THE 'SPECIAL ACCOUNT' MODALITY

For Decision

1. PURPOSE

This paper relates to the proposed draft Financial Procedures Agreement (FPA) between the United Nations Children's Fund (UNICEF), acting as a Supervising Entity designated to receive funds from the Global Partnership for Education Fund (GPEF), and the International Bank for Reconstruction and Development (the Bank), as Trustee of the GPEF (the Trustee)(attached as **Annex 1**).

The purpose of this paper is to submit for the consideration of the Board of Directors the above-mentioned draft FPA, including alternative provisions to those required, under the Contribution Agreements with the Contributors to the GPEF, to be included in FPAs except as the Board and the Trustee may otherwise agree.

2. RECOMMENDED DECISION

The Board of Directors is asked to consider approval of the following decision:

BOD/2014/02-xx <u>Financial Procedures Agreement with UNICEF acting as Supervising Entity using the 'Special Account' modality:</u> The Board of Directors, in agreement with the World Bank, as Trustee for the Global Partnership for Education Fund (GPEF), approves the content of the Financial Procedures Agreement between UNICEF, acting as Supervising Entity using the 'Special Account' modality, and the World Bank as Trustee for the GPEF as set out in Annex 1 of BOD/2014/01/DOC01, including alternative provisions to those in Annex 1 (Standard Provisions Applicable to the Global Partnership for

Education Fund) of the Contribution Agreements between the Trustee and the Contributors to the GPEF.

3. BACKGROUND

3.1. The Board of Directors approved in April of 2013 (BOD/2013/04-01) the FPA for UNICEF acting as a Managing Entity (ME). From the UNICEF perspective, what was being approved was a FPA for UNICEF to receive and administer funds as UNICEF revenue and support Government partners and others through its 'Country Program of Cooperation' modality.

3.2. In May 2013, the Board of Directors approved an allocation of US$82.6 million for Yemen with UNICEF as ME for US$10 million and a further US$72.6 million with UNICEF as Supervising Entity (SE). The US$10 million directed to UNICEF as ME will be received and administered using the 'Country Program of Cooperation' modality, and therefore was administered under the terms of the ME FPA approved the previous month. We understand that UNICEF intends to use this ME FPA in all situations where it serves as ME or using its 'Country Program of Cooperation' modality. However the remaining US$72.6 million directed to UNICEF as SE will be received and administered not as UNICEF revenue but as funds held in trust, and thus will use UNICEF's 'Special Account' modality for which no FPA was in place. It should be noted that a grant for Afghanistan approved in December 2011 with UNICEF as SE is handled by UNICEF in this same way, but is funded from the Catalytic Fund and not the GPEF. Therefore a new FPA needs to be signed between UNICEF and the Trustee that reflects UNICEF's 'Special Account' modality before funds can be committed and transferred.

3.3. UNICEF intends that the proposed draft Financial Procedures Agreement (Annex 1) under consideration will establish the standard terms and conditions that will apply to the commitment, transfer and administration of funds allocated from the GPEF where UNICEF acts as a Supervising Entity using its 'Special Account' modality.

UNICEF's 'Country Program of Cooperation' Versus 'Special Account' Modalities

3.4. (a) UNICEF's support for national Governments as ME is undertaken within the framework of its Country Programme of Cooperation with that Government, which it implements using funds received by UNICEF as revenue under its Financial Regulations and Rules, and for which UNICEF takes accountability; this is reflected in the ME FPA. When supporting national Governments as an SE, however, UNICEF receives and hold funds to Government in accordance with agreed disbursement arrangements: UNICEF takes accountability for the funds while held by UNICEF and the Government takes accountability for the funds once it receives them. Accordingly, UNICEF use the trust account or 'Special Account' modality established in its Financial Regulations and Rules.

(b) In the cases of Afghanistan (finance from the Catalytic Fund) and Yemen (to be financed by the GPEF), UNICEF agreed, at the request of the LEG and respective Country Partner Government and concurrence by the GPE Board of Directors, to serve as SE. As such, activities funded by the GPE are not part of UNICEF Country Programme of Cooperation. The accountability for programme implementation and achievement of results rests with the country programme partner. UNICEF, however, works with the country partner, LEG and ultimately the GPE Board of Directors to outline implementation arrangement utilizing the existing systems of the Government and adding, where relevant, additional controls such as an external financial advisor or external audit firm to verify that GPE resources are being soundly administered once transferred from UNICEF to the relevant Developing Country Partner. This arrangement seeks to ensure sound control while optimizing ownership of the country partner systems and where appropriate the proposal also outlines additional steps where capacity will be strengthened during the course of the GPE support.

Compliance with Donor Contribution Agreements

3.5. The terms under which the Trustee administers GPEF Contributions on behalf of all Contributors are defined in, among other things, the *Standard Provisions Applicable to the Global Partnership for Education Fund* (the Standard Provisions), which is Annex 1 to, and

forms an integral part, of all Contribution Agreements entered into between the Trustee and Contributors to the GPEF.

3.6. The Standard Provisions requires that, except as the Trustee and Board may otherwise agree, each Financial Procedures Agreement and Financial Procedures Memorandum:

(a) provide the responsibilities of each Supervising Entity or Managing Entity, including for the use of the Trust Fund funds transferred to it and Activities carried out therewith in accordance with its own policies and procedures and the applicable decisions of the Board (Standard Provisions, Section 8.2 (a)(i));

(b) provide that any Grant Agreement between a Supervising Entity and a Developing Country Partner shall provide that the Developing Country Partner shall refund Trust Fund funds to the Supervising Entity if the Supervising Entity determines that Trust Fund funds are used in a manner inconsistent with the Grant Agreement (Standard Provisions, Section 8.2 (b));

(c) provide that, if the Board determines that Transferred Funds have been used in a manner inconsistent with the Financial Procedures Agreement or applicable decisions of the Board, the Trustee shall withhold transfers to such Supervising Entity or Managing Entity and/or require the Supervising Entity or Managing Entity to promptly return such funds to the Trustee (Standard Provisions, Section 8.2(c));

(d) include a requirement that the Supervising Entity or Managing Entity undertake to use reasonable efforts, consistent with its policies and procedures, to ensure that the Trust Fund funds provided to the Supervising Entity or Managing Entity are used for their intended purposes and are not diverted to terrorists or their agents (Standard Provisions, Section 8.3);

(e) name the Contributors as third party beneficiaries with direct rights on the part of the Contributors to seek recourse under the Financial Procedures Agreement and provide the Trustee with the rights of novation and assignment to enable

Contributors to seek direct recourse against a Supervising Entity or Managing Entity (Standard Provisions, Section 8.4); and

(f) include that the Supervising Entity or Managing Entity may invite the Contributors to participate in its supervision missions related to the Trust Fund and that, if any Contributor wishes to request to review or evaluate activities of a Supervising Entity or Managing Entity financed by the Trust Fund, the Contributor and the Supervising Entity shall agree on the scope and conduct of such review or evaluation, and the Supervising Entity or Managing Entity shall provide all relevant information within the limits of its policies and procedures (Standard Provisions, Section 8.5).

3.7. The foregoing have been included in the model Financial Procedures Agreement, and are set out in sections 8.2, 8.3 (a), 5.4 (b), 8.4, 5.5 and 5.6, and 5.7 respectively of the model Financial Procedures Agreement (see **Annex 2**).

Proposed Alternative Provisions

3.8. Due to the different nature of UNICEF's roles and financial management responsibilities between the ME and SE functions, UNICEF has proposed provisions for the SE FPA that are in line with the accountabilities it assumes when serving as SE (as outlined in the Afghanistan and Yemen country proposals approved by the GPE Board of Directors). As these provisions differ from the standard FPA, this requires agreement by the Board of Directors as called for under the Contribution Agreements. These alternative provisions have been highlighted in **Annex 1**, and, for ease of reference, compared to the Standard Provisions and the text of the model Financial Procedures Agreement in **Annex 2**.

3.9. With respect to the Section 5.4(a) and Section 5.4(c) of the proposed draft Financial Procedures Agreement, it should be noted that these are consistent with Section 5.4 and Section 5.5 respectively of the Financial Procedures Agreement entered into with UNICEF as Managing Entity, the content of which was approved by the Board of Directors in its decision number BOD/2013/04-01.

3.10. The Trustee is willing to accept UNICEF's proposed alternative text, if the Board of Directors also accepts the text. UNICEF's proposal does not change the Trustee's obligations

and responsibilities under the Contribution Agreements and/or the Financial Procedures Agreement.

Key Issues

3.11. When the Board of Directors considered approval of the FPA with UNICEF as ME ('Country Program of Support' modality) in April 2013, there were two critical issues of concern raised, the first was application of GPE's Misuse of Funds Policy (BOD/2012/06-09), and the second issue was the rights of GPE contributors as third party beneficiaries.

3.12. Under the proposed FPA the resolution of these issues with respect to funds directly administered by UNICEF that was accepted by the Board in April 2013 remains unchanged.

3.13. However it should be noted that under the 'Special Account' modality, UNICEF will be transferring all funds received from the GPE to the Developing Country Partner (potentially up to US$72.6 million for Yemen), other than funds allocated for Agency fees and Supervision allocations which will be directly administered by UNICEF

3.14. The main difference between the standard FPA and the version proposed by UNICEF is that the responsibility and accountability of UNICEF with respect to use of funds once transferred to the Developing Country Partner is specific and limited to those set forth in the proposal that was approved by the Board. In a standard FPA, the Supervising Entity has a broader responsibility in that they are responsible that GPE Funds are used in accordance with the decisions of the Board and in line with the purpose for which the allocation was approved

3.15. In the case of Yemen, UNICEF's responsibility as Supervising Entity once funds are transferred to the Developing Country Partner are limited to those set forth in the proposal that was approved by the Board in May 2013. Section 5 of the program document (attached as Annex 3) outlines the implementation arrangements for the Yemen grant including UNICEF's role as Supervising Entity in Yemen, the funding modality, use of government systems, flow of funds, reporting, disbursement, and auditing arrangements.

3.16. In order to ensure that contributors to the GPEF have meaningful third party beneficiary rights considering that the Trustee does not have any legal agreement with the Developing Country Partner. The proposed FPA outlines that UNICEF in its agreement with the Developing Country Partner will include a number of provisions that protect the

interests of GPE and its contributors with respect to this issue and other issues related to ensuring that funds are used for their intended purpose.

3.17. The details are included in the agreement in Annex 1 and can be compared to the standard provisions outlined in Annex 2. UNICEF has already captured these provision in the agreement signed with the Government of Yemen (the first country to use this agreement if approved by the Board of Directors).

4. NEXT STEPS

4.1. Assuming the Board approves the proposed alternative language, as specified in the recommended decisions above, the Trustee and UNICEF will proceed to finalize and execute the Financial Procedures Agreement allowing remaining funds to be committed and transferred for the Yemen grant.

4.2. It should be further noted, that the Secretariat and the Board through its decision in November 2013 (BOD/2013/11-08) recognized the need to properly examine the roles, responsibilities and terminology around Supervising and Managing Entities. The Secretariat intends to address this issue once further details on the revised funding model become known to ensure that any changes are fully aligned with the expectations of these roles under the new funding model.

4.3 It is not envisaged that further applications will be received using the 'Special Account' modality in 2014.

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