

MEMORANDUM OF UNDERSTANDING**BETWEEN****THE UNITED NATIONS WORLD FOOD PROGRAMME,****THE MINISTRY OF TRADE OF IRAQ,****AND THE COALITION PROVISIONAL AUTHORITY**

The United Nations World Food Programme, hereinafter referred to as "WFP",

the Ministry of Trade of Iraq, hereinafter referred to as "MOT",

and the Coalition Provisional Authority, hereinafter referred to as "CPA".

Noting that under the provisions of Article 55 of the Fourth Geneva Convention, to the fullest extent of the means available to it, the CPA as the Occupying Power has the duty of ensuring the food supplies of the population and that it should, in particular, bring in the necessary foodstuffs if the resources of the occupied territory are inadequate, as recalled by Security Council Resolution 1472 (2003),

Recognizing that regular and uninterrupted food supply to the Public Distribution System (PDS) is critical to ensuring the food supplies of the Iraqi population, and that this could be facilitated by the temporary continuation of WFP's emergency assistance to Iraq, including thorough capacity building activities,

Noting that CPA has made a specific request for assistance to WFP, for the purpose of providing support to the PDS from 22 November 2003 through June 2004,

Noting that the Minister of Trade of Iraq has made a specific request to WFP for the same purpose,

Noting that the Security Council resolved in its Resolution 1511 (2003) that the United Nations should strengthen its vital role in Iraq, including by providing humanitarian relief,

Recalling United Nations General Assembly Resolutions 43/131 and 45/100 on humanitarian assistance to victims of natural disasters and similar emergency situations,

Recognizing the importance and full force of the Operations Agreement signed by CPA and WFP on [date] which extends to WFP all privileges, immunities and safeguards to which it is normally entitled,

Agree to carry out the following activities:

1. PROCUREMENT OF BUFFER STOCKS AND SHORTFALL COMMODITIES

- 1.1 For the purpose of commodity procurement, MOT shall provide WFP with detailed commodity specifications for each commodity contained in the PDS food basket within one week of the signing of this MOU.
- 1.2 WFP shall procure, in accordance with its rules and regulations, commodities as requested by CPA, initially in the amount of \$110 million worth of wheat, rice, vegetable oil, infant formula, and tea, as per table in ANNEX 1. Additional procurement may follow as agreed by all parties until March 31, 2004. Procurement thereafter shall be the responsibility of MOT.
- 1.3 WFP shall contract in accordance with its rules and regulations with suppliers to ensure procurement of commodities under this Agreement.

2. SHIPPING AND OVERLAND TRANSPORT

- 2.1 WFP shall deliver to Iraq in accordance with the provisions of Articles 2.3 to 2.14 all those commodities procured under Article 1.2.
- 2.2 WFP shall have no operational responsibility in the delivery of commodities resulting from CIF contracts renegotiated under SCR 1483
- 2.3 WFP shall arrange ocean and overland transport and final delivery of commodities described in Article 1.2. to three designated hubs in Iraq, namely Baghdad, Mosul and the port of Umm Qasr (warehouse and silo).
- 2.4 WFP shall deliver commodities to the port of Umm Qasr on truck alongside vessel or landed in port sheds, at WFP's sole discretion. MOT shall receive the commodities as fast as the vessel(s) can discharge.
- 2.5 WFP shall use up to four land corridors for the transport of commodities into Iraq, including but not limited to corridors via Jordan, Turkey and Syria. WFP will maintain offices in each of these countries. In addition, WFP will maintain offices in Kuwait to monitor deliveries into Umm Qasr.
- 2.6 MOT shall accept as proof of conformity to specifications certificates of origin and other internationally accepted shipping/transport/quality control documents provided by WFP and suppliers.
- 2.7 WFP shall undertake quality testing at load point for commodities in accordance with MOT specifications referred to in Article 1.1. Any further quality testing, if required, by MOT shall take place subsequent to passage of title.
- 2.8 WFP shall place a representative of an independent surveyor in each of the hubs named in Article 2.3, including the silo complex in Umm Qasr, with the responsibility of certifying on behalf of WFP and jointly with MOT quantities of delivered goods.
- 2.9 WFP's responsibility for ensuring transport and delivery of the said commodities shall end F.O.T. upon delivery at the three hubs defined in Article 2.3 and certification by the independent surveyor, after which point title shall pass to MOT.
- 2.10 MOT and CPA acknowledge that the independent surveyor appointed by WFP under this clause shall be freely allowed to inspect commodities and take samples for analysis at his

discretion at the three hubs named in Article 2.3, including the silo complex at Umm Qasr, without restriction or interference.

- 2.11 WFP shall contract in accordance with its rules and regulations with transporters to ensure delivery of commodities under this Agreement.
- 2.12 MOT shall ensure that no trucks carrying WFP waybills will be diverted to locations other than the one stated on the waybill.
- 2.13 MOT shall ensure that truck off-loading time at hubs does not exceed 48 hours upon arrival. Any demurrage thereafter shall be the sole responsibility of MOT.
- 2.14 WFP shall provide the MOT and CPA with a daily dispatch report for each corridor.
- 2.15 Pursuant to Article V of the Operations Agreement and for the avoidance of doubt, WFP is not liable to pay the reconstruction levy coming into force on 1 January 2004 in respect of goods imported into Iraq.

3. PIPELINE DATA

- 3.1 Taking into account needs and current stock levels MOT, endorsed by CPA, shall provide WFP on a monthly basis for the duration of this MOU with an updated monthly allocation plan by commodity for each hub defined in Article 2.3, supported by a monthly distribution plan by governorate.
- 3.2 MOT shall provide WFP with a weekly countrywide stock report per commodity, and with a monthly stock report within five days of the end of the month for each hub defined in Article 2.3 and for PDS stocks in each governorate.
- 3.3 MOT and CPA shall provide WFP with all relevant information on expected arrivals of food and non-food cargo likely to impact port or storage availability for PDS commodities.
- 3.4 On the basis of information provided under Articles 3.1 to 3.3, WFP shall prepare a pipeline document for PDS commodities showing expected arrival time per commodity to the hubs defined in Article 2.3, and implement a delivery plan accordingly.
- 3.5 WFP shall share the updated pipeline document with MOT and CPA on a weekly basis.

4. OTHER PDS MANAGEMENT, COORDINATION AND CAPACITY ISSUES

4.1 MOT responsibilities:

- to commit appropriate resources to efficiently manage the PDS;
- to provide appropriate staff to work in the Coordination Centre in Baghdad, as requested by CPA;
- to manage distribution system from hubs defined in Article 2.3 to food agents, including continued operation of the ration registration centres;
- in consultation with CPA to set and announce the food ration for each month according to schedule;
- to provide accurate local and national inventory monitoring and recording systems for the storage of food products;
- to provide audit inventory stocks at storage points upon request of CPA;
- to develop improved quality testing arrangements with CPA;
- to ensure adequate storage space and handling capacity in warehouses and silos for the receipt and dispatch of food commodities; and

- to ensure security of storage space and warehouses and silos as well as the commodities located therein;
- to permit WFP to retain its existing office space within the MOT compounds
- to ensure competent and fair distribution of commodities to PDS beneficiaries.

4.2 CPA responsibilities:

- to establish and manage a coordination centre in Baghdad and satellite cells to support and facilitate logistics operations, and assign points of contact within the centre for PDS operations as necessary;
- to assign liaison staff at key points of operation to provide support to WFP and MOT at their request;
- to provide MOT with communications capability in key locations;
- to ensure authentication facilities are established and operating at all entry points;
- to provide appropriate voice and data connectivity at the three hubs defined in Article 2.3 in order to facilitate communications with the representatives of the WFP independent surveyor;
- to guarantee sufficient resources to MOT so that the three hubs defined in Article 2.3 should be able to receive the food quantities delivered by WFP in accordance with the pipeline document defined in Article 3.4.

5. FINANCING

5.1 The goods and services to be provided by WFP under the present MOU have been costed in the estimated budget available in ANNEX 2. They include:

- Cost of the commodities procured under Article 1.2
- Cost of external and overland transport, as defined in Article 2.
- Direct support costs (DSC), being costs of WFP services, including staff costs, relating to procurement, external and overland transport and pipeline management and any other WFP activity directly related to the implementation of the present MOU.
- Indirect support costs established at 4.5 per cent of direct costs.

5.2 WFP costs do not include the cost of obligations established between CPA and MOT under the present MOU.

5.3 CPA shall fund:

- The cost of commodities procured under Article 1.2;
- The cost of external and overland transport for commodities defined in Article 2.1,
- Direct support costs (DSC) up to the level budgeted in ANNEX 2, excluding DSC funded directly by WFP in accordance with the provisions of Article 5.4.
- Indirect support costs established at 4.5 per cent of the above direct costs.

5.4 WFP shall determine which fund balances, if any, resulting from OIP indemnities paid pursuant to Security Council Resolutions 1472 (2003) and 1483 (2003) can be appropriately used against DSC requirements expressed in ANNEX 2, and shall use them to this effect.

5.5 CPA shall transfer in advance to WFP funds sufficient to cover costs referred to in Article 5.3. CPA payments shall be made in tranches, according to a schedule mutually agreed upon by WFP and CPA, based on projected disbursements. The first tranche shall be paid within two weeks of the signing of this MOU and shall be sufficient to cover the cost of procurement of commodities referred to in Article 1.2.

- 5.6 WFP shall communicate to CPA on a monthly basis, a detailed report of its disbursements against direct costs defined under Article 5.1 and shall return all unspent funds received from CPA against these costs upon termination of this MOU.

6. IMPLEMENTATION PERIOD

The present MOU shall be effective once the Operations Agreement between CPA and WFP has been signed by both parties. Once the Operations Agreement has been signed, this MOU will then take effect from the date of signature, and remain in effect until 30 June 2004 or until such time as all commodities referred to in this MOU have been delivered in accordance with the provisions in Article 2.

7. DISPUTE RESOLUTION

Any dispute between the Parties arising out of or relating to this Memorandum of Understanding that cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of any of the Parties. For the purposes of the implementation of this Section, each Party shall appoint one arbitrator and advise the other Party of the name of its arbitrator. Should the arbitrators fail to agree upon an award they shall immediately appoint an umpire. In the event that within thirty (30) days of the request for arbitration either Party has not appointed an arbitrator, or that the arbitrators appointed fail to agree on an award and/or on the appointment of an umpire, either Party may request the President of the International Court of Justice to appoint an arbitrator or an umpire, as the case may be. A majority vote of the arbitrators shall be sufficient to reach a decision, including decisions on procedural matters, which shall be final and binding. The expenses of arbitration shall be borne by the Parties as laid down in the arbitral award.

8. AMENDMENTS

No changes or amendments to this MOU can be made unless agreed in writing by all the parties.

9. INDEMNITY

The CPA shall indemnify, hold and save harmless, and defend, at its own expense, WFP, its personnel and agents and sub-contractors from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of activities in relation to any contract negotiated by WFP prior to or subsequent to 21 November 2003, and undertaken pursuant to this Memorandum of Understanding. For the avoidance of doubt, the CPA shall be responsible for dealing with claims by third parties, where loss of or damage to property, personal injury or death occurred during or in connection with activities undertaken by the Parties, and shall include any claim by any third party as a result of any contract cancellation arising from activities by the parties undertaken pursuant to this Memorandum of Understanding. The CPA will directly indemnify WFP up to 200 million dollars, with any indemnities beyond this amount being covered from the Development Fund of Iraq.

10. PRIVILEGES AND IMMUNITIES

The CPA shall extend to WFP and its officials the privileges and immunities contained in the Convention on the Privileges and Immunities of the United Nations, adopted by the United

Nations General Assembly on 13 February 1946 and the Convention on the Privileges and Immunities of the Specialized Agencies and its Annex II, concerning the Food and Agriculture Organization of the United Nations, adopted by the United Nations General Assembly on 21 November 1947.

11. PUBLIC STATEMENTS

Neither CPA nor MOT shall issue any written statement concerning this agreement, or concerning any work done by WFP in conjunction with CPA or MOT at any time, without prior written approval of WFP.

For: The United Nations World Food Programme

Name:

Title:

Date:

For: The Ministry of Trade

Name:

Title:

Date:

For: The Coalition Provisional Authority

Name:

Title:

Date:

ANNEX 1: QUANTITIES TO BE PROCURED

Commodity	Commodity rate (US\$)	Tonnage (MT)	US\$ for commodity
Wheat	200	163,200	32,640,000
Rice	250	54,400	13,600,000
Veg. Oil	600	16,320	9,792,000
Tea	1,400	6,528	9,139,200
Infant Formula	2,800	2,176	6,092,800
		242,624	71,264,000

ANNEX 2: BUDGET

Grand Total US\$

DIRECT OPERATIONAL COSTS (DOC)	\$	96,254,272
DIRECT SUPPORT COSTS (DSC)	\$	8,991,768
TOTAL WFP DIRECT COSTS	\$	105,246,040
INDIRECT SUPPORT COSTS (ISC) 4.5%	\$	4,736,072
TOTAL WFP COSTS	\$	109,982,112

<i>Cost Category</i>	<i>Tonnage</i>	<i>Value</i>
Commodity		
Wheat Grain	163,200	32,640,000
Rice	54,400	13,600,000
Tea	6,528	9,139,200
Veg. Oil	16,320	9,792,000
Infant Formula	2,176	6,092,800
Total Commodities	242,624	\$ 71,264,000
External Transport		\$ 13,586,944
ITSH		
Overland		
LTSH		\$ 11,403,328
ODOC		\$ -