

Memorandum of Understanding

THE UNDERSIGNED:

1. The State of the Netherlands, represented by the Minister of Transport, Public Works and Water Management and the Minister of Finance, (hereinafter referred to as "the State")

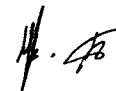
and

2. NS Reizigers B.V., duly represented by drs. ir. J.W. Huisinga.
3. Koninklijke Luchtvaart Maatschappij N.V., duly represented by [...],

(2 and 3 hereinafter referred to as "the Consortium"; The State and the Consortium together hereinafter referred to as 'the Parties'.)

WHEREAS:

- A. The State has issued a tender procedure for the exclusive rights to operate domestic high speed rail transport over the route of HSL-Zuid, together with the rights to provide high speed international train services between Amsterdam, Brussels and Paris.
- B. Pursuant to the Invitation to Tender ("ITT"), the State has received offers from three qualified Tenderers, which have been evaluated by the State.
- C. Based on their binding offer ("the Bid"), the Consortium has been invited by the State – by means of an Invitation to Direct Negotiations ("ITDN") – for direct and exclusive negotiations on the final conditions of the Concession Agreement for the HSL-Zuid ("Concession Agreement"), to be closed between the State and the Consortium;
- D. The Consortium has declared its willingness to conduct these negotiations on the basis of the ITDN by means of signing the Acknowledgement of Receipt of the ITDN; and Parties intend to close the Concession Agreement in the last quarter of the year 2001;
- E. The Consortium will set up a Special Purpose Company ("SPC"), prior to 12 December 2001, which will be the party to the Concession Agreement;
- F. The Summary of the Concession Agreement (Annex A1 of the ITT, dated 9 April 2001) is attached to this Memorandum of Understanding ("MoU") as a basis for negotiations regarding the detailed Concession Agreement together with additions and changes based on the Addenda to the ITT, the binding Bid of the Consortium, the ITDN and this MoU.



AGREE TO THE FOLLOWING:**Article 1 – Purpose and status of this Memorandum of Understanding**

- 1.1 This MoU sets out the basic understanding of Parties regarding the HSL-Zuid Concession Agreement, in addition to Annex A1 of the ITT, and selected issues regarding the negotiation process.
- 1.2 The Concession Agreement will be based on the summary of the items indicated in Annex A1 of the ITT (attached to this MoU), as well as the Addenda of the ITT, including (but not limited to) Addendum 2.1 regarding the discount percentages in the years 2006-2012 and a mechanism for benefit sharing.

Article 2 – Negotiation principles

- 2.1 The negotiations for the Concession Agreement will be based on the following documents:
- the ITT, dated 15 December 2000, including its Annexes, as well as the Clarifications and Addenda;
 - the binding offer of the Consortium, dated 1 May 2001, including (but not limited to) the Business Plan to the 'Base Case' and the Bid on 'Variant 6' including the Clarifications;
 - the ITDN, dated 15 June 2001;
 - this MoU.
- 2.2 Insofar as this MoU explicitly differs from the documents mentioned under article 2.1, or parts thereof, this MoU prevails.

Article 3 – Timetable

- 3.1 Parties agree on the following timetable:

<i>Close of Concession Agreement and the arrangements for the Implementation Phase.</i>	12 October 2001
<i>Finalisation of the formal approval procedures by the State and the Consortium.</i>	12 December 2001

- 3.2 The State has the right to extend the terms mentioned in article 3.1 by a maximum of (i) two months for the close of the Concession Agreement and the arrangements for the Implementation Phase and (ii) three months for the official approval procedures and signing, respectively. Before 13 July 2001 Parties shall agree on a detailed working plan for the period until 12 October 2001.
- 3.3 In case the Parties do not succeed in meeting the aforementioned timetable as a direct consequence of circumstances attributable to the Preferred Tenderer, the State has the right to continue the Tender Procedure by inviting another Tenderer to enter into direct and exclusive negotiations, or to execute the fall back position as described in the ITT.

Article 4 – Adjustment 'Financial Bid' of the Consortium

- 4.1 As a direct consequence of article 5.1 of the ITDN, regarding the transfer of responsibilities to the Consortium, the State has accepted a downward adjustment of the 'Financial Bid' of the Consortium for Variant 6, dated 1 May 2001, with 18.4 million Euro to an amount of 160.4 million Euro.

- 4.2 The Consortium has accepted the obligations under articles 5 and 6 of this MoU without further adjustments of the said Financial Bid.
- 4.3 Further adjustments of the Financial Bid may follow from the provisions set out in article 7 of the MoU and Addendum 2.1 (see article 1.2 of this MoU).

Article 5 – Service Pattern

- 5.1 The State shall grant the Consortium the long term rights as described in the ITT¹ for the operation of the service pattern described in this article.
- 5.2 The Consortium will offer the following international services, in accordance with the draft agreement with SNCB (see Annex A2 of the ITT) and – for services to Paris – the position of the SNCF (see Annex A3, § 1.2 of the ITT and article 5.1 of the ITDN):
- A service Amsterdam-Brussels consisting of two trains per hour per direction. Additional stops in The Netherlands are Schiphol Airport and Rotterdam. An extension of this service to Paris of one train per hour per direction.
 - A service The Hague-Brussels four times per direction per day, in accordance with Variant 4 in the Bid.
 - An hourly service between Breda and Brussels, serving the smaller Belgian stations (described in Variant 5 of the ITT) up to eight times per day.
- 5.3 The Consortium will offer the following domestic train services:
- A service Amsterdam-Schiphol-Rotterdam consisting of two trains per hour per direction, with a minimum of 32 trains per day.
 - A service Amsterdam-Schiphol-Rotterdam-Breda consisting of two trains per hour per direction, with a minimum of 32 trains per day.
- 5.4 In co-operation with the relevant international partners, train services may be extended to other stations abroad, not mentioned above. In accordance with article 5.3b of the ITDN the use of Amsterdam Central and/or Amsterdam Zuid/WTC is not governed by this MoU.
- 5.5 On weekend days and public holidays a reduced service pattern may be offered.
- 5.6 The planned journey times will not exceed those specified in the ITT; with the understanding that the journey time to Paris Gare du Nord is subject to consent of SNCF.
- 5.7 Within two years after the start of the Concession, following full availability of the infrastructure, the full domestic service pattern will be established. For the service Amsterdam-Brussels article 5.1 of the Draft Contract with SNCB (Annex A2 of the ITT) applies. For the extension of services to Paris Gare du Nord the Consortium will make an agreement with SNCB and SNCF with the aim of realising the full service pattern as soon as possible.

Article 6 – Quality of the service offer

- 6.1 The Consortium will offer a good quality of services to the passengers. In addition the Consortium accepts the quality objectives and Minimum Requirements described below. In as much as these can only be realised in co-operation with and/or the approval of the Belgian or French authorities, SNCB or SNCF, the Minimum Requirements are subject to the required co-operation with and/or the approval of these Parties.

¹ Annex A1: 'The State will guarantee the allocation of train path capacity on rail infrastructure in the Netherlands and the required quality of the infrastructure for the agreed number of both Domestic and International Services per hour and per day.'

- 6.2 **Seat Chance.** The Consortium shall aim at offering a seat to virtually all its passengers.
- Through the use of seat reservation, seats will be guaranteed for all international and for all business class passengers.
 - There will be no reservation required for economy class passengers in domestic trains. Instead, customers will be able to take maximum advantage of the "turn-up-and-go" principle and may board any train for which their ticket is valid (the access for domestic economy class passengers to international trains will be subject to negotiations between the Consortium and NMBS and SNCF). The seat chance for these passengers will be at least 98%, even on the busiest train of a regular business day, on the busiest stretch (Schiphol to Rotterdam). This means that a commuter who takes the busiest train every day of the week will only have to stand once a month on average.
- 6.3 **Punctuality.** The punctuality target will be at least 95%, in as much as this is attributable to the Consortium. Punctuality is defined as arriving at a destination no later than 3 minutes behind schedule for the domestic services and no later than 5 minutes behind for the international services. In order to achieve this, the Consortium shall:
- Shape their process in accordance with paragraph 9.3 of the business plan of the Consortium, regarding:
 - Planned reserve and stand-by arrangements
 - Turnaround times
 - Operations control centre
 - Restrictions in working hours
 - Accelerated training and hiring
 - Spare rolling stock
 - Maintenance
 - The proportion of trains cancelled due to the train operator shall be less than 0,5%.
- 6.4 **Pricing.**
- The ticket prices of low fare tickets on the off peak service will be competitive with a seat on the conventional train service, taking into account the higher quality of the HSL-Zuid service.
 - As of the 5th year from the start of the Concession, the development of average domestic yields per O/D will not exceed the Consumer Price Index plus 3 indexpoints. This provision does not apply to the first 4 years of the Concession.
- 6.5 **Chipcard.** If and when a national public transport chip card is introduced, this card will be used in the sales and distribution processes for HSL-Zuid. The Consortium shall make arrangements in order to facilitate HSL-Zuid travellers from outside The Netherlands.
- 6.6 **Compensation.** The Consortium shall establish a customer-friendly system for compensation in case of delayed journeys. Provided that the Consortium considers that the financial risks of delays not caused by the Consortium are sufficiently covered, the Consortium shall offer the following compensation scheme:
- | Delay | 15 - 29 minutes | 30 - 59 minutes | ≤ 60 minutes |
|---------------|-------------------|--------------------|--------------------|
| Domestic | 50% reimbursement | 100% reimbursement | 100% reimbursement |
| International | N/A | 50% reimbursement | 100% reimbursement |
- 6.7 **Access for disabled passengers.** The Consortium will pay particular attention to the needs of disabled passengers:
- In the final specifications for acquiring rolling stock, the needs of disabled passengers will be taken into account.
 - In addition the Consortium shall enter into agreements with the relevant partners in order to facilitate smooth access en egress for disabled passengers.

- 6.8 **Safety and security.** In addition to the safety requirements as set out in the ITT, the Consortium will do its best to make passengers feel safe on board of the trains. The following Minimum Requirements apply:
- The train will be well lit.
 - In case of emergencies, passengers can reach the help-button and speak directly with the driver or the train steward.
 - Every international HST traveller will receive personal attention from a steward once per journey (for domestic passengers this is a target, not a Minimum Requirement).
- 6.9 **Customer Satisfaction.** The customer satisfaction target will be at least 80% (defined as the proportion of passengers rating the service at 7 or more out of 10). The Consortium shall survey and report the customer satisfaction every three months on at least the following items and inform LOCOV of the results on these separate items:
- punctuality;
 - seat chance;
 - travel information for the passenger;
 - personal safety in the train;
 - internal and external cleanliness of the train.
- 6.10 **Performance monitoring.** The Consortium shall report to the State every three months on its performance on the Minimum Requirements and quality objectives as described in this article.

Article 7 – Further investigations

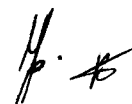
- 7.1 In accordance with article 5.3 c and d of the ITDN additional or modified Minimum Requirements and fare restrictions may be set by the State. On a request thereto by the State the Consortium will, in a transparent way, inform the State of the consequences of such additions or modifications on the concession payment and/or other contractual obligations. The State will then decide whether or not to include such Minimum Requirements or fare restrictions in the final negotiations.
- 7.2 **Fare restrictions:** The Consortium will investigate the consequences in case one of the following fare restrictions would apply to domestic transport:
- A maximum price for a full fare economy class ticket of no more than 125% of a full fare second class ticket via conventional rail.
 - A maximum average yield per passenger kilometer (economy class) of no more than 125% of the average HRN yield (second class).
- 7.3 In accordance with article 5.2a and b of the ITDN, Parties will investigate the potential benefits resulting from:
- Amendment of the financial security as provided by the Performance Bond;
 - An agreement comparable with the 'Direct Agreement' in the United Kingdom, as a consequence whereof the risk for the residual value of the rolling stock can be lowered;
 - The use of an existing type of rolling stock;
 - Through trains on the main rail network in the Netherlands;
 - Arrangements with the Infrastructure Provider which will lead to a decrease in the integral costs of the transportation system (infrastructure, rolling stock and operations).

Article 8 – Implementation Arrangements

- 8.1 Parties will, in accordance with the timetable in article 3 of this MoU, make further arrangements regarding the Implementation Period. The basis for these arrangements is the acknowledgement that the responsibility of the State in this respect is limited to:
- the obligation to inform the Parliament every 6 months regarding the progress of the HSL-Zuid project; and
 - the monitoring of progress regarding a limited number of milestones, as set out below.
- 8.2 The Consortium will present to the State a sufficiently detailed Implementation Plan, including an activity plan, before 1 October 2001. The part of the Implementation Plan regarding the procurement of rolling stock will be presented to the State in draft before 1 September 2001. Based on this Implementation Plan the State will define a maximum of 10 milestones for the period until the start of the Concession.
- 8.3 The Consortium will inform the State twice a year, well in advance of the 'Voortgangsrapportage Grote Projecten' to Parliament. If and as soon as a delay of more than three months regarding one of these milestones becomes apparent, the Consortium will inform the State of such a delay. Upon request of the State the Consortium will then provide the State with a full explanation of this delay and the measures taken to remedy the delay in the best possible way.
- 8.4 Within its contractual powers and responsibilities towards the Consortium and the Infrastructure-Provider, the State shall support the Consortium to realise a timely implementation in respect to the necessary technical specifications and other relevant information regarding rolling stock and agreements with SNCB and SNCF, in the following ways:
- The State shall give the Consortium full access to all technical and contractual data available to the Projectdirectie HSL-Zuid, in as much as this is legally possible.
 - The State shall, until 1 May 2002, maintain a team of experts to help the Consortium identify and understand the available information. From 1 May 2002 onward a contact person within the contract management unit will be available for questions from the Consortium.
- 8.5 In case the Consortium, in co-operation with the Infrastructure-Provider, identifies opportunities for improvements in the design of the transportation system (infrastructure, rolling stock and operations), which will benefit the integral system but not or insufficiently one of these two parties, the State will co-operate with the adjustment of its arrangements with each of the individual parties where this is necessary to reach a more balanced attribution of the benefits, to the extent agreed by the individual parties. The State may refuse such co-operation in case this improvement does not fit within the specifications of (parts of) the transportation system, or when these improvements lead to financial disadvantages or risks to the State.

Article 9 – Choice of law and settlement of disputes

- 9.1 This MoU shall be subject to the laws of the Netherlands.
- 9.2 In case a dispute arises before the end of the ITDN phase:
- (i) each of the Parties shall submit the dispute to its highest managerial level, in order to resolve it in an amicable way;
 - (ii) in case the dispute has not been resolved within one week as from the date the dispute was submitted in accordance with sub (i), the parties shall enter into mediation in accordance with the NMI rules;
 - (iii) if mediation in accordance with sub (ii) did not resolve the dispute, the Parties shall submit their dispute to a panel of arbitrators in accordance with article 9.4.



- 9.3 Each Party shall appoint no later than 1 September 2001, one arbitrator. The arbitrators appointed by parties will jointly, on no later than 30 September 2001, appoint a third arbitrator who will act as chairman of the panel of arbitrators. The arbitrators will rule in accordance with the "NAI arbitrage Reglement". The language to be used in the proceedings shall be the Dutch language.
- 9.4 In case of arbitration, Parties shall, no later than 12 October 2001, instruct the arbitrators to resolve their disputes before 30 November 2001. Until 31 October 2001, Parties will continue their efforts to resolve their disputes in an amicable manner. If Parties succeed in these efforts before 31 October 2001, they will withdraw their request for dispute resolution by the arbitrators. At the request of one or both Parties, the arbitrators can issue interim relief rulings ("arbitraal kort geding") pending their deliberations on final ruling.
- 9.5 Notwithstanding the above the formal approval of the Consortium regarding the final draft Concession Agreement in accordance with article 3.1 MoU shall remain intact.

Thus agreed, drawn up in threefold and signed on ... July 2001.

For the State of the Netherlands:

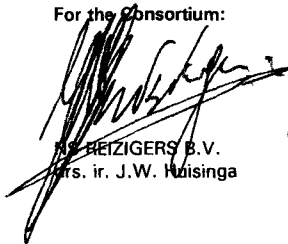


THE MINISTER OF TRANSPORT,
PUBLIC WORKS AND WATER MANAGEMENT
T. Netelenbos

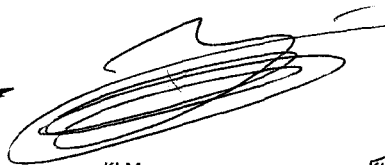


THE MINISTER OF FINANCE
G. Zalm

For the Consortium:



HEIZIGERS B.V.
drs. ir. J.W. Kuisinga



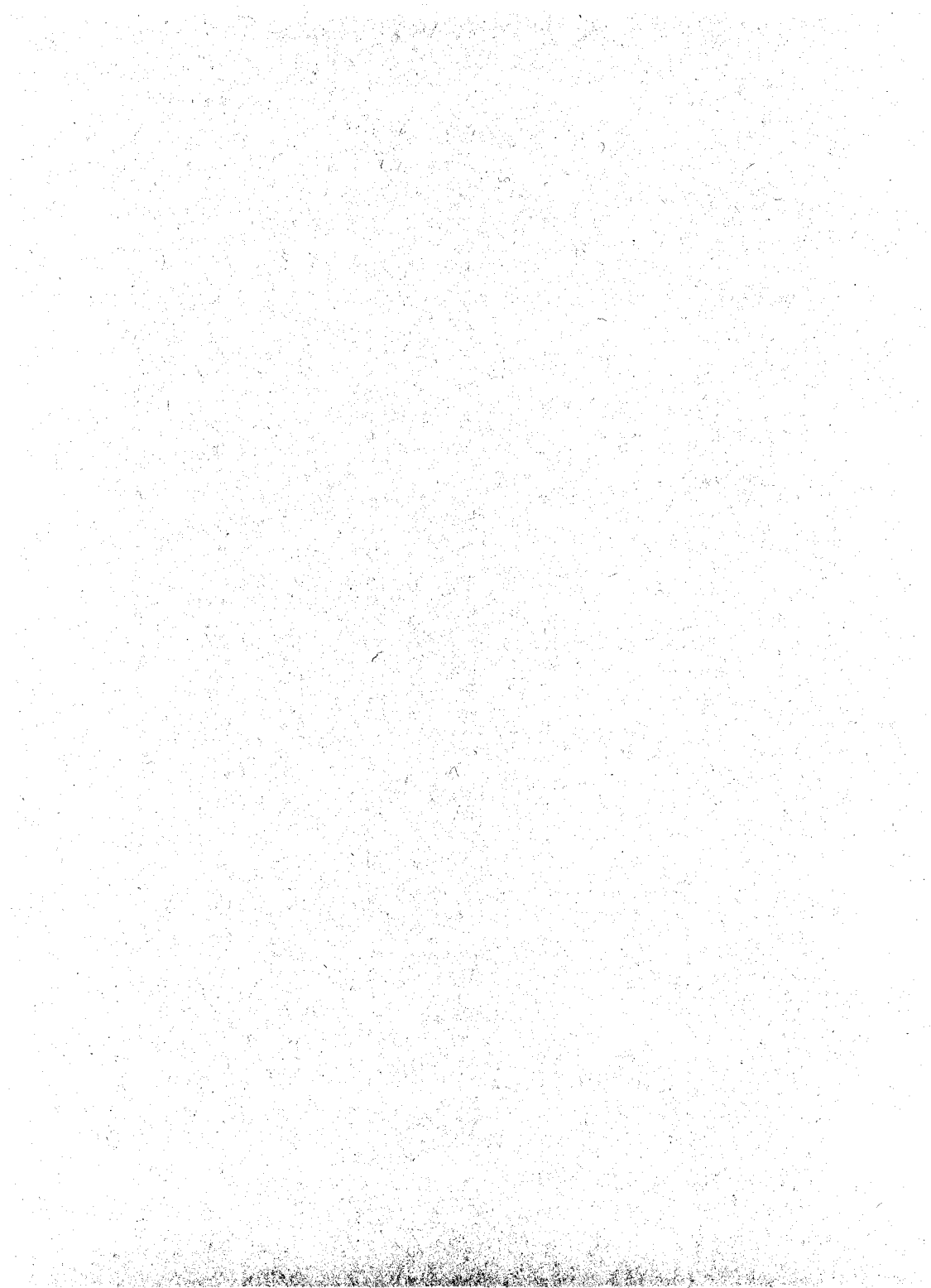
KLM
, mr H.E. Kuiperi
Algemeen Secr.



KLM
drs. ing. P.F. Hartman
Directeur

APPROVED: AMS/DJ
6/7 2001
GOEDGEKEURD: 2





INVITATION TO DIRECT NEGOTIATIONS

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To the Preferred Tenderer

Guidelines for reading the Invitation to Direct Negotiations (ITDN)

The Invitation to Tender (ITT), handed over to you on 15 December 2000, forms the basis on which the Tenderers have submitted their Bids to the State in May of this year. Whilst entering into the Negotiation Phase, the ITT will remain the basis on which the Bids have been submitted to the State, as most of the information in the ITT will remain unchanged. Additions and changes to the ITT glossary are included in this Invitation to Direct Negotiations (ITDN), see Annex II.

Please note that different then foreseen in the ITT no Invitation to Negotiate (ITN) is issued. The State has decided to enter into direct negotiations with you as the preferred Tenderer. This ITDN will provide additional information, terms and conditions for such negotiations in addition to the ITT. Therefore, the ITT, Addenda (dated 28 February 2001 and 23 March 2001) and Clarifications based on the ITT will remain valid, unless the information contained therein is replaced by this ITDN.

Important Notice

For the purpose of this ITDN references in the important notice to the ITT or the Bidding Phase should read as references to this ITDN or the Negotiation Phase. Furthermore, the following text should be read in addition:

As stated in the cover letter, the State is of the opinion that the binding, complete and compliant Bid on the Base Case of the Preferred Tenderer, in combination with the Bid on Variant 6, could lead to an attractive offer to the State, both from a financial and qualitative perspective. However, in taking this position, the State does not take over any responsibility for the contents of the binding offer of the Preferred Tenderer, the relevant binding Bid, or the feasibility thereof. The Preferred Tenderer will remain ultimately responsible for the contents and the feasibility of its offer and the relevant Bid, as well as for the contents and feasibility of any amendment that will be made thereto as a result of the outcome of the negotiations.

During the evaluation process the State has sent out Requests for Clarifications in respect of compliance issues and the Preferred Tenderer has provided the State with answers thereto. In sending this ITDN the State does not take over any responsibility for the contents of these answers.

The text of this chapter 'to the Preferred Tenderer' will form an integral part of this ITDN.

Structure of the ITDN

This ITDN continues with complementary information compared to the ITT, followed by four Annexes.

1. Introduction

During the evaluation procedure the State has sought clarification from your consortium both regarding the Bid submitted on 2 May 2001, as well as the potential for direct negotiations, should the State invite you for such negotiations. The text of this ITDN reflects the points of agreement between the State and yourselves.

2. Purpose of the ITDN

The purpose of this ITDN is to enter into direct and exclusive negotiations for a long-term concession for HSL-Zuid transport services .

In entering into constructive negotiations with the Preferred Tenderer on the basis of this ITDN, the State is aiming to conclude the following documents in due course:

- (a) a Memorandum of Understanding (MoU), comprising the main principles of the Concession Agreement to be drafted, the procedural elements to be followed by the State and the Preferred Tenderer, as well as the Enhanced Specifications of the State.
- (b) a Concession Agreement as described in the ITT, as well as arrangements for the implementation phase on the basis of further elaboration by the Preferred Tenderer of the subjects and elements mentioned in the MoU.

3. Basis for Negotiations

Negotiations will be based on the following documents:

- (a) the ITT, dated 15 December 2000, including its Annexes, as well as the clarifications and addenda;
- (b) the binding offer of the Preferred Tenderer, dated 1 May 2001, including (but not limited to) the Business Plan to the Base Case and the Bid on Variant 6; and
- (c) this ITDN.

4. Timetable

This paragraph describes the next steps (indicative timetable) in the Tender Procedure.

<i>Invitation to Direct Negotiations ("ITDN")</i>	15 June 2001
<i>Acknowledgement of Receipt of the ITDN</i>	19 June 2001
<i>Memorandum of Understanding ("MoU")</i> (including approval procedures set out in paragraph 7 of this ITDN)	28 June 2001 Ultimately 26 July 2001
<i>Concession Agreement and arrangements for Implementation Phase</i>	12 October 2001
<i>Finalisation State's decision procedures</i>	12 December 2001

Immediately upon acceptance by the Preferred Tenderer of this ITDN, the Parties shall agree on a detailed working planning. The Parties shall do their utmost to ensure that the indicative timetable in the foregoing table will be met. The State has the right to extend the terms of the indicative timetable with a maximum of two weeks (MoU), two months (Concession Agreement and arrangements Implementation Phase) and three months (finalisation State's decision procedures).

In case the Parties will not succeed in meeting the aforementioned timetable, the State has the right to continue the Tender Procedure in accordance with the provisions of the ITT under 'Negotiation Phase'. In case the Parties will not succeed in meeting the aforementioned timetable as a consequence of

circumstances attributable to the Preferred Tenderer, the State has the right to continue the Tender Procedure by inviting another Tenderer to enter into direct and exclusive negotiations, or to execute the fall back position as described in the ITT.

5. Subjects of Negotiations

During the negotiations the Parties shall elaborate on the following limitative list of subjects. The list will have a limitative character, which means that subjects not comprised by the list never can lead to amendments to the binding offer of the Preferred Tenderer and/or the basis for negotiations as laid down in this ITDN, nor to the MoU yet to be agreed, except in case the Parties will reach mutual agreement to the contrary. The limitative list is divided into two three categories, namely:

1. 'Working Assumptions';
2. 'Upward Potential'; and
3. 'Enhanced Specifications and Minimum Requirements'.

Ad 1. Working Assumptions

The realisation of the Working Assumptions as described in Annex A4 of the ITT and the Addenda thereto (A1.3 until and including A1.7) will be the sole responsibility of the Preferred Tenderer, except for the items as mentioned hereunder.

- (a) **Start of Concession**
Concerning the start of the Concession, it herewith is stipulated that this will be agreed in the MoU, taking into account the indicated terms for availability of the infrastructure preceding that date.
- (b) **SNCF**
The situation in which SNCF will not be prepared to co-operate with the Preferred Tenderer, at least insofar set out in its Position Statement as included in Annex A3 of the ITT (e.g. if, despite of the efforts by the Preferred Tenderer, less than 12 train paths to Paris will be available, taking into account a sufficient division during the day. The possible consequences this difference will have on the Concession Payment will be made transparent by the preferred Tenderer).
- (c) **Planned maintenance infrastructure**
It herewith is stipulated that the availability set out in this Working Assumption will have to be realised in accordance with the Implementation Agreement, between the State and the Infraprovider.
- (d) **Stations**
In particular with respect to the turnaround facilities at the platforms at Rotterdam CS and The Hague CS, it is stated that the State shall guarantee these return facilities in case the concession for the main rail network in the Netherlands will be granted to another party than one of the members of the consortium of the Preferred Tenderer.
- (e) **Legislation and institutional arrangements in the Netherlands**
It remains the responsibility of the State to get into force the mentioned legislation before the date as stipulated in this Working Assumption.

During the evaluation procedure your consortium has clarified the financial impact on your Bid resulting from the transfer of the risks of realisation of the remaining working assumptions.

Ad 2. Upward Potential

During the negotiations both Parties shall do their utmost in order to achieve optimisations as described under a and b of this paragraph.

- (a) **Optimisations for the exclusive benefit of the State**
 - amendment of the financial security as stated in the Performance Bond;
 - a decrease of the lease-costs through an agreement comparable with the 'Direct Agreement' in the United Kingdom, as a consequence whereof the risk for the remaining value of the Rolling Stock can be lowered.

- (b) Optimisations for the benefit of both Parties, to be divided equally
 - the potential use of an existing Rolling Stock type;
 - the potential benefit arising from through trains on the main rail network in the Netherlands;
 - arrangements with the Infrastructure Provider which will lead to a decrease in the integral costs of the transportation system (infrastructure, Rolling Stock and operations).

Ad 3. *Enhanced Specifications and Minimum Requirements*

- (a) The MoU shall comprise, amongst others, the Enhanced Specifications to be specified by the State, as well as the mechanisms which shall be used by the Preferred Tenderer to submit its Enhanced Bid, in addition to its binding Bid on Variant 6. The Enhanced Specifications shall include potential amendments to the service level, the Minimum Requirements and potential tariff restrictions.
- (b) With regard to the service level, it is the State's position that both Parties may propose amendments thereto, taking into account the following restriction. The service to The Hague (according to the Bid on Variant 4 as already submitted by the Preferred Tenderer) and the service to the smaller Belgian stations (according to the Bid on Variant 5 as submitted by the Preferred Tenderer, but with a maximum of 8 times each direction per day) shall be offered by the Preferred Tenderer without further financial impact in relation to the Concession Payment to the State. Services to Amsterdam Centraal and/or Zuid WTC shall not be dealt with in the MoU. The Preferred Tenderer may integrate these services, without further financial impact in relation to the Concession Payment to the State, at a later stage, taking into account the available capacity and discussions thereto with the international partners of the Preferred Tenderer and the Capacity Manager.
- (c) The Minimum Requirements shall comprise (quality) aspects as foreseen in the business plan integrated in your offer to the State, in the Tender documentation (as of the Registration Document of June 1999), as well as in (proposed) legislation. As a basis, the MoU shall contain the relevant proposals as laid down in the aforementioned business plan, taking into account the flexibility as required by the Preferred Tenderer. In case the State, during the negotiations, will ask for additional or stronger requirements that will lead to decreased earnings, increased costs or to a significantly deteriorated risk profile for the Preferred Tenderer / SPC, the State will be prepared to enter into arrangements with the Preferred Tenderer / SPC in order to determine the financial impact thereof on the Concession Payment to the State in a transparent way.
- (d) With regard to potential tariff restrictions (Domestic Services) it is the State's position that, in case these restrictions may lead to a tariff level which is comparable to, or lower than, the tariff level as proposed by the Preferred Tenderer, the Preferred Tenderer will get the opportunity to submit to the State a proposal wherein the integral effects of the proposal, including but not limited to the financial impact, will be made explicit and transparent.

6. Performance Regime

Parties shall endeavour to realise an effective performance regime together with the Infrastructure Provider, Rail Infra-Beheer (RIB) and other Train Operating Companies with the purpose to end up with a view to improve punctuality and reliability of services.

7. Approval Procedures MoU

In accordance with the indicative timetable in paragraph 1.3 of this ITDN, the final text of the MoU shall be ready on 28 June 2001. As a condition to signing, the internal approval procedures applicable to both Parties (taking into account the terms of the indicative timetable) shall have to be finalised within 4 weeks after that date at the maximum. It is assumed that these approval procedures will comprise the following:

- (a) to the State: approval by the Advisory Board and the Ministers of Transport and Finance;
- (b) to the Preferred Tenderer: approval by the Supervisory Board and the 'Centrale Ondernemingsraad'.

8. Applicable Law and Binding Advice Procedure

Applicable law

This ITDN and the negotiations to be carried out on the basis thereof will be governed by Dutch law.

Binding advice procedure

The stage of the negotiations will determine the way in which disputes between the Parties will be resolved:

- (a) until the moment of signing of the MoU, no specific dispute resolution method will be applicable;
- (b) during the period between signing of the MoU and signing of the Concession Agreement disputes will be resolved in accordance with the method set out in this paragraph below;
- (c) upon signing of the Concession Agreement disputes will be resolved in accordance with the relevant provisions in the Concession Agreement.

Ultimately upon signing of the MoU the Parties jointly shall appoint two advisors. Disputes arising out or in connection with the MoU shall be submitted to the joint advisors. During a period of one week upon submission of the dispute, the advisors shall act as mediators in order to try to get the dispute resolved by the Parties themselves. If the Parties will not reach a settlement of their dispute within the aforementioned period, the advisors shall submit a unanimous decision within a period of two weeks, which will be binding upon the Parties. The dispute resolution procedure can be determined by the joint advisors. Each of the advisors may unilaterally decide not to come to a decision, in which case each party may decide to submit the dispute to the competent court in The Hague.

Annex I – Changes to the ITT

1. The Business (ITT, Chapter 1)

For the purpose of this ITDN, no changes have been made to the text of this chapter of the ITT.

2. The Contractual Framework (ITT, Chapter 2)

For the purpose of this ITDN, no changes have been made to the text of this chapter of the ITT. As far as the Concession Agreement is concerned, reference is made to paragraph 5 hereunder with regard to the revised summary of the Concession Agreement.

3. The Tender Procedure (ITT, Chapter 3)

For the purpose of this ITDN, reference is made to 'To the Preferred Tenderer' of this document, in which it is stated that no ITN is issued. The information in the ITT regarding the ITN may be disregarded for the purpose of this ITDN.

The indicative timetable for the remaining phases of the Tender Procedure will be amended as set out in paragraph 4 ('Timetable').

4. The Bid (ITT, Chapter 4)

For the purpose of this ITDN, no changes have been made to this chapter.

5. Summary Concession Agreement (ITT, Annex A1)

This Annex A1 has been replaced by the revision dated 9 April 2001.

6. Draft Contract SNCB (ITT, Annex A2)

For the purpose of this ITDN, no changes have been made to this Annex.

7. Draft Agreement SNCF (ITT, Annex A3)

For the purpose of this ITDN, no changes have been made to this Annex. Reference is made to paragraph 5 here above ('Subjects of Negotiations'), comprising the State's position with respect to the Working Assumptions.

8. Working Assumptions (ITT, Annex A4)

Reference is made to paragraph 5 here above ('Subjects of Negotiations'), comprising the State's position with respect to the Working Assumptions.

9. Bid Format (ITT, Annex B1)

For the purpose of this ITDN, no changes have been made to this Annex.

10. Data Room Procedure (ITT, Annex B2)

For the purpose of this ITDN, no changes have been made to this Annex.

11. Process Agreements (ITT, Annex B3)

For the purpose of this ITDN, no changes have been made to this Annex.

12. Additional Process Agreement NS (ITT, Annex B4)

For the purpose of this ITDN, no changes have been made to this Annex.

13. Process Agreement Schiphol (new Annex to the ITDN)

For the purpose of this ITDN, a new Process Agreement will be added to this Annex. The Process Agreement between the State and N.V. Luchthaven Schiphol will be attached to this ITDN as Annex III.

14. Supporting Documents (ITT)

For the purpose of this ITDN, no changes have been made to the Supporting Documents as comprised in the ITT.

Annex II – Glossary

In this glossary additions and changes to the ITT glossary are presented.

Addenda	Additions and/or amendments to the ITT <u>and/or the ITDN</u> .
Annexes	Documents that are enclosed with the ITT and that form an integral whole with the main text of the ITT <u>and/or the ITDN</u> .
Draft Contract SNCB	The draft contract, appended in Annex A2 <u>of the ITT</u> , which will be signed by SNCB en HSL-Zuid TOC before Contract Award. This contract forms the base for a Co-operation Agreement between the SNCB and the Concessionaire.
Draft Agreement SNCF	The draft agreement, appended in Annex A3 <u>of the ITT</u> , on which Tenderers can base their Bid.
Enhanced Bid	A proposal, which conforms with the requirements of the Enhanced Specifications, submitted by a Tenderer which is selected to enter the Negotiation Phase, <u>or by the Preferred Tenderer as the case may be</u> .
Enhanced Specifications	The specifications and requirements on which the Tenderers are invited for the Negotiation Phase, <u>or which will be subject to negotiations upon issue of the ITDN</u> .
HSL-Zuid Train Operating Company	The party to be selected by the State in, <u>or upon entering into the Negotiation Phase that will enter into the Concession Agreement with the State</u> .
<u>ITDN</u>	<u>Invitation to Direct Negotiations (this document)</u>
<u>Minimum Requirements</u>	<u>The State's minimum requirements relating to service level and safety, to be determined in the MoU and the Concession Agreement</u> .
<u>MoU</u>	<u>Memorandum of Understanding as ment in this ITDN</u> .
Negotiation Phase	The second phase of the Tender Procedure, following the ITN <u>or the ITDN</u> .

Annex III – Process Agreement Schiphol

Staat- NV Luchthaven Schiphol

24 april 2001

STAAT - NV LUCHTHAVEN SCHIPHOL

De ondergetekenden:

1. DE STAAT DER NEDERLANDEN, (hierna te noemen; "de Staat") waarvan de zetel is gevestigd te 's-Gravenhage te dezen vertegenwoordigd door de Projectdirecteur HSLZuid, ir. W. Korf

en
2. De naamloze vennootschap NV LUCHTHAVEN SCHIPHOL, (hierna te noemen: "Schiphol"), te dezen vertegenwoordigd door de Executive vice president and chief operations officer, ir. M.E. van Lier Lels.

Nemen het volgende in aanmerking:

- a. De Staat is voornemens door middel van een openbare tender (hierna "de Tender") één of meer spoorvervoersondernemingen te selecteren voor de exploitatie van nationaal en internationaal hogesnelheidsvervoer over het traject HSL-Zuid (hierna: "het HSL-Vervoer"). Deze voornemens zijn nader omljnd in het Kwalificatie Document d.d. 17 juli 2000 en de Invitation to Tender van 15 december 2000.
- b. De Staat ziet het als zijn taak te verzekeren, dat de spoorvervoersondernemingen zo veel mogelijk op basis van gelijke kansen aan de Tender kunnen deelnemen, en dat na selectie van één of meer spoorvervoersondernemingen een vervoersaanbod tot stand komt dat zoveel mogelijk beantwoordt aan de door de Staat nagestreefde substitutiedoelstellingen van luchtvervoer en autovervoer door spoorvervoer (hierna: "de Substitutie-doelstellingen"). Bepalende factoren daarvoor zijn, dat er gedurende het tenderproces wordt samengewerkt tussen de Staat en Schiphol, en dat na selectie van één of meer spoorvervoersondernemingen wordt samengewerkt tussen deze

Staat- NV Luchthaven Schiphol

spoorvervoersonderneming(en) en Schiphol.

- c. Schiphol stelt zich ten doel de mainport-functie van Schiphol te versterken door middel van vergroting van het vervoersvolume, onder meer door de ontwikkeling van een intermodaal netwerk van een hoge vervoerskwaliteit. Bepalende factoren daarvoor zijn eveneens: (i) dat gedurende de Tender wordt samengewerkt tussen de Staat en Schiphol, (ii) dat na selectie van één of meer spoorvervoersondernemingen wordt samengewerkt tussen deze spoorvervoersonderneming(en) en Schiphol.

Artikel 1 De samenwerking tussen partijen gedurende de biedfase van de Tender

- 1.1 Schiphol zal op verzoek van de Staat de aan laatstgenoemde door bidders gevraagde gegevens verstrekken aan alle bidders over toegang en/of medegebruik van voor het vervoer relevante faciliteiten op Schiphol.
- 1.2 Schiphol zal de Staat gedurende de biedfase van de Tender adviseren omtrent (de beoordeling van) onderdelen van de biedingen die betrekking hebben op de Substitutiedoelstellingen.
- 1.3 De Staat zal daarbij slechts geanonimiseerde gegevens aan Schiphol verstrekken. Mocht Schiphol bij het uitvoeren van haar adviestaken bekend raken met de identiteit van een bidder dan zal zij deze geheimhouden. Schiphol zal zich in deze fase onthouden van contacten met de bidders voor zover deze contacten betrekking hebben op de Tender.
- 1.4 Onderdelen van biedingen waarmede een (toekomstige) prestatie van Schiphol gemoeid is, zullen door de Staat aan Schiphol worden voorgelegd alvorens een definitieve beoordeling daarvan zal plaatsvinden
- 1.5 Alle verrichtingen van Schiphol als adviseur van de Staat in de Tender zullen door de Staat worden geprotocolleerd teneinde de transparantie van de Tender te waarborgen.
- 1.6 De positie van Schiphol alsmede de door haar gegeven adviezen in haar hoedanigheid

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van onafhankelijk adviseur, kunnen nimmer tegen haar worden gebruikt in een later stadium van de Tender.

Artikel 2 De samenwerking tussen partijen gedurende de Onderhandelingsfase

- 2.1 Met Onderhandelingsfase is bedoeld de fase van de Tender waarin er nog sprake is van twee bidders.
- 2.2 De tot de Onderhandelingsfase toegelaten bidders leggen ieder aan Schiphol één of meerdere voorstellen voor gericht op een samenwerking tussen Schiphol en de bidders, hierna het Airrail-pakket, met het oog op het realiseren van de Substitutiedoelstellingen van de Staat
- 2.3 Het Airrail-pakket is zodanig uitgewerkt dat de biedende partijen kunnen onderhandelen over de invulling van dit pakket met Schiphol om te komen tot concept-overeenkomsten tussen Schiphol en iedere individuele bidder.
- 2.4 Tijdens de Onderhandelingsfase zal de Staat Schiphol gelegenheid bieden met de tot de Onderhandelingsfase toegelaten bidders te spreken omtrent verdere uitwerking van het Airrail-pakket. Bij deze besprekingen zal een notulist van de Staat steeds aanwezig zijn. Schiphol zal zich onthouden van contacten met voornoemde bidders buiten aanwezigheid van de notulist van de Staat.
- 2.5 Het Airrail-pakket wordt betrokken in de selectie van de bidder aan het einde van de Onderhandelingsfase en kan daarmee van positieve of negatieve invloed zijn op de prijsvorming in de Onderhandelingsfase. Schiphol wordt niet betrokken bij deze selectie.
- 2.6 Schiphol onthoudt zich tot en met deze fase van deelname aan een consortium waaraan een bidder deelneemt of zal deelnemen.
- 2.7 Overeenstemming bereikt tussen een bidder en Schiphol zal door de Staat in het kader van een transparante uitvoering van de Tender schriftelijk worden vastgelegd.

Staat- NV Luchthaven Schiphol

Artikel 3 Samenwerking tussen partijen na Contractering

- 3.1 Met Contractering is bedoeld het sluiten van de Concessie overeenkomst tussen de Staat en de te selecteren concessiehouder voor het vervoer over de HSL-Zuid (hierna: HSL Zuid Vervoermaatschappij), waarbij de Staat de HSL Zuid Vervoermaatschappij onder meer de meerjarige rechten op het vervoer over de HSL Zuid verleent.
- 3.2 Schiphol neemt de verplichting op zich om de HSL-Zuid Vervoersmaatschappij toegang en/of medegebruik van voor het vervoer relevante faciliteiten op Schiphol, voor zover in eigendom en/of beheer van Schiphol, te bieden op transparante, marktconforme en non-discriminatoire voorwaarden (prijzen daaronder begrepen).
- 3.3 Na Contractering staan de HSL-Zuid Vervoermaatschappij en Schiphol vrij met elkander regelingen overeen te komen in aanvulling op het Airrail-pakket en/of de overeenkomst zoals bedoeld in artikel 2.7. Met het Airrail-pakket strijdige afwijkingen behoeven evenwel de voorafgaande goedkeuring van de Staat, met het oog op het realiseren van de Substitutietoelstellingen.

Artikel 4: toepasselijk recht en geschillenbeslechting

- 4.1 Op deze overeenkomst is het Nederlands recht van toepassing. Geschillen tussen partijen omtrent deze overeenkomst zullen worden voorgelegd aan de bevoegde rechter te Den Haag.

Aldus in tweevoud opgesteld te Amsterdam en getekend op ... 1 mei 2001.

DE STAAT DER NEDERLANDEN



ir. W. Korf

N.V. LUCHTHAVEN SCHIPHOL



mw. ir. M.W. van Lier Lels

Annex IV – Acknowledgement of Receipt**FORMAT FOR ACKNOWLEDGEMENT OF RECEIPT
OF THE INVITATION TO DIRECT NEGOTIATIONS (“ITDN”)**

To: Projectorganisatie HSL-Zuid
Mr. Roel Testroete
PO Box 43
3500 AA UTRECHT
The Netherlands

We accept this Invitation to Direct Negotiations.

Place: *Amstelveen* Date: *27-06-01*

NS Reizigers - KLM

Name of Authorised Officer:

[Signature]
W.P. Spaargaren

[Signature]
R.M. van Es

APPROVED: AMS/DJ
28/6 2001
GOEDGEKEURD: *[Signature]*