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ANNEXURE XVI

HIGHWAY USAGE FEE

1. Definitions

In this Annexure, the following words and phrases shall have the following meanings:

"**Shareholder Distribution**" means any cashflows made by or on behalf of the Concessionaire to the Shareholders in respect of Equity (including, without limitation, dividends, return of capital, interest, repayment or retirement of debt or principal or any other costs).

"**Shareholder IRR**" means, at any date, the real [post tax] internal rate of return which a holder of Equity in the Concessionaire has achieved on its investment in Equity at that date having regard to the aggregate Shareholder Distributions received by such holder of Equity up to and including that date.

2. Payment of Highway Usage Fee

If, at any time during the Concession Period, the Concessionaire is proposing, and is permitted by the terms of the Loan Agreements, to make a Shareholder Distribution such that, after deducting from such Shareholder Distribution the amount of the Highway Usage Fee payable to the Authority by operation of this Clause 2, the Shareholders will have achieved a Shareholder IRR which is within any of the bands set out in column 1 of Appendix 1 to this Annexure (the "**HUF 1 Relevant IRR**"), the Concessionaire shall, at the same time as it makes the relevant payment to the Shareholders, pay to the Authority such percentage of the proposed Shareholder Distribution set out in column 2 of Appendix 1 to this Annexure as is opposite the Shareholder IRR achieved.

Comment [ID1]: Note-this is quite a neat mechanism as allows the private sector to benefit from its efficiencies but enables the public sector to benefit from the upside as well. There is a risk that an argument will be raised that if it benefits from the upside then it should take a risk on the downside. In the transaction on which the documentation is based the public sector takes the risk of having to pay back the bank debt.]

Comment [ID2]: [note- as drafted could be post tax in the hand of the recipient which may not be what is wanted].

APPENDIX 1

HIGHWAY USAGE FEE

Shareholder IRR (x)

Percentage of Shareholder Distribution payable to Authority

●% < X ≤ ●%
●% < X ≤ ●%
●% < X ≤ ●%
●% < X ≤ ●%
●% < X ≤ ●%
X > ●

●%
●%
●%
●%
●%
●%

SAMPLE