

Clarifications sought by Interested Bidders on the Confidentiality Undertaking
(Reference Annexure 9 of the PIM)

Sl. No.	Confidentiality Undertaking Clause Reference	Clarification
1.	<p>Page 1: Parties executing Confidentiality Undertaking (Sole Bidder or Consortium) – Clarification has been sought that the consortium structure defined, while submitting the Confidentiality Agreement, should not limit the eventual structure used for EOI submission / bid process</p>	<p>It is clarified that parties executing this Confidentiality Undertaking (including whether they are Lead Member or not) need not compulsorily be same as consortium composition at time of EOI submission. The benefit of VDR Access Fee will be given to only one IB/Consortium for continued access, and may be decided in the following manner:</p> <ul style="list-style-type: none"> ➤ As long as at least one of the members who have submitted Confidentiality Undertaking, as part of the Consortium that has paid the VDR Access Fee of One Crore, continues to be part of consortium which finally submits EOI (inter alia through split or reorganization of consortium); or ➤ If instead of consortium member/IB which signs Confidentiality Undertaking, any person who controls, is controlled by or is under common control with such consortium member (Control shall have the same meaning as under the Companies Act, 2013), subsequently submits EOI <p>In such cases, VDR Access Fee shall not be payable again for accessing VDR in stage II, provided (a) consent is obtained from the IB/consortium member, who is/are drawer of the demand draft</p>

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		submitted to TA for VDR Access Fee; (b) the IB/consortium member, who is/are drawer of the demand draft submitted to TA for VDR Access Fee, cannot give consent to more than one IB/consortium (including itself) for continued VDR Access; and (c) the benefit of VDR Access Fee will be given to only one IB/Consortium for continued access.
2.	<p>Confirmation sought whether each of the structures contemplated below would be permitted:</p> <p>Scenario 1 : Party A, B and C sign the NDA for VDR as a consortium with Party A as lead member. For submission of EOI, can either of these parties or their Affiliates submit an EOI individually as sole bidders or as a member of a consortium with only 2 of these parties or as a member of an entirely different consortium?</p> <p>Scenario 2: Party A signs the NDA as sole bidder. Party B that is an Affiliate of Party A also signs the NDA separately or signs the same NDA. Can Party A and Party B submit an EOI as a consortium?</p> <p>Scenario 3: If Party A signs the NDA as a consortium, but separately submits EOI as a sole bidder or part of a different consortium, would Party A or the new consortium need to pay INR 1,00,00,000/- (INR One Crore) towards non-refundable VDR access fee</p>	<p>Yes, there are no restrictions on EOI submission in this scenario.</p> <p>Party A and Party B (if both decide to participate) are allowed to submit EOI only as a consortium. It is clarified that Party A and Party B are not allowed to submit two separate EOIs as they are Affiliates (please refer to clause 13 of the PIM)</p> <p>If other consortium members of Party A do not submit a separate EOI/seek access to VDR, INR One Core of VDR Access Fee need not be paid again. As per clarification above, If Party A is not the drawer of the demand draft, Party A/new consortium that Party A is now part of, needs to seek consent of member who was the drawer of</p>

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	<p>“Affiliate” means in relation to any entity, a person who controls, is controlled by or is under common control with such entity. Control shall have the same meaning as under the Companies Act, 2013.</p>	<p>the demand draft for VDR Access Fee, for continued VDR access. The benefit of VDR Access Fee will be given to only one IB/Consortium for continued access.</p>
3.	<p>Beneficiaries of the Confidentiality Agreement Request was made that reference to Advisors as beneficiaries under Confidentiality Undertaking be removed</p>	<p>The terms will be as per the Confidentiality Undertaking set out in the PIM</p>
4.	<p>Recitals Section (A): Request was made that since Confidentiality Undertaking may be signed by prospective investors (for accessing VDR), in advance of EOI submission, the language in Confidentiality Undertaking may be suitably modified</p>	<p>It is clarified that in case the IB/Consortium Members are submitting the Confidentiality Undertaking prior to submission of EOI, the following language can be used :</p> <p><i>“Pursuant to the advertisement dated [.] and the PIM dated [.] , the IB/Consortium Members is/are evaluating the Proposed Transaction and has/have accordingly requested for access to VDR.”</i></p> <p>However, parties submitting Confidentiality Undertaking along with EOI submission can continue to use the original language as mentioned in PIM published on 27th January,2020.</p>
5.	<p>Clause 1: Definition of Receiving Party Request was made that Bidder’s Significant Shareholder (more than 26% shareholding), Bidder’s Subsidiary should be included in the definition of Receiving party</p>	<p>It is clarified that Significant shareholders and/or subsidiaries of Bidder/Consortium Members, may be appointed as Representatives by the Bidder/ Consortium Members or may sign the Confidentiality Undertaking as Consortium Members</p>

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6.	<p>Clause 4: Clarification on the language <i>“before accessing the Confidential Information, it shall provide to the TA the list of its Representative(s), whom the Bidder/Consortium will disclose the Confidential Information”</i></p> <p>Requirement to provide list of Representative(s) which may be updated subsequently, to whom the Bidder/Consortium will disclose the Confidential Information</p>	<p>It is clarified that the list of Representatives to be provided to the TA may be updated (as and when such Representatives are identified by Bidder/Consortium), provided Bidder/Consortium shall submit to TA the details of such additional Representative(s) before such Representative(s) access the VDR.</p>
7.	<p>Clause 4: Clarification on language <i>“shall ensure that its Representative(s) / Representatives of the Consortium Members, as the case may be, have read and understood this Undertaking and have agreed in writing to be bound by the terms and conditions contained herein”</i></p>	<p>The agreement in writing refers an agreement between the Representative(s) and the Bidder/Consortium Members and not an agreement between the Representative(s) and the GOI/AI/Advisors. If there are existing agreements with similar scope between Bidder/Consortium Members and their Representative(s), it would satisfy the requirement under this Confidentiality undertaking</p>
8.	<p>Clause 6: Request was made to delete this clause</p>	<p>The terms will be as per the Confidentiality Undertaking set out in the PIM</p>
9.	<p>Clause 7:</p> <ul style="list-style-type: none"> Clarification on the language <i>“the Receiving Party will provide the Advisors, the Government and the Company with prompt written notice of such request”</i> - <p>Requirement of prompt written notice to Advisors, the Government and the Company should only be if is not illegal to do so</p> <ul style="list-style-type: none"> Deletion of language <i>“Advisors, the Government or the Company may seek an appropriate injunction, protective order or other appropriate remedy”</i> post receipt of 	<p>It is clarified that the requirement under this clause is subject to applicable laws</p> <p>The terms will be as per the Confidentiality Undertaking set out in the PIM</p>

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	<p>written notice (bidder's request for clarification that their obligation is only to provide notice- what these parties do with this information is their own prerogative)</p> <ul style="list-style-type: none"> Deletion / Clarification of language regarding receiving <i>"written opinion of the Receiving Party's legal counsel (reasonably acceptable to the Advisors, the Government and the Company)"</i> to determine what part of Confidential Information is legally required to be disclosed Deletion of language regarding <i>"the Receiving Party using best efforts to obtain reliable assurance that confidential treatment will be accorded to any Confidential Information so disclosed"</i> 	<p>It is clarified that this obligation under Clause 7 is not intended to be prior approval requirement from GOI. However, in term of Clause 7 of the Confidentiality Undertaking, it is clarified that the IB/Consortium Member shall promptly provide the written opinion of its legal counsel to afford GOI reasonable time to evaluate and object, if necessary.</p> <p>The terms will be as per the Confidentiality Undertaking set out in the PIM</p>
10.	<p>Clause 8: Request for deleting the clause and comment provided that no unilateral modifications can be agreed by the parties to this undertaking</p>	<p>It is clarified that the said clause would be applicable only for the Confirmed Selected Bidder (i.e. definitive agreement will only be signed with Confirmed Selected Bidder as set out in the PIM) and modifications would be in the terms of definitive documents.</p>
11.	<p>Clause 9 Request for deleting the clause</p>	<p>The terms will be as per the Confidentiality Undertaking set out in the PIM</p>
12.	<p>Clause 10: Request for providing a carveout for retaining electronic copies of the Confidential Information only to the extent that these have been archived as part of its normal data backup procedures and it is not feasible to delete;</p> <p>deletion of language regarding providing Government <i>"a list of the destroyed materials and returned materials"</i></p>	<p>It is clarified that the obligation on Receiving Parties to inter alia delete/destroy/cause to be destroyed, in terms of the Clause 10, pertains to the information that is in possession and/or under control of the Receiving Party</p> <p>The terms will be as per the Confidentiality Undertaking set out in the PIM</p>
13.	<p>Clause 11: Deletion of language in clause</p>	<p>This clause is intended to cover</p>

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	requiring bidders not to communicate with officers/directors or employees of the Government/Company	communications, correspondences or discussions only with the officer(s), director(s) or employee(s) of AI, DIPAM and MOCA regarding the business, operations, prospects or financing of the Company or the Proposed Transaction. Provided clause 11 is not applicable for any interactions/discussions between Receiving Party , DIPAM and/or MOCA and/or the Company in the ordinary course of business
14.	Clause 12 Request for deleting the clause	The terms will be as per the Confidentiality Undertaking set out in the PIM
15.	Clause 13: Deletion of language in clause requiring bidders not to solicitate for employment or hire any employee of the Company	It is clarified that the Receiving party shall not directly or indirectly, solicit for employment or solicit for hiring any employee of the Company
16.	Clause 14: Request for deleting the clause	The terms will be as per the Confidentiality Undertaking set out in the PIM
17.	Clause 15: Deletion of language in clause <i>“as well as on its own investigation, analysis and assessment of its Investment”</i>	The terms will be as per the Confidentiality Undertaking set out in the PIM
18.	Clause 16: Request for deleting the clause	The reference to losses in this clause is clarified to mean direct losses
19.	Clarification sought by bidders that in the interest of time, if scanned copy of the Confidentiality Undertaking (including those executing the undertaking overseas) can be submitted to get access to VDR and how many originals of the confidentiality undertaking are required to be submitted to the TA?	It is clarified that one original copy of the Confidentiality Undertaking along with Demand Draft of One Crore should be submitted to TA
20.	Clarification sought on submission of One Crore DD for accessing VDR – Whether the amount should be adjusted for TDS ?	The Demand Draft submitted to TA should be for One Crore (any TDS, any other deduction is to be bidder’s account and not adjusted in any manner from One Crore DD to be submitted)