

# Template Confidentiality Agreement

---

***[insert name of Gladstone Coal Producer/potential Third Party Shipper]***  
ABN ***[INSERT]***

**WICET Holdings Pty Limited**  
ABN 26 131 210 001

**Wiggins Island Coal Export Terminal Pty Limited**  
ABN 20 131 210 038

---

## About this document:

This is the template Confidentiality Agreement referred to in the Wiggins Island Terminal Access Policy. If you are a Gladstone Coal Producer or a potential Third Party Shipper you may request certain information from WICET provided you enter into a Confidentiality Agreement with WICET in substantially the form of this template.

Please contact the WICET Access Officer if you wish to enter into a Confidentiality Agreement.

---

## Blake Dawson

Level 36, Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Australia  
T 61 2 9258 6000  
F 61 2 9258 6999

### Reference

DWM MHO 02-1433-6651

©Blake Dawson 2010

---

# Contents

<b>1.</b>	<b>INTERPRETATION</b>	<b>3</b>
<b>2.</b>	<b>DISCLOSURE AND USE</b>	<b>5</b>
<b>3.</b>	<b>REVERSE ENGINEERING</b>	<b>5</b>
<b>4.</b>	<b>SECURITY CONTROL</b>	<b>5</b>
<b>5.</b>	<b>DESTRUCTION OR RETURN OF INFORMATION</b>	<b>6</b>
<b>6.</b>	<b>NO RIGHTS</b>	<b>6</b>
<b>7.</b>	<b>REMEDIES</b>	<b>6</b>
<b>8.</b>	<b>TERMINATION</b>	<b>7</b>
<b>9.</b>	<b>MISCELLANEOUS PROVISIONS</b>	<b>7</b>
9.1	Jurisdiction	7
9.2	Notices	7
9.3	No joint venture or partnership	7
9.4	Deed poll binding	7
9.5	Amendment and Waiver	7
9.6	Counterparts	7
9.7	Attorneys	8

# Confidentiality Agreement

DATE

BY

[*insert name of Gladstone Coal Producer/potential Third Party Shipper*] ABN [*Insert*]  
(Recipient)

FOR THE BENEFIT OF

**WICET Holdings Pty Limited** (ABN 26 131 210 001) and **Wiggins Island Coal Export Terminal Pty Limited** (ABN 20 131 210 038) (each a **Discloser** and together the **Disclosers**)

RECITALS

The Recipient has agreed that the provisions of this deed poll will apply to Confidential Information provided by a Discloser to the Recipient in connection with the Approved Purpose.

OPERATIVE PROVISIONS

## 1. INTERPRETATION

---

In this deed poll, unless the contrary intention appears:

- (a) **A Class Commercial Information** has the meaning given to it in the Access Policy.
- (b) **Access Policy** means the Wiggins Island Terminal Access Policy (as amended from time to time) approved by the State and published by the WICET Group setting out, inter alia, the rules for allocation by WICET of available capacity at its coal export terminal.
- (c) **Approved Purpose** means any or all of:
  - (i) deciding whether to apply for a B Class ordinary share to be issued by WICET Holdings;
  - (ii) deciding whether to apply for available capacity at WICET's coal export terminal;
  - (iii) evaluating information provided by WICET in relation to Surplus Capacity
- (d) **B Class Commercial Information** has the meaning given to it in the Access Policy.
- (e) **Confidential Information** means, in respect of a Discloser, all information (regardless of form) disclosed or otherwise made available at any time (including before the date of this deed poll) by the Discloser or its Representatives to the Recipient (or its Representatives) for or in connection with the Approved Purpose and all information created by the Recipient or its Representatives in the course of carrying out the Approved Purpose, including:
  - (i) B Class Commercial Information, A Class Commercial Information and any proforma agreements referred to in the Access Policy or other documents prepared by the WICET Group;

- (ii) information in connection with available Surplus Capacity;
- (iii) information which is designed or indicated as being the proprietary or confidential information of the Discloser or any of its Related Bodies Corporate;
- (iv) proprietary or confidential information of a third party to whom the Discloser or its Representatives owe an obligation of confidentiality; and
- (v) information derived or produced partly or wholly from such information including any calculation, conclusion, summary or computer modelling, except to the extent:
  - (vi) that the information is in the public domain otherwise than by reason of an unauthorised disclosure of which the Recipient is aware or ought reasonably to be aware;
  - (vii) that the information is in the Recipient's lawful possession and not subject to any duty of confidentiality before the date of this deed poll;
  - (viii) that the information has been independently generated by the Recipient without reference to any disclosed information; or
  - (ix) the Disclosers notify the Recipient in writing that they no longer consider the information to be confidential.
- (f) **Law** means any applicable law, legislation, regulation, order of a court or tribunal, requirement of a regulator or prudential authority, stock exchange rule or financier's code of practice.
- (g) **Related Body Corporate** has the same meaning as in the *Corporations Act 2001* (Cth).
- (h) **Representative** means a party's officers, employees, agents, contractors and professional consultants and advisors.
- (i) **Surplus Capacity** means capacity at WICET's coal export terminal which WICET determines is available for use on a short term basis.
- (j) **WICET** means Wiggins Island Coal Export Terminal Pty Limited (ABN 20 131 210 038).
- (k) **WICET Group** means either WICET Holdings or WICET or both (as the case may be).
- (l) **WICET Holdings** means WICET Holdings Pty Limited (ABN 26 131 210 001).
- (m) **WICET Shareholder** means, at any time, each person who holds an A Class ordinary share issued by WICET Holdings at that time.
- (n) A reference in this deed poll to disclosure of information is a reference to disclosure, provision, supply or availability of the information by any means, including circumstances where the Recipient is able to access information on the website of a Discloser or during attendance at the premises of a Discloser.
- (o) The headings in this deed poll are inserted for convenience only, and will not affect the construction or interpretation of it.

- (p) Words importing the singular include the plural and vice versa, words importing any gender include the other genders and references to persons include corporations and vice versa.

## **2. DISCLOSURE AND USE**

---

In consideration of the Discloser disclosing Confidential Information to the Recipient, and other consideration hereby acknowledged as received, the Recipient undertakes that it will:

- (a) not disclose the Confidential Information to any person, except:
- (i) to such directors, officers or employees of the Recipient to whom disclosure is required for the Approved Purpose and who have agreed that the Confidential Information must be kept confidential in accordance with the terms of this deed poll;;
  - (ii) in accordance with the prior written consent of the Discloser;
  - (iii) as required by Law; or
  - (iv) as reasonably required to defend the Recipient in any legal proceeding brought or threatened against it;
- (b) to the greatest extent permitted by Law, notify the Discloser promptly on becoming aware that the Recipient is likely to be required to make disclosure pursuant to clauses 2(a)(iii) or (iv);
- (c) subject to paragraph (a) (above), keep all Confidential Information completely in confidence;
- (d) use the Confidential Information exclusively in relation to the Approved Purpose and for no other purpose;
- (e) only reproduce the Confidential Information as reasonably required in relation to the Approved Purpose;
- (f) ensure that each person to whom it discloses Confidential Information in accordance with this deed poll complies with the terms of this deed poll;
- (g) be liable for any action or omission by a director, officer, employee, consultant, professional adviser or associate of the Recipient which (if that person were personally bound by this deed poll) would be a breach of this deed poll by that person; and
- (h) on reasonable request by a Discloser, inform the Discloser of the Recipient's compliance or otherwise with its obligations under this deed poll.

## **3. REVERSE ENGINEERING**

---

The Recipient undertakes not to directly or indirectly attempt to reverse engineer, decrypt, disassemble, decompile, decipher or reconstruct in any way the Confidential Information.

## **4. SECURITY CONTROL**

---

The Recipient undertakes to:

- (a) have in place and maintain effective security measures to safeguard Confidential Information from access or use not authorised under this deed poll; and
- (b) immediately notify the Disclosers of any suspected, threatened or actual unauthorised use of Confidential Information.

## **5. DESTRUCTION OR RETURN OF INFORMATION**

---

- (a) The Recipient undertakes to, on written request from the Discloser following termination of this deed poll, in respect of its Confidential Information previously provided to the Recipient:
  - (i) return to the Discloser or destroy (at the election of the Discloser) all of that Confidential Information which is in hardcopy; and
  - (ii) use the delete function available in the relevant software to delete all of that Confidential Information which is in softcopy.
- (b) If the Recipient returns, destroys or deletes the Confidential Information and other materials referred to in paragraph (a) (above), it must as soon as practicable after doing so certify to the Discloser that it has returned, destroyed or deleted (as the case may be) all of the Confidential Information together with all copies, notes and memoranda relating to it in its possession or under its control.
- (c) Despite paragraph (a), the Recipient may retain any Confidential Information (or a copy of it) to the extent:
  - (i) required by Law; or
  - (ii) reasonably required to defend the Recipient in any legal proceeding brought or threatened against it.
- (d) Without prejudice to clause 8, this deed poll will continue to apply to Confidential Information:
  - (i) not returned or destroyed; or
  - (ii) retained pursuant to paragraph (c) (above).

## **6. NO RIGHTS**

---

Except as may be expressly set out in a written agreement between the Recipient and a Discloser, the Recipient agrees that no right, licence or property is granted by or in this deed poll to the Recipient in relation to any part of the Confidential Information.

## **7. REMEDIES**

---

Each Discloser is entitled to seek:

- (a) relief both at law and in equity; and
  - (b) remedies including (without limitation) injunctive relief and specific performance,
- in the event of any breach or anticipated breach of this deed poll without having to prove any actual damage.

---

**8. TERMINATION**

---

- (a) A Discloser or the Recipient may terminate this deed poll by giving written notice to the other of them not less than 10 days prior to the effective date of termination.
- (b) Despite any provision to the contrary in this deed poll, the obligations of the Recipient with respect to Confidential Information survive the termination of this deed poll.

**9. MISCELLANEOUS PROVISIONS**

---

**9.1 Jurisdiction**

This deed poll is governed by and construed in accordance with the laws in force in the State of Queensland. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Queensland and courts of appeal from them.

**9.2 Notices**

The Recipient will, on request, provide to a Discloser details of the address and facsimile numbers to which any notices and other communications to be given under this deed poll may be sent. A Discloser's address and facsimile number are as separately notified to the Recipient from time to time.

**9.3 No joint venture or partnership**

This deed poll does not oblige a person to provide any Confidential Information to any other person, does not oblige a person to enter any transaction and does not establish a joint venture, partnership, trust or other relationship between any persons.

**9.4 Deed poll binding**

- (a) This deed poll is binding on the Recipient in favour of each Discloser immediately upon execution of this deed poll by the Recipient and the Recipient must from the date of its execution of this deed poll comply with its terms.
- (b) This document operates as a deed poll by the Recipient for the benefit of each Discloser. Each Discloser may enforce this deed poll, despite not being a party to this deed poll.

**9.5 Amendment and Waiver**

- (a) No failure or delay by a party in exercising any right or power conferred under this deed poll will operate as a waiver of that right or power.
- (b) This deed poll may only be amended by deed between the Recipients and all Disclosers.

**9.6 Counterparts**

This deed poll, and any amending deed, may be executed in counterparts which, when taken together, will constitute one instrument.

**9.7 Attorneys**

Each person who executes this deed poll on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**Executed** as a deed poll

**SIGNED, SEALED and DELIVERED** for  
**[insert name of Gladstone Coal  
Producer/potential Third Party Shipper]**  
under power of attorney in the presence of:

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date of power of attorney