

Agreement

Department of Education
Disposal of removed buildings from Dutton Park

Sale agreement

The State of Queensland acting through the
Department of Education

[INSERT DETAILS OF PURCHASER]

FOR INFORMATION ONLY

Agreement for the Sale of Buildings(s)

Date ►

Between the parties

Department **The State of Queensland Acting through the Department of Education**
Education House
30 Mary Street
BRISBANE QLD 4000

Purchaser **[INSERT DETAILS OF ORGANISATION]**

- Recitals**
- A. The Department is the owner of the Buildings.
 - B. Through an EOI process, the Department invited interested parties to submit proposals to purchase one or more of the Department's buildings.
 - C. The Purchaser has represented in its Proposal that it:
 - (i) wants to acquire the Buildings;
 - (ii) is committed to transporting, installing, repairing and renovating the Buildings, and using the Buildings for the Proposed Use; and
 - (iv) has the financial means and resources necessary to undertake the Development Commitments.
 - D. On the basis of the Purchaser's Proposal, the Department shortlisted the Purchaser to acquire the Buildings.
 - E. This Agreement is the terms on which the Department has agreed to sell and the Purchaser has agreed to acquire the Buildings.
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The parties agree as follows:

1 Definitions

The meanings of the terms used in this Agreement are set out below.

Term	Meaning
Agreement	means this Sale Agreement, and includes all schedules attached to this agreement.
Building(s)	means the building(s) described in Part A of Schedule 1 (<i>Buildings and Proposed Use</i>).
Business Day	means between 9.00am and 4.00pm on a weekday other than a Saturday, Sunday or public holiday in Brisbane, Queensland.
Development Commitments	means the development commitments of the Purchaser in relation to the Building(s) as described in Schedule 2 (<i>Development Commitments</i>).
Dollars, A\$ and \$	means the lawful currency of the Commonwealth of Australia.
EOI	means the Expression of Interest for Disposal of removed buildings from Dutton Park issued by the Department on or around [insert date].
Government Agency	means any government (including any local government) or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
Law	means acts, ordinances, regulations, subordinate legislation, by-laws, orders, awards and proclamations, principles of law and equity established by decisions of courts, whether or not in force on the date of this Agreement.
Loss	loss, damage, liabilities, costs and expenses.

Term	Meaning
Proposal	means the Purchaser's Proposal submitted in response to the EOI.
Proposed Use	means the Purchaser's proposed use of the Building(s) as set out in Part B (<i>Proposed Use</i>) of Schedule 1 (<i>Buildings and Proposed Use</i>).
Storage Contract(s)	means each contract between the Department and the relevant Storage Manager for storage of each Building.
Storage Contract Transfer	has the meaning given in clause 3(b).
Storage Manager	means the person at the Storage Site for a Building with whom the Department has a Storage Contract.
Storage Site	for each Building, means the storage facility where that Building is kept by the Department, as specified in Part A of Schedule 1 (<i>Buildings and Proposed Use</i>). ¹

2 Agreement to sell

In consideration of the Purchaser agreeing to pay to the Department one dollar (\$1.00) on demand by the Department, subject to clause 3, the Department agrees to sell, and the Purchaser agrees to acquire, the Building(s) on the terms and conditions of this Agreement.

3 Transfer of Storage Contract(s) to Purchaser

- (a) The Purchaser acknowledges and agrees that before the Building(s) is transferred to the Purchaser, the Storage Contract for each Building must be transferred from the Department to the Purchaser, and the Purchaser will be responsible for the storage of, storage costs for, the Building.
- (b) Each party must use their respective best endeavours to transfer the Storage Contract for each Building from the Department to the Purchaser, either by way of:
 - (1) novation or assignment of the Storage Contract from the Department to the Purchaser;

- (2) the Department terminating part or all of the relevant Storage Contract and the Purchaser entering into a new storage contract with the Storage Manager; or
 - (3) any other means reasonably available to, and agreed by, the parties,
(Storage Contract Transfer).
- (c) If a Storage Contract Transfer is not achieved for any Building within 30 days after the date of this Agreement (or any later date that may be agreed by the Department), either party (provided that party has used its best endeavours to achieve the Storage Contract Transfers) may terminate this Agreement in respect of that Building by giving written notice to the other party.
 - (d) If this Agreement is terminated under clause 3(c) by either party, then the Department retains title to and possession of the Building(s) and may make any use of the Building(s) as it sees fit (including selling the Building(s) to another person).
 - (e) The sale and acquisition of each Building under clause 2 does not become effective unless and until a Storage Contract Transfer is finalised for that Building.
 - (f) The Purchaser acknowledges and agrees that on and from the date of each Storage Contract Transfer being finalised for each Building, the Purchaser becomes responsible for the storage of, and all storage costs in relation to, that Building.

4 Risk and title

- (a) Risk and title to each Building passes to the Purchaser at the time the Storage Contract Transfer is finalised for that Building.
- (b) The Purchaser is responsible for taking out and maintaining all insurances that are required by Law and that a prudent owner of a building of the nature of the Building(s) would reasonably take out and maintain in relation to the Building(s) on and from the time that risk in the Building(s) passes to the Purchaser.

5 Proposed Use and Development Commitments

- (a) The Purchaser acknowledges and agrees that the Department has entered into this Agreement in reliance on, among other things, the Purchaser's representations in its Proposal to:
 - (1) utilise the Building(s) for the Proposed Use; and
 - (2) use its reasonable endeavours to fulfil the Development Commitments.
- (b) The Purchaser:
 - (1) undertakes to the Department that it will utilise the Building(s) for the Proposed Use; and
 - (2) must use its reasonable endeavours to fulfil the Development Commitments, including within the anticipated time periods set out in the Development Commitments.

- (c) The Purchaser acknowledges and agrees that it is responsible for all costs of and in connection with the Building(s), including:
 - (1) all costs of transporting each Building from its Storage Site to the Purchaser's site; and
 - (2) all costs necessary to undertake the Development Commitments and to use the Building(s) for the Proposed Use.

6 Purchaser's responsibility for approvals

- (a) The Purchaser acknowledges and agrees that it is responsible for seeking, obtaining and maintaining (and for all costs in relation to seeking, obtaining and maintaining) all approvals, permits licences and authorisations of any nature whatsoever (including for all requirements under all Laws and from all Governmental Authorities) that may be required in relation to the Building(s), including all approvals, permits licences and authorisations required in relation to:
 - (1) the collection and transportation of the Building(s) from the Storage Site to the Purchaser's site;
 - (2) carrying out the installation of, and all works in relation to, the Building(s), including carrying out the Development Commitments and engaging any third party certifiers that may be required; and
 - (3) planning and environmental requirements in relation to the site for the Building(s) and all use of the Building(s), including for the Proposed Use.
- (b) Without limiting clause 6(a), the Purchaser must comply with all Laws in relation to the Building(s) and its obligations under this Agreement.

7 Provision of Information

Promptly following any request by the Department in the 36 months after the date of this Agreement, the Purchaser must provide to the Department all information:

- (a) reasonably required to verify; and
- (b) otherwise reasonably requested by the Department in relation to, the Purchaser's compliance or otherwise with this Agreement (including under clauses 5 and 6).

8 Termination

- (a) Either party (**first party**) may terminate this Agreement by giving notice in writing to the other party (**other party**) if the other party commits a material breach of this Agreement:
 - (1) that is capable of being remedied, and the other party fails to remedy the breach within 30 days after receiving notice from the first party specifying the breach and requiring its remedy; or

- (2) that is not capable of being remedied.
- (b) For the purposes of this Agreement, a 'material breach' of this Agreement is:
 - (1) in respect of the Department, a breach by the Department of clause 9(a); and
 - (2) in respect of the Purchaser, a breach by the Purchaser of clause 3, clause 5, or clause 6.
- (c) Clauses 9, 10, 11, 12, 13 and all other clauses which are expressed to survive, or are capable of surviving, after the expiration or termination of this Agreement will survive and continue following the expiration or termination of this Agreement.

9 Warranties

- (a) The Department warrants that it has all right, title and interest necessary to transfer title in the Building(s) to the Purchaser in accordance with this Agreement.
- (b) Other than the warranty in clause 9(a), and subject to clause 10.2:
 - (1) the Department provides no other conditions or warranties in connection with this Agreement; and
 - (2) excludes all conditions and warranties by the Department that may otherwise be implied in this Agreement.
- (c) The Purchaser acknowledges and agrees that:
 - (1) it has inspected the Building(s);
 - (2) subject to clause 10.2, it has not entered into this Agreement in reliance on any express or implied statement, representation, promise or warranty made by the Department or on its behalf in respect of any matter relating to the Building(s), or which has or may have an effect on the Building(s), including that the Building(s), or any parts of them:
 - (A) conform to any particular specifications;
 - (B) are fit for any particular purpose; or
 - (C) are capable of being repaired, refurbished or renovated in any particular manner (including in accordance with the Development Commitments).

10 Limitation of liability

10.1 General limit on liability

- (a) Subject to clause 10.2, the Department's total aggregate liability for all Loss suffered or incurred by the Purchaser under or in connection with this Agreement, whether arising from breach of contract, breach of statute, tort (including any negligent act or omission) or otherwise, is limited to \$50,000.

10.2 Australian Consumer Law

- (a) This clause 10.2 applies only if (and then only to the extent that) this Agreement is a Consumer Contract under the Australian Consumer Law, and to that extent only.
- (b) To the extent this Agreement is a Consumer Contract under the Australian Consumer Law, nothing in this Agreement is intended to, or does:
- (1) exclude any Consumer Guarantee; or
 - (2) exclude, restrict or modify (except as set out in this clause) any liability of the Department for failing to comply with any Consumer Guarantee,
- that applies to this Agreement under the Australian Consumer Law.
- (c) Subject to clause 10.2(d), unless the goods under this Agreement are Excluded Goods, the liability of the Department for Loss, however caused (including by the negligence of the Department), suffered or incurred by the Purchaser because of a failure to comply with a Consumer Guarantee in respect of those goods is limited to the Department (at its election):
- (1) replacing the goods or supplying equivalent goods;
 - (2) repairing the goods;
 - (3) paying the cost of replacing the goods or of acquiring equivalent goods; or
 - (4) paying the cost of having the goods repaired; and
- (d) Clause 10.2(c) does not apply in relation to a Title Guarantee or if it is not Fair or Reasonable for the Department to rely on it.
- (e) For the purposes of clause 10.2:
- (1) **Australian Consumer Law** (or **ACL**) means Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the Australian Consumer Law (Qld).
 - (2) **Consumer Contract** means a contract with a 'Consumer' as that term is defined in section 3 of the Australian Consumer Law.
 - (3) **Consumer Guarantee** means a Consumer Guarantee applicable to this Agreement under the Australian Consumer Law.
 - (4) **Fair or Reasonable** means 'fair or reasonable' for the purposes of section 64A of the Australian Consumer Law.
 - (5) **Excluded Goods** means 'goods of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 3 of the Australian Consumer Law.
 - (6) **Title Guarantee** means a guarantee provided for by any of sections 51, 52 or 53 of the Australian Consumer Law.

11 GST

- (a) In this clause:
- (1) any reference to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (**GST Act**) is, unless the context

- indicates otherwise, a reference to that term as defined or used in the GST Act;
- (2) a reference to GST payable by or input tax credit of a party includes the corresponding GST payable by or input tax credit of the representative member of the GST group of which that party is a member; and
 - (3) the term '**Excess GST**' has the meaning given to that term in section 142-10 of the GST Act.
- (b) Unless otherwise expressly stated, all amounts referred to in this Agreement, including amounts used to determine a payment to be made by one party to the other (other than an amount referred to in clause 11(g)), are exclusive of GST (**GST Exclusive Consideration**).
 - (c) To the extent that GST is payable in respect of all or any part of a supply made by a party (**Supplier**) under or in connection with this agreement, the GST Exclusive Consideration to be provided under this agreement for that supply is increased by an amount equal to the GST payable by the Supplier (excluding any Excess GST).
 - (d) The recipient must pay the additional amount payable under clause 11(c) to the Supplier at the same time and in the same manner as the GST Exclusive Consideration for the supply is otherwise required to be provided.
 - (e) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the additional amount on account of GST under clause 11(c) or at such other time as the parties agree.
 - (f) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment and excluding any Excess GST) and if the net GST differs from the amount previously paid under clause 11(d), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
 - (g) If one of the parties to this Agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 11(c).

12 Stamp duty

The Purchaser is responsible for paying any and all stamp duty that may apply to any transactions under or contemplated by this Agreement.

13 General

13.1 Notices

- (a) Any notice under this Agreement must be:
- (1) in writing, in English and signed by a person duly authorised by the sender; and
 - (2) hand delivered or sent by pre-paid post to the recipient's address set out below, or the address that may otherwise be notified by that party:

If the Notice is sent to the Department:

Address: The Department of Education
Education House
30 Mary Street
Brisbane
QLD 4000

Attention: [INSERT]

Facsimile: [INSERT]

Email [INSERT]

If the Notice is sent to the Purchaser:

Address: [INSERT]

Attention: [INSERT]

Facsimile: [INSERT]

Email [INSERT]

- (b) A notice given in accordance with clause 13.1(a) shall be deemed to be received:
- (1) if hand delivered, on delivery; or
 - (2) if sent by prepaid post on the third Business Day after the date of posting (or on the 10th Business Day after the date of posting if posted to or from outside Australia),
- but if it is not a Business Day in the place the notice is received, the notice is taken to be received at 9.00am on the next Business Day in the place of receipt.

13.2 Governing law and jurisdiction

This Agreement is governed by the laws of Queensland. Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

13.3 Enforceability, prohibition and severance

- (a) Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity,

legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

13.4 Waivers

- (a) Waiver of any right, power, authority, discretion or remedy arising upon default under this Agreement must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising upon default under this Agreement, does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Agreement or on a default under this agreement as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.
- (e) This clause 13.4 may not itself be waived except by writing.

13.5 Variation

Variation of any term of this Agreement must be in writing and signed by the parties.

13.6 Cumulative rights

The rights, powers, authorities, discretions and remedies arising out of or under this Agreement are cumulative and do not exclude any other right, power, authority, discretion or remedy of the Department.

13.7 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this Agreement.

13.8 Entire agreement

This Agreement is the entire agreement between the parties in respect of its subject matter.

13.9 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this agreement by signing any counterpart.

13.10 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

13.11 Interpretation

In this Agreement, headings and bold type are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing (including to any right) includes a part of that thing but nothing in this clause 13.11(e) implies that performance of part of an obligation constitutes performance of the obligation;
- (f) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to, this Agreement and a reference to this Agreement includes any attachment, exhibit and schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;
- (j) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (k) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (l) anything specified after the word "including" or a similar expression does not limit what else is included.

Schedule 1

Buildings and Proposed Use

A. Buildings

	Building	Storage Site
1.	Building number [INSERT]	[INSERT]
2.	Building number [INSERT]	[INSERT]
3.	Building number [INSERT]	[INSERT]
4.	Building number [INSERT]	[INSERT]

B. Proposed Use

[INSERT FROM ITEM 2 (BUILDING(S) AND PROPOSED USE) OF PART 5 (RESPONSE SCHEDULE) OF THE PURCHASER'S PROPOSAL IN RESPONSE TO THE EO]

Schedule 2

Development Commitments

[INSERT FROM ITEM 3 (CAPACITY TO TRANSPORT, REPAIR AND MAINTAIN THE BUILDING(S) OF PART 5 (RESPONSE SCHEDULE) OF THE PURCHASER'S PROPOSAL IN RESPONSE TO THE EOI]

FOR INFORMATION ONLY

Signing page

Executed as an agreement

Department

Signed for and on behalf of the **State of Queensland, acting through the Department of Education** by its authorised person, in the presence of:

Sign here _____ *Sign here ▶* _____
Witness Authorised person

Print name _____ *Print name* _____

Date _____

Purchaser

Signed for

[Purchaser Name]

[in accordance with section 127 of the Corporations Act 2001 (Cth), by:] **[To be updated depending on entity type]**

Sign here _____ *Sign here ▶* _____
Director Director/Secretary

Print name _____ *Print name* _____

Date _____