

# Pre-Disclosure Deed Poll For Prospective Franchisee

*Date:* \_\_\_\_\_

*By:*

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("Prospective Franchisee")

*In Favour of:*

**DIXON SYSTEMS PTY LTD**  
("Franchisor")

# PRE-DISCLOSURE DEED POLL FOR PROSPECTIVE FRANCHISEE

**THIS DEED POLL** made at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ 200\_\_

**BY**

\_\_\_\_\_  
of \_\_\_\_\_  
(the “**Prospective Franchisee**”);

**IN FAVOUR OF** **Dixon Systems Pty Ltd (ACN 102 327 337)** of 1821 Ipswich Road, Rocklea, 4106, Queensland (the “**Franchisor**”);

## RECITALS

- A. The Prospective Franchisee desires to obtain access to the Confidential Information to enable it to evaluate and make a reasonably informed decision about obtaining a franchise to operate the Dixon Homes and/or Tamawood Homes Franchise Business;
- B. The Franchisor is willing to provide the Prospective Franchisee with the Confidential Information subject to the confidentiality of that information being preserved in accordance with the terms and conditions of this Deed;
- C. The Franchisor will provide the Prospective Franchisee with information on a Dixon Systems Franchise Business that includes, but is not limited to: branding and support from Dixon/Tamawood, one of the largest building groups in Australia and Queensland’s number one for the last 10 years combined;

Potential savings in buying rates achieved through tapping into the Dixon/Tamawood materials supply agreements based on hundreds of approvals per year;

Potential administrative and materials savings through improved efficiency provided by the industry leading Dixon /Tamawood Building Business Administration Systems;

Training workshops to ensure proficiency in sales, client service and operation of the Building Business Administration System;

Range of dominant home designs covering many market niches and includes the proven Dixon Home’s designs that cost more than \$3 million in architect’s, engineers and colour consultants fees to develop and resulted in Dixon Homes having won more Housing Industry Association design awards than any other builder in Australia;

Potential group services savings in areas such as insurance;

Network of display homes distributed along the eastern seaboard and access to a national leads referral network;

Provision of proven and comprehensive marketing materials including brochures, business cards, dedicated web site with a personalised page for each Franchisee and press, radio and television advertisements;

Drawings, computerised estimating and bills of quantity and job cost reports;

- D. The Franchisor will provide the Prospective Franchisee with the direct financial costs associated with: a royalty fee, rental of the cutting edge computerised Building Business Administration System which covers every aspect of the effective management of building company;
- E. The Franchisor confirms the Prospective Franchisee will not have to pay any joining or exit fees.

## **THIS DEED PROVIDES**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Deed unless the context otherwise requires:

**“Approved Purposes”** means evaluation of the Franchise Business, making of a decision whether or not to enter into the Franchise Business and negotiation of a formal agreement concerning the Franchise Business;

**“Confidential Information”** means information of every kind:

(a) concerning or in any way connected with:

- (i) the Franchise Business;
- (ii) the Franchisor; or
- (iii) any of the Franchisor's Related Companies;

and which:

- (b) is disclosed in writing, orally or by any other means by the Franchisor or by any person on the Franchisor's behalf to the Prospective Franchisee or any employee, officer or agent of the Prospective Franchisee; or
- (c) comes to the knowledge of the Prospective Franchisee or any employee, officer or agent of the Prospective Franchisee by any means;

and which may include, but is not limited to the:

- (d) Disclosure Document;
- (e) Manual; and
- (f) Franchise Agreement;

**“Disclosure Document”** means the document prepared by the Franchisor in accordance with Division 2.2 of the Franchising Code of Conduct 1998 (Cth);

**“Franchise Agreement”** means the agreement that governs the rights and benefits, which may be granted by the Franchisor to the Prospective Franchisee for the purpose of operating the Franchise Business;

**“Franchise Business”** means the business of designing, constructing, displaying, marketing and selling houses by virtue of the rights and benefits which may be granted by the Franchisor to the Prospective Franchisee;

**“Notes”** means notes which relate to, summaries and copies of and extracts from any Confidential Information whether in documentary, visual, machine readable or other form;

**“Manual”** means the manual prepared by the Franchisor that contains information on operating the Franchise Business;

**“Related Company”** means in relation to the Franchisor and the Prospective Franchisee respectively a body corporate which, in accordance with the Corporations Law, is related to the Franchisor or the Prospective Franchisee (as the case requires).

## 1.2 In this Deed:

- (a) the singular includes the plural and the plural includes the singular;
- (b) “person” includes a body corporate;
- (c) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (d) headings are for convenience only and do not affect the interpretation or form part of this Deed;
- (e) “including” and similar expressions are not words of limitation;
- (f) reference to a party includes the party’s legal personal representatives or successors and the party’s assigns; and
- (g) “agent” includes financial advisers, solicitors and other advisers.

## 2. ENFORCEABILITY

- 2.1 This Deed operates as a deed poll and is enforceable in accordance with its terms and conditions against the Prospective Franchisee by the Franchisor, notwithstanding that the Franchisor has not executed this Deed.

### 3 MAINTENANCE OF CONFIDENTIALITY

#### 3.1 The Prospective Franchisee must:

- (a) maintain and take all steps necessary to maintain the Confidential Information and the Notes in strictest confidence;
- (b) ensure that proper and secure storage is provided for the Confidential Information and the Notes while in the possession or under the control of the Prospective Franchisee;
- (c) take all precautions necessary to prevent accidental disclosure of any of the Confidential Information or any of the Notes;
- (d) not disclose any of the Confidential Information or any of the Notes to any person other than those of the Prospective Franchisee's employees, officers and agents who are required to receive and consider the Confidential Information in the course of (and solely for the purpose of) the Approved Purposes;
- (e) use the Confidential Information and the Notes solely for the Approved Purposes;
- (f) not make any Notes or allow any Notes to be made except as necessary in connection with the Approved Purposes;
- (g) keep a record of what copies have been made of the Confidential Information and of the Notes and what Notes have been made and by whom and supply this information to the Franchisor on request;
- (h) keep confidential the fact that the Confidential Information has been provided by the Franchisor to the Prospective Franchisee; and
- (i) not expressly or impliedly disclose the existence of the Confidential Information or the Notes.

#### 3.2 Clause 3.1 does not impose obligations on the prospective Franchisee concerning the Confidential Information which the Prospective Franchisee proves to the reasonable satisfaction of the Franchisor:

- (a) at the date of this Deed is publicly available or subsequent to the date of this Deed becomes publicly available without breach of this Deed;
- (b) the Prospective Franchisee obtained from some third party without breach by that third party of any obligation of confidence concerning that Confidential Information; or
- (c) was already in the Prospective Franchisee's possession (as evidenced by written records) at the time when that Confidential Information was first provided by or on behalf of the Franchisor.

3.3 It is not a breach of clause 3.1 for the Prospective Franchisee to disclose the Confidential Information which it is obliged by law to disclose to the person to whom it is disclosed.

#### **4. EMPLOYEES AND AGENTS**

4.1 The Prospective Franchisee must:

- (a) require all of its employees, officers and agents who received or have access to this Confidential Information of the Notes to observe all of the Prospective Franchisee's obligations and undertakings contained in this Deed;
- (b) ensure that all of the employees, officers and agents referred to in clause 4.1(a) are aware of the confidential nature of the information disclosed to them;
- (c) where the prospective Franchisee is a body corporate, nominate an officer, agent or senior employee to receive on behalf of the prospective Franchisee any documents containing the Confidential Information, being the person who will be in charge of using the Confidential Information for the approved Purposes and for the safe custody of any documents and other Confidential Information or Notes; and
- (d) from time to time when requested by the Franchisor, immediately provide the Franchisor with a list of the persons to whom Confidential Information has been disclosed.

#### **5. RETURN OF CONFIDENTIAL INFORMATION**

5.1 The Prospective Franchisee must return all documents and other media which contain Confidential Information and deliver all Notes to the Franchisor immediately when requested by the Franchisor to do so.

5.2 The Prospective Franchisee must also at the same time as it returns the documents, media and Notes referred to in clause 5.1, ensure that its offices, employees and agents return all copies of the documents, media and Notes held by them.

#### **6. INDEMNITY**

6.1 The Prospective Franchisee indemnifies the Franchisor against:

- (a) all losses suffered by the Franchisor;
- (b) all liabilities incurred by the Franchisor; and
- (c) the cost of all demands, actions and other proceedings against the Franchisor (including legal costs on a solicitor and client basis),

arising directly or indirectly as a result of or in connection with any breach or non-performance of the obligations of the Prospective Franchisee whether express or implied under this Deed.

- 6.2 This indemnity extends to liabilities incurred by the Franchisor under or in connection with any agreement by which the Franchisor is bound concerning the Confidential Information.

## **7. CONTINUATION OF OBLIGATIONS**

- 7.1 The Prospective Franchisee's obligations under this Deed continue, notwithstanding the execution of an agreement concerning the Franchise Business or the Prospective Franchisee's decision not to execute an agreement concerning the Franchise Business.

## **8. RIGHTS OF OTHER PERSONS**

- 8.1 The Franchisor and its Related Companies make no representations, warranties, assurances or inducements that the Confidential Information does not infringe the rights of other persons.

## **9. GOVERNING LAW AND JURISDICTION**

- 9.1 The law governing this Deed is the law of Queensland and the Prospective Franchisee submits to the exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia and courts with jurisdiction to hear appeals therefrom.

**EXECUTED** as a deed poll

*Where the Prospective Franchisee is an individual:*

**SIGNED SEALED AND DELIVERED** by \_\_\_\_\_ )  
\_\_\_\_\_ )

In the presence of:

.....  
(Signature)

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

*or, where the Prospective Franchisee is a body corporate:*

**THE COMMON SEAL** of \_\_\_\_\_ )  
\_\_\_\_\_ )  
Was affixed in accordance with its Articles of Association in the presence of: \_\_\_\_\_ )

.....  
(Signature of Director)

.....  
(Signature of Secretary/Director)

.....  
(Name of Director in Full)

.....  
(Name of Secretary/Director in Full)