

## **Freedom Nutritional Products Limited**

ABN 41002 814 235

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Taren Point NSW Australia

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[www.freedomnutritional.com.au](http://www.freedomnutritional.com.au)

## **JOINT ASX AND NZX ANNOUNCEMENT**

**9<sup>th</sup> April 2010**

### **Freedom Nutritional Products and A2 Corporation Merger Discussions**

Freedom Nutritional Products Limited (ASX:FNP) ("**FNP**") and A2 Corporation Limited (NZAX:ATM) ("**A2C**") today announced that they are in merger discussions in relation to an all scrip-based 'merger of equals', under which the surviving entity would remain listed on the ASX (**Merger Proposal**).

To facilitate discussions in relation to the Merger Proposal, FNP and A2C have today signed an Exclusivity Deed which provides for a 3 week exclusivity period during which the parties will:

- undertake reciprocal due diligence; and
- attempt to negotiate the terms of the Merger Proposal and agree and execute a Merger Implementation Agreement to give effect to that proposal.

Details of the exclusivity arrangements are set out in the attachment.

For further information, please contact:

#### **Freedom Nutritional Products**

**Geoffrey Babidge, Managing Director & CEO**  
**+61 419 990 987**

#### **A2 Corporation**

**Cliff Cook, Chairman**  
**+6421 932254**

**Scott Pannell, CEO**  
**+6421 456745**

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# Exclusivity Deed

**Freedom Nutritional Products Limited  
A2 Corporation Limited**

**Gilbert + Tobin**

2 Park Street  
Sydney NSW 2000  
Australia

GPO Box 3810  
Sydney NSW 2001

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## Parties

- 1 **Freedom Nutritional Products Limited (ABN 41 002 814 235)** of 80 Box Road, Taren Point, New South Wales, Australia (**FNP**).
  - 2 **A2 Corporation Limited (CN 1014105)** of Level 5, 235 Broadway, Newmarket, Auckland, New Zealand (**A2C**).
- 

## Recitals

- A The parties have entered into discussions in relation to a proposed scrip-based 'merger of equals', under which FNP will subsume (directly or indirectly) A2C (**Merger Proposal**).
- B The parties have agreed to negotiate exclusively with each other on the terms of this Deed to attempt to agree the Merger Proposal and execute a Merger Implementation Agreement to give effect to the Merger Proposal (**Merger Implementation Agreement**).

### The parties agree

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## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

### 1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this deed.

### 1.3 Consents and approvals

If the doing of any act, matter or thing under this Deed is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion (unless this Deed specifies otherwise).

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## 2 A2C Exclusivity

### 2.1 No-shop restriction

- (a) During the term of this Deed, A2C must ensure that neither it nor any of its Representatives directly or indirectly solicits, invites, facilitates, encourages or initiates any enquiries, negotiations or discussions, or communicates any intention to do any of these things, with a view to obtaining any expression of interest, offer or proposal from any person in relation to a A2C Competing Transaction.

- (b) Nothing in paragraph (a) prevents A2C from continuing to make normal presentations to, and to respond to, enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to its business generally.

## **2.2 No-talk restriction**

Subject to clause 2.5, during the term of this Deed, A2C must ensure that neither it nor any of its Representatives negotiates or enters into, continues or participates in negotiations or discussions with any other person regarding a A2C Competing Transaction, even if:

- (a) that person's A2C Competing Transaction was not directly or indirectly solicited, initiated, or encouraged by A2C or any of its Representatives; or
- (b) that person has publicly announced their A2C Competing Transaction.

## **2.3 No due diligence**

Without limiting the general nature of clause 2.2 but subject to clause 2.5, during the term of this Deed, A2C must not:

- (a) solicit, invite, facilitate or encourage any party (other than FNP or its Representatives) to undertake a due diligence investigation on A2C or any of its Related Bodies Corporate; or
- (b) make available to any person (other than FNP or its Representatives) or permit any such person to receive any non-public information relating to A2C or any of its Related Bodies Corporate.

This clause 2.3 does not prevent A2C providing information to the NZX or A2C's auditors and advisers acting in that capacity in the ordinary course of business or to otherwise effect the negotiation and entry into or performance under the Merger Implementation Agreement.

## **2.4 Notification**

Subject always to clause 2.5, during the term of this Deed, A2C must immediately inform FNP if A2C is approached by any person to engage in any activity that would breach its obligations in clauses 2.1, 2.2 or 2.3 (or would breach its obligations in clauses 2.1, 2.2 or 2.3 if it were not for clause 2.5) and as soon as reasonably practicable provide in writing to FNP:

- (a) the identity of that person; and
- (b) details of the expression of interest and/or proposal or proposed A2C Competing Transaction made by the person making the approach.

## **2.5 Exceptions**

The restrictions in clauses 2.2 and 2.3 and the notification obligations in clause 2.4 do not apply to the extent that they restrict A2C or the A2C Board from taking or refusing to take any action with respect to a bona fide A2C Competing Transaction (which was not encouraged, solicited, invited, facilitated or initiated by A2C or the A2C Board in contravention of clause 2.1), or to the extent that they require A2C to provide the notification referred to in clause 2.4, provided that the A2C Board has determined, in good faith and acting reasonably, after having obtained written advice from its legal and, if appropriate, its financial advisers, that:

- (a) the A2C Competing Transaction is (having regard to its terms, including as to conditionality, and the substance of the counterparty) a superior proposal to the Merger Proposal, or would be a superior proposal to the Merger Proposal if it is proposed; and
  - (b) failing to respond to such bona fide A2C Competing Transaction or providing the notification referred to in clause 2.4 (as applicable) would be likely to constitute a breach of one or more of the A2C directors' fiduciary or statutory obligations.
- 

### **3 FNP Exclusivity**

#### **3.1 No-shop restriction**

- (a) During the term of this Deed, FNP must ensure that neither it nor any of its Representatives directly or indirectly solicits, invites, facilitates, encourages or initiates any enquiries, negotiations or discussions, or communicates any intention to do any of these things, with a view to obtaining any expression of interest, offer or proposal from any person in relation to an FNP Competing Transaction.
- (b) Nothing in paragraph (a) prevents FNP from continuing to make normal presentations to, and to respond to, enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to its business generally.

#### **3.2 No-talk restriction**

Subject to clause 3.5, during the term of this Deed, FNP must ensure that neither it nor any of its Representatives negotiates or enters into, continues or participates in negotiations or discussions with any other person regarding an FNP Competing Transaction, even if:

- (a) that person's FNP Competing Transaction was not directly or indirectly solicited, initiated, or encouraged by FNP or any of its Representatives; or
- (b) that person has publicly announced their FNP Competing Transaction.

#### **3.3 No due diligence**

Without limiting the general nature of clause 3.2 but subject to clause 3.5, during the term of this Deed, FNP must not:

- (a) solicit, invite, facilitate or encourage any party (other than A2C or its Representatives) to undertake a due diligence investigation on FNP or any of its Related Bodies Corporate; or
- (b) make available to any person (other than A2C or its Representatives) or permit any such person to receive any non-public information relating to FNP or any of its Related Bodies Corporate.

This clause 3.3 does not prevent FNP providing information to the ASX or FNP's auditors and advisers acting in that capacity in the ordinary course of business or to otherwise effect the negotiation and entry into or performance under the Merger Implementation Agreement.

#### **3.4 Notification**

Subject always to clause 3.5, during the term of this Deed, FNP must immediately inform A2C if FNP is approached by any person to engage in any activity that would breach its

obligations in clauses 3.1, 3.2 or 3.3 (or would breach its obligations in clauses 3.1, 3.2 or 3.3 if it were not for clause 3.5) and as soon as reasonably practicable provide in writing to A2C:

- (a) the identity of that person; and
- (b) details of the expression of interest and/or proposal or proposed FNP Competing Transaction made by the person making the approach.

### **3.5 Exceptions**

The restrictions in clauses 3.2 and 3.3 and the notification obligations in clause 3.4 do not apply to the extent that they restrict FNP or the FNP Board from taking or refusing to take any action with respect to a bona fide FNP Competing Transaction (which was not encouraged, solicited, invited, facilitated or initiated by FNP or the FNP Board in contravention of clause 3.1), or to the extent that they require FNP to provide the notification referred to in clause 3.4, provided that the FNP Board has determined, in good faith and acting reasonably, after having obtained written advice from its legal and, if appropriate, its financial advisers, that:

- (a) the FNP Competing Transaction is (having regard to its terms, including as to conditionality, and the substance of the counterparty) a superior proposal to the Merger Proposal, or would be a superior proposal to the Merger Proposal if it is proposed; and
- (b) failing to respond to such bona fide FNP Competing Transaction or providing the notification referred to in clause 3.4 (as applicable) would be likely to constitute a breach of one or more of the FNP's directors' fiduciary or statutory obligations.

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## **4 Term of Deed**

This Deed, and the parties' obligations under it, will terminate upon the earliest of the following to occur:

- (a) 3 May 2010;
- (b) the entry by the parties into the Merger Implementation Agreement; or
- (c) such other later date agreed by the parties.

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## **5 Announcements**

- (a) As soon as reasonably practicable after the entry into this Deed, the parties must jointly release to the ASX and NZX the form of announcement regarding this Deed which has been agreed and initialled by the parties prior to entry into this Deed.
- (b) Subject to clause 5(c), each party must use its best endeavours to consult with the other prior to making any other public announcements in connection with the matters the subject of this Deed.
- (c) Where a party is required by applicable law, the NZX or the ASX Listing Rules or any other applicable stock exchange regulation to make any announcement or make any disclosure relating to matters the subject of this Deed, it may do so only after it has given the other party as much notice as is reasonably practicable in the context of any deadlines imposed by law or a Government Agency and has consulted with the other party as to the content of that announcement of disclosure.

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## 6 Warranties

Each party represents and warrants to the other that, at the date of this Deed:

- (a) it is duly incorporated under the laws of the place of its incorporation;
- (b) it has the power and authority to sign this Deed and perform and observe all its terms;
- (c) this Deed has been duly executed and is a legal, valid and binding agreement, enforceable against it in accordance with its terms; and
- (d) it is not bound by any contract which may restrict its right or ability to enter into or perform this Deed.

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## 7 Due diligence

The parties agree to conduct certain due diligence enquiries on each other, in a form and manner to be separately agreed by the parties, provided that such due diligence enquiries are completed by no later than 3 May 2010.

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## 8 Miscellaneous

### 8.1 Notices

Any notice given under this Deed:

- (a) must be in writing addressed to the intended recipient at the address shown below or the address last notified by the intended recipient to the sender:

#### **FNP**

Address: 80 Box Road, Taren Point, New South Wales, Australia  
Attention: Geoffrey Babidge  
Fax: +61 9525 5406

#### **with a copy to Gilbert + Tobin:**

Address: Level 37, 2 Park Street, Sydney, New South Wales, Australia  
Attention: Jason Lambeth  
Facsimile: +61 9263 4111

#### **A2C**

Address: c/- Simpson Grierson, 88 Shortland Street, Auckland,  
New Zealand  
Attention: Richard Le Grice  
Fax: +64 9 523 3912

**with a copy to Simpson Grierson:**

Address: Simpson Grierson, 88 Shortland Street, Auckland,  
New Zealand  
Attention: Peter Hinton/Andrew Matthews  
Fax: +64 9 977 5067

- (b) must be signed by a person duly authorised by the sender; and
- (c) will be taken to have been given when delivered, received or left at the above address. If delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 5.00 pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

**8.2 Entire Deed**

This Deed contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

**8.3 Amendment**

This Deed may be amended only by another agreement executed by all parties.

**8.4 Assignment**

The rights and obligations of each party under this Deed are personal. They cannot be assigned, charged or otherwise dealt with, and no party shall attempt or purport to do so, without the prior written consent of all the parties.

**8.5 Severance**

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

**8.6 No waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

**8.7 No merger**

The rights and obligations of the parties will not merge on completion of any transaction under this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

**8.8 Costs and expenses**

Each party will pay its own costs and expenses in connection with:

- (a) the negotiation, preparation, execution, and performance of this Deed; and

(b) the proposed, attempted or actual implementation of this Deed.

#### **8.9 Governing law**

This Deed is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

#### **8.10 Counterparts**

This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement. The parties agree that a facsimile or PDF copy of a counterpart received from a party shall be regarded as an original copy of that counterpart received from that party.

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## Schedule 1 — Dictionary

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### 1 Dictionary

In this Deed:

**A2C Board** means the board of directors of A2C from time to time.

**Adviser** means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity to the market in general and who has been engaged by that entity.

**ASX** means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange it operates.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales, Australia or Auckland, New Zealand.

**Competing Transaction** means, in relation to a party, a transaction, which if completed, would mean a person (other than a party to this Deed or a Related Body Corporate of a party) would:

- (a) directly or indirectly, acquire an interest, a relevant interest in or become the holder of:
  - (i) more than 20% of the securities of the party or any of its subsidiaries; or
  - (ii) the whole or a material part of the business or property of the party or any of its subsidiaries;
- (b) acquire control of the party, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire, or merge with (including by way of a reverse takeover bid, scheme of arrangement, amalgamation or dual listed companies structure) the party.

**Companies Act** means the *New Zealand Companies Act 1993*.

**Corporations Act** means the *Corporations Act 2001 (Cth)*.

**Government Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity in any part of the world. It includes the Australian Securities and Investments Commission, ASX, NZX (and any other stock exchange).

**FNP Board** means the board of directors of FNP from time to time.

**Merger Proposal** has the meaning given to that expression in Recital A.

**Merger Implementation Agreement** has the meaning given to that expression in Recital B.

**NZX** means NZX Limited (Company No. 1266120) or the New Zealand Stock Exchange it operates.

**Officer** means, in relation to an entity, its directors, officers and employees.

**Related Body Corporate** has the meaning, in relation to FNP, given to that expression in the Corporations Act and, in relation to the A2C, given to "Related Company" in section 2(3) of the Companies Act provided that a reference to "company" in that section will refer to any company, notwithstanding the jurisdiction of incorporation of the relevant company.

**Representative** means, in relation to a party:

- (a) a Related Body Corporate of the party;
- (b) an Officer of the party or any of the party's Related Bodies Corporate; or
- (c) an Adviser to the party or any of the party's Related Bodies Corporate.

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## 2 Interpretation

In this Deed the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Deed;
  - (vi) this Deed includes all schedules and attachments to it;

- (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (viii) an agreement other than this Deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (ix) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) in determining the time of day, where relevant to this Deed, the relevant time of day is:
- (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
  - (ii) for any other purpose under this Deed, the time of day in the place where the party required to perform an obligation is located; and
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it.

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**Execution page**

**Executed and delivered as a deed.**

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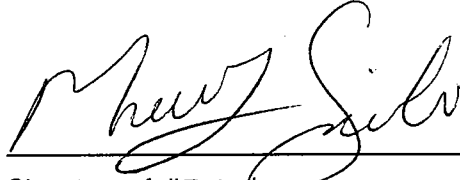
Signed and delivered by **Freedom Nutritional Products Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:



Signature of director

G H BARLOWE

Name of director (print)



Signature of ~~director~~ secretary

Mark Gilio

Name of ~~director~~ secretary (print)

---

Signed by **A2 Corporation Limited** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director (print)

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**Execution page**

**Executed and delivered as a deed.**

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Signed and delivered by **Freedom Nutritional Products Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

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Signature of director

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Signature of director/secretary

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Name of director (print)

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Name of director/secretary (print)

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Signed by **A2 Corporation Limited** by:

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Signature of director

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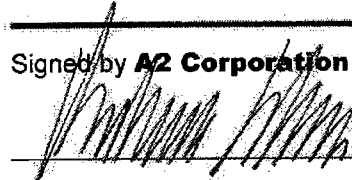
Signature of director

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Name of director (print)

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Name of director (print)



RICHARD GRAM LE CAILLE



DAVID W. MAIR

