

## **Freedom Nutritional Products Limited**

ABN 41002 814 235

80 Box Road

Taren Point NSW Australia

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

### **ASX ANNOUNCEMENT**

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

#### **Freedom Nutritional Products and Mountain Road Investments**

Freedom Nutritional Products Limited (ASX:FNP) ("**FNP**") today announced that it has been granted a right of first refusal by Mountain Road Investments Limited ("**MRI**"), the largest shareholder in A2 Corporation Limited (NZAX:ATM) ("**A2C**"), in respect of up to 15% of the shares issued in A2C (**Offer Shares**). Under this arrangement, FNP has the right to acquire the Offer Shares if MRI wishes to dispose of those shares to a third party under a cash offer. The consideration payable for the Offer Shares by FNP is a cash amount equal to the third party offer price.

A copy of the Right of First Refusal Agreement is attached.

For further information, please contact:

#### **Freedom Nutritional Products**

**Geoffrey Babidge, Managing Director & CEO**

**+61 419 990 987**

#### **Mountain Road Investments**

**Andrew Edwards**

**+6421 944152**

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# Right of First Refusal Agreement

**Freedom Nutritional Products Limited**

**Mountain Road Investments Limited**

**Gilbert + Tobin**

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Sydney NSW 2000  
Australia

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Sydney NSW 2001

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## Parties

- 1 **Freedom Nutritional Products Limited (ABN 41 002 814 235)** of 80 Box Road, Taren Point, NSW, Australia (**FNP**).
  - 2 **Mountain Road Investments Limited (Company No. 861908)** of Level 5, 25 Broadway, Newmarket, Auckland, New Zealand (**Shareholder**).
- 

## Background

- A The Shareholder is the registered holder and the beneficial owner of the RFR Shares.
- B A2C and FNP have entered into discussions concerning the FNP Proposal.
- C The Shareholder has agreed to grant to FNP a right of first refusal in relation to the RFR Shares on the terms and conditions of this 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 agreement.

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## 2 Right of First Refusal

### 2.1 Right of First Refusal

- (a) In return for FNP paying to the Shareholder \$1.00 (receipt of which is acknowledged by the Shareholder), the Shareholder irrevocably grants to FNP the right to require the Shareholder, within 10 Business Days after issuance of an RFR Notice and in accordance with the terms and conditions of this agreement, to sell to FNP (or to its nominee as FNP may direct) all or some of the RFR Shares for the Purchase Consideration (**RFR**).
- (b) To avoid doubt, the RFR confers on FNP the right, but not the obligation, to give the Shareholder the RFR Exercise Notice.

## **2.2 Covenant in relation to Non-Cash Competing Offers**

For the consideration mentioned above, the Shareholder irrevocably undertakes that it will not during the RFR Period accept any third party offer for any A2C shares or any Competing Transaction that offers consideration other than 100% cash, or take any action which would give rise to an obligation on the Shareholder to effect any such acceptance.

## **2.3 RFR Period**

The RFR Period is the period commencing on the date of this agreement and ending on the Sunset Date.

## **2.4 Lapse of RFR**

The RFR lapses on the earliest to occur of the following:

- (a) the expiry of the RFR Period; and
- (b) the acquisition of the RFR Shares by FNP under the FNP Proposal before the RFR is exercised.

## **2.5 Effect on lapsing**

Upon lapsing, the RFR is of no further force and effect and (without prejudice to any accrued rights or obligations of either party) there will be no continuing rights or obligations of either party.

## **2.6 RFR Notice**

The Shareholder must give an RFR Notice to FNP if, during the RFR Period:

- (a) the Shareholder has received a 100% cash offer from a third party to acquire all or a specified number of the RFR Shares or any other A2C shares held by it; or
- (b) a Competing Transaction that offers 100% cash consideration is announced or is open for acceptance,

(together **Third Party Offer**) and, in either case, the Shareholder wishes to sell, transfer, dispose of or vote all or some of the RFR Shares or any other shares held by it in A2C under or in favour of the Third Party Offer,

## **2.7 RFR Exercise**

FNP may only exercise the RFR if the Shareholder has given an RFR Notice.

## **2.8 RFR Exercise Notice**

- (a) The RFR may be exercised in respect of all or some of the RFR Shares and may only be exercised by FNP giving to the Shareholder an RFR Exercise Notice specifying the number of RFR Shares to which the RFR Exercise Notice relates.
- (b) If FNP exercises the RFR in respect of some, but not all, of the RFR Shares, the Shareholder will be permitted to dispose of the remaining RFR Shares pursuant to a Third Party Offer on the terms set out in the RFR Notice.
- (c) If FNP does not give an RFR Exercise Notice to the Shareholder within 10 Business Days after issuance of an RFR Notice, the Shareholder will be permitted

to dispose of all or any of their RFR Shares to pursuant to a Third Party Offer on the terms set out in the RFR Notice.

## **2.9 Sale free from any Encumbrance**

- (a) Upon giving an RFR Exercise Notice, in accordance with the terms of this agreement, the Shareholder must sell to FNP (or to its nominee as FNP may direct) the number of RFR Shares specified in the RFR Exercise Notice free from any Encumbrance or restriction on transfer and FNP must buy those RFR Shares from the Shareholder for the Purchase Consideration.
- (b) During the RFR Period and provided the RFR has not lapsed, the Shareholder must not sell the RFR Shares unless it has fully complied with its obligations under this agreement and must not otherwise assign, create an Encumbrance over or dispose of or deal with the RFR Shares or any right to or interest in the RFR Shares without the prior written consent of FNP (which consent shall not be unreasonably withheld where FNP's interests under the RFR are not prejudiced).

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## **3 RFR Settlement**

### **3.1 Settlement**

If FNP exercises the RFR in accordance with clauses 2.7 and 2.8(a), then Settlement of the sale and purchase of the RFR Shares must take place at 2:00pm on the Settlement Date at the offices of the Shareholder in Auckland or at such other place as the parties agree.

### **3.2 Delivery obligations of the Shareholder**

On the Settlement Date the Shareholder must deliver:

- (a) duly executed transfers for the relevant RFR Shares, executed by the Shareholder and in registrable form; and
- (b) share certificates for the relevant RFR Shares (if A2C has issued such share certificates).

### **3.3 Delivery obligations of FNP**

If the Shareholder performs its obligations under clause 3.2, at Settlement FNP must pay to the Shareholder the Purchase Consideration.

### **3.4 Interdependence**

- (a) The obligations of the Shareholder and FNP under this clause 3 are interdependent.
- (b) Settlement will not occur unless all of the obligations of the Shareholder and FNP under clause 3 are complied with and fully effective.

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## **4 Power of attorney**

Subject to FNP complying with clause 3.3, the Shareholder grants to FNP (or to its nominee) an irrevocable power of attorney to execute all documents and take any actions on the Shareholder's behalf which are necessary or convenient to give effect to the transfer of the relevant RFR Shares including, without limitation:

- (a) to sign completed share transfer forms for the relevant RFR Shares in registrable form in favour of FNP (or its nominee) as transferee on Settlement on the Shareholder's behalf; and
- (b) to exercise all the powers of a registered holder of the relevant RFR Shares until FNP (or its nominee) becomes registered as the holder of the relevant RFR Shares,

such appointment to be deemed to have been made irrevocably when the Purchase Consideration is paid to the Shareholder pursuant to the terms of this agreement.

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## 5 Representations and warranties

### 5.1 Representations and warranties

Each party represents and warrants that:

- (a) **(documents effective)** this agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration; and
- (b) **(no contravention)** neither its execution of this agreement nor the carrying out by it of the transactions that it contemplates, does or will:
  - (i) contravene any law to which it or any of its property is subject or any order of any government agency that is binding on it or any of its property;
  - (ii) contravene any authorisation, consent, declaration, exemption, notarisation or waiver, however it is described;
  - (iii) contravene any undertaking or instrument binding on it or any of its property;
  - (iv) contravene its constitution; or
  - (v) require it to make any payment or delivery in respect of any financial accommodation or financial instrument before it would otherwise be obliged to do so.

### 5.2 Warranty by the Shareholder

The Shareholder represents and warrants to FNP that:

- (a) the Shareholder is legally and beneficially entitled to the RFR Shares; and
- (b) the RFR Shares are not subject to any Encumbrance.

### 5.3 Repetition of representations and warranties

The representations and warranties in clause 5.1 and 5.2 are taken to be repeated on the Settlement Date.

### 5.4 Reliance on representations and warranties

Each party acknowledges that the other party has executed this agreement and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made or repeated in this clause.

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## 6 General

### 6.1 Notices

Any notice given under this agreement:

- (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, NSW, Australia  
Attention: Geoffrey Babidge  
Fax: + 61 2 9525 5406

#### The Shareholder

Address: Level 5, 25 Broadway, Newmarket, Auckland, New Zealand  
Attention: Greg Hinton  
Fax: +64 9 379 3342

- (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.

### 6.2 Entire Agreement

This agreement 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.

### 6.3 Amendment

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

### 6.4 Assignment

The rights and obligations of each party under this agreement 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.

### 6.5 Severance

Any provision of this agreement 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 agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

### 6.6 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this agreement 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.

#### **6.7 Further assurances**

Each party must do anything necessary (including executing agreements and documents) to give full effect to this agreement and the transactions contemplated by it.

#### **6.8 No merger**

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

#### **6.9 Costs and expenses**

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

- (a) the negotiation, preparation, execution, and performance of this agreement; and
- (b) the proposed, attempted or actual implementation of this agreement.

#### **6.10 Governing law**

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

#### **6.11 Counterparts**

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

#### **6.12 Confidentiality**

- (a) The parties must maintain absolute confidentiality in respect of the existence and terms of this agreement.
- (b) No disclosure of the existence or terms of this agreement is permitted without the prior written consent of the other party, unless the disclosure is required by law or by the NZX or ASX or is made to the party's own officers, auditors or professional advisers who require knowledge of this agreement in the performance of their duties and who are also subject to an obligation of confidentiality to the disclosing party.

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## Schedule 1 — Dictionary

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### 1 Dictionary

In this agreement:

**A2C** means A2 Corporation Limited (CN. 1014105).

**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 a transaction, which if completed, would mean a person (other than FNP or a Related Body Corporate of FNP), 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 A2C or any of its subsidiaries; or
  - (ii) the whole or a material part of the business or property of A2C or any of its subsidiaries;
- (b) acquire control of A2C, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge (including by way of a reverse takeover bid, scheme of arrangement, amalgamation or dual listed companies structure) with the A2C.

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

**Encumbrance** means a security interest, mortgage, charge, pledge, lien, hypothecation or third party interest of any kind whatever, or an agreement to create any of them or to allow any of them to exist.

**FNP Proposal** means the proposal by FNP to merge with A2 by means of a transaction (including an amalgamation or scheme of arrangement under the *New Zealand Companies Act 1993*) under which FNP acquires (directly or indirectly) all of the Shares on issue in, or assets and property of, A2C, or such other transaction structure as agreed by FNP and A2C.

**Merger Implementation Agreement** means an agreement entered into between A2C and FNP to give effect to the FNP Proposal.

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

**RFR** means the right of first refusal granted by the Shareholder to FNP under clause 2.1.

**RFR Exercise Notice** means a notice given by FNP to the Shareholder under clause 2.8(a) substantively in the form of Schedule 3.

**RFR Notice** means a notice given by the Shareholder to FNP under clause 2.6 substantively in the form of Schedule 2.

**RFR Period** has the meaning given to it in clause 2.3.

**RFR Shares** means 57,197,886 ordinary shares in Target, being approximately 15% of the total issued share capital of the Target as at the date of this agreement.

**Purchase Consideration** means such cash sum per RFR Share as is offered under the relevant Third Party Offer.

**Settlement** means the completion of the acquisition of the RFR Shares by FNP in accordance with clause 3.

**Settlement Date** means the date which is 5 Business Days after the Shareholder receives an RFR Exercise Notice from FNP.

**Sunset Date** means the later of:

- (a) 1 Business Day after the date on which the exclusivity arrangements between FNP and A2C in relation to the FNP Proposal are terminated; and
- (b) the sunset date as that term is defined in the Merger Implementation Agreement.

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## 2 Interpretation

In this agreement 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 agreement;
- (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 agreement;

- (vi) this agreement 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; and
  - (viii) an agreement other than this agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
- 
- (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 agreement, 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 agreement, 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 agreement or any part of it.

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**Schedule 2 —  
RFR Notice - RFR Shares**

To: FNP

The Shareholder has become aware of a Third Party Offer, the key terms of which (including price) are set out below.

In accordance with the terms of the Agreement, this notice entitles FNP (or its nominee) to, within 10 Business Days after issuance of this notice and in accordance with the terms and conditions of the Agreement, to acquire all or some of the RFR Shares for the Purchase Consideration.

**Third Party Offer – Key Terms:**

**Number of Shareholders A2C's shares  
subject of the Third Party Offer:**

**Identity of the Other Offeror:**

**Price per A2C shares:**

**Other terms:**

In this RFR Exercise Notice, terms defined in the Right of First Refusal Agreement between the Shareholder and FNP (**Agreement**) have the same meanings.

**DATED [date]**

Signed for and on behalf of Mountain Road Investments Limited  
by:

-----  
Officer:  
Name: [printed]

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### Schedule 3 – RFR Exercise Notice - RFR Shares

To: Mountain Road Investments Limited

By this notice FNP exercises the RFR conferred by clause 2.1 of the Agreement in respect of [*insert number*] RFR Shares and requires you to sell [*insert number*] RFR Shares for the relevant Purchase Consideration and otherwise in accordance with the Agreement.

In this RFR Exercise Notice, terms defined in the Right of First Refusal Agreement between the Shareholder and FNP (**Agreement**) have the same meanings.

**DATED** [*date*]

Signed for and on behalf of Freedom Nutritional Products Limited  
by:

-----  
Officer:  
Name: [printed]

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**Execution page**

**Executed as a agreement.**

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Signed and delivered by **Freedom Nutritional Products Limited** by:

*GH Baridge*

Signature of director

GH BARIDGE

Name of director (print)

*Mark Gilio*

Signature of ~~director~~ secretary

Mark Gilio

Name of ~~director~~ secretary (print)

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Signed and delivered by **Mountain Road Investments Limited** by:

Signature of director

Name of director (print)

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**Execution page**

**Executed as a agreement.**

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Signed and delivered by **Freedom Nutritional Products Limited** by:

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

\_\_\_\_\_  
Signature of director/secretary

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

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

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Signed and delivered by **Mountain Road Investments Limited** by:

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

*Gregory Paul Minton*

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