

9 August 2023

Mergers, Exemptions & Digital – Competition Exemptions
Australian Competition and Consumer Commission

For the attention of:

Mr David Hatfield, Director

Ms Anna Pound, Assistant Director

Ms Sophie Magliano, Senior Analyst

By email:

exemptions@acc.gov.au

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Dear Mr Hatfield, Ms Pound and Ms Magliano

Re: AA1000641 – Fred IT Group & Ors – variation to Proposed Conduct

Further to recent correspondence and discussions, please be advised that applicants wish to vary the Proposed Conduct as defined in the above Application (noting that this letter uses defined terms in accordance with the Application).

Background to variation

Many of the matters which were originally to be the subject of agreement between Fred IT Group and MediSecure have instead been settled between MediSecure and the Department directly. Whilst Fred IT Group has had no visibility in relation to the discussions between MediSecure and the Department, its obligations under the Contract have been reduced as a consequence – this was effected by way of a contract variation between Fred IT Group and the Department signed on 3 July 2023.

At the same time, many vendors have approached Fred IT Group directly in relation to transitioning to the eRx PDS since becoming aware of the tender outcome. This has obviated the need for Fred IT Group to engage with MediSecure in relation to identifying those vendors requiring transition and obtaining assistance from MediSecure in relation to the transition process.



In its original Application, Fred IT Group identified three aspects to the Proposed Conduct for which authorisation was sought: Site Transition, Vendor Transition, and Data Transition. The two developments outlined above mean that authorisation for activities relating to Site Transition and Vendor Transition is no longer required.

Data transition

Notwithstanding the narrowing of the Proposed Conduct which these developments have prompted, Fred IT Group presses its Application in relation to Data Transition. A smooth transition to a single provider model in respect of publicly-funded electronic prescriptions will still be best achieved if data stored on the MediSecure system can be transferred to the eRx PDs. In accordance with the Interim Authorisation granted by the ACCC on 21 June 2023, the parties have been negotiating the extent to which such transfer is permitted (taking into account their respective privacy obligations, and the consents which were granted at the time the data was collected). Accordingly, authorisation of the Proposed Conduct as now defined (particularly those matters identified in revised paragraph 30 of the Application) will contribute to as smooth a transition as possible to a single provider model for publicly-funded electronic prescriptions.

Variation to Application

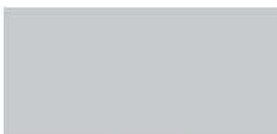
Given the background outlined above, I ask that the following parts of the original Application be replaced with the corresponding attachments to this letter:

- paragraphs 26-32 of the main body of the Application; and
- Annexure B (for which I have included public and confidential versions).

For completeness, I also attach a mark-up of paragraphs 26-32 of the original Application, indicating the changes made.

Please let me know if you have any further queries in relation to this issue.

Kind regards,



Alexandra Merrett
Competition Lawyer

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic). Liability limited by a scheme approved under Professional Standards Legislation

Att.

26. Accordingly, this application pertains to the co-operative arrangements that would be necessary between Fred IT Group and MediSecure to effect a smooth transition.
 27. The transitional arrangements, to the extent they require cooperation between Fred IT Group and MediSecure, essentially relate to:
 - 27.1. [deliberately left blank];
 - 27.2. [deliberately left blank];
 - 27.3. **data transition** (which is subject to “reasonable commercial efforts”, per clause 3.2(a) of Schedule 5 of the Contract). Specifically:
 - 27.3.1. transferring all current e-prescriptions stored within the MediSecure PDS to the eRx system;
 - 27.3.2. obtaining (to the extent required) technical assistance from MediSecure to ensure the eRx system can successfully integrate data from the MediSecure system;
 - 27.3.3. obtaining (to the extent required) ongoing support from MediSecure to Fred IT Group to identify and resolve technical and data-related issues as they arise.
 28. [Deliberately left blank.]
 29. [Deliberately left blank.]
 30. To meet the Department’s expectations and effect the transitional arrangements within the framework provided by Schedule 5, Fred IT Group would (assuming this application is granted) seek to make and give effect to one or more contracts, arrangements or understandings with MediSecure in relation to the following matters:
 - 30.1. the date or dates by which certain prescriptions and related data will transfer from the MediSecure PDS to the eRx PDS and the process for how such data will be transferred;
 - 30.2. [deliberately left blank];
 - 30.3. when and how the MediSecure PDS will cease to be used in respect of publicly-funded scripts, such that new publicly-funded prescriptions are no longer created, stored or accessed via this system; and
 - 30.4. (subject to the proviso set out above at paragraph 27.3) MediSecure’s ongoing operation of its PDS for the duration of the transition period (and possibly longer) to ensure the integrity of all data stored on its system is maintained.
 - 30.5. [deliberately left blank.]
 31. Vendors include prescribers and prescribing software providers, dispensers and dispensing software providers, and mobile intermediaries. These vendors as discussed in further detail below at paragraph 42.
 32. Fred IT Group’s obligations with respect to transition, including as they relate to or involve MediSecure, are set out in Schedule 5 of the Contract. On 3 July 2023, the parties signed a variation which included a revised Schedule 5, which is attached as **Annexure B**.
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Australian Government
Department of Health
and Aged Care

Schedule 9 – Change Order

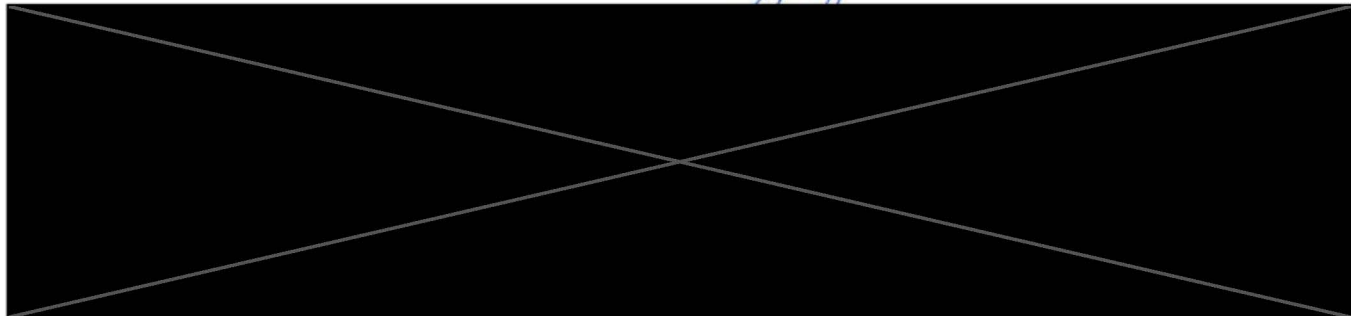
Change Order Number to Contract Number E21-576909

ITEM	DESCRIPTION	DETAILS
1.	Title of Change Order	Variation to amend contract terms and procure additional services.
2.	Description of Change Order	<p>1. Delete the words "Subject to clause 3.3" from clause 3.1 ("Contract Period") of the Contract.</p> <p>2. From Clause 3 of the Contract ("Term"), delete Clause 3.3 ("Condition precedent and commencement of Transition In").</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
4.	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

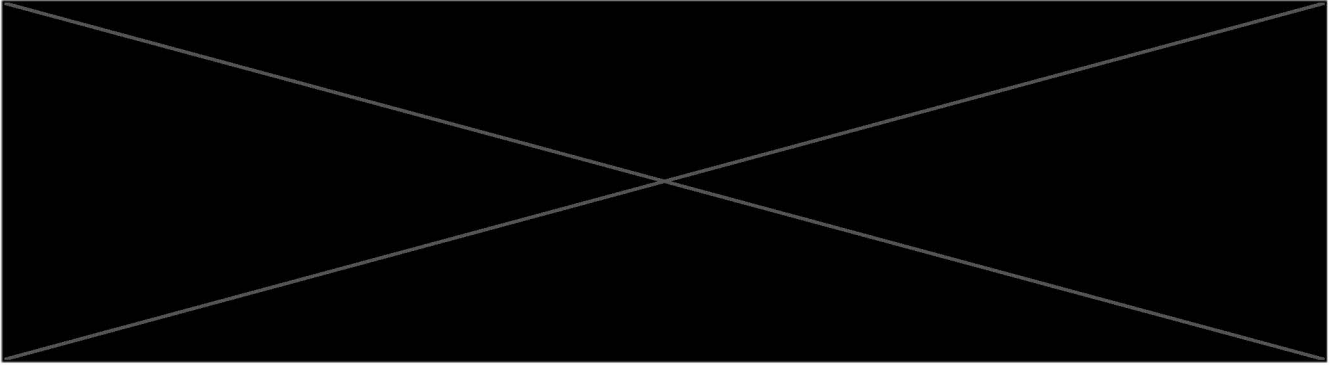
ITEM	DESCRIPTION	DETAILS
		<p>[REDACTED]</p> <p>8. Replace "Schedule 5 – Transition In" with the new Schedule 5 at Attachment A of this Change Order.</p> <p>█ [REDACTED]</p> <p>i. [REDACTED]</p> <p>iii. [REDACTED]</p>
3.	Contract	Contract dated 8 May 2023 for Electronic Prescribing Services (the Contract).
4.	Party Representatives	[REDACTED]

ITEM	DESCRIPTION	
5.	Preservations	
	Acknowledgement of rights	[REDACTED]
6.	Term	The Contract Period is not amended by this Change Order
7.	Fees	[REDACTED]
8.	Invoices and Payment	As per the Contract.
9.	Changes made by this Change Order	There are no other changes to the Contract resulting from this Change Order.

SIGNED, SEALED and DELIVERED by the
COMMONWEALTH OF AUSTRALIA as
represented by THE DEPARTMENT OF
HEALTH AND AGED CARE by its
authorised signatory in the presence of:



SIGNED, SEALED and DELIVERED by
FRED IT GROUP PTY LTD
(ABN 68 109 546 901) by two Directors or
a Director and Secretary in accordance
with s.127 of the Corporations Act 2001
(Cth):



ATTACHMENT A

Schedule 5– Transition In

1. OVERVIEW OF TRANSITION IN SERVICES

- (a) The Service Provider must ensure that the Solution and the Services are transitioned-in so as to minimise the risk of disruption to the EPE and ensure service continuity.
- (b) The Service Provider must transition the following sites to use Fred IT's Prescription Delivery Service (PDS) for Eligible Electronic Prescriptions:
 - (i) The sites of Transacting Entities whose software is currently connected both to Fred IT's PDS and to the PDS of the departing incumbent provider; and
 - (ii) The sites of Transacting Entities whose software is currently connected to the PDS of the departing incumbent provider only.
- (c) Subject to clause 3.2(a), following the site transition, the Service Provider must transition any Eligible Electronic Prescriptions from the PDS of the departing incumbent provider to Fred IT's PDS.
- (d) The Department understands that the transition-in services will be managed by Fred IT and that Fred IT may engage subcontractors, one of which may be the departing incumbent provider, to complete the transition in.

2. TIMING

- (a) The Service Provider will commence transition on the Commencement Date and will complete phase 1 of transition within 5 months from the Commencement Date.
- (b) Phase 1 of transition will be deemed to have been completed when:
 - (i) 100% of conformant Transacting Entities have successfully dispensed an Eligible Electronic Prescription from Fred IT's PDS; and
 - (ii) the number of Transacting Entities which represent 95% of prescriptions by volume have successfully prescribed a prescription into Fred IT's PDS.
 - (iii) Subject to clause 3.2(a), 100% of Eligible Electronic Prescriptions within the PDS of the departing incumbent provider resides in Fred IT's PDS.
- (c) The Service Provider will commence phase 2 of transition immediately on completion of the phase 1 transition.

- (d) Phase 2 of transition will be deemed to have been completed when the remaining Transacting Entities which represent the final 5% of prescriptions by volume have successfully prescribed an Eligible Electronic Prescription into Fred IT's PDS.
- (e) The obligations in this clause 2 apply only to the extent that the conformant Transacting Entity is ongoing and operational as at the relevant time.

3. SERVICES TO BE PROVIDED

3.1 Site transition services

- (a) For the sites of Transacting Entities whose software is currently connected both to Fred IT's PDS and to the PDS of the departing incumbent provider, the Service Provider must transition them to exclusively use Fred IT's PDS for Eligible Electronic Prescriptions by undertaking activities that may include but may not be limited to:
 - (i) Contacting all sites to advise them that they will need to register to use Fred IT's PDS service for Eligible Electronic Prescriptions and that the departing incumbent provider is expected to release them from their contract in respect of these prescriptions;
 - (ii) providing guidance on how to register;
 - (iii) contacting registered sites and arranging an appointment for the technical transition to take place;
 - (iv) conducting the technical transition, any technical escalation and support for transition;
 - (v) providing training for the site; and
 - (vi) providing ongoing help desk and other support services.
- (b) For the sites of Transacting Entities whose software is currently connected to the PDS of the departing incumbent provider only, the Service Provider must transition them to exclusively use Fred IT's PDS for Eligible Electronic Prescriptions by undertaking activities that may include but may not be limited to:
 - (i) contacting all sites to advise them that they will need to contact Fred IT to transition their PDS service from their departing incumbent provider to Fred IT for Eligible Electronic Prescriptions;
 - (ii) receiving contact from sites and providing the required specifications and support material to connect to Fred IT's PDS;
 - (iii) providing support to sites if required to code to the Fred IT specification and undertake conformance testing;

- (iv) on request from sites, coordinating a conformance assessment and advising the sites of its completion;
- (v) providing support to sites if required to submit the Electronic Prescribing Conformance Vendor Declaration Form to the ADHA;
- (vi) receiving notifications from the ADHA of sites deemed to be conformant and given permission to go into production;
- (vii) contacting conformant sites to advise them that they will need to upgrade their software and register to use Fred IT's PDS service for Eligible Electronic Prescriptions;
- (viii) providing guidance on how to register;
- (ix) contacting registered sites and arranging an appointment for the technical transition to take place;
- (x) conducting the technical transition, any technical escalation and support for transition;
- (xi) providing training for the site; and
- (xii) providing ongoing help desk and other support services.

3.2 Data transition services

- (a) The Service Provider must use reasonable commercial efforts to transition any Eligible Electronic Prescriptions from the PDS of the departing incumbent provider to the Fred IT PDS.
- (b) Data transition services may include (subject to agreement with the departing incumbent provider) the following activities:
 - (i) maintenance of the departing incumbent provider's database and the interoperability service bus between Fred IT and the departing incumbent provider
 - (ii) co-development and implementation of code by Fred IT and the departing incumbent provider to enable Eligible Electronic Prescriptions to be identified as being solely in the departing incumbent's database and transitioned to Fred IT.

3.3 Planning

- (a) Within 14 days of the Commencement Date, the Service Provider must provide a Transition Plan to the Department for approval detailing how the Service Provider will meet the requirements of this Schedule 5.

3.4 Reporting and governance

- (a) Within 28 days of the Commencement Date, the Service Provider must commence provision of fortnightly Transition Reports by email to the Department Contract Manager in a format to be agreed between the Parties. The Transition Reports must detail the Service Provider’s performance against the Transition Plan, together with any associated risks and mitigations.
- (b) The Service Provider must attend weekly status meetings with the Department Contract Manager throughout the transition and must present its Transition Reports to the Department’s Prescription Delivery Services Transition Committee on a fortnightly basis.

4. SERVICE CHARGES

4.1 Payment of Service Charges

- (a) The Service Charges for the delivery of the Services detailed in this Schedule 5 are as follows:

Item	Description	Price (GST exclusive)	Price (GST inclusive)	Payment mechanism
Transition Fee	Once off fee payable to the Service Provider to support the completion of all activities in this Schedule 5 (including those specified in the Transition Management Plan) in accordance with the specified Service Levels.	██████████	██████████	Amount is payable on the Commencement Date. Payment to be paid via invoice to be presented on the relevant date

5. SERVICE LEVELS

- (a) The Service Provider must meet or exceed the following Service Levels in respect of delivery of the transition services:

Item	Deliverable	Service Level
Site transition services	Site transition of all EPE Transacting Entity sites to exclusively use Fred IT’s PDS.	(a) Subject to clause 2(e), Under phase 1 of transition, within 5 months of the Contract Commencement Date: (i) 100% of conformant Transacting Entities have successfully dispensed an Eligible Electronic

		<p>Prescription and / or ETP from Fred IT's PDS; and</p> <p>(ii) the number of Transacting Entities which represent 95% of prescriptions by volume have successfully prescribed an Eligible Electronic Prescription into Fred IT's PDS.</p> <p>(b) Under phase 2 of transition, within 5 months of the completion of the phase 1 transition, the remaining Transacting Entities which represent the final 5% of prescriptions by volume have successfully prescribed an Eligible Electronic Prescription into Fred IT's PDS.</p>
Data transition services	Transition of any residual prescription data from the PDS and ASLR of the departing incumbent provider to the Fred IT PDS and ASLR.	Subject to clause 3.2(a) of this Schedule, within 5 months of the Contract Commencement Date, 100% of Eligible Electronic Prescriptions from the PDS of the departing incumbent provider resides in the Fred IT PDS.
Planning	Transition Management Plan	Once off, within 14 days of the Contract Commencement Date – 100% on time and approved by the Department.
Reporting	Transition Management Reports	Fortnightly, the first report to be delivered within 28 days of the Contract Commencement Date – 100% on time and in agreed format (each party acting reasonably).
Governance	Status meetings EP Transition Committee meetings	Weekly attendance 100% of the time. Fortnightly attendance 100% of the time.

6. ACKNOWLEDGEMENTS

The parties acknowledge that some of the obligations set out in this Schedule 5 may be most efficiently or effectively achieved by the Service Provider cooperating with the departing incumbent provider. Such cooperation cannot occur unless and until the ACCC grants authorisation in respect of Application AA1000641-1 and would be subject to any conditions imposed as part of the ACCC's final determination. In this context, the parties acknowledge that the Service Provider will use its best endeavours to fulfil the obligations contained in this Schedule 5 on a unilateral basis pending the ACCC's final determination and if authorisation is denied, granted subject to conditions, or not granted in a timely fashion, then the obligations set out in this Schedule will be read down accordingly.