



# Accreditation Services Agreement

ASHM Health (ACN 139 281 173) (ABN 48 264 545 457)  
The party identified as the Provider in Item 1 of Schedule 1

# Accreditation Services Agreement

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# Accreditation Services Agreement

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## Date

## Parties

**ASHM Health** ACN 139 281 173 (ABN 48 264 545 457) of Level 3, 160 Clarence Street, Sydney NSW 2000 (**ASHM**);

The party identified at Item 1 of Schedule 1 (**Provider**).

## Background

- A ASHM is a charitable organisation of health professionals in Australia and New Zealand who work to generate knowledge and action in clinical management and research, education, policy and advocacy in HIV, viral hepatitis and sexually transmissible infections in Australasia and internationally.
- B ASHM has developed an accreditation framework for online BBV/STI testing and screening services.
- C The Provider supplies online services offering BBV and STI testing and screening in Australia, providing a cost-effective, private and accessible alternative to in-person sexual health services.
- D The Provider wishes to engage ASHM to Accredite the Provider's online services.
- E Subject to Accreditation of the Provider's online services, ASHM may authorise the Provider to use the Accreditation Marks in connection with the promotion of the Provider's online services.

The parties agree

## 1 Definitions and interpretation

### 1.1 Definitions

In this Agreement:

**Accreditation** means confirmation that ASHM has determined the OTAS Services to be in accordance with the Accreditation Standards.

**Accreditation Marks** means the registered trade marks in Schedule 3.

**Accreditation Process** means the accreditation process set out in Schedule 2.

**Accreditation Services** means the services described in this Agreement, to be performed by ASHM, for the purpose of determining whether to Accredite the OTAS Services.

**Accreditation Standards** means standards selected by ASHM for benchmarking overall quality of BBV and STI testing services.

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**Agreement** means the agreement evidenced by this document.

**ASHM Code of Conduct** means ASHM's Code of Conduct available at <https://ashm.org.au/key-policies/code-of-conduct/> as amended from time to time.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Authorisation** means any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency.

**Authorised Person** means in relation to a party:

- (a) the Personnel of that party;
- (b) the legal, financial and other advisers of that party; and
- (c) the respective officers and employees of those legal, financial and other advisers.

**BBV** means blood-borne virus.

**Business Day** means a day other than a Saturday, Sunday or public holiday in New South Wales, commencing at 9.00am and ending at 5.00pm.

**Claim** means any claim, demand or proceedings made or commenced in any jurisdiction for loss or damage of any kind for any remedy and founded on breach of contract, negligence, any other tort, breach of statutory duty or any other cause of action whatsoever.

**Commencement Date** means the date set out in Item 3 of Schedule 1.

**Corporations Act** means the *Corporations Act 2001* (Cth), as amended from time to time and including any associated legislative instruments or regulations.

**Confidential Information** means all information disclosed to or acquired by the Receiving Party or the Receiving Party's Authorised Persons before or after the date of this Agreement, whether orally, in writing or in electronic or machine readable form. Confidential Information includes the terms of this Agreement and its subject matter, but does not include information that:

- (a) the Receiving Party can prove by contemporaneous written documentation was in the lawful possession of the Receiving Party before the Disclosing Party had any dealings with the Receiving Party or was independently generated by the Receiving Party or on its behalf;
- (b) is in the public domain otherwise than as a result of a breach of this Agreement or any other obligation of confidentiality owed to the Disclosing Party; or
- (c) was legally and properly obtained by the Receiving Party from any other source without restriction on further disclosure.

**Consequential Loss** means any loss or damage which, although in the contemplation of the parties at the time they entered into this Agreement, is not a loss or damage which may fairly and reasonably be considered to arise naturally (that is, in the usual course of things)

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from the breach or other act or omission, and any loss of revenue or profits, loss of actual or anticipated savings, loss of or damage to data or information and loss of opportunity.

**Consumer** has the meaning provided to it in section 3 of the Australian Consumer Law.

**Consumer Guarantee** means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

**Developed IP** means materials, documents or information (in whatever form) in which Intellectual Property Rights subsist, and any new Intellectual Property, that is created or which arise in the course of performing this Agreement.

**Disbursement** means a cost incurred by ASHM that will be reimbursed by the Provider in accordance with clause 7.

**Disclosing Party** means a party who discloses its Confidential Information to the Receiving Party.

**Existing IP** means any materials, documents or information (in whatever form) in which Intellectual Property Rights subsist, and any Intellectual Property:

- (a) belonging to a party that are pre-existing as at the Commencement Date; or
- (b) that are brought into existence, by or on behalf of a party, other than in connection with the performance of that party's obligations under this Agreement,

and includes any enhancements, modifications and developments to such materials, to the extent not comprising Developed IP.

**Fees** means the prices and fees payable to ASHM for the supply of Services, as specified in Item 5 of [Schedule 1].

**Force Majeure Event** means any fire, flood, earthquake, elements of nature or acts of God, strikes, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, quarantines, pandemics or epidemics (including COVID-19 events or any variants thereof), embargoes and other similar governmental action, or any other event beyond the reasonable control of a party.

**Government Agency** means jurisdictional departments of health..

**GST** means the tax imposed or assessed by the GST Act.

**GST Act** means the *A New Tax System (Goods & Services Tax) Act 1999* (Cth), as amended from time to time and including any associated legislative instruments or regulations.

**Health Practitioner National Law** means the *Health Practitioner Regulation National Law 2009* (NSW) as amended from time to time, or as applied and modified as the law of NSW under the *Health Practitioner Regulation (Adoption of National Law) Act 2009* (NSW).

**Inappropriate Content** means:

- (a) illegal, sexually explicit, pornographic, or otherwise offensive or distasteful material;
- (b) instructions on the manufacture and/or use of drugs, alcohol;

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- (c) material that promotes harassment, hatred or discrimination based on age, race, religion, gender, sexual preference or any other factor;
  - (d) defamatory, disparaging, abusive, threatening or offensive messages;
  - (e) false or misleading information about OTAS Services; or
  - (f) content that may adversely affect the image or reputation of ASHM or its operations or the Accreditation Services.

**Insolvency Event** means if a party enters into bankruptcy, provisional liquidation, liquidation, receivership, voluntary administration or if a "controller" (as defined in the Corporations Act) is appointed to a party or if a mortgagee takes possession of any assets of a party whether by itself or by an agent or if a party ceases to trade or is unable to pay its debts as they fall due or if a party makes a compromise with its creditors or enters into a scheme of arrangement.

**Intellectual Property** means all forms of intellectual property throughout the world including patents, petty and innovation patents, patentable inventions, know-how, trade marks, copyright, designs, circuit layout rights, object code, source code, methods, techniques, libraries and database rights, whether existing now or in the future and whether or not registered or registrable, and including any applications for registration of any of the foregoing and rights to apply for registration of any of the foregoing, and **Intellectual Property Right** has a corresponding meaning.

**Law** means from time to time any statute, regulation, code, standards, award or other subordinate legislation or legislative instrument, any rule of common law or equity, and any legally binding or enforceable requirement of a Government Agency or authority applicable to a party to this Agreement.

**Licence Term** has the meaning given in clause 5.1.

**Loss** means any loss, damage, liability, cost (including all legal and other professional costs on a full indemnity basis), charge, expense, Claim, outgoing, fine or payment of any nature or kind.

**OTAS Services** means STI and BBV online testing services offered by the Provider to members of the public as at the Commencement Date.

**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth).

**Personnel** in relation to a party means the employees, officers, agents and authorised subcontractors of that party.

**Receiving Party** means a party who receives the Confidential Information from or on behalf of the Disclosing Party.

**Services** means services to be supplied by ASHM as set out in Schedule 2.

**STI** means sexually transmitted infection.

**Term** means the term of this Agreement referred to in clause 2.1.

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## 1.2 Interpretation

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

- (a) a reference to a party includes that party's successors and permitted transferees and assigns, and if the party is an individual, includes executors and personal legal representatives;
- (b) a reference to a person includes individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trustee, a trust, an association (whether incorporated or not), a government and a government authority or agency;
- (c) a reference to singular includes the plural and vice versa;
- (d) a reference to a document or instrument, including this Agreement, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (e) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (f) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement; and
- (g) unless otherwise stated, a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

## 2 This Agreement

### 2.1 Term of this Agreement

This Agreement commences on the Commencement Date and unless terminated earlier in accordance with its terms or in accordance with law, will continue until the first to occur of:

- (a) ASHM notifying the Provider that Accreditation of the OTAS Services has been withheld or refused; or
- (b) the expiry of the Licence Term.

### 2.2 Components

This Agreement comprises the following documents:

- (a) clauses 1 to 14 of this document; and
- (b) any schedule to this document,

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and in the event of any conflict or inconsistency between the documents set out in this clause 2.2, the document listed higher in the list will prevail over the document listed lower in the list to the extent of such conflict or inconsistency.

### **2.3 Relationship**

- (a) This Agreement does not create a relationship of employment, agency, partnership or joint venture between the parties.
- (b) Each party must not allow it to appear (whether by representations or actions) to any other person that the engagement between the parties is one of employment, agency, partnership, joint venture or principal and agent, or that one party is otherwise vicariously liable for the acts or omissions of the other party.

## **3 Accreditation of the OTAS Services**

- (a) Subject to the Provider complying with the Accreditation Process, including submitting all information and meeting all timeframes in the Accreditation Process, ASHM will:
  - (i) perform the Accreditation Services:
    - (A) in accordance with the terms of this Agreement;
    - (B) with due care, skill and attention;
    - (C) utilising Personnel that are suitably skilled, experienced and qualified; and
    - (D) in accordance with all applicable Laws; and
  - (ii) based on the Provider's participation in the Accreditation Process, exercise good faith in:
    - (A) giving recommendations and feedback to the Provider to assist the Provider to obtain Accreditation of the OTAS Services; and
    - (B) determining whether to grant, withhold or refuse Accreditation of the OTAS Services.
- (b) ASHM will notify the Provider of ASHM's determination as to Accreditation, and may do so at any time during or at the conclusion of the Accreditation Process.
- (c) The Provider acknowledges and agrees that:
  - (i) ASHM will exercise its own discretion in granting, withholding or refusing Accreditation;
  - (ii) ASHM has no obligation to reconsider or provide reasons for the exercise of such discretion; and
  - (iii) the Accreditation Services supplied by ASHM under this Agreement are supplied for the benefit of the Provider, and unless otherwise agreed in writing with ASHM, the Provider must not allow or permit any third party to

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access, use or obtain the benefit of any Accreditation Services provided by ASHM.

## 4 Provider obligations

The Provider must:

- (a) comply and must ensure that its Personnel comply with the ASHM Code of Conduct; and
- (b) not, and must ensure that its Personnel do not:
  - (i) engage in professional misconduct or breach any applicable law, including the Health Practitioner National Law;
  - (ii) do anything which may cause damage to the reputation, name or brand name of ASHM, including engaging in professional misconduct, offensive or unlawful behaviour, racial vilification, corruption or criminal activity; or
  - (iii) use any Accreditation mark in any manner which may:
    - (A) contain or incorporate Inappropriate Content;
    - (B) deceive or cause confusion in trade;
    - (C) bring ASHM, its operations and services or the Accreditation Services into disrepute.

## 5 Accreditation Marks

### 5.1 Licence Grant

- (a) Subject to the Provider gaining Accreditation and the Provider's continued compliance with clause 4, ASHM grants to the Provider a non-exclusive, non-transferable, non-sublicensable, royalty-free licence for a period of three (3) years following the date the OTAS Services are approved in accordance with the Accreditation Process] (**Licence Term**) to display Accreditation Marks on the Provider's website].
- (b) During the Licence Term, the Provider must:
  - (i) ensure that wherever practicable, the trade mark symbol (®) appears whenever the Trade Marks are used; and
  - (ii) comply with any and all instructions or directions of ASHM's (including any brand guidelines provided by ASHM from time to time) at all times.
- (c) The Provider acknowledges and agrees that:
  - (i) it must not exercise any of the rights available to it pursuant to s 26 of the *Trade Marks Act 1995* (Cth) in connection with the Accreditation Marks;

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- (ii) it is not acquiring any right, title or interest in and to the Accreditation Marks;
  - (iii) ASHM owns all right, title, and interest in, to and under the Accreditation Marks;
  - (iv) all use of the Accreditation Marks by the Provider under this Agreement and all goodwill arising from that use will enure for the ultimate benefit of ASHM;
  - (v) the Provider's only rights in respect of the Accreditation Marks are those rights of use expressly given under this Agreement and the Provider does not have any proprietary right, title or interest to the Accreditation Marks or the goodwill in them.

## **5.2 Non derogation of Accreditation Marks**

- (a) The Provider must not:
  - (i) infringe, or encourage or permit any infringement of, any of the rights in the Accreditation Marks;
  - (ii) do, cause or authorise the doing of anything which may reasonably be expected to adversely affect or jeopardise:
    - (A) the distinctiveness of the Accreditation Marks;
    - (B) the goodwill associated with, or value of, the Accreditation Marks;
    - (C) ASHM's right, title or interest to the Accreditation Marks; or
    - (D) the validity of the registration of the Accreditation Marks;
  - (iii) contest or challenge in any legal proceedings or otherwise, ASHM's rights in relation to the Accreditation Marks or any registration or application for registration of the Accreditation Marks, including:
    - (A) opposing or applying to remove or cancel the Accreditation Marks or any applications or registrations of the Accreditation Marks; or
    - (B) assisting any other person to oppose the use of the Accreditation Marks or apply to remove or cancel the Accreditation Marks;
  - (iv) in any way dispute, contest or challenge the validity of the Accreditation Marks or the registration of the Accreditation Marks;
  - (v) create or assert any lien, charge, mortgage, encumbrance or other right against the Accreditation Marks; and
  - (vi) use, register or apply for, or become involved in any application by any other person for the registration of:
    - (A) any business names, additional company names or trade marks that are substantially identical or deceptively similar to the Accreditation Marks; or

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- (B) any mark which is substantially identical, deceptively similar, similar to or capable of being confused with the Accreditation Marks or any other trade mark registered or used by ASHM,

as a trade mark, business name, domain name or otherwise anywhere in the world.

- (b) The Provider acknowledges that ASHM's rights in respect of the Accreditation Marks are valuable property rights and that non-compliance by the Provider with its obligations under this Agreement could severely prejudice the value of the Accreditation Marks and goodwill of ASHM. The Provider acknowledges that it is appropriate for ASHM to enforce compliance with this Agreement by seeking injunctive relief (including urgent interlocutory injunctions).

### 5.3 Protection of Accreditation Marks

- (a) The Provider shall immediately notify ASHM in writing giving full particulars if any of the following matters come to its attention:
  - (i) any actual, suspected or threatened infringement of any of the Accreditation Marks;
  - (ii) any claim made or threatened that its use of the Accreditation Marks infringes the rights of any third party; or
  - (iii) any other form of attack, charge or claim to which any of the Accreditation Marks may be the subject of.
- (b) The Provider must give all assistance reasonably required by ASHM relating to any infringement:
  - (i) at its own cost and expense where such infringement is caused or contributed to by it; or
  - (ii) at ASHM's cost and expense where such infringement is not caused or contributed to by the Provider.

## 6 Indemnity

- (a) The Provider indemnifies ASHM and holds ASHM and its Personnel (**those indemnified**) from and against all Loss suffered or incurred by ASHM arising out of or in connection with:
  - (i) any claim by a person to which the Provider supplies OTAS Services;
  - (ii) any breach by the Provider of clause 4 (Provider obligations);
  - (iii) the Provider's breach of any of the following clauses:
    - (A) clause 5.1 (Licence Grant);
    - (B) clause 5.2 (Non derogation of Accreditation Marks); and
    - (C) clause 5.3 (Protection of Accreditation Marks); and

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- (iv) any actual or alleged claims (including any infringement claims) made by any third party against ASHM arising from the Provider's use of the Accreditation Marks to the extent such use is not in accordance with the terms of this Agreement.
  - (b) Each party (**indemnifying party**) indemnifies the other party from and against all Loss suffered or incurred by the other party arising out of or in connection with a breach by the indemnifying party or its Personnel of clause 8 (Confidentiality and Privacy).
  - (c) Nothing in this clause 6 shall restrict or limit either party's general obligation at law to mitigate a Loss it may suffer or incur.

## 7 Fees and Disbursements

### 7.1 Fees and Disbursements

- (a) In consideration for the performance of the Accreditation Services by ASHM, the Provider must pay to ASHM the Fees, in accordance with this clause 7.
- (b) If ASHM provides any Fees as estimates or quotes, the parties each acknowledge and agree that while that estimate or quote is given in good faith, the actual amount of the Fees for Accreditation Services may be more or less than the estimated amount. ASHM must notify the Provider as soon as practicable if ASHM anticipates that any estimated or quoted Fee amount is likely to be exceeded.

### 7.2 Payment terms

- (a) ASHM will issue invoices at the end of each month throughout the Term, or at any other reasonable or sensible juncture, taking into account the performance of the Accreditation Services.
- (b) The Provider must pay all invoices issued by ASHM in full within 14 days from the date of that invoice.
- (c) If the Provider fails to make payment to ASHM of an amount under an invoice which is due and payable within the time required for payment under this Agreement, then ASHM may:
  - (i) notify the Provider in writing that:
    - (A) the payment for an invoice not yet paid for is due immediately; and
    - (B) if the Provider does not make payment in full of the outstanding amount by 14 days from the date of the notice, ASHM may terminate this Agreement without liability,
  - (a **Due Notice**); and
  - (ii) suspend performance of its obligations under this Agreement until payment is made for that invoice in full.

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### 7.3 Deposit

- (a) ASHM may require that the Provider pay a percentage or portion of the Fees or Disbursements as an upfront deposit on account (**Deposit**), prior to ASHM performing any Accreditation Services.
- (b) The Provider authorises ASHM to apply any amount paid as a Deposit to ASHM, against payment of any amount owed by the Provider to ASHM under an invoice.

### 7.4 GST

- (a) If GST applies to a supply under this Agreement, the Provider must pay, in addition to the Fees, the sum calculated as the GST on those sums.
- (b) If GST applies, any invoice issued by ASHM to the Provider will be a tax invoice that complies with the GST Act.
- (c) If the Provider reimburses ASHM for a Disbursement, loss or liability, ASHM will not charge the Provider for GST on that Disbursement, loss or liability to the extent that ASHM can obtain an input tax credit for the relevant supply to which the Disbursement, loss or liability relates.[]

## 8 Confidentiality and Privacy

### 8.1 Confidential Information

- (a) The Receiving Party must:
  - (i) maintain the confidential nature of the Confidential Information; and
  - (ii) not disclose or otherwise provide any Confidential Information to any person except:
    - (A) where ASHM is the Receiving Party and the disclosure is reasonably necessary for ASHM to perform its obligations under this Agreement;
    - (B) to an Authorised Person; or
    - (C) with the prior written consent of the Disclosing Party.
- (b) The obligations of confidence do not apply where the Receiving Party is required by Law to disclose specific Confidential Information, provided that the Receiving Party must give the Disclosing Party reasonable prior notice of any proposed disclosure of Confidential Information including the form and content of the disclosure to be made.

### 8.2 Privacy

- (a) Each party must, and must ensure that its Personnel to whom it discloses Personal Information under this Agreement, comply with the *Privacy Act 1988* (Cth) in relation to any Personal Information it collects, stores, uses or discloses in the course of performing its obligations under this Agreement.

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- (b) Each party must not, and must ensure that any Personnel to whom it discloses Personal Information in connection with this Agreement does not:
    - (i) disclose any Personal Information to a third party except:
      - (A) to the extent required to perform its obligations under this Agreement;
      - (B) as required by Law; or
      - (C) with the prior written consent of the other party; or
    - (ii) do anything or omit to do anything which would cause the other party to breach its obligations under the *Privacy Act 1988* (Cth).

### **8.3 Publicity**

Except as set out in this Agreement, neither party will make or authorise the making of any press release or other public announcement relating to the negotiations of the parties, the subject matter of this Agreement, or any of the transactions contemplated by this Agreement, unless:

- (a) it has the prior written approval of the other party; or
- (b) the release or announcement is required to be made by Law or the rules of a securities exchange, in which case, the announcing party must give the other party a reasonable opportunity to comment on the contents of the release or announcement before its release.

## **9 Intellectual Property**

### **9.1 Existing IP**

- (a) Unless otherwise specifically agreed between the parties, the parties agree that nothing in this Agreement will affect the ownership of either party in that party's Existing IP.
- (b) The Provider grants to ASHM a non-exclusive, non-sublicensable, non-transferable, royalty-free licence to use any Intellectual Property Rights in the Provider's Existing IP to the extent necessary for ASHM to perform its obligations under this Agreement.
- (c) ASHM grants to the Provider a non-exclusive, non-sublicensable, non-transferable, royalty-free licence to use any Intellectual Property Rights in ASHM's Existing IP to the extent necessary for the Provider to obtain the full benefit of the Accreditation Services supplied by ASHM to the Provider under this Agreement.

### **9.2 Developed IP**

The parties acknowledge and agree that:

- (a) where ASHM creates any Developed IP in the course of performing ASHM's obligations under this Agreement, all Intellectual Property Rights are owned by

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ASHM, except to the extent such Developed IP contains any of the Provider's Existing IP; and

- (b) ASHM grants to the Provider a non-exclusive, non-sublicensable, non-transferable, royalty-free licence to use any Intellectual Property Rights in the Developed IP to the extent necessary for the Provider to obtain the full benefit of any Accreditation Services supplied by ASHM to the Provider under this Agreement.

## **10 Warranties**

### **10.1 General warranties**

Each party represents and warrants that it has:

- (a) the full power and authority to enter into and perform its obligations under this Agreement, and that entering into this Agreement will not give rise to a breach of any other obligation or duty to any other person;
- (b) taken all necessary action to authorise the execution, delivery and performance of this Agreement; and
- (c) not entered into any other agreement, arrangement or understanding which would restrict or prevent it from performing its obligations under this Agreement.

### **10.2 Provider warranties**

The Provider represents and warrants to ASHM that:

- (a) any data or information provided to ASHM by or for the Provider under this Agreement is and will remain valid, accurate and complete;
- (b) the Provider has and will maintain the Supplier has all the Authorisations necessary to perform the OTAS Services; and
- (c) will perform the OTAS Services with due care, skill and diligence.

### **10.3 ASHM warranties**

ASHM warrants and represents to the Provider that to ASHM's knowledge and belief:

- (a) ASHM not have a conflict of interest in performing the Accreditation Services to the Provider; and
- (b) the performance of Accreditation Services in accordance with the requirements of this Agreement, will not, and will not cause the Provider to, infringe the Intellectual Property Rights or proprietary rights of any third party.

## **11 Liability**

- (a) If the Provider is a Consumer, ASHM's liability to the Provider in connection with any breach of the Consumer is limited (at ASHM's discretion) to:

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- (i) in the case of the goods:
    - (A) the replacement of the goods or the supply of equivalent goods;
    - (B) the repair of the deliverables;
    - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (D) the payment of the cost of having the goods repaired; and
  - (ii) in the case of the Accreditation Services:
    - (A) the supplying of the Accreditation Services again; or
    - (B) the payment of the cost of having the Accreditation Services supplied again.
- (b) Subject to clauses 11(a) and 11(c):
- (i) the liability of ASHM under this Agreement to the Provider, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action is limited to:
    - (A) 100% of the Fees paid or payable by the Provider under this Agreement; and
  - (ii) neither party will be liable under or in connection with this Agreement whether in contract, tort (including negligence), statute or any other cause of action for any Consequential Loss, provided that this does not limit any liability of the Provider to pay the Fees and any Disbursements; and
  - (iii) nothing in this Agreement operates to limit or exclude liability that cannot by Law be limited or excluded.
- (c) Notwithstanding anything else in this Agreement:
- (i) clause 11(b) does not limit or exclude any liability of a party under the indemnities in clause 6; and
  - (ii) a party's liability under this Agreement (**Liable Party**) to the other party, including a liability to indemnify, will be limited or reduced to the extent that:
    - (A) the non-Liable Party has failed to take steps to mitigate its Loss; and
    - (B) any act or omission of the non-Liable Party has caused or contributed to the Loss in question.

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## 12 Termination

### 12.1 Termination for cause

Without limiting either party's other rights under the Agreement, either party may terminate this Agreement by providing written notice to the other party:

- (a) if the other party (**Defaulting Party**) commits a breach of this Agreement, and:
  - (i) the breach is not capable of being remedied; or
  - (ii) the breach is capable of being remedied, but the Defaulting Party within 30 days following receipt of a notice from the non-Defaulting Party requiring it to do so does not remedy the breach;
- (b) if, subject to applicable Laws, the other party suffers an Insolvency Event;
- (c) if, where ASHM is the terminating party, ASHM has issued a Due Notice under clause 7.2(c)(i) and the Provider has still not paid the outstanding amount within the required period; and
- (d) in accordance with clause 13(b).

### 12.2 Termination for convenience

Without limiting any rights of a party under this Agreement, either party may terminate this Agreement for convenience by providing at least 60 days written notice to the other party.

### 12.3 Consequences of termination

If this Agreement expires or is terminated for any reason, then unless otherwise agreed between the parties:

- (a) ASHM will, from the date expiry or termination cease performing the Accreditation Services;
- (b) any licences granted by ASHM to the Provider will immediately cease;
- (c) each party must cease using and accessing any Confidential Information or Personal information of the other party;
- (d) [ASHM will refund to the Provider any amounts paid by the Provider in Fees for Services which, as at the date of termination or expiry, have not been delivered or supplied to the Provider; and]
- (e) [ASHM may issue to the Provider an invoice for Accreditation Services performed but not invoiced as at the date of expiry or termination.]

### 12.4 Surviving rights

- (a) Following termination or expiry of this Agreement for any reason, each term which by its nature is intended to survive the termination or expiry of this Agreement does so survive, including without limitation, clauses 1, 4, 5.2, 5.3, 6, 8, 9, 11, 12.3, 14 and this clause 12.4.

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- (b) Termination or expiry of this Agreement for any reason does not affect the accrued rights or remedies of either party.

## 13 Force Majeure

- (a) Neither party (**Affected Party**) will be liable for any failure to perform or delay in performing its obligations under this Agreement where its performance is delayed or prevented by a Force Majeure Event, provided that the Affected Party has:
  - (i) promptly notified the non-Affected Party of the occurrence of a Force Majeure Event, providing details of the delayed or prevented aspects of its obligations and the expected timeframe of the Force Majeure Event; and
  - (ii) used its best efforts to minimise the effect of the Force Majeure Event and resume performance in accordance with this Agreement as soon as practicable.
- (b) If the Affected Party is unable to perform its obligations due to a Force Majeure Event for a consecutive period of 30 days or more, the non-Affected Party may terminate this Agreement by giving reasonable written notice to the Affected Party.

## 14 General provisions

### 14.1 Notices

- (a) Unless this Agreement expressly states otherwise, any notice, consent, approval, waiver or other communication (**notice**) in connection with this Agreement must be in writing and signed by the sender or a person authorised by the sender. A notice may be given by hand delivery, prepaid post or by electronic communication.
- (b) Notices must be directed to the address for a party set out in Items 1 or 2 of Schedule 1 (as applicable), unless a party has provided the other party with written notice updating its address details.
- (c) Subject to clause 14.1(d), a notice will be deemed to be received:
  - (i) if hand delivered, at the time of delivery;
  - (ii) if sent by post to or from a place within Australia, three Business Days after the date of posting;
  - (iii) if sent by post to or from a place outside of Australia, eight Business Days after the date of posting; and
  - (iv) if sent by email, one hour after the electronic communication is recorded as being sent by the device from which the sender sent that electronic communication, unless the sender knows or could reasonably be expected to know that an electronic communication system has failed and as a result, the electronic communication was not received.

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- (d) Any notice not fully delivered on a day other than a Business Day will be regarded as having been delivered on the first Business Day (determined by reference of the time of day at the recipient's address) after such day.
  - (e) A notice may be given by an employee or agent (including a legal advisor) of the party giving the notice.

#### **14.2 Assignment and Novation**

Neither party may assign, novate or otherwise transfer this Agreement without the prior written consent of the other party.

#### **14.3 Costs**

Except as otherwise stated in this Agreement or as agreed between the parties, each party must pay its own costs of negotiating, preparing and executing this Agreement and performing its obligations under this Agreement.

#### **14.4 Amendment**

A variation or amendment of this Agreement must be in writing and signed or otherwise assented to in writing by both parties.

#### **14.5 No merger**

On completion or termination of the transactions contemplated by this Agreement, the rights, interests and obligations of the parties set out in this Agreement will not merge and any provision that has not been fulfilled remains in force.

#### **14.6 Waiver**

- (a) No failure to exercise or delay in exercising any right given by or under this Agreement to a party constitutes a waiver and the party may still exercise that right in the future. No single or partial exercise of any right precludes any other or further exercise of that or any other right.
- (b) Any waiver of any provision of this Agreement or a right created under it must be in writing signed by the party giving the waiver and is only effective to the extent set out in that written waiver.

#### **14.7 Severability**

If any provision of this Agreement is void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from this Agreement without affecting the validity or enforceability of the remaining provisions of this Agreement.

#### **14.8 Records**

Each party must maintain and keep current and complete records relating to the performance of its obligations under this Agreement, and must, within a reasonable time of receipt of a written request from the other party, provide the other party with access to, or copies of, those records.

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## 14.9 Electronic signature and counterparts

- (a) This Agreement may be signed in any number of counterparts. All signed counterparts taken together constitute one document.
- (b) The parties consent to this Agreement being signed by or on behalf of a party by electronic signature. In this clause, **electronic signature** means a digital signature or other visual representation of a person's handwritten signature or mark placed or typed on a copy of this deed by electronic or mechanical means (or any other means of electronic signing this deed used by agreement between the parties) and electronically signed has a corresponding meaning.
- (c) Where this Agreement is electronically signed by or on behalf of a party, the party warrants and agrees that the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by this agreement.
- (d) Each party consents to the exchange of counterparts of this agreement by delivery by email to the party or its legal representative or other electronic means of exchange as the parties may agree.
- (e) The parties agree that a printed copy of a counterpart of this Agreement that a party signed by electronic signature will be taken to be duly executed by that party.

## 14.10 Governing Law and jurisdiction

This agreement is governed by the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

**EXECUTED** as an agreement.

**EXECUTED** by **ASHM HEALTH ACN 139 281 173** in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by the following officers:

.....  
Signature of director

.....  
Signature of director/company secretary

.....  
Name of director  
(please print)

.....  
Name of director/company secretary  
(please print)

---

**EXECUTED** by **SUPLIER** in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by the following officers:

.....  
Signature of director

.....  
Signature of director/company secretary

.....  
Name of director  
*(please print)*

.....  
Name of director/company secretary  
*(please print)*

*The person whose signature appears above states that they have been authorised to sign this document and have had no notice of revocation or suspension of this authorisation*

# Accreditation Services Agreement

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## Schedule 1 - Agreement Details

Item	Details
1	<b>The Provider</b> <u>Name:</u>  <u>Address:</u>  <u>Email:</u>  <u>Attention:</u>
2	<b>ASHM</b> <u>Name:</u> ASHM Health (ACN 139 281 173) (ABN 48 264 545 457) <u>Address:</u> Level 3, 160 Clarence Street, Sydney NSW 2000, Australia. <u>Email:</u> finance@ashm.org.au <u>Attention:</u> Jessica Michaels
3	<b>Commence- ment Date</b> The date the last party executes this Agreement
4	<b>Insurances</b> Public and Products Liability Insurance
5	<b>Fees</b> Waived

# Accreditation Services Agreement

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## Schedule 2 - Accreditation Services

### Accreditation framework for online STI testing services

#### Overview

Recent years have seen an increase in the availability online services offering BBV and STI testing and screening in Australia. Compared with in-person sexual health services, these online options may provide an alternative that is cost-effective, private and more accessible, particularly for those in rural and remote areas. These services may also have the potential to reduce stress on overburdened sexual health clinics.

However, online BBV/STI testing and screening services in Australia are minimally regulated, leading to inconsistencies across services with regards to, for example, cost creating a barrier to accessibility, accessibility of platforms, service design and availability of tests offered. Further many of these services do not comply with national testing guidelines, potentially leading to over- or under-testing, inappropriate follow-up care and provision of information, or missed opportunities for linkage to other clinical or support services and gaps in surveillance data.

An accreditation framework for online BBV/STI testing and screening services would help ensure these services are safe, appropriate to a user's needs, cost-effective, transparent, private, and in line with national testing and data collection/provision policies. Accreditation under the framework would allow providers to be endorsed by ASHM and State and Territory government health bodies, providing an incentive for services to engage with the accreditation process.

#### Overview of existing online BBV/STI testing and screening services

A systematic review in 2022 of the current landscape of online BBV/STI testing and screening in Australia identified 17 services<sup>1</sup>, including government-funded and private services. These services differed in how testing was carried out, either self-testing, self-sampling (sample collected at home and returned to laboratory) or self-navigated pathology (specimens collected at pathology centre). The reliability of services was assessed against the Health on the Net Foundation Code of Conduct, and quality was assessed using a score card developed based on ASHM's *Australian STI Management Guidelines*<sup>2</sup>. The review identified considerable variability in the quality and reliability of the services and recommended the development of national standards.

When assessed against national guidelines, a range of issues with service quality were identified:

- Not obtaining a full patient history
- Offering tests not recommended by guidelines, e.g. ureaplasma and herpes
- Not offering all recommended tests or not testing all appropriate infection sites, e.g. only offering urine testing for chlamydia and gonorrhoea
- Providing self-testing devices not approved by the TGA

Further issues were identified relating to wide variability in cost (\$0 to \$595), variability in time to receive results (4 to 14 days) and, despite tests being ordered online, variability in accessibility of collection/postal options for people in rural and remote areas (1 to 650 minutes by car).

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<sup>1</sup> <https://www.jmir.org/2023/1/e45695>

<sup>2</sup> <https://sti.guidelines.org.au/>

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Issues were also identified in relation to inaccessibility for people who are Medicare-ineligible, despite identified needs within national BBV/STI strategies to better engage overseas-born people in testing. Such issues included a requirement by some services to provide a Medicare card, and barriers relating to English literacy.

### **Priorities for a proposed national accreditation program**

A quality framework and accreditation process based on national guidelines and additional measures of quality, including evidence-based testing, care and treatment, would provide an avenue for quality improvement for these services. Improved online BBV/STI testing and screening services could help fill gaps in the availability of such services in Australia, without compromising on quality and accessibility of care.

Reviews of services have been carried out in other jurisdictions. The American Sexually Transmitted Diseases Association (ASTDA) published a position statement on “direct-to-consumer sexually transmitted infection testing services” in 2021<sup>3</sup>, providing recommendations across the development of quality frameworks, the operation of services and policy change. Key recommendations included:

- Improved transparency of information on testing websites
- Ensuring tests are carried out in alignment with leading public health advice
- Ensuring quality of self-obtained testing samples

The British Association for Sexual Health and HIV (BASHH) and the Faculty of Sexual and Reproductive Healthcare of the Royal College of Obstetricians and Gynaecologists (FSRH) developed a complete set of standards for “online and remote providers of sexual and reproductive health services” in 2020<sup>4</sup>. These standards operate across five domains: safe; effective; treating people with kindness, respect and compassion; responsive; and governance and leadership.

A similar quality framework to underpin an accreditation program should be developed for the Australian context, specific to Australia’s clinical guidelines, and service and policy landscape.

### **Accreditation Process**

Services applying for accreditation would be required to supply evidence to demonstrate that they meet the standards outlined in the quality framework and clearly outlined in the accreditation application. Services will be provided with examples of evidence that can be accepted for accreditation in an FAQ available on the accreditation website. Information about accreditation application fees will be available on the accreditation website.

Once the service has supplied their evidence for accreditation, the application is assessed, and a decision is made.

Successful applicants receive recognition of the accreditation that can be displayed on their website, as well as being listed on an ASHM website and a State or Territory Health Department website should they choose to do so. ASHM will manage all communication to State and Territory Health Departments.

Unsuccessful applicants receive a report based on their application and are encouraged to reapply.

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<sup>3</sup> <https://pubmed.ncbi.nlm.nih.gov/34030157/>

<sup>4</sup> <https://www.fsrh.org/standards-and-guidance/documents/fsrhbashh-standards-for-online-and-remote-providers-of-sexual/>

Services will be accredited for a 3-year period and will be asked to complete an annual evaluation survey to enable ASHM to gain feedback on the accreditation application process and service provision since accreditation approval was granted.

During the accreditation period, ASHM will monitor services adherence to the quality framework. ASHM accreditation will be withdrawn if a service is deemed to not comply with the framework and is not willing to undertake remedial measures.

The timeline for an accreditation process is outlined below.

Week	Action	Outcome
1–2	Online service providers are encouraged to review all information on the accreditation program website and submit an application that meets criteria within the quality framework, including relevant national BBV/STI policy frameworks.	The provider submits an application based on an understanding of the principles and priorities of the accreditation process
3–6	ASHM reviews the provider application against the quality framework criteria and requests additional information to support the application as required.	The provider receives a request to provide additional information as required to meet the criteria of the quality framework
7-14	ASHM will provide a recommendation on whether accreditation is approved.	Provider receives a report based on the review, and a decision regarding accreditation
15-20	If the provider fails to gain accreditation, it will review the feedback and collate and supply new evidence to demonstrate that they meet the standards outlined in the quality framework	Provider submits a report outlining the results of their self-assessment, supported by evidence
21–22	Final meetings with the provider to debrief on the review and accreditation process; communication with jurisdictional Departments of Health to report the results of the assessment	The provider has gained an understanding of their final report and receives communications materials to advertise their accreditation status, and information about how to maintain accreditation
<b>Post assessment</b>	If accreditation standards were not met, the provider may reapply, addressing the gaps outlined in the report	Provider has gained an understanding of how to meet the gaps in their self-assessment and has been encouraged to reapply
<b>1-year post-program assessment</b>	1 year following accreditation, providers will be requested to complete an evaluation survey to enable ASHM to gain feedback on the accreditation application process and service provision since accreditation approval was granted.	The provider and jurisdictional Departments of Health receives an evaluation summary report

## Quality framework for Online STI testing services

All online STI testing and screening services operating in Australia should comply with jurisdictional and national public health requirements.

Standards	
<p>Standard 1. Safe:</p> <p>Providers must satisfy themselves that they can make an adequate and reliable assessment which does not compromise on service user care; have safety nets in place to manage and limit risks associated with remote consultations; ensure all staff receive appropriate training and maintain their skills; and have a system in place which enables a comprehensive approach to risk identification, assessment analysis and response in remote consultations.</p>	<p>1. Service Quality</p> <p>1.1 Becoming a user/client Can individuals create an account?</p> <p>1.2 Consent Information should be provided to individuals, so they understand what tests they are requesting and why, and any personal implications of a positive test.</p> <p>1.3 Patient History: An adequate patient history should be taken via a standardised intake method to assess risk and determine appropriate testing recommendations relevant to the information provided. To note: asynchronous questionnaire-based assessments are not sufficient to access Medicare rebated tests.</p> <p>1.4 Assessment questions and Testing offered: Services should offer all tests recommended for a routine STI check-up according to Australian STI Management guidelines (chlamydia, gonorrhoea, syphilis, and HIV), unless otherwise assessed by a qualified clinician based on identified risk factors. If the service is unable to offer all the recommended tests, this should be clearly acknowledged, and recommendations should be made for users to seek further testing elsewhere. Services should not promote or provide testing outside recommendations for asymptomatic screening for example Hepatitis A/B/C, Mycoplasma genitalium, bacterial vaginosis, thrush, HSV or HPV. Opt-out of any recommended tests is available. Services to provide tailored recommendations for additional testing or prevention interventions that may be indicated, based on information provided by the user.</p>
<p>Standard 2. Effective:</p> <p>Providers shall ensure that valid consent is obtained from service users by providing them with adequate information to make an informed decision, free from duress; ensure all staff are adequately trained to obtain valid consent by assessing for capacity in line with current Australian legislation and relevant professional regulatory Guidance's; consider how permission to share information is recorded and conducted; ensure appropriate and secure management of service user information in line with current guidance; and adhere to the Australian Competition and Commission Standards and the Therapeutic Goods (Therapeutic Goods Advertising Code) Instrument 2021, with regard to relationships with pharmaceutical companies and advertising of their products.</p>	
<p>Standard 3. Treating People with Kindness, Respect and Compassion:</p> <p>Providers shall ensure that: their services are accessible and inclusive</p>	

<p>for all those who need to use them; staff delivering online consultations understand and promote compassionate, respectful and empathetic behaviour; that the tests they utilise meet all Australian standards and that processes are in place for monitoring and evaluating their workload; that any user interface is easy to navigate with regular review and input from the service user; and adhere to national guidance and standards regarding the use of service user information and demonstrate how confidentiality is maintained.</p>	<p>1.5 Appropriate Testing sites: Services should provide testing at all appropriate sites, including oral, anal, and urogenital. If the service is only able to offer certain types of testing, this should be clearly acknowledged, and recommendations should be made for uses to seek further testing elsewhere.</p>
<p>Standard 4. Responsive:</p> <p>Providers must be able to demonstrate how they promote equality within their services and meet Australia’s anti-discrimination laws; how they collect, manage and respond to suggestions, concerns and complaints from service users; as well as how user and public involvement is encouraged and developed.</p>	<p>1.6 Testing type: All testing should follow Australian STI Management Guidelines.</p>
<p>Standard 5. Governance and Leadership:</p> <p>Providers should ensure that a clear strategy is in place to deliver a high quality and sustainable care plan. The provider must be registered with the appropriate regulatory body and have processes in place to continually review and improve services.</p>	<p>1.7 Result Communication: All results must be communicated in a clear and timely manner (ideally no more than 7 days post-test as feasible). Results should be communicated in a method that is secure and confidential. It is the responsibility of the provider to ensure secure methods of communicating results. Services should provide appropriate and clear information about the meaning of an individual’s results and any further management and/or treatment and/ or follow-up that is required. If required, location appropriate referrals for post-test counselling and follow up testing should be provided. Services should have a documented process of action when a patient cannot be reached to deliver results.</p> <p>1.8 Treatment: Services are not required to provide treatment but must provide a written referral and linkage to care (both to the client and care provider if known) that is, location and/or follow-up -appropriate referral for treatment. People with positive results should be referred to their usual GP or primary care provider for appropriate treatment, management and continuity of care where possible, and the patient consents. Where follow up with the patient’s usual GP or primary care provider cannot occur within a clinically appropriate time frame, or the patient has not nominated a usual GP or primary care</p>

	<p>provider, follow up with an appropriate service should be facilitated through HealthDirect.</p> <p>1.9 Partner Notification: Services should communicate the importance of partner notification and services should provide culturally sensitive partner notification information and list available services relevant for all potential service users. Services should comply with jurisdictional and national public health requirements regarding contact tracing.</p> <p>1.10 Jurisdictional legislation and public health notifications: Services are required to comply with jurisdictional and national public health requirements, including the submission of notifiable condition forms where relevant. Jurisdictional requirements should be applied according to the state or territory that a client resides in at the time of testing. Information about specific jurisdictional requirements is available on the accreditation website.</p> <p>2 Website Quality</p> <p>2.1 Authority: All websites should provide information on authorship and supporting affiliates of the service, including purpose of the service.</p> <p>2.2 Privacy and Confidentiality: Websites must provide clear statements/policies of privacy and confidentiality pertaining to all aspects of data collection and storage. Websites should also provide clear statements regarding notifiable results and jurisdictional public health requirements. These statements/policies must be highly visible and accessible to all users.</p> <p>2.3 Attribution: When providing medical information (e.g. prevention, clinical information, testing, treatment, referral), websites should</p>
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	<p>include reputable resources with citations including the date in which the information was published to the website.</p> <p>2.4 Transparency: Websites should provide at least one point of contact, so users can communicate their questions and any issues relating to the service being provided.</p> <p>Websites should clearly outline processes for updating language, testing and treatment guidelines based on evidence based Australian recommendations in a timely manner.</p> <p>Websites should clearly outline on how they manage medical records.</p> <p>2.5 Recall services for re-testing Information regarding window periods for infection and when and how recall for testing occurs should be clear on the website.</p> <p>2.6 Referral to support: Services should provide links to information about support services, including peer services where relevant.</p> <p>2.7 Further information: Services should provide an up-to-date FAQ page with basic information about STIs, including the testing process and any subsequent follow up that may be required, and consumer-facing information about specific STIs. For example, what to expect following a diagnosis of a specific STI. This information should be referenced and/or linked to Australian government developed fact sheets. Additionally, information about the expected time periods for requesting or purchasing testing via the online platform to receiving the test result should be advised.</p> <p>2.8 User feedback mechanism Service users should have a mechanism to provide feedback on the services accessed</p>
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	<p>and a means of complaint resolution clearly displayed on their website.</p> <p>3 Additional considerations:</p> <p>3.1 Accessibility:</p> <p>3.1.1 Website Accessibility: Websites should utilise the standards set out in the <a href="#">Web Content Accessibility Guidelines</a>.</p> <p>3.1.2 Rural access: Services should, to the best of their ability, provide service options to individuals living in rural and remote areas of Australia.</p> <p>3.1.3 Language:</p> <p>Services should provide information in multiple languages or provide information in a way that is culturally safe and translatable based on translation technology that is currently available. Gender neutral language and images and culturally sensitive images are encouraged as and where feasible and appropriate. Use lay language and avoid language that is normative and stigmatising.</p> <p>3.2 Cost</p> <p>3.2.1 Cost transparency: Websites should ensure transparency around costings including Medicare coverage and charges for consultation and pathology as feasible.</p> <p>3.2.2 Medicare ineligibility: Where services require a Medicare card, information should be provided about where to access services for those who are Medicare-ineligible.</p> <p>3.3 Non-stigmatising and inclusive: Services should ensure that language and images used on the site are non-stigmatising in relation to STIs or towards priority populations.</p> <p>3.4 STI prevention</p>
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	STI and HIV prevention messaging should be easily accessible on the website.
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## Schedule 3 - Accreditation Marks

### Unregistered Trade Marks:



### Registered Trade Marks:

Trade Marks:	Number:	Classes:	Registered date:	Renewal date:
	1382184	<p>Class 16: Periodical publications relating to health care; printed matter relating to health education</p> <p>Class 41: Health education; arranging and conducting of conferences; arranging of conferences; conducting of educational conferences; mentoring (education and training); mentoring (training)</p> <p>Class 44: Advisory services relating to health; advocacy services relating to health issues; consultancy relating to health care; health care consultancy services (medical); information services relating to health care; preparation of reports relating to health care matters</p>	25 August 2011	8 September 2030

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## Signing page

**EXECUTED** by **ASHM HEALTH ACN 139 281 173** in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by the following officers:

.....  
Signature of director

.....  
Signature of director/company secretary

.....  
Name of director  
*(please print)*

.....  
Name of director/company secretary  
*(please print)*

**EXECUTED** by **SUPLIER** in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by the following officers:

.....  
Signature of director

.....  
Signature of director/company secretary

.....  
Name of director  
*(please print)*

.....  
Name of director/company secretary  
*(please print)*

*The person whose signature appears above states that they have been authorised to sign this document and have had no notice of revocation or suspension of this authorisation.*