

**MedCan Hawaii LLC**  
**Terms and Conditions for Laboratory Services**

**Section 1 - Services to be Provided**

Medcan Hawai`i LLC, a Hawai`i limited liability company (“Medcan Hawai`i”), shall provide testing services to you in accordance with these Terms and Conditions. All tests will be performed with the degree of care and skill ordinarily exercised under similar circumstances by reputable similar laboratories and using test procedures and laboratory protocols accepted by such.

**Section 2 - Standard of Care**

You expect the services provided by Medcan Hawai`i under these Terms and Conditions will be performed in a manner consistent with the level of care and skill ordinarily exercised by members of the laboratory profession currently practicing under similar conditions and time period in the locality of the project. No warranty, expressed or implied, is made or intended by providing laboratory services or by furnishing oral or written reports of the findings made.

**Section 3 - Reports and Confidentiality**

Medcan Hawai`i will provide written reports by the delivery date and in the quantities as specified in the test order forms. Except as required by law, Medcan Hawai`i shall not disclose to any person or entity other than you: 1) reports, 2) the conclusions, observations and opinions contained in reports, or 3) any information, samples or other material supplied to Medcan Hawai`i by you. Medcan Hawai`i shall abide by any additional confidentiality requirements required under the law.

**Section 4 - Chain of Custody, Document Retention**

Either Medcan Hawai`i or you shall create and maintain appropriate written chain of custody documentation to assure linking of results to specific samples. If requested by you, Medcan Hawai`i shall provide the chain of custody documentation with the report. Medcan Hawai`i will retain test data pursuant to regulatory requirements in effect at the time.

**Section 5 - Delivery, Acceptance and Retention of Samples**

You represent and warrant that any information provided to Medcan Hawai`i shall be accurate and complete without any further independent verification from Medcan Hawai`i. You further agree that Medcan Hawai`i shall not be held liable for any incorrect lab results, loss or damages that arise from Medcan Hawai`i's reliance on such information.

Loss or damages to samples remains your responsibility until Medcan Hawai`i's acceptance of samples by notation on chain of custody documents in writing.

Medcan Hawai`i will retain or destroy samples if required by law. If directed, Medcan Hawai`i may, but is not required to, extend the retention period, provided that the you agree to pay the storage and sample tracking fees established from time to time by Medcan Hawai`i. Following the retention period, Medcan Hawai`i will dispose of all samples pursuant to regulatory requirements in effect at the time.

## **Section 6 - Changes to Test Order Forms**

No persons other than the designated representatives for each test order form are authorized to act regarding changes to a test order form. Medcan Hawai'i shall provide you with written notification promptly upon identifying any activity that is a change to the terms and conditions of a test order form. The notice will include the date, nature, circumstance, and cause of the activity regarded as a change, and will specify the particular elements of project performance for which an equitable adjustment is sought. Changes may be made to a test order form through issuance of an amended test order form signed by both parties. The amendment will specify the reason for the change and, as appropriate, include any modified budgets, schedules, scope of work, and other necessary provisions.

## **Section 7 - Invoices**

Invoices shall be paid within 14 days of receipt of the invoice. An administrative surcharge of 1.5% per month on the outstanding balance will be applied to invoices after 14 days. In the event that you dispute all or a portion of an invoice, you shall advise Medcan Hawai'i in writing, shall pay the undisputed portion of the invoice as specified in these Terms and Conditions, and shall resolve the disputed portion of the invoice through the disputes procedures described herein.

## **Section 8 - Reserved**

## **Section 9 - Disputes**

You agree that the laws of the State of Hawai'i, without regard to principles of conflict of laws, will govern these Terms and Conditions, and any dispute that might arise with respect thereto between you and Medcan Hawai'i or its officers, directors, employees or agents. You expressly and irrevocably agree that exclusive venue and jurisdiction for any such dispute shall be in the state courts of the City and County of Honolulu, Hawai'i, or in the United States District Court for the City and County of Honolulu, and you further expressly and irrevocably consent to the exercise of personal jurisdiction in such courts in connection with any such dispute. You and Medcan Hawai'i agree that the prevailing party to such dispute should be entitled to an award of attorney's fees and costs. As to any disputes that arise under, involve the interpretation of, and/or in any way relate to these Terms and Conditions, its subject matter or the reports provided by Medcan Hawai'i, we shall first attempt to resolve that dispute through confidential mediation with Dispute Prevention & Resolution Hawai'i (<https://dprhawaii.com/>)("DPR") in Honolulu with an agreed upon neutral, with each of us bearing our own fees and expenses. We agree to share the costs of mediation equally. If confidential mediation fails, we shall engage in confidential binding arbitration under Haw. Rev. Stat. Ch. 658A (HRS 658A) and the DPR Arbitration Rules then in effect before a single agreed upon arbitrator. The arbitrator's fees shall be shared equally by us. Any arbitration award may be confirmed and enforced as permitted in HRS 658A in a court with jurisdiction. The prevailing party in any proceeding shall be entitled to an award of attorneys' fees and expenses, including fees incurred in any mediation.

## **Section 10 - Indemnification**

You shall indemnify and hold harmless Medcan Hawai'i, its officers, directors, shareholders and employees from and against any damages, losses, liabilities, judgments, costs or expenses (including reasonable attorney's fees and costs and all other fees and costs of defense) arising out

of (a) a claim by a third party relating to your use of Medcan Hawai`i's test results, or (b) your breach or violation of these Terms and Conditions.

**Section 11 - Termination and Suspension**

You may order work suspended or terminated upon three days' advance written notice. If work is suspended, Medcan Hawai`i shall receive, upon resumption, an adjustment in the cost of services to compensate for additional costs incurred due to the interruption of services. Upon suspension or termination, Medcan Hawai`i shall preserve samples, provided that you agree to pay the sample storage charge.

**Section 12 - Limits of Liability**

Medcan Hawai`i shall not be held liable for any loss or damage due to inaccurate test results of samples that were affected by latent or hidden conditions, or conditions otherwise not made known to Medcan Hawai`i by you prior to testing. Medcan Hawai`i shall not be liable for any indirect, incidental, special or consequential damages, losses or expenses arising in connection with your use of the test results provided by Medcan Hawai`i or in connection with any failure of performance, error, omission, inaccuracy of information, interruption, delay or defect in transmission. In no event shall Medcan Hawai`i's total liability exceed the sum of twice the testing fee or a sum of One Thousand Dollars (\$1,000), whichever is greater.

**Section 13 - Miscellaneous Provisions**

These Terms and Conditions shall apply to the services provided by Medcan Hawai`i to you. You agree that the services may be performed by a third party in the event of a merger, acquisition or liquidation. Medcan Hawai`i's failure to act with respect to a breach of these Terms and Conditions by you or others does not constitute a waiver of Medcan Hawai`i's right to act with respect to a subsequent or similar breach. These Terms and Conditions constitute the entire agreement between us, and supersedes all other and prior agreements. Any term, condition, prior course of dealing, course of performance, usage of trade, understanding, purchase order conditions, or other agreement purporting to modify, vary, supplement, or explain the services is of no effect. To the extent any part of these Terms and Conditions is determined to be unenforceable by a court of competent jurisdiction, such portion will be modified solely to the extent necessary to cause such portion to be enforceable, and these Terms and Conditions, as modified, will remain in full force and effect.

BY REQUESTING MEDCAN'S SERVICES YOU ACKNOWLEDGE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.