

## BIOCERTICA – TERMS OF SERVICE

### 1 INTRODUCTION

- 1.1 BioCertica Proprietary Limited, trading as "**BioCertica**," maintains the website located at [www.biocertica.com](http://www.biocertica.com) and its related mobile application downloadable as "BioCertica" (together the "**BioCertica Platforms**"), and provides the services available on these BioCertica Platforms. These Services include the supply of genetic testing kits and related services which allow users to translate their genetic information into reports that provide them with information about their DNA and that may assist them to make informed decisions about their health.
- 1.2 Access to and use of the BioCertica Platforms and/or the Services by you is governed by these terms and conditions (the "**Terms and Conditions**") as read with the privacy policy located at [\[insert\]](#) (the "**Privacy Policy**"). Any references to "**BioCertica**", "**we**", "**us**" or "**our**" shall be to BioCertica Proprietary Limited, and shall include, where applicable, our affiliates and subsidiaries. References to "**user**", "**you**" or "**your**" shall be to any person that has registered for the BioCertica Services and uses the BioCertica Platforms and/or such Services.
- 1.3 **Upon your acceptance hereof, these Terms and Conditions will constitute a legally binding agreement between you and BioCertica and will also constitute your acceptance of the Privacy Policy.**
- 1.4 **These Terms and Conditions contain warranty disclaimers and other provisions that limit BioCertica's liability towards you or which may require you to indemnify BioCertica or assume a risk or liability. Any such terms will be in bold, in the same style as this paragraph. By accessing and using the BioCertica Platforms and/or the Services, you acknowledge that you have read, accept, and will be bound by these Terms and Conditions as read with the Privacy Policy. If you do not agree to this, please do not use the BioCertica Platforms and/or the Services.**

### 2 DEFINITIONS

- 2.1 In these Terms and Conditions, unless the context indicates a contrary intention, the following words and expressions bear the following meaning assigned to them –
- 2.1.1 "**BioCertica Content**" means the content created by BioCertica and any other property created or developed by or for us, including but not limited to the BioCertica Platforms, the test Kit, Tests, Test Results, all data obtained through analysis of your DNA sample provided to us (and all data supplemental or ancillary thereto), all technical and scientific information obtained through the analysis of your DNA sample, any compilation of the aforementioned information or databases

created by us with such information, as well as all other services and/or communications displayed or provided directly or indirectly by us to you;

- 2.1.2 "**days**" means calendar days unless qualified by the word "**business**", in which instance a "**business day**" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 2.1.3 "**Intellectual Property Rights**" means all intellectual property capable of protection, whether registered or unregistered, in any jurisdiction worldwide, including without limitation inventions and patents, trademarks, logos, know-how, trade names, works capable of copyright protection, trade secrets and business information, data, software, source code and object code, designs, and any other proprietary rights of any nature whatsoever including all associated goodwill and all applications, renewals, improvements, adaptations, revisions and copies in respect thereof;
- 2.1.4 "**Professional**" means a medical professional forming part of the BioCertica network of professionals;
- 2.1.5 "**Services**" means the services provided by BioCertica through the BioCertica Platforms and which will be provided in accordance with the service elements (which include the Test types, Test Results and supply of the Test Kits, where purchased directly from BioCertica) set out at <https://www.biocertica.com/collections>, from time to time, as selected by you;
- 2.1.6 "**Test**" means the BioCertica genetic test which includes, but is not limited to, the testing of your DNA at a laboratory, in accordance with the test type selected by you;
- 2.1.7 "**Test Kit**" means the BioCertica DNA test kit, which is supplied to you by BioCertica for purposes of collecting a sample of your DNA; and
- 2.1.8 "**Test Results**" means the report generated by BioCertica that constitutes a translation of your genetic information, in accordance with the type of Test selected by you.

### 3 ACCESS TO THE BIOCERTICA PLATFORMS AND THE SERVICES

- 3.1 You may only use the BioCertica Platforms and the Services if you are located in South Africa and the Services will not be provided outside of the borders of South Africa.
- 3.2 You will only have access to the BioCertica Platforms and the Services if you have completed the BioCertica registration process and have been provided with the necessary log-in details (which includes setting up your single sign-on details, and which may include forms of verification such as facial recognition, PIN selection, as well as email and mobile number verifications).

- 3.3 We may update the BioCertica Platforms from time to time. If you do not make use of the latest version thereof, your access to and use of the BioCertica Platforms and/or the Services may be restricted.
- 3.4 You acknowledge and agree that we may update these Terms and Conditions from time to time by notifying you, and that you will be required to accept such updated Terms and Conditions prior to your subsequent use of the BioCertica Platforms and Services. If you do not accept such amended Terms and Conditions your access to the BioCertica Platforms and/or Services may be suspended and/or terminated by us.
- 3.5 If you are under the age of 18, you require a parent or legal guardian to consent to your use of the BioCertica Platforms and/or the Services, and your parent or legal guardian will be bound by these Terms and Conditions. Where you are a parent or legal guardian so consenting on behalf of a person under the age of 18, you warrant that you are duly authorised to provide such consent and that the information you provide to BioCertica is correct.
- 3.6 The BioCertica Platforms and the Services are intended for personal use and may under no circumstances be used to obtain genetic information of any third party (save to the extent that you are doing so as a legal guardian or other lawful representative of a person under the age of 18). By using the BioCertica Platforms and/or the Services you warrant that you are not attempting to do so and that you are not an employer, government entity, insurer or any other person or entity making use of the BioCertica Platforms and/or the Services for this purpose.
- 3.7 Employers, insurers and third parties wishing to conduct third-party testing are required to enter into separate agreements with BioCertica. Please contact us via the information provided in paragraph 21.

#### **4 HOW WE USE YOUR DATA**

- 4.1 To facilitate your access to the BioCertica Platforms and to provide the Services to you, we are required to process some of your personal information and to share some of this personal information with certain third parties, such as our duly appointed service providers and Professionals.
- 4.2 We shall process this personal information in accordance with applicable data privacy legislation and our Privacy Policy, available here [\[insert hyperlink\]](#).
- 4.3 Please read the Privacy Policy to understand the types of personal information we collect, where we collect it from, who we may need to share it with, how long we retain it for, whether it leaves the country in which we collected it, and how you can request access to and/or deletion of your personal information.
- 4.4 We will destroy your genetic material submitted as part of a Test Kit that you return to us, within 30 days after your DNA sample collected by means of the Test Kit has been processed.

- 4.5 Your Test Results remain accessible via our database until you choose to delete your BioCertica account.
- 4.6 **You acknowledge and agree that we may perform complete tests in accordance with our internal processes on your genetic material, which tests generate more information than what we provide as part of your Test Results, for the type of Test selected by you. You will not have any rights or access to this additional information and/or any corresponding results unless you purchase the applicable additional Services (including the necessary Test type) and provided that BioCertica includes an option for such information or combinations thereof, as part of its Services (and Test type).**
- 4.7 **You acknowledge and agree that we may keep and use your Test Result and the data we extracted from the genetic material you submit upon return of a Test Kit, for research purposes, however any of your data that we retain and use for such research purposes is aggregated and anonymised. It will not identify you personally.**

## 5 PURCHASING A TEST KIT

- 5.1 The estimated turnaround time for delivery of a Test Kit purchased via the BioCertica Platforms is 1 to 5 business days from the date on which you place your order and payment for the order is received by us. Applicable delivery and shipping fees will be stipulated upon check-out.
- 5.2 **BioCertica will not be liable for any loss of or damage to a Test Kit during the delivery process, or for any loss or damage suffered where the Test Kit is taken receipt of by an unauthorised or incorrect person.**
- 5.3 The Test Kit will contain instructions in respect of the use of the Test Kit. If you require an additional Test Kit, whether because you lost, contaminated, or destroyed your Test Kit or did not follow the instructions correctly, this will be at your own expense.
- 5.4 Collection of the Test Kit will be facilitated by a courier nominated by BioCertica, and you are responsible for arranging such collection with the courier. **BioCertica will not be liable for any loss of or damage to a Test Kit during the collection process, or for any loss or damage suffered where the Test Kit is not collected by the courier or delivered to us in a processable condition.**
- 5.5 **We cannot process your Test Kit if you remove the barcode from the swab included as part of the Test Kit, and we will not be obliged to provide you with a replacement Test Kit. BioCertica will not be liable for any incorrect Test Results generated as a result of the removal of or tampering with the barcode in any way.**

- 5.6 **When using the Test Kit, you are required to follow the instructions precisely and BioCertica will not be liable for any incorrect Test Results generated as a result of your incorrect use of the Test Kit.**
- 5.7 We will send your Test Kit to our third-party laboratory service providers for processing. These third-party service providers may have operations in South Africa and/or abroad.
- 5.8 Users are also able to purchase a Test Kit directly from a Professional. This Professional can then also assist with interpretation of a Test Result after BioCertica and its service providers have processed the DNA sample collected by means of the Test Kit and generated a Test Result (as explained in clause 10). In this instance, you will make payment directly to the Professional (or to the Professional via the BioCertica Platforms if and when this functionality becomes available), and the Professional will be responsible for the delivery of the Test Kit to you. **BioCertica will not be responsible for the delivery of the Test Kit and will not be liable for any loss of or damage to a Test Kit during the delivery process, or for any loss or damage suffered where the Test Kit is taken receipt of by an unauthorised or incorrect person.**

## 6 PAYMENTS AND FEES

- 6.1 **You acknowledge and agree that BioCertica reserves the right to amend the fees for the Services (including the fees set out on the relevant mobile application store(s) where you download the BioCertica mobile application), as well as the payment terms and payment methods available, at BioCertica's sole discretion and without providing prior notice.**
- 6.2 BioCertica may from time to time offer discounts, free trials, and similar promotional offerings. Any such offering may be subject to such additional terms as BioCertica may impose in its sole discretion.
- 6.3 Your order is not complete, and the fees payable are not set, until you have placed an order. **BioCertica will not be liable where a price displayed changes from the time you place an item into your cart until the time you make payment.**
- 6.4 Your bank or any additional payment provider you select to make payment, may charge additional transaction, administrative and/or facilitation fees. BioCertica is not responsible for any such fees.
- 6.5 If you pay us with your credit or debit card, BioCertica may need to request certain additional information from you to verify and/or authorise your payment. You warrant that you are authorised to use the card you are using to make payment and that your card will have sufficient funds available to cover the cost of your purchase.

- 6.6 You are responsible for repaying to BioCertica any reversed or charged-back credit card payments within 10 days of BioCertica requesting you to do so. BioCertica will not be obligated to provide any Services until such payment has cleared.
- 6.7 If you purchase a Test Kit from a Professional and/or you have requested that a Professional (as explained in paragraph 10) provide additional interpretation of your Test Result, your payments are made directly to this Professional and shall be subject to their own terms and conditions (including the applicable price/fees, refunds and cancellation policy in relation thereto), to which BioCertica is not a party. **BioCertica will not be liable for any loss or damage suffered by you due to an inability to obtain a cancellation or refund from such Professional.**
- 6.8 **Any payment link that you may receive from BioCertica to facilitate the payment to a Professional (if and when this functionality becomes available) will be provided in BioCertica's capacity as a payment facilitator for the Professional and not in its capacity as a provider of products and/or services in terms of these Terms and Conditions.**

## 7 CANCELLATION AND REFUNDS

### 7.1 Cancellation by BioCertica

- 7.1.1 BioCertica may cancel your order at any time at our discretion, for any reason, which we will not be obliged to disclose to you. After notifying you of the cancellation, you will be refunded the full purchase price paid within 30 days from notice of cancellation by us.
- 7.1.2 If BioCertica is not able to generate a result based on your DNA sample returned with your Test Kit after 2 attempts (2 samples), BioCertica will cancel your order. After notifying you of the cancellation, you will be refunded the full purchase price paid within 30 days from notice of cancellation by us.
- 7.1.3 If BioCertica is not able to generate a Test Result due to instrument or other failure on BioCertica's part, you will be refunded the full purchase price paid within 30 days from notice of cancellation by us.
- 7.1.4 If BioCertica cannot process your results due to your genetic material (provided upon return of your Test Kit) not meeting the required quality levels as a result of you not following the Test Kit instructions correctly, you will not be entitled to a refund.
- 7.1.5 If BioCertica cancels your order for any reasons set out in this paragraph 7.1.5, you will not be entitled to submit another sample. If you do so, we will not be obligated to re-process your sample nor to refund you.

7.1.6 Notwithstanding any cancellation by BioCertica, your genetic material provided as part of a Test Kit will not be returned to you but will be destroyed in accordance with paragraph 4.4.

## 7.2 Cancellation by you

7.2.1 If you choose to cancel an order, you may do so provided that your order has not yet been processed. BioCertica will refund you in full within 30 days of the written cancellation request being received.

7.2.2 If you choose to cancel an order after the Test Kit has been delivered to you, you may return the Test Kit to BioCertica at your own expense in its original, unopened condition. Provided that BioCertica is satisfied that the Test Kit is unused and unopened, BioCertica will refund you within 30 days, subject to your payment of a handling fee that will be stipulated upon cancellation.

7.2.3 You may also cancel an order in the following instances, in which case BioCertica will refund you within 30 days, subject to your payment of a handling fee that will be stipulated upon cancellation –

7.2.3.1 after your Test Kit has been collected by BioCertica, but before our third-party laboratory partners have processed it; or

7.2.3.2 after your Test Kit has been collected by BioCertica and sent to our third-party laboratory partners, but before you have received your Test Results.

7.2.4 Any handling fee charged by us in terms of this paragraph 7.2 will escalate on 1 January each year.

7.2.5 You cannot cancel your order once our third-party laboratory partners have processed your DNA sample collected from the Test Kit you return to us, or you have received your Test Results.

7.2.6 Notwithstanding any cancellation by you, your genetic material provided as part of a used Test Kit that you return to us, will not be returned to you, but will be destroyed in accordance with paragraph 4.4.

7.2.7 If you have requested that a Professional provide additional interpretation of your Test Result, your payments are made directly to this Professional and any payment to and/or cancellation or refund in respect of the Professional's fees and services shall be subject to their own terms and conditions, to which BioCertica is not a party. **BioCertica will not be liable for any loss or damage suffered by you due to an inability to obtain a cancellation or refund from the Professional.**

7.2.8 The BioCertica Platforms allow you to book a consultation for the interpretation of your Test Result. Should you make use of this functionality, any cancellation of such consultation needs to be done directly with the applicable Professional. We are not responsible for any delays or time overruns that the Professional may be experiencing on the day of your consultation or for any cancellation of such

consultation. Any cancellation or consultation changes will be communicated to you directly by the Professional.

## **8 YOUR TEST RESULT**

- 8.1 You warrant that the genetic material you submit as part of a used and returned Test Kit is your own (save where you are submitting the genetic material of a person under the age of 18 in your capacity as their legal guardian or under another form of lawful authority, in which case you warrant that the genetic material is that of the relevant person under the age of 18 as indicated by you)'.
- 8.2 We provide your Test Results in a bespoke encrypted digital format which keeps it secure. We do not provide the Test Results in any other format and cannot assist with requests for Test Results in alternative formats.
- 8.3 We strive to continuously improve our Services, which means we may from time-to-time update, review or amend our Services and the Test Results based on new scientific and technological developments. We reserve the right to amend your Test Results after they have been delivered to you, however we are under no obligation to update your Test Results once they have been delivered to you.
- 8.4 We partner with experienced scientific professionals to help us render our Services to you in a reliable manner. Together with these professionals, we determine the genes we should analyse and the genes we should omit. This means BioCertica may, where your genetic material submitted to us does not contain the required gene markers tested for, statistically infer your Test Result by using imputation software. It may also happen that we are not able to statistically infer your Test Result by using imputation software, due to factors outside our control. This is unlikely, but where it does happen, we will include in your Test Result only such data that we could successfully process.

## **9 SHARING YOUR TEST RESULT**

- 9.1 Once we have delivered your Test Results to you, it is your responsibility to keep it secure and confidential.
- 9.2 If you choose to share your Test Result with any third party, including a physician (or a Professional), you should understand that this may have serious implications in relation to how those Test Results are used, including that the Test Result may form part of your medical record, which may influence your physician's advice to you, aspects of your insurance and other implications in relation to, for example, applicable legislation and/or the common law, which may apply to the use of the Test Result which has been shared by you.
- 9.3 Ask your physician what the effect of sharing your Test Result will be before disclosing it.



9.4 **BioCertica will not be liable for any loss or damage suffered by you where you choose to share your Test Result with a third party.**

## 10 TEST RESULT INTERPRETATION

10.1 If you require additional interpretation of your Test Result, a consultation with a Professional forming part of the BioCertica network "" can be booked through the BioCertica Platforms, in order for such Professional to interpret the Test Results for you, or you are free to approach a medical professional of your choice. BioCertica cannot assist with interpretation services.

10.2 Should you decide to use a medical professional other than a Professional to interpret your Test Results, you will be required to share the Test Results provided to you with such medical professional as such medical professional does not have access to the BioCertica Platforms or the enhanced version of your Test Results that is provided to Professionals (as set out in paragraph 10.6). This is at your own risk and expense.

10.3 We recommend that you complete the BioCertica online lifestyle and medical questionnaires via our mobile application, whereafter you can be referred to a Professional.

10.4 Notwithstanding BioCertica referring you to any Professional, BioCertica is not a healthcare provider and does not provide medical advice or diagnostic services.

10.5 Though BioCertica takes care in assessing the Professionals that form part of its network, BioCertica is not responsible for the Professionals' designations or their registrations with their professional bodies, including the maintenance and renewal of such designations and registrations, or for the Professionals' compliance with applicable legislation.

10.6 If you have a complaint about the conduct of a Professional, you should report them to the appropriate professional body and/or follow the appropriate legal process.

10.7 Should you request a Professional to interpret the Test Results for you, BioCertica will share an enhanced version of the Test Results with the Professional and which allows the Professional to provide you with an additional interpretation of your Test Results. You will be required to follow and complete the "Share Data" prompts on the BioCertica Platforms prior to BioCertica sharing the enhanced version of your Test results with the Professional.

10.8 We will also share the medical and lifestyle questionnaires that you have completed with the Professional, to allow the Professional to provide the enhanced interpretation service. The Professional cannot provide this service if you do not agree to us sharing your data with them. All data, including the Test Results, will be transmitted securely via the BioCertica Platforms.

- 10.9 The Professional may have their own terms and conditions which apply to your relationship with them. BioCertica is not bound by these Terms and Conditions, and it is your responsibility to ensure that you understand any such terms and conditions before agreeing to them.
- 10.10 In the event that BioCertica facilitates your payment for the results interpretation session and your access to the Professional, BioCertica is not a party to the relationship between you and the Professional and BioCertica's only role is acting as a payment facilitator. Payment is made directly to the Professional and BioCertica merely serves as an agent.
- 10.11 The Services allow for a Professional to make comments and notes in relation to your Test Results, which will be available on your BioCertica account, however this is at the discretion of the Professional.
- 10.12 **Where a patient-physician relationship comes into existence between you and the Professional, BioCertica shall not be a party to this relationship. BioCertica does not employ the Professional and will have no liability for the acts or omissions of the Professional.**
- 10.13 **You are solely responsible for acting on the recommendations made and/or information provided by a Professional, and BioCertica will not be liable for any loss or damage suffered by you as a result hereof.**
- 10.14 **Notwithstanding the fact that you are able to book a consultation with a Professional via the BioCertica Platforms, BioCertica does not warrant the availability of a Professional for interpretation purposes and does not guarantee your access to such a Professional. The availability and lead times for access to a Professional is at the discretion of such Professional and booked consultations may be cancelled or amended at the discretion of the Professional. BioCertica will not be liable for any loss or damage suffered by you as a result hereof.**

## 11 SERVICE LIMITATIONS

- 11.1 We offer a variety of tests as part of our Services, each designed to provide insight into varying aspects of your health. Your Test Result will only include results in respect of the category of Service (and/or Test type) you selected and paid for, even though it may be possible to produce additional results from the genetic material you submitted as part of your returned Test Kit. The Test Result is accordingly limited to the information we could derive from the genetic material submitted by you as part of your returned Test Kit, and to the category of Service (and/or Test type) you selected.
- 11.2 **You acknowledge and agree that –**

- 11.2.1 **the Services are for informational purposes only. Neither the BioCertica Platforms nor our Services are intended to fulfil a diagnostic function or to provide care for medical conditions or emergencies;**
- 11.2.2 **providing BioCertica with genetic material upon your return of a used Test Kit does not create a physician-patient relationship between you and BioCertica and the Test Results do not purport to diagnose any medical condition;**
- 11.2.3 **neither the Test Results nor any information provided by BioCertica to you, whether as part of your registration, general correspondence or otherwise, shall be construed as medical advice;**
- 11.2.4 **if your Test Results indicate a predisposition to a certain condition, it does not necessarily mean that you will develop that condition. If your Test Results do not indicate a predisposition to a certain condition, it does not necessarily mean that you will not develop that condition;**
- 11.2.5 **your Test Results are based on the genetic material you submitted to us upon your return of a used Test Kit. Your Test Results may become less relevant, outdated, or inaccurate based on your changing health condition, the effluxion of time, and/or advances in genetic testing and biotechnology. BioCertica will not be liable for any loss or damage suffered by you due to the Test Result becoming inaccurate or of less relevance on this basis.**
- 11.3 **You should consult your primary physician before making any changes to your health care regime based on the Test Results. BioCertica will not be liable for any loss or damage suffered by you due to actions taken by you or a third party pursuant to a Test Result.**

## **12 DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

- 12.1 **You acknowledge that the BioCertica Platforms and/or the Services are provided on an 'as is' basis, without any warranty that the BioCertica Platforms and/or the Services will be free from defects, to the extent that it is lawful to do so, and that the existence of errors in the BioCertica Platforms and/or the Services alone will not constitute a breach of these Terms and Conditions by us. In the event of any such defect or error, your sole remedy will be to cease your use of the BioCertica Platforms and/or the Services.**
- 12.2 **BioCertica does not warrant that –**
  - 12.2.1 **the BioCertica Platforms and/or the Services (or any component thereof) will meet your personal requirements;**

- 12.2.2 **the BioCertica Platforms and/or the Services (or any component thereof) will operate in the combinations that you select for use;**
- 12.2.3 **the operation of the BioCertica Platforms and/or the Services (or any component thereof) will be uninterrupted or error-free; or**
- 12.2.4 **that all errors or defects will be corrected.**
- 12.3 **No representations or warranties are made or provided in respect of the information provided as part of the BioCertica Platforms and/or the Services, including in respect of the accuracy of the information. Your use of the BioCertica Platforms and/or the Services is at your own and sole risk.**
- 12.4 **In addition, and to the extent that it is lawful to do so, BioCertica disclaims all warranties with respect to the BioCertica Platforms and/or the Services, either express or implied, including, without limitation, warranties of accuracy, non-interruption, merchantability, fitness for a particular purpose and/or non-infringement.**
- 12.5 **In no event shall BioCertica or its affiliates, officers, directors, employees, agents, service providers or contractors be liable for any special, indirect, consequential, or incidental damages arising out of, or related to, the BioCertica Platforms and/or the Services, whether such damages arise in contract, negligence, delict, under statute, in equity, at law or otherwise.**
- 12.6 **In no event shall BioCertica or its affiliates, officers, directors, employees, agents, service providers or contractors be liable for, without limitation, –**
- 12.6.1 **any failure of the Services or failure of your use of the Services;**
- 12.6.2 **viruses and/or other malicious code that may infect your device by means of which you access and use the BioCertica Platforms and/or Services;**
- 12.6.3 **your reliance on any material or content provided through the BioCertica Platforms and/or the Services;**
- 12.6.4 **any defect, error, failure, fault, delay, or unavailability of the BioCertica Platforms and/or the Services;**
- 12.7 **BioCertica will not be liable to you for any claims or losses of whatsoever nature arising as a result of anyone else gaining unlawful access to the BioCertica Platforms, or as a result of BioCertica acting on an instruction received from you.**

- 12.8 **We will furthermore not be liable for any default of delay in performance if and to the extent that such default or delay is caused by any act of God, pandemic or endemic, government restrictions, war or civil disturbance, labour unrest, court order, or any other circumstance beyond our reasonable control, including fluctuations in communication of utility services, and provided we are without fault in causing such default of delay, and such default or delay could not have been prevented by us through the use of alternative economically viable means.**
- 12.9 **You agree to defend and indemnify BioCertica and to hold BioCertica and its officers, subsidiaries, affiliates, successors, assigns, directors, officers, agents, service providers, suppliers, and employees harmless from and against all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorneys' fees) arising from your use of and access to the BioCertica Platforms and/or the Services in any manner or format, including without limitation –**
- 12.9.1 **your use of and access to any third-party platforms linked to the BioCertica Platforms and/or the Services;**
- 12.9.2 **your violation of any part of these Terms and Conditions;**
- 12.9.3 **your violation of any third party right, including without limitation any copyright, trade mark, trade secret or other property, or privacy right; and/or**
- 12.9.4 **any claim that your use of the BioCertica Platforms and/or the Services caused damage to a third party.**
- 12.10 **BioCertica's liability toward you shall, to the fullest extent permitted by applicable law, be limited to an amount equal to 500% of the amount paid by you to BioCertica in the 12 months immediately preceding the date upon which the liability arose.**
- 12.11 **This defence and indemnification obligation will survive termination, modification or expiration of these Terms and Conditions and your use of the BioCertica Platforms and/or the Services.**

### **13 LICENCE AND USAGE TERMS**

- 13.1 **You may use the BioCertica Platforms and/or the Services only for private, personal purposes that are legal, and you must not (nor will you allow or cause any third party to) –**
- 13.1.1 **resell or attempt to resell, on-sell, or distribute the Test Kits, Test Results, or any part of the Services in any way;**

- 13.1.2 tamper with, disassemble, decompile, reverse engineer, edit, attempt to derive the source code of or modify the BioCertica Platforms and/or the Services;
- 13.1.3 use or exploit the BioCertica Platforms and/or the Services for commercial gain under any circumstances whatsoever or copy the BioCertica Platforms and/or the Services;
- 13.1.4 sublicense, distribute, export, or resell the BioCertica Platforms and/or the Services (whether in whole or in part) or otherwise transfer any rights therein; or
- 13.1.5 exercise any other right to the BioCertica Platforms and/or the Services not expressly granted in these Terms and Conditions.
- 13.2 You are granted a revocable, non-transferable, non-exclusive, limited licence to use the BioCertica Platforms to receive the Services for personal, private use.
- 13.3 The BioCertica Platforms may incorporate open-source software, the terms of which may override or supplement these Terms and Conditions. The relevant mobile application store from which you downloaded the BioCertica mobile application may have its own terms and conditions, which are separate from these Terms and Conditions.
- 13.4 **You are responsible for telecommunications, internet and other costs related to downloading and making use of the BioCertica Platforms, and for obtaining permissions to use the BioCertica Platforms and Services on any device.**
- 13.5 **You are responsible for the security of the device used to access and/or use the BioCertica Platforms and Services and BioCertica will not be responsible for any damages or losses suffered by you, including in relation to the damage or destruction of data, as a result of the lack of appropriate security on such device.**

#### 14 INTELLECTUAL PROPERTY

- 14.1 BioCertica and/or its valid licensor(s) own all right, title and interest in and to the BioCertica Content, including the BioCertica Platforms and/or the Services, and all information, documentation, Intellectual Property Rights and/or proprietary products, made available via the BioCertica Platforms and/or the Services. No licence or other right or interest in or to the BioCertica Content, including the BioCertica Platforms and/or the Services is granted to you, except for the licence rights specifically set forth herein.
- 14.2 By communicating with BioCertica or sharing any information with BioCertica, you grant BioCertica a royalty-free, perpetual, irrevocable, non-exclusive licence to use, reproduce, modify, publish, edit, translate, distribute, perform, and display the communication, content, or any information therein alone

or as part of other works in any form, media, or technology, whether now known or hereafter developed, for any purpose.

- 14.3 BioCertica retains ownership in all BioCertica Content (including your Test Results), generated during the rendering of the Services to you and you are granted a limited licence in respect of such BioCertica Content for your personal use only, and only to the extent of the Service component that you have selected and paid for.

## 15 **INFORMATION SECURITY**

- 15.1 We have put in place procedures to deal with any suspected security breaches in respect of the BioCertica Platforms and will notify you and any applicable regulator of a suspected breach or unauthorised disclosure where we are legally required to do so.
- 15.2 We will do our best to protect your information, and we will use technology that will help us to do this, including through the use of encryption technology, however, the transmission of information via the internet is not completely secure and we cannot guarantee the security of your information transmitted to or via the BioCertica Platforms.
- 15.3 Any transmission of your information on the BioCertica Platforms is entirely at your own risk. Once your information is received by the BioCertica Platforms, we and/or our third-party service providers shall use strict procedures and security features to try and prevent unauthorised access.
- 15.4 You are responsible for the activity occurring under your account on the BioCertica Platforms, and it is your responsibility to keep your accounts, passwords and devices secure and protected.

## 16 **THIRD-PARTY LINKS**

- 16.1 We may use third-party service providers to monitor our users' interests. In addition, the BioCertica Platforms may occasionally contain links to third-party platforms. If you click on the links to third-party platforms, you leave the BioCertica Platforms.
- 16.2 We are not responsible for the content of these third-party platforms or for the security of your information when you use the third-party platforms. These third-party service providers and third-party platforms may have their own terms and policies governing the security and retention of your information that you may be subject to.
- 16.3 These Terms and Conditions do not govern information provided to, stored on, or used by these third-party providers and third-party platforms. We recommend that, when you enter a third party's platform, you review its terms and privacy policy.

- 16.4 **By using the BioCertica Platforms, you agree that we are not liable for any of the following —**
- 16.4.1 **the content, security, operation, use, accuracy, or completeness of any third-party platforms; or the products or services that may be offered or obtained through them; or the accuracy, completeness, or reliability of any information obtained from a third-party platform;**
  - 16.4.2 **the ownership or right of use of any licensor of any software provided through any third-party platform;**
  - 16.4.3 **any content featured on a third-party platform that is accessed through the links found on our BioCertica Platforms; and/or**
  - 16.4.4 **any failure or problem that affects the products or services of a third-party platform, for example any telecommunication service provider, internet service provider, electricity supplier, local or other authority.**

## 17 **YOUR BIOCERTICA ACCCOUNT**

- 17.1 We will use reasonable endeavours to maintain the availability of the BioCertica Platforms and/or the Service(s), except during scheduled maintenance periods, and reserve the right to discontinue, terminate, suspend and/or modify the BioCertica Platforms and/or the Service(s) or any part thereof with or without notice to you. **BioCertica will have no liability to you in such instance, save for a duty to refund any amounts paid by you in respect of Services not yet rendered at the time of termination.**
- 17.2 You agree to adhere to these Terms and Conditions and to conduct yourself in a respectful, lawful manner on the BioCertica Platforms. You agree that you will not, through your use of the BioCertica Platforms and/or the Services, –
- 17.2.1 infringe or violate the rights, including the Intellectual Property Rights, of any third party;
  - 17.2.2 distribute any form of marketing or other unsolicited material to any third party; or
  - 17.2.3 post or transmit content that is defamatory, unlawful, hateful, obscene, abusive, or slanderous toward any third party.
- 17.3 You acknowledge that BioCertica reserves the right to suspend and/or terminate your access to the BioCertica Platforms and/or the Services should you contravene any of these terms. **BioCertica will not be liable for any loss or damage you suffer due to your inability to access the BioCertica Platforms and/or the Services where BioCertica terminates your access on this basis.**



- 17.4 BioCertica reserves the right to suspend or terminate your use of the BioCertica Platforms and/or the Services should BioCertica learn that you are under the age of 18 and that a parent or legal guardian has not consented to your use of the BioCertica Platforms and/or Services and agreed to be bound by these Terms and Conditions on your behalf.
- 17.5 You warrant that all the information you provide to BioCertica, whether by way of the BioCertica Platforms or as part of the Services, is up to date and correct.
- 17.6 Your account is personal to you, and you may not allow third parties to use your account.
- 17.7 You can delete your BioCertica account at any time by following the prompts on the BioCertica Platforms.

## 18 **DISPUTE RESOLUTION AND GOVERNING LAW**

- 18.1 Any disputes that may arise hereunder shall be governed by the laws of South Africa. All proceedings, which may arise out of, or in connection with, these Terms and Conditions shall be brought solely in the Western Cape Division of the High Court in South Africa.
- 18.2 You agree that if there is any dispute in respect of these Terms and Conditions, we will attempt to first resolve the dispute informally by engaging with you. Please contact our service manager at [info@biocertica.com](mailto:info@biocertica.com) if you wish to notify us of a dispute. Should this informal dispute resolution process fail, the dispute may be referred to arbitration in accordance with the rules of the Arbitration Foundation of South Africa. This will not preclude BioCertica or yourself from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 18.3 If you breach these Terms and Conditions, we may take such action, including legal action, as we deem appropriate. All costs, charges and expenses which may be incurred by us in enforcing our rights including, without limitation, legal costs on the scale as between an attorney and own client and collection commission, shall be recoverable from you if the above rights are successfully enforced.
- 18.4 It is not intended that any part of these Terms and Conditions contravene any provision of any legislation which may apply including in respect of healthcare, health professions, electronic transactions and/or consumer protection. Therefore, all the provisions of these Terms and Conditions must be treated as being qualified, to the extent necessary, to ensure that the provisions of applicable legislation are complied with. No provision of these Terms and Conditions does or purports to –
- 18.4.1 limit or exempt us from any liability to the extent that the law does not allow such a limitation or exemption;

- 18.4.2 requires you to assume risk or liability for a liability or loss to the extent that the law does not allow such an assumption of risk or liability;
- 18.4.3 limits or excludes any warranties or obligations which are implied into these Terms and Conditions by the Consumer Protection Act No 68 of 2008 and/or the Electronic Communications and Transactions Act 25 of 2002, or other applicable laws.

## 19 SEVERABILITY

All provisions of these Terms and Conditions are, notwithstanding the way they have been grouped together or linked grammatically, severable from each other. Any provision of these Terms and Conditions which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* (as if not written herein) and the remaining provisions shall remain of full force and effect.

## 20 WHOLE AGREEMENT

- 20.1 These Terms and Conditions, as read with the Privacy Policy, constitute the entire and only agreement between BioCertica and you and supersedes all prior or contemporaneous agreements, representations, warranties, and understandings concerning the BioCertica Platforms and/or the Services.
- 20.2 We reserve the right to modify or amend these Terms and Conditions at any time without notice. Your continued use of the BioCertica Platforms and/or the Services signifies your acceptance of these Terms and Conditions, as amended from time to time.

## 21 ASSIGNMENT

- 21.1 Neither these Terms and Conditions nor any part, share or interest therein nor any rights or obligations hereunder may be ceded, delegated, or assigned by you without the prior signed written consent of BioCertica.
- 21.2 BioCertica reserves the right to cede its rights or delegate its obligations without your prior written consent where such action is pursuant to a sale of business, sale of shares, or change of ownership in BioCertica or its holding entities or pursuant to any internal reorganisation or amalgamation in respect of BioCertica and/or any of its holding entities.

## 22 HOW TO CONTACT US

- 22.1 If you have any questions, comments and/or requests about these Terms and Conditions, please contact us at [info@biocertica.com](mailto:info@biocertica.com) with "Terms and Conditions" in the subject line or call us on (021) 300 6387.

22.2 To assist in resolving technical problems with the BioCertica Platforms and/or the Services, we provide access to a help function powered by "FreshDesk" which is available via our website. We will respond to all support queries logged using FreshDesk within a reasonable period.

### 23 **ADDITIONAL INFORMATION**

23.1 Our full name: BioCertica Proprietary Limited

23.2 Registration Number: 2012/109992/07

23.3 Physical Address: BioCertica, Suite B03 La Concorde Building, 57 Main Road, Paarl, 7646, Western Cape, South Africa

23.4 Telephone Number: 021 300 6387

23.5 Website Address: [www.biocertica.com](http://www.biocertica.com)

23.6 E-mail Address: [info@biocertica.com](mailto:info@biocertica.com)

23.7 Membership of any self-regulatory or accreditation bodies: None

23.8 Codes of conduct to which we subscribe: None

23.9 Category of services: Biotechnology

Last updated on [08/02/2022].