

NON-DISCLOSURE, CONFIDENTIALITY AND NON-COMPETE AGREEMENT

Between

JANE MACKENZIE

6110020175080

Director of

AVATAR HEALTH T/A 365 HEALTHY BY CHOICE (PTY) LTD SA

365 HEALTHY BY CHOICE Ltd. UK

And

Full Name

ID

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1. **INTERPRETATION**

In this Agreement:

- 1.1. the headings appearing in this Agreement are for reference purposes only and shall not affect the interpretation hereof;
- 1.2. if any provision in a definition is a substantive provision, conferring rights or imposing obligations on any party, notwithstanding that such provision is only contained in the relevant definition, effect shall be given thereto as if such provision is in the body of this Agreement;
- 1.3. the rule of construction that, in the event of ambiguity, the Agreement shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement;
- 1.4. the expression "including" and its derivatives, such as "include" and "includes", means including, but without limitation; and
- 1.5. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. **DEFINITIONS**

- 2.1. Unless such meaning is inconsistent with the context, the following terms shall throughout this Agreement have the meanings respectively ascribed to them, namely:
 - 2.1.1. **"this Agreement"** means this non-disclosure and confidentiality agreement;
 - 2.1.2. **"Confidential Information"** means any information (including but not limited to any formula, pattern, compilation, device, method, technique or process) that derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, and includes information of the Disclosing Party, its customers, suppliers, and other personas and entities with whom the Disclosing Party does business. Confidential information includes, without limitation, patents, copyrights, trade secrets, systems procedures, manuals, confidential reports, processes, know-how, forms, formulas, specifications, computer programs, data bases, designs, copies, lay-outs other original works of authorship, customer information, pricing, business

plans, budgets, sales records, financial information, accounting, statistical methods of compiling information, sales and promotions, techniques, distribution formulas, market analysis, strategies and forecasts and customer lists (which are deemed for all purposes confidential and proprietary), as well as the nature and type of services rendered by the Disclosing Party, the equipment and methods used and preferred by the Disclosing Party's customers, and the amounts paid by them.

- 2.1.3. **"Contractor"** means the Party who has to his disposal the facilities, expertise and infrastructure for, the formulation, the research and development and the manufacturing of pharmaceutical products, complimentary medicine products, food supplement products and powders.
- 2.1.4. **"Person"** means an individual, a corporation a partnership, a limited liability company, an association, a trust or any other entity or organisation of any kind, including without limitation, a governmental authority or agency.
- 2.1.5. **"Representative"** means a Party's subsidiaries, affiliates, officers, directors, members, managers, employees and professional advisors (including, but not limited to, attorneys, accountants and financial advisors).
- 2.1.6. **"Disclosing Party"** means the party disclosing the Confidential Information and successors in title; Jane Mackenzie and 365 HEALTHY BY CHOICE (PTY) LTD
- 2.1.7. **"Receiving Party"** means the party receiving any Confidential Information and successors in title;
- 2.1.8. the **"Parties"** means Jane Mackenzie and

3. **RESTRICTIONS ON DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION**

- 3.1. The Receiving Party may disclose the Confidential Information only to its representatives, officers and employees and then only to such representatives, officers and employees whom such disclosure is reasonably necessary, provided that such representatives, officers and employees are either bound by general confidentiality undertakings no less stringent than those contained in this Agreement or agree, in writing, to be bound by the terms and conditions of this Agreement prior to such disclosure, as if they were Party to this Agreement.
- 3.2. Notwithstanding the above in clause 3.1, the Receiving Party shall be responsible for a breach of the terms of this Agreement by its representatives, officers and employees to whom it discloses Confidential Information of the Disclosing Party, and the Receiving

Party shall take all reasonable measures to restrain such persons from prohibited or unauthorised use or disclosure of the Disclosing Party's Confidential Information.

3.3. The Receiving Party agrees:

- 3.3.1. not to disclose the Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, save in accordance with the provisions of this Agreement;
- 3.3.2. not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this Agreement for any purpose whatsoever other than strictly in relation to the Purpose;
- 3.3.3. that the unauthorised or unlawful use or disclosure of the Confidential Information may cause irreparable loss, harm and damage to the Disclosing Party. Furthermore, the Receiving Party acknowledges that monetary damages may not be a sufficient remedy for unauthorised or unlawful use or disclosure of the Confidential Information and that the Disclosing Party shall be entitled, without waiving any other rights or remedies, to such interim or equitable relief as may be deemed proper by a court of competent jurisdiction.

3.4. Unless the Parties otherwise agree in writing, any documentation or records relating to the Disclosing Party's Confidential Information which comes into the possession of the Receiving Party during the existence of this Agreement or at any time thereafter:

- 3.4.1. shall be deemed to form part of the Confidential Information of the Disclosing Party;
- 3.4.2. shall be deemed to be the property of the Disclosing Party;
- 3.4.3. shall not be published or circulated by the Receiving Party;
- 3.4.4. shall not be copied or reproduced by the Receiving Party other than strictly in accordance with the requirements of the Purpose; and
- 3.4.5. shall be surrendered to the Disclosing Party on request, and the Receiving Party shall not retain any extracts therefrom, unless required for its internal purposes only.

4. **TITLE**

4.1. All Confidential Information that is disclosed by the Disclosing Party to the Receiving Party:

4.1.1. is proprietary to the Disclosing Party; and

4.1.2. does not confer any rights of whatsoever nature in such Confidential Information to the Receiving Party.

5. **STANDARD OF CARE**

The Receiving Party agrees to protect the Confidential Information of the Disclosing Party by using the same standard of care used to safeguard its own information of a confidential nature (but no less than a reasonable standard of care) and taking all reasonable steps to prevent any unauthorised disclosure of such Confidential Information.

6. **RETURN OF INFORMATION**

6.1. The Disclosing Party may, at any time by way of written notice to the Receiving Party, require the Receiving Party to return any Confidential Information (in whatever form) of the Disclosing Party and to expunge such Confidential Information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the Receiving Party to furnish a written statement (certified as correct by a director of the Receiving Party) to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such Confidential Information unless required for its internal purposes only.

6.2. As an alternative to the return of the Confidential Information as contemplated above, the Receiving Party shall, at the instance of the Disclosing Party, destroy such Confidential Information and furnish the Disclosing Party with a written statement (certified as correct by a director of the Receiving Party) to the effect that such Confidential Information has been destroyed.

6.3. The Receiving Party shall comply with all requirements in terms of this clause 6 within 7 (seven) days of receipt of written notice thereof.

7. EXCLUDED INFORMATION

7.1. The obligations of the Receiving Party pursuant to the provisions of this Agreement shall not apply to any information that:

- 7.1.1. is known to or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;
- 7.1.2. is or becomes publicly known, otherwise than pursuant to a breach of this Agreement by the Receiving Party;
- 7.1.3. is developed independently by the Receiving Party in circumstances that do not amount to a breach of the provisions of this Agreement and without reference to the Confidential Information of the Disclosing Party;
- 7.1.4. was received by the Receiving Party from a third party who is entitled to disclose same free of restriction and without obligation (whether contractual, legal, fiduciary or otherwise) to the Disclosing Party;
- 7.1.5. is disclosed by the Receiving Party to satisfy the order of a court of competent jurisdiction or to comply with provisions of any law or regulations in force from time to time, provided that in these circumstances, the Receiving Party shall advise the Disclosing Party in writing prior to such disclosure to enable the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard, provided further that the Receiving Party will disclose only that portion of the information which it is legally required to disclose; or
- 7.1.6. is disclosed with the prior written permission of the Disclosing Party's duly authorised representative.

8. BACKGROUND AND PURPOSE

- 8.1. The Parties intend having discussions in order to evaluate whether they are willing to enter into a business relationship with each other and the purpose of this Agreement is to assist the Parties while protecting the confidentiality of confidential information provided pursuant to this process.
- 8.2. For the purposes of the aforementioned discussions it will be necessary for the Parties to make available to each other certain information, which is considered confidential by the Party disclosing such information.

9. **GOVERNING LAW**

This Agreement shall be governed by and construed and interpreted in accordance with the laws of South Africa.

10. **NOMINATED ADDRESSES**

- 10.1. The Parties choose the following as their nominated addresses for all purposes arising out of or in connection with this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature:

10.1.1. Jane Mackenzie:
Physical: 26 Portman Rd, Bryanston, JHB, 2091, RSA.
Email: info@365HealthyByChoice.com

10.1.2. Name:

Physical Address:

Email:

- 10.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by email.

- 10.3. Either Party may by notice to the other Party change the physical address or its fax number chosen as its nominated address and vis-à-vis that Party to another physical address or fax number, within the borders of the Republic of South Africa, provided that the change shall become effective vis-à-vis that addressee on the 5th (fifth) business day from the deemed receipt of the notice by the addressee.

- 10.4. Any notice to a Party:

10.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its nominated address shall be deemed to have been received on the 5th (fifth) business day after posting (unless the contrary is proved);

10.4.2. delivered by hand to a responsible person during ordinary business hours at its nominated address shall be deemed to have been received on the day of delivery; or

10.4.3. sent by fax to its chosen fax number stipulated in clause 10.1, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

- 10.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its nominated address.

11. **WHOLE AGREEMENT**

This Agreement constitutes the whole Agreement between the Parties as to the subject-matter hereof and no agreements, representations or warranties between the Parties other than those set out herein are binding on the Parties.

12. **VARIATION**

No addition to or variation, consensual cancellation or novation of this Agreement (including this clause 12) shall be of any force or effect unless reduced to writing and signed by both Parties' duly authorised representatives, and no waiver of any right of either party arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the party waiving its right.

13. **RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by either party to the other in respect of the performance of any obligation hereunder or the enforcement of any right arising from this Agreement and no single or partial exercise of any right by either party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this Agreement or estop such party from enforcing, at any time without notice, strict and punctual compliance with each and every provision or term hereof.

14. **SEVERABILITY**

If any provision in this Agreement is found by any court of competent jurisdiction to be invalid, unlawful or unenforceable, such provision shall not invalidate the remaining provisions of this Agreement.

15. **ASSIGNMENT**

Neither party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

16. **NON-OBLIGATION**

Nothing contained in this Agreement shall be construed as creating an obligation or expectation on the part of either party to enter into a business relationship with the other party, or an obligation to refrain from entering into a business relationship with any third party. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership or employment relationship between the Parties.

17. **COSTS**

Each party shall bear and pay its own costs of or incidental to the negotiation, drafting, preparation and execution of this Agreement.

18. **DURATION**

This Agreement shall be binding on the Parties for a period of 4 (four) years from the date of signature of this Agreement; provided that the general confidentiality obligations and undertakings contained herein shall remain binding on the Parties, after termination of this Agreement, for such time as the Confidential Information remains confidential and proprietary to the Disclosing Party and does not become excluded information in terms of clause 10 hereof.

19. **LIMITATION OF LIABILITY**

The Parties shall not be liable to each other for any indirect, special or consequential loss or damage, including loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract as a result of or in connection with this Agreement.

20. **COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall constitute the same Agreement

21. **NON-COMPETE**

The Receiving party will not manufacture, distribute or market the same or similar Products/Services/Training material/Devices offered by Jane Mackenzie and 365 Healthy By Choice without the prior written consent from Jane Mackenzie. The term non-compete means that the Receiving parties shall not directly or indirectly compete with Jane Mackenzie or 365 Healthy By Choice by serving as an officer, owner, partner, director or

consultant to any firm or entity substantially engaged in a business similar or competitive to the business of Jane Mackenzie.

The parties agree that this signed NDA and Non-Compete Agreement between the Receiving and Disclosing parties is in place to protect the Intellectual Property of Jane Mackenzie and 365 Healthy By Choice (PTY) LTD SA and Ltd UK. and any other legal entities introduced to the Receiving parties and agreements entered into. The parties confirm that both the NDA and Non-compete clauses in this agreement are binding globally.

SIGNED at _____ on the _____ day of _____ 2020 .

AS WITNESSES:

1. _____

2. _____

Sign for and on behalf of:

JANE MACKENZIE
duly authorised thereto

(Print name of signatory in block letters)

AS WITNESSES:

1. _____

2. _____

Sign for and on behalf of:

.....
duly authorised thereto

(Print name of signatory in block letters)