

## MATERIAL TRANSFER AND CONFIDENTIALITY AGREEMENT

This Material Transfer and Confidentiality Agreement ("Agreement") is entered into on February 10, 2022 (the "Effective Date") between:

### PARTIES

(1) Baidayi Enterprise Co., Ltd., whose principal place of business is at 15F., No. 187, Sec. 4, New Taipei Blvd, Xinzhuang Dist., New Taipei City 242032 Taiwan ("Company").

(2) Kerry Inc., whose principal place of business is at 3400 Millington Road, Beloit, WI 53511, and its affiliates and subsidiaries ("Kerry").

Together the "Parties" and each a "Party".

**WHEREAS**, each Party wishes to disclose to the other Party certain information that is non-public, confidential or proprietary in nature in relation to the Purpose of the Agreement (as defined below) and as part of this business discussion they wish to protect the confidential nature of the disclosed information; and

**WHEREAS**, Kerry has agreed to provide Company with samples of proprietary technology (hereinafter referred to as the "Material") in order to conduct testing of the Material.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth herein, the Parties agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation in this clause apply in this Agreement:

**Purpose:** a business relationship, including but not limited to the use of Kerry's Material in Company's products.

**Material:** Includes BC30™, Wellmune®, Sporevia™, Staimune®, Bonice!®, Ganpro® and/or Everwell™.

**Affiliates:** means any subsidiary or holding company of either Party, any subsidiary of any of its holding companies and any partnership, company or undertaking (whether incorporated or unincorporated) in which it has the majority of the voting rights or economic interest.

**Confidential Information:** all non-public, confidential or proprietary materials or information disclosed or made available directly or indirectly before, on or after the Effective Date, by either Party (or any of its Affiliates or Representatives) to the other Party (or any of its Affiliates or Representatives), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential", including without limitation:

- (a) Information learned by the Recipient through observation or examination of any documents, books, records, data, or products of the other Party; through observation or examination of its place of business, research and development facilities, plant and machinery production facilities, processes or procedures, or otherwise learned in any manner from or through the Disclosing Party;
- (b) all information concerning the Disclosing Party (or its Affiliates), and their customers', suppliers' and other third-parties' past, present and future business affairs including, without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices,

forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies; and

- (c) the Disclosing Party's (or its Affiliates) unpatented inventions, ideas, methods and discoveries, trade secrets, know-how, recipes, samples, unpublished patent applications and other confidential intellectual property.

Confidential Information shall not include information or materials which:

- (a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient;
- (b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (c) was lawfully known by or in the possession of the Recipient, as established by documentary evidence, prior to being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; or
- (d) is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

For the avoidance of any doubt, information shall not be deemed to be within the exceptions set out in paragraphs (a) to (d) above merely because it is contained in more general information which is in the public domain and the combination of two or more portions of the information shall not be deemed to be within the exceptions set out in paragraphs (a) to (d) above merely because each separate portion is within the said exceptions. The burden of proving the applicability of an exception set out in paragraphs (a) to (d) above shall be borne by the Recipient.

**Disclosing Party:** The Party to this Agreement who discloses or makes available directly or indirectly Confidential Information hereunder.

**Intellectual Property Rights:** shall mean any and all intellectual property rights, including but not limited to patents, copyrights, trade secrets, design rights, database rights, trade names, trademarks, service marks and the goodwill pertaining thereto, as well as any registrations, applications, divisions, continuations, re-examinations, renewals or reissues of any of the foregoing.

**Recipient:** a Party to this Agreement who receives or obtains directly or indirectly Confidential Information.

**Representative:** employees, agents, directors, officers, attorneys, accountants or advisers.

## 2. OBLIGATIONS OF CONFIDENTIALITY

2.1 The Recipient shall keep the Disclosing Party's Confidential Information confidential and shall:

- (a) not use or exploit the Confidential Information in any way except for the Purpose, or otherwise in any manner to the Disclosing Party's detriment, including without limitation, to reverse engineer, disassemble, decompile, design around the Disclosing Party's proprietary services, products and/or confidential intellectual property, or otherwise attempt to derive the underlying information or ideas from any Confidential Information;
- (b) apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own similar confidential information, but no less than reasonable care; and

- (c) not disclose or make available the Confidential Information in whole or in part to any third-party, except as expressly permitted by this Agreement. Except as required by law, each Party further agrees to keep confidential the existence of this Agreement and that it is meeting with or receiving information from the other Party.

2.2 The Recipient may disclose the Disclosing Party's Confidential Information to those of its Representatives (or Representatives of its Affiliates), who need to know the Confidential Information for the Purpose, provided that:

- (a) the Recipient informs its Representatives (or Representatives of its Affiliates) of the confidential nature of the Confidential Information before disclosure;
- (b) the Representatives (or Representatives of its Affiliates) are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement; and
- (c) the Recipient shall at all times be liable for the failure of any Representative to comply with the terms of this Agreement.

2.3 Either Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party prior notice of this disclosure so that the Disclosing Party may seek a protective order, contest the requirement for disclosure or seek any other appropriate remedy and/or waive compliance with the terms of this Agreement; and, where notice of disclosure is not prohibited and is given in accordance with this clause 2.3, it takes into account the reasonable requests of the other Party in relation to the content of this disclosure. Notwithstanding the foregoing, if the Recipient remains legally compelled to disclose any of the Confidential Information of the Disclosing Party, the Recipient agrees to disclose only that portion of the Confidential Information which the Recipient is advised by opinion of legal counsel is legally required to be disclosed.

### **3. CONDITIONS OF USE OF MATERIAL**

3.1 The Material is being provided by Kerry solely for use by Company in furtherance of the Purpose. Company acknowledges that the Material is for development and Kerry makes no representation that Material will be supplied on a commercial basis; except in the case where a separate purchase agreement is executed between the parties.

3.2 Company will not analyse, culture, or otherwise reverse engineer the Material;

3.3 The Material shall be used, handled, stored and disposed of in accordance with any and all applicable laws, statutes, regulations, and/or guidelines, as well as any written instructions received from Kerry, and Company will keep the Material in their control and treat it with at least the same level of care as other Confidential Information;

3.4 Company shall promptly communicate the results of any performance evaluations to Kerry;

3.5 Company shall not perform clinical trials, human or animal studies related to the Material or related technologies without the prior written approval of Kerry.

3.6 The furnishing of Material under this Agreement shall not constitute any assignment, grant, option, or license to Company under any patent, patent application, or other rights now or hereafter held by Kerry. Kerry shall have and retain sole ownership of, and all rights, title and interest in or to, the Material (including any derivatives generated), and nothing herein shall be construed as creating, granting or conveying to Company, whether expressly, by implication, estoppel, or otherwise, any ownership interest or other rights in or to the Material.

3.7 Company shall bear all risk, liability, damage, loss, and expense associated with or resulting from its use, storage, handling and/or disposal of the Material.

#### **4. DAMAGES IN THE EVENT OF BREACH**

Each of the Parties acknowledges and agrees that the unauthorized disclosure or other violation, or threatened violation of this Agreement by such Party, may cause irreparable damage to the other Party. Each of the Parties further agrees that the non-breaching Party will be entitled to seek an injunction in any applicable jurisdiction prohibiting the breaching Party from any such disclosure, attempted disclosure, violation or threatened violation without the necessity of proving damages or furnishing a bond or other security and in addition shall be entitled to such other relief to which it may be entitled in law or equity. Each Party hereby indemnifies and holds the other harmless from and against all damages, losses and costs (including reasonable attorneys' fees) resulting from any such actual, attempted or threatened disclosure or violation.

#### **5. RETURN OR DESTRUCTION OF INFORMATION**

5.1 At any time during or after the term of this Agreement, at the request of the Disclosing Party, the Recipient shall:

- (a) destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the Disclosing Party's Confidential Information;
- (b) erase all the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (except for copies of Confidential Information created pursuant to automatic archiving or backup procedures); and
- (c) certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by applicable law or any governmental or regulatory authority of competent jurisdiction or to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this Agreement. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient.

#### **6. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT**

6.1 Each Party hereby retains its entire right, title and interest, including all Intellectual Property Rights, in and to all of its Confidential Information. Any disclosure of Confidential Information hereunder shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest.

6.2 Except as expressly stated in this Agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.

6.3 The Parties agree that neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise.

6.4 Each Party represents and warrants to the other that it has the right to enter into this Agreement without breaching or violating any fiduciary, contractual, or statutory obligations owed to another.

## **7. TERM AND TERMINATION**

7.1 The term of this Agreement shall commence on the Effective Date. The Agreement and the exchange of Confidential Information may continue for so long as the business relationship between the Parties is in effect or until either Party terminates the business relationship with the other Party, for any reason, at any time, and without liability or restriction, other than the obligations of confidentiality and non-use and the obligation to return the disclosed Confidential Information as provided for herein.

7.2 Following the date of any expiration or termination of this Agreement (a) the Recipient shall make no further use of the Confidential Information, and (b) the Recipient's confidentiality and non-use obligations under this Agreement shall survive and otherwise continue in force, in respect of Confidential Information disclosed prior to the date of any expiration or termination for a period of five (5) years from the date of termination of this Agreement, even after the return or destruction of Confidential Information by the Recipient. With respect to trade secrets the Recipient's obligations shall survive any termination of the Agreement for so long as the Confidential Information remains a trade secret under applicable State law.

## **8. MISCELLANEOUS**

8.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

8.2 This Agreement may only be amended, modified or supplemented by an agreement in writing and signed by each of the Parties.

8.3 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

8.4 No Party may assign, sub-contract or transfer in any way this Agreement, or any of its rights or obligations under it, without first obtaining the written consent of the other Party.

8.5 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments or on behalf of any other Party.

8.6 No one other than a Party to this Agreement shall have any right to enforce any of its terms.

8.7 This Agreement shall be governed by and construed in accordance with the laws of the State of New York (notwithstanding its conflict of laws).

8.8 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

8.9 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

9. NOTICES

Any formal notice or demand to be made or given under this Agreement shall be in writing and may be given by personal delivery, email or by a nationally recognized overnight delivery service addressed to the respective parties as follows:

In the case of Kerry: Kerry Inc.  
3400 Millington Road  
Beloit, WI 53511  
Attention: Legal Department  
Email: legalsfdc@kerry.com

In the case of Company: Baidayi Enterprise Co., Ltd.  
15 F., No. 187, Sec. 4, New Taipei Blvd., Xinzhuang Dist.  
New Taipei City 242032 Taiwan  
Attention: Shuo-Chun Cheng  
Email: bke.pc02@gmail.com

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

KERRY INC.

Signed by Jason Corradini  
Name: Jason Corradini  
Title: Head of Legal – North America  
Date: February 10, 2022

BAIDAYI ENTERPRISE CO., LTD.

Signed by 吳啟明  
Name: CHI-MING, WU  
Title: General Manager  
Date: April 29, 2022