EXHIBIT A

EX-10.17 19 d635330dex1017.htm EX-10.17

Exhibit 10.17

THE SYMBOL "[***]" DENOTES PLACES WHERE CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH (i) NOT MATERIAL, AND (ii) WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED

LICENSE AND CO-DEVELOPMENT AGREEMENT

THIS LICENSE AGREEMENT ("**Agreement**") is made as of July 4, 2018 ("**Effective Date**"), by and between **BioNTech RNA Pharmaceuticals GmbH**, a corporation organized and existing under the laws of Germany ("**BioNTech**"), having its principal place of business at An der Goldgrube 12, 55131 Mainz, Germany, and **Genevant Sciences GmbH**, a corporation organized and existing under the laws of Switzerland ("**Genevant**"), having an address of Viaduktstrasse 8, 4051 Basel, Switzerland. BioNTech and Genevant are referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, Genevant has an exclusive license to certain intellectual property rights relating to RNA-based therapeutics enabled by lipid nanoparticle delivery technologies;

WHEREAS, BioNTech is developing certain mRNA payloads for treatment in the field of oncology and infectious diseases and is also developing alone and in collaboration with third parties certain formulations useful for the delivery of mRNA payloads;

WHEREAS, the Parties wish to jointly develop pharmaceutical products that combine the best mRNA payloads with the best lipid nanoparticle technology in the fields of rare diseases and liver diseases, under the terms and conditions set forth herein; and

WHEREAS, BioNTech wishes to obtain from Genevant a license to utilize the lipid nanoparticle delivery technologies in conjunction with its development of mRNA payloads and delivery technologies in the oncology field, and Genevant is willing to grant such license to BioNTech, all under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, the receipt and sufficiency which are hereby acknowledged, BioNTech and Genevant hereby agree as follows.

ARTICLE 1
DEFINITIONS

Unless the context otherwise requires, the terms in this Agreement with initial letters capitalized, shall have the meanings set forth below, or the meaning as designated in the indicated places throughout this Agreement.

1.1 "**Accounting Standards**" means internationally recognized accounting principles (including IFRS, US GAAP, and the like), in each case, as then in effect and as consistently applied by the applicable Party or its Affiliate or Sublicensee.

1.2 "**Affiliate**" means, (a) with respect to Genevant, any Person that, directly or indirectly through one or more intermediaries is controlled by Genevant Sciences Ltd., but for only so long as such control exists; and (b) with respect to BioNTech, any Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with BioNTech, but for only so long as such control exists. For the purpose of this definition, "**control**" (including, with correlative meaning, the terms "controlled by" and "under common control") means (a) to possess, directly or indirectly, the power to direct the management

or policies of an entity, whether through ownership of voting securities, by contract relating to voting rights or corporate governance, or otherwise; or (b) direct or indirect beneficial ownership of more than fifty percent (50%) of the voting share capital or other equity interest in such entity. Notwithstanding the above, for purposes of this Agreement, [***] and its Affiliates will not be deemed to be Affiliates of Genevant, and AT Impf GmbH, having its place of business at Rosenheimer Platz 6, 81669 Munich, Germany, and any person or entity that, during the Term, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with AT Impf GmbH (other than BioNTech AG or any person or entity that is directly or indirectly controlled by BioNTech AG) shall not be considered an Affiliate of BioNTech.

1.3 "**Alliance Manager**" has the meaning set forth in Section 3.5 (Alliance Managers).

1.4 "Allowable Expenses" has the meaning set forth in Exhibit F.

1.5 "**Applicable Laws**" means the applicable provisions of any and all national, supranational, regional, state and local laws, treaties, statutes, rules, regulations, administrative codes, guidances, ordinances, judgments, decrees, directives, injunctions, orders, permits (including MAAs) of or from any court, arbitrator, Regulatory Authority or Governmental Authority having jurisdiction over or related to the subject item.

1.6 [***] means [***].

1.7 "[***] **Agreement**" means the April 11, 2018, Cross License Agreement by and between Genevant Sciences Ltd. and [***].

1.8 "**Auditor**" has the meaning set forth in Section 8.8 (Audit Dispute).

1.9 "**BioNTech Development Milestone Plan**" has the meaning set forth in Section 4.2.

1.10 "**BioNTech Field**" means the treatment, prevention and diagnosis of illnesses in the field of oncology.

1.11 "**BioNTech Indemnitees**" has the meaning set forth in Section 15.1 (Indemnification by Genevant).

1.12 "**BioNTech Joint Inventions**" has the meaning set forth in Section 11.1(c) (Joint Patent Committee).

1.13 "**BioNTech Joint Patents**" has the meaning set forth in Section 11.1(c) (Joint Patent Committee).

1.14 "**BioNTech Know-How**" means all Know-How that BioNTech Controls as of the Effective Date or during the Term that is necessary or reasonably useful for the Development, Manufacture or Commercialization of: (a) any BioNTech Product in the BioNTech Field; and/or (b) any Co-Development Product in the Co-Development Field. BioNTech Know-How includes BioNTech Joint Inventions, BioNTech Sole Inventions and BioNTech's interest in Co-Owned Joint Inventions.

1.15 "**BioNTech mRNA Payloads**" means the five (5) mRNA payloads created by BioNTech and the [***] identified in Exhibit A. The Parties agree that Exhibit A will include [***] mRNA payloads at the time of execution of this Agreement. Within twelve (12) months from execution of this Agreement, BioNTech may propose [***] additional mRNA payloads to be included in the BioNTech mRNA Payloads and [***] the proposal made by BioNTech, [***]. Upon written agreement by the Parties to such final mRNA payload, Exhibit A will be updated to include such mRNA payload.

1.16 "**BioNTech Patents**" means all Patents that BioNTech Controls as of the Effective Date or during the Term that are necessary or reasonably useful for the Development, Manufacture or Commercialization of: (a) any BioNTech Product in the BioNTech Field; and/or (b) any Co-Development Product in the Co-Development Field. BioNTech Patents includes BioNTech Joint Patents BioNTech's interest in Co-Owned Joint Patents. A list of BioNTech Patents existing as of the Effective Date is attached as Exhibit H. While the Parties intend Exhibit H to be exhaustive, the failure to list a Patent on Exhibit H will not exclude it from the definition of BioNTech Patents if it otherwise meets the definition provided herein.

1.17 "**BioNTech Product**" means any pharmaceutical product that contains a BioNTech mRNA Payload encapsulated within a LNP (irrespective of whether such LNP is Contolled by Genevant or BioNTech).

1.18 "**BioNTech Product Infringement**" has the meaning set forth in Section 11.4(a) (Notice).

1.19 "BioNTech Product Manufacturing Know-How" means Genevant Know-How that is necessary or reasonably useful to Manufacture any BioNTech Product in the BioNTech Field.

1.20 "**BioNTech Product Pharmacovigilance Agreement**" has the meaning set forth in Section 5.4 (Pharmacovigilance).

1.21 "**BioNTech Product Supply Agreement**" has the meaning set forth in Section 6.1 (Manufacture of BioNTech Products).

1.22 "**BioNTech Products Collaboration Plan**" has the meaning set forth in Section 4.4 (Conduct of Development Activities by Genevant).

1.23 "**BioNTech Sole Inventions**" means any Inventions made solely by BioNTech's or its Affiliates' employees, agents or independent contractors.

1.24 "**BioNTech Technology**" means the BioNTech Know-How and the BioNTech Patents.

1.25 "**Blocker Entity**" has the meaning set forth in Section 16.5(b) (Taxes of Co-Entrepreneurship).

1.26 "**Board of Directors**" has the meaning set forth in Section 1.49(a) (Competitor Change of Control).

1.27 "**Business Day**" means a day other than a Saturday, Sunday or a bank or other public holiday in Mainz, Basel or New York.

1.28 "**Calendar Quarter**" means each respective period of three (3) consecutive months ending on March 31, June 30, September 30, and December 31.

1.29 "**Calendar Year**" means each respective period of twelve (12) consecutive months ending on December 31.

1.30 "**CFR**" means the U.S. Code of Federal Regulations.

1.31 "**Claims**" means all Third Party demands, claims, actions, proceedings and liability (whether criminal or civil, in contract, tort or otherwise) for losses, damages, legal costs and other expenses of any nature.

1.32 "**CMC**" means chemistry, Manufacturing, and controls.

1.33 "**CMO**" means contract Manufacturing organization.

1.34 "**Code**" has the meaning set forth in Section 3.3 (JSC Decision-Making).

1.35 "**Co-Development Field**" means the treatment, prevention and diagnosis of liver diseases (as defined by the FDA and/or the EMA), excluding any oncology diseases.

1.36 "**Co-Development Joint Inventions**" has the meaning set forth in Section 11.1(c) (Joint Patent Committee).

1.37 "**Co-Development Joint Patents**" has the meaning set forth in Section 11.1(c) (Joint Patent Committee).

1.38 "**Co-Development mRNA Payloads**" means the six (6) mRNA payloads to be created by BioNTech in the Co-Development Field and the [***] identified in Exhibit B of which five (5) will be selected for Development as part of Co-Development Products.

1.39 Co-Development Product" means any pharmaceutical product that contains a Co-Development mRNA Payload encapsulated within a Genevant LNP and/or, if agreed between the Parties in the JSC, within another LNP.

1.40 "Co-Development Product Development Plan" has the meaning set forth in Section 9.2.

1.41 "**Co-Development Product Commercialization Plan**" has the meaning set forth in Section 10.2 (Commercialization Plan and Report).

1.42 "**Co-Development Product Infringement**" has the meaning set forth in Section 11.4(a) (Notice).

1.43 "**Co-Development Product Pharmacovigilance Agreement**" has the meaning set forth in Section 9.10 (Co-Development Product Pharmacovigilance).

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.