

JOINT DEFENSE AND CONFIDENTIALITY AGREEMENT

THIS JOINT DEFENSE AND CONFIDENTIALITY AGREEMENT (the “Agreement”) is made as of October 21, 2022 (the “Effective Date”), by and between the undersigned counsel for and on behalf of their respective clients to further the defense and interests of those clients subject to, or who are or may be impacted by, Petitions IPR2023-00070 against U.S. Patent No. 7,541,179 (“the ’179 Patent”) and IPR2023-000074 against U.S. Patent No. 8,058,061 (“the ’061 Patent”) filed by bluebird bio, Inc. a Delaware corporation, before the United States Patent Trial and Appeal Board (“PTAB”).

WHEREAS, the Parties share a common interest in defending the validity of the claims of the ’179 and ’061 Patents, including as challenged in IPR2023-00070 and IPR2023-00074, (collectively, the “IPR Proceeding”).

WHEREAS, the Parties recognize that by virtue of the Parties’ patent license agreement for the ’179 and ’061 Patents, and their interest in protecting the validity of the such patents, they have a common interest in defending the IPR Proceeding and in developing defenses and strategies with respect to the IPR Proceeding. While the Parties desire to continue to pursue their separate but common interests in responding to the various legal issues raised in the IPR Proceeding, the Parties acknowledge and agree that their common interests will best be served if they are able to share with the other Parties confidential information and materials and engage in communications relating to the IPR Proceeding without waiving any otherwise applicable privilege or protection with respect to such information, materials and/or communications.

WHEREAS, in order to confirm the Parties’ understanding and to preserve the confidentiality and/or privileged nature(s) of information shared or exchanged between the Parties pursuant to this Agreement, and to avoid any allegation or claim of waiver of the confidentiality of privileged communications or documents, the Parties hereby agree as follows:

- 1. Joint Defense Materials.** The Parties may, in their sole and absolute discretion, determine that the sharing and disclosure of certain information with the other Parties and their legal counsel may be in furtherance of their common legal interests in the defense of the IPR Proceeding. Such disclosures may entail confidential attorney-client communications, opinion work product, and privileged work product materials (collectively referred to as the “Joint Defense Materials”). The Joint Defense Materials may be disclosed orally, in writing, electronically or in any other format and may include, without limitation, factual information, mental impressions, legal research and analysis, strategy, communications, interview reports, memorandum, reports of experts and consultants, discovery materials, meetings between counsel and/or the Parties and/or their employees or representatives, meetings with potential witnesses or experts, and any other information relevant to the Parties’ common interests in the defense of the IPR Proceeding. All information and communications exchanged or shared between the Parties pursuant to this Agreement shall constitute Joint Defense Materials and will be subject to this Agreement. With respect to all tangible Joint Defense Materials, the Parties shall endeavor to mark such materials as “Privileged Joint Defense Materials” prior to any disclosure thereof. However, the failure by any Party to mark any Joint Defense Materials will not be deemed a waiver of the joint defense privilege. For purposes of this Agreement, the term “Counsel” shall include both outside and in-house counsel for the Parties. This Agreement and the identity of the Parties hereto shall be deemed to constitute Joint Defense Materials.

2. Disclosure of Joint Defense Materials. It is the Parties' intention that any communications made and/or materials provided between the Parties in furtherance of their common legal interests in the IPR Proceeding shall be treated in strict confidence and shall be, to the fullest extent permitted by law, protected from disclosure to any third party pursuant to, among other privileges, the attorney-client privilege and attorney work product privilege. The Joint Defense Materials provided under this Agreement shall at all times remain confidential and subject to the attorney-client privilege. No Party shall disclose any Joint Defense Materials to any third party without the prior written consent of all the other Parties to the Agreement, which consent shall be at such other Parties' sole discretion. It is the intent of the Parties that no claim of attorney-client privilege, work product privilege, or other privilege shall be waived by reason of the disclosure of the Joint Defense Materials to any other Party hereto. The Parties further agree that all such communications will be treated by the Parties in such a manner that will preserve any and all privileges applicable to any information shared or disclosed by the Parties pursuant to this Agreement.

3. Use of Joint Defense Materials.

- (a) Joint Defense Materials shall only be used by the Parties and their Counsel in furtherance of their common legal interests related to the IPR Proceeding and any other challenge to the validity of the '179 and '061 Patents. A Party may disclose without the consent of the other Parties any Joint Defense Materials that originated with the disclosing Party or which is acquired or developed independent of this Agreement.
- (b) Each Party shall take all commercially reasonable measures to maintain the confidentiality of the Joint Defense Materials. The Parties shall only disclose Joint Defense Materials received hereunder to its directors, officers, employees and counsel who are actively participating in and have a need to know such information in furtherance of the defense or prosecution of the IPR Proceeding. Each Party shall advise all persons who are provided access to the Joint Defense Materials that such materials are privileged and are subject to the terms and restrictions set forth in this Agreement, and each such person shall agree to comply with the terms of this Agreement. The Parties, though their Counsel, may also disclose to or receive Joint Defense Materials from consultants, expert witnesses, and other litigation service providers retained by a Party with respect to the IPR Proceeding, provided that all such persons have been made aware of and have agreed to abide by the terms of this Agreement, and such persons have entered into a written confidentiality agreement precluding them from disclosing any Joint Defense Materials to any other person or party at least as restrictive as this Agreement.
- (c) The Parties agree not use any of the Joint Defense Materials against or to the detriment of any other Party, whether in the IPR Proceeding or any other legal proceeding involving the Parties. The Parties agree that the foregoing precludes use or introduction into evidence of the Joint Defense Materials in the proceeding, *San Rocco Therapeutics, LLC v. Memorial Sloan-Kettering Cancer Center et al.*, 1:21-cv-08206-VSB (S.D.N.Y.) (the "SDNY Action"), unless the material was produced as part of the course of an otherwise proper discovery request in the SDNY Action, provided however, that all Parties retain the right to object to production of requested information in the SDNY Action for reasons including, but not limited to attorney-client privilege, work product

or any other applicable privilege. Nothing in this Agreement precludes any of the Parties in the SDNY Action from seeking any materials or information they would otherwise be entitled to pursue.

4. **No Waiver of Privilege.** It is the intent of the Parties that no attorney-client privilege, attorney work product privilege or any other privilege relating to the Joint Defense Materials shall be waived by any Party based on the disclosure of the Joint Defense Materials between the Parties and their respective Counsel. It is also the intent of the Parties that all of the Joint Defense Materials shall be protected from discovery by any third party based on the attorney-client privilege, the attorney work product privilege and any other applicable privilege to the fullest extent permitted by law. No privilege relating to the Joint Defense Materials may be waived by any Party without first obtaining the written consent of all the other Parties. The disclosure by any Party hereto of any of the Joint Defense Materials, whether inadvertent or intentional, in violation of the terms of this Agreement shall not be construed as a waiver of any privilege associated with such information.
5. **No Obligation to Disclose Information.** This Agreement shall not create any obligation on the part of any Party to disclose any materials or information of any kind, whether or not such materials or information is privileged. Each Party hereto shall have sole discretion in determining what information, if any, it wishes to provide to the other Parties in furtherance of their common interests with respect to the IPR Proceeding.
6. **Independent Representation.** Neither the disclosure of Joint Defense Materials nor anything else in this Agreement shall affect the Parties' separate and independent representation by their respective legal Counsel. All of the Parties acknowledge and agree that each Party is represented solely by its own attorneys. While Counsel to the Parties to this Agreement must preserve the Joint Defense Materials pursuant to the terms and conditions contained in this Agreement, they are not acting as and will not be representing any other Party other than their own client(s). Each Party understands that this Agreement does not and will not create an attorney-client relationship with any of the other Party's Counsel. Each Party further acknowledges and agrees that the Counsel representing the other Parties have an exclusive duty of loyalty to their own client and not to any other Party. Notwithstanding such right, no Counsel to any Party hereto may disclose any Joint Defense Materials in violation of the terms of this Agreement.
7. **No Disqualification of Counsel.** Each Party knowingly and voluntarily waives the right to object to the continued retention by any other Party of its Counsel or the Counsel's law firm, and each Party agrees it will not seek to disqualify any other Party's Counsel based upon the contention that such Counsel has been provided access to any Joint Defense Materials or that such Counsel has a conflict of interest in representing his or her client or is unable to effectively represent the client based upon participation in joint defense activities permitted under and/or in pursuing the common legal interests contemplated by this Agreement.
8. **Required Disclosures of Confidential Information.** In the event that a Party is requested or required by legal action (including oral question, interrogatories, requests for information or

documents, subpoenas, civil investigation or similar process) to disclose any of the Joint Defense Materials, such Party will immediately notify Counsel for all the other Parties to this Agreement and shall provide them with copies of all the documents requesting such information, before it responds to such request. Counsel for each Party shall take all reasonable measures available to prevent the disclosure of such information, including the assertion of any and all applicable privileges associated with the requested Joint Defense Materials. No Party hereto will waive any privilege relating to any of the Joint Defense Materials without first obtaining the written consent of all the other Parties to the Agreement. Each Party and their Counsel shall fully cooperate and assist, at their own expense, the other Parties and their Counsel in any action taken or in any legal proceeding to prevent (or limit) the disclosure of any Joint Defense Materials. In the event that disclosure is nonetheless required despite such efforts, the Party that received the request shall furnish only that portion of the Confidential Information which it is advised by its legal counsel must be provided pursuant to the request.

9. **Withdrawal from the Agreement; Resolution of the IPR Proceeding.** In the event that a Party determines in good faith that it no longer shares a common legal interest with the other Parties in the defense of the IPR Proceeding, or has developed legal interests that are adverse to those of another Party (other than the SDNY Action), such Party shall withdraw from this Agreement by providing written notice of withdrawal to all the other Parties. Additionally, each Party hereto may withdraw from this Agreement at any time by providing written notice of withdrawal to all the other Parties. Notwithstanding a Party's withdrawal, this Agreement shall remain in full force and effect with respect to all of the other Parties and with respect to all Joint Defense Materials furnished prior to the date of withdrawal. Any Party that withdraws from this Agreement shall continue to comply with all of its terms with regard to any Joint Defense Materials shared or provided prior to the effective date of its withdrawal. In the event a Party resolves the IPR Proceeding, whether by settlement, dismissal or otherwise, such Party shall be deemed to have withdrawn from this Agreement and shall comply with its terms as to all Joint Defense Materials shared prior to the date of such dismissal or settlement. Each Party agrees that it will not enter into any settlement or other agreement with any third party that will or may require the disclosure, without the prior written consent of all the other Parties, of any Joint Defense Materials.
10. **Return of Confidential Information.** The Parties shall promptly return or destroy all copies of the Joint Defense Materials within thirty (30) days following the final resolution of the IPR Proceeding and any other challenge to the validity of the '179 and '061 Patents, including the exhaustion of any appeals or appeals period with respect to the IPR Proceeding. Any party withdrawing from this Agreement shall also return or destroy all Joint Defense Materials in its possession within ten (10) days following the effective date of such withdrawal. Each Party shall provide a certification by an authorized representative to Counsel for all the other Parties that all such Joint Defense Materials have been returned or destroyed. If and to the extent a Party has any notes, analyses, compilations, studies, interpretations, memoranda, photographs, magnetic or electronic media or videotapes, or any other documents prepared by or on behalf of a Party that contain, reflect or are based upon, in whole or in part, any Joint Defense Materials received pursuant to this Agreement, then that Party shall redact, erase, delete or destroy such documents so that the Joint Defense Materials are no longer accessible. Notwithstanding the foregoing, outside Counsel for each Party may retain one copy of the Joint

Defense Materials, which information shall be retained in compliance with the terms of this Agreement.

11. No Other Obligations; No Liability; Inadmissibility. No Party shall have any obligation to any of the other Parties pursuant to this Agreement except as expressly provided for herein. No Party shall incur any liability based upon its withdrawal from this Agreement, so long as such Party abides by the terms of this Agreement. This Agreement shall not constitute or be used as evidence of any admission of law or fact against any of the Parties, or as evidence of liability by any of the Parties with respect to any of the allegations asserted in the IPR Proceeding, the SDNY Action, or otherwise.

12. Execution of Agreement. Each Counsel signing this Agreement represents that he or she has authority to execute this Agreement on behalf of their client. This Agreement shall become binding and enforceable between and among each Party signing this Agreement as of the date of its execution by Counsel for such Party without regard to any other Party that may elect to become Parties hereto. Execution of this Agreement by Counsel for a Party shall bind that Party and all existing and future in-house and outside Counsel that are or may provide any legal services of any kind and at any time in connection with the IPR Proceeding.

13. Governing Law.

(a) This Agreement, and all disputes arising hereunder or relating hereto shall be construed in accordance with and governed in all respects by the laws of the State of New York without regard to any conflicts of law principles that would result in application of laws of any other jurisdiction.

(b) The Parties shall make all reasonable efforts to resolve any dispute concerning this Agreement, its construction, or its actual or alleged breach, by face-to-face negotiations between senior executives. Should such negotiation fail to resolve the matter, as defined by either party sending written notice to the other party of an impasse after at least one face-to-face negotiation meeting among senior executives of the parties, the matter shall be finally decided by David Ichel of X-Dispute, LLC or, if Mr. Ichel is not available, three (3) neutral arbitrators (the "Tribunal") seated in New York, New York under the AAA Arbitration Rules (the "Rules").

14. Survival. The Parties' obligations under this Agreement shall be perpetual and shall survive any withdrawal of any Party from this Agreement or the resolution or dismissal of any Party with respect to the IPR Proceeding or any other challenge to the validity of the '179 and '061 Patents, and such obligations shall further survive the termination of this Agreement.

15. Equitable Relief. The Parties acknowledge and agree that in the event of a breach or threatened breach of any provision of this Agreement, the nonbreaching Parties will suffer irreparable harm for which they will not have an adequate remedy at law.

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