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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d)**  
**of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): April 10, 2023**

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**BIOCEPT, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-36284**  
(Commission  
File Number)

**80-0943522**  
(I.R.S. Employer  
Identification No.)

**9955 Mesa Rim Road, San Diego, CA**  
(Address of principal executive offices)

**92121**  
(Zip Code)

**Registrant's telephone number, including area code: (858) 320-8200**

(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	BIOC	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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**Item 1.01 Entry into a Material Definitive Agreement.**

On April 10, 2023, Biocept, Inc. (the “Company”) entered into a Purchase Agreement (the “Purchase Agreement”) with Samuel D. Riccitelli, the Chair of the Company’s Board of Directors (“Purchaser”), pursuant to which the Company agreed to issue and sell one share of the Company’s newly designated Series B Preferred Stock, par value \$0.0001 per share (the “Series B Preferred”), to the Purchaser for a purchase price of \$100.00. The closing of the sale and purchase of the share of Series B Preferred was completed on April 10, 2023.

Additional information regarding the rights, preferences, privileges and restrictions applicable to the Series B Preferred is set forth under Item 5.03 of this report.

Pursuant to the Purchase Agreement, the Purchaser has agreed to cast the votes represented by the share of Series B Preferred on any Reverse Stock Split Proposal (defined below) in the same proportion as shares of common stock of the Company (“Common Stock”) are voted (excluding any shares of Common Stock that are not voted, whether due to abstentions, broker non-votes are otherwise) on such proposal; provided, however, that unless and until at least one-third of the outstanding shares of Common Stock on the record date established for the meeting of stockholders at which the Reverse Stock Split Proposal is presented are present in person or represented by proxy at such meeting, the Purchaser will not vote the share of Series B Preferred on such Reverse Stock Split Proposal. A “Reverse Stock Split Proposal” means any proposal approved by the Company’s Board of Directors and submitted to the stockholders of the Company to adopt an amendment, or a series of alternate amendments, to the Company’s Amended and Restated Certificate of Incorporation to combine the outstanding shares of Common Stock into a smaller number of shares of Common Stock at a ratio specified in or determined in accordance with the terms of such amendment or series of alternate amendments.

The foregoing summary of the Purchase Agreement does not purport to be complete and is qualified in its entirety by the full text of the Purchase Agreement, a copy of which is filed as Exhibit 10.1 to this report.

**Item 3.02 Unregistered Sales of Equity Securities.**

The disclosure included in Item 1.01 of this report is incorporated under this Item by reference. The Purchaser is an “accredited investor” and the offer and sale of the share of Series B Preferred was exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended.

**Item 3.03 Material Modification to Rights of Security Holders.**

The disclosure included in Item 5.03 of this report is incorporated under this Item by reference. Prior to the issuance of the Series B Preferred, stockholder approval of a Reverse Stock Split Proposal required the affirmative approval of a majority of the outstanding shares of Common Stock. Following the issuance of the Series B Preferred, stockholder approval of a Reverse Stock Split proposal requires affirmative approval from a majority of the voting power of the shares of Common Stock and the share of Series B Preferred, voting together as a single class. The Purchaser will cast the votes represented by the share of Series B Preferred on a Reverse Stock Split Proposal in a manner that mirrors the votes cast by holders of Common Stock on such proposal. Prior to the issuance of the share of Series B Preferred, abstentions and any other non-votes would have had the same effect as a vote against a Reverse Stock Split Proposal. Following the issuance of the share of Series B Preferred, abstentions and any other non-votes on a Reverse Stock Split Proposal will still technically have the same effect as a vote against such proposal, but because the share of Series B Preferred has a high number of votes and will vote in a manner that mirrors votes actually cast by the holders of Common Stock (which does not include abstentions or any other non-votes), abstentions and any other non-votes will have a minimal effect on the outcome of a Reverse Stock Split Proposal.

## Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On April 10, 2023, in connection with the Purchase Agreement, the Company filed a Certificate of Designation of Preferences, Rights and Limitations of Series B Preferred Stock (the “Series B Certificate of Designation”) with the Secretary of State of the State of Delaware. The Series B Certificate of Designation designates one share of the Company’s Preferred Stock as Series B Preferred, and establishes and designates the preferences, rights and limitations thereof. Pursuant to the Series B Certificate of Designation:

*Convertibility.* The share of Series B Preferred is not convertible into, or exchangeable for, shares of any other class or series of stock or other securities of the Company.

*Dividends.* The share of Series B Preferred shall be entitled to receive dividends on a pari passu basis with the outstanding shares of Common Stock.

*Voting.* The share of Series B Preferred will have 300,000,000 votes, but has the right to vote only on any Reverse Stock Split Proposal, and pursuant to the Purchase Agreement, the votes represented by the Series B Preferred must be voted in the same proportion as the votes cast by shares of Common Stock on such proposal. The share of Series B Preferred will vote together with the Common Stock as a single class on any Reverse Stock Split Proposal. The Series B Preferred has no other voting rights, except as may be required by the General Corporation Law of the State of Delaware.

*Rank; Liquidation.* Upon a liquidation, bankruptcy, reorganization, merger, acquisition, sale, dissolution or winding up of the Company pursuant to which assets of the Company or consideration received by the Company are to be distributed to the stockholders, the holder of Series B Preferred will be entitled to receive, before any payment is made to the holders of Common Stock by reason of their ownership thereof, an amount equal to \$100.00.

*Transfer Restrictions.* The Series B Preferred may not be transferred at any time prior to stockholder approval of a Reverse Stock Split Proposal without the prior written consent of the Company’s Board of Directors.

*Redemption.* The outstanding share of Series B Preferred will be redeemed for a redemption price of \$100.00, payable out of funds lawfully available therefor, (i) if such redemption is ordered by the Company’s Board of Directors, or (ii) automatically immediately following the approval by the stockholders of a Reverse Stock Split Proposal.

The foregoing is only a summary of the terms of the Series B Certificate of Designation, does not purport to be complete and is qualified in its entirety by reference to the full text of the Series B Certificate of Designation, a copy of which is filed as Exhibit 3.1 to this report.

## Item 9.01 Financial Statements and Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
3.1	<a href="#">Certificate of Designation of Preferences, Rights and Limitations of Series B Preferred Stock</a>
10.1	<a href="#">Purchase Agreement, dated April 10, 2023 by and between Biocept, Inc. and the purchaser named therein</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**BIOCEPT, INC.**

Dated: April 10, 2023

By: /s/ Samuel D. Riccitelli  
Name: Samuel D. Riccitelli  
Title: Interim President and Chief Executive Officer

**BIOCEPT, INC.**

**CERTIFICATE OF DESIGNATION  
OF  
PREFERENCES, RIGHTS AND LIMITATIONS OF  
SERIES B PREFERRED STOCK**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

THE UNDERSIGNED DOES HEREBY CERTIFY, on behalf of Biocept, Inc., a Delaware corporation (the “**Corporation**”), that the following resolution was duly adopted by the board of directors of the Corporation (the “**Board of Directors**”), in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, as amended (the “**DGCL**”), on April 10, 2023, which resolution provides for the creation of a series of the Corporation’s Preferred Stock, par value \$0.0001 per share, which is designated as “Series B Preferred Stock,” with the designation, powers, preferences, rights and restrictions set forth therein.

**WHEREAS**, the Amended and Restated Certificate of Incorporation of the Corporation (as amended, the “**Certificate of Incorporation**”) provides for a class of capital stock of the Corporation known as Preferred Stock, consisting of 5,000,000 shares, par value \$0.0001 per share (the “**Preferred Stock**”), issuable from time to time in one or more series, and further provides that the Board of Directors is expressly authorized to from time to time provide by resolution for the issuance of the shares of Preferred Stock in series, and to designate and establish the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof.

**RESOLVED**, that, pursuant to authority conferred upon the Board of Directors by the Certificate of Incorporation, (i) a series of Preferred Stock be, and hereby is, authorized by the Board of Directors, (ii) the Board of Directors hereby authorizes the issuance of one share of Series B Preferred Stock and (iii) the Board of Directors hereby fixes the designation, powers, preferences, rights and restrictions of such share of Series B Preferred Stock, in addition to any provisions set forth in the Certificate of Incorporation that are applicable to all series of the Preferred Stock, as follows:

**TERMS OF SERIES B PREFERRED STOCK**

**1. Designation, Amount and Par Value.** The series of Preferred Stock created hereby shall be designated as the Series B Preferred Stock (the “**Series B Preferred Stock**”), and the number of shares so designated shall be one. The share of Series B Preferred Stock shall have a par value of \$0.0001 per share and will be uncertificated and represented in book-entry form.

**2. Dividends.** The share of Series B Preferred Stock shall be entitled to receive dividends on a pari passu basis with the outstanding shares of common stock, par value \$0.0001 per share (the “**Common Stock**”), of the Corporation.

**3. Voting Rights.** Except as otherwise provided by the Certificate of Incorporation or as required by law, the holder of the share of Series B Preferred Stock shall have the following voting rights:

**3.1.** The outstanding share of Series B Preferred Stock shall have 300,000,000 votes. The outstanding share of Series B Preferred Stock shall vote together with the outstanding shares of Common Stock as a single class exclusively with respect to a Reverse Stock Split Proposal (as defined below) until such time as, following the filing of this Certificate of Designation, a Reverse Stock Split Proposal is approved by the stockholders of the Corporation, and shall not be entitled to vote on any other matter except to the extent required under the DGCL. As used herein, the term “**Reverse Stock Split Proposal**” means any proposal approved by the Board of Directors and submitted to the stockholders of the Corporation to adopt an amendment, or a series of alternate amendments, to the Certificate of Incorporation to combine the outstanding shares of Common Stock into a smaller number of shares of Common Stock at a ratio specified in or determined in accordance with the terms of such amendment or series of alternate amendments.

**3.2.** In accordance with the voting agreement provisions contained in that certain Purchase Agreement between the Corporation and the original holder of the share of Series B Preferred Stock, dated on or about the filing date of this Certificate of Designation, the holder of the share of Series B Preferred Stock shall vote the share of Series B Preferred Stock on any Reverse Stock Split Proposal in the same proportion as shares of Common Stock are voted (excluding any shares of Common Stock that are not voted, whether due to abstentions, broker non-votes or otherwise) on such respective proposals (and, for purposes of clarity, such voting rights shall not apply on any other matter submitted to the stockholders of the Corporation for a vote).

**4. Rank; Liquidation and Other.** Upon a liquidation, bankruptcy, reorganization, merger, acquisition, sale, dissolution or winding up of the Corporation, whether voluntarily or involuntarily, pursuant to which assets of the Corporation or consideration received by the Corporation are to be distributed to the stockholders, the holder of Series B Preferred Stock shall be entitled to receive, before any payment is made to the holders of Common Stock by reason of their ownership thereof, an amount of \$100.00.

**5. Transfer.** The Series B Preferred Stock may not be Transferred at any time prior to stockholder approval of a Reverse Stock Split Proposal without the prior written consent of the Board of Directors. “**Transferred**” means, directly or indirectly, whether by merger, consolidation, share exchange, division, or otherwise, the sale, transfer, gift, pledge, encumbrance, assignment or other disposition of the share of Series B Preferred Stock (or any right, title or interest thereto or therein) or any agreement, arrangement or understanding (whether or not in writing) to take any of the foregoing actions.

**6. Redemption.**

**6.1** The outstanding share of Series B Preferred Stock shall be redeemed in whole, but not in part, out of funds lawfully available therefor, (i) at any time if such redemption is ordered by the Board of Directors in its sole discretion, automatically and effective on such time and date specified by the Board of Directors in its sole discretion, or (ii) automatically immediately following the approval by the stockholders of the Corporation of a Reverse Stock Split Proposal (any such redemption pursuant to this Section 6.1, the “**Redemption**”). As used herein, the “**Redemption Time**” shall mean the effective time of the Redemption.

**6.2** The share of Series B Preferred Stock redeemed in the Redemption pursuant to this Section 6 shall be redeemed in consideration for the right to receive an amount equal to \$100.00 in cash (the “**Redemption Price**”) for the share of Series B Preferred Stock that is owned of record as of immediately prior to the applicable Redemption Time and redeemed pursuant to the Redemption, payable upon the applicable Redemption Time.

**6.3** From and after the time at which the share of Series B Preferred Stock is called for Redemption (whether automatically or otherwise) in accordance with Section 6.1, such share of Series B Preferred Stock shall cease to be outstanding, and the only right of the former holder of such share of Series B Preferred Stock, as such, will be to receive the applicable Redemption Price. The share of Series B Preferred Stock Redeemed by the Corporation pursuant to this Certificate of Designation shall be automatically retired and restored to the status of an authorized but unissued share of Preferred Stock, upon such Redemption. Notice of a meeting of the Corporation’s stockholders for the submission to such stockholders of any proposal to approve a Reverse Stock Split Proposal shall constitute notice of the Redemption of the share of Series B Preferred Stock at the Redemption Time pursuant to Section 6.1(ii) hereof. In connection with the filing of this Certificate of Designation, the Corporation has set apart funds for payment for the Redemption of the share of Series B Preferred Stock and shall continue to keep such funds apart for such payment through the payment of the purchase price for the Redemption of such share.

**7. Severability.** Whenever possible, each provision hereof shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, then such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof.

IN WITNESS WHEREOF, Biocept, Inc. has caused this Certificate of Designation of Preferences, Rights and Limitations of Series B Preferred Stock to be duly executed by the undersigned duly authorized officer as of this 10<sup>th</sup> day of April, 2023.

**BIOCEPT, INC.**

By: /s/ Samuel D. Riccitelli

Samuel D. Riccitelli

Interim President and Chief Executive Officer

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “*Agreement*”) is made as of April 10, 2023, by and between the purchaser listed on **Exhibit A** attached hereto (the “*Purchaser*”) and Biocept, Inc., a Delaware corporation (the “*Company*”).

### RECITALS

**C.** The Company desires to sell to the Purchaser, and the Purchaser desires to purchase from the Company, one share of Series B Preferred Stock, par value \$0.0001 per share (“*Series B Preferred*”), for the purchase price of \$100.00 (the “*Purchase Price*”).

**D.** The Series B Preferred shall have the rights and preferences set forth in the Certificate of Designation of Preferences, Rights and Limitations of Series B Preferred Stock (the “*Series B COD*”), substantially in the form attached hereto as **Exhibit A**, which shall be filed by the Company with the Secretary of State of the State of Delaware prior to the Closing (as defined below).

**NOW THEREFORE**, in consideration of the foregoing premises and the respective representations and warranties, covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Company and the Purchaser agree as follows:

### Article I: Sale and Purchase

1.1. Upon the terms and subject to the conditions herein contained, the Company agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Company, at the Closing (as defined below), one share of Series B Preferred for the Purchase Price. The sale and purchase of the share of Series B Preferred pursuant to this Agreement is referred to herein as the “*Stock Purchase*.”

1.2. At or prior to the Closing, the Purchaser will pay the Purchase Price by wire transfer of immediately available funds in accordance with wire instructions provided by the Company to the Purchaser prior to the Closing, or by check or money order payable to the Company.

1.3. Subject to the satisfaction of each of the conditions set forth in Article IV and Article V hereof (to the extent not waived in accordance therewith), the closing of the Stock Purchase (the “*Closing*”) shall take place remotely via the exchange of documents and signatures within one business day after the date hereof or via such method and at such other time and place as is mutually agreed to by the Company and the Purchaser (the date on which such Closing occurs is hereinafter referred to as the “*Closing Date*”).

### Article II: Covenants, Representations and Warranties of the Purchaser

The Purchaser hereby covenants as follows, and makes the following representations and warranties, each of which is and shall be true and correct on the date hereof and at the Closing, to the Company and all such covenants, representations and warranties shall survive the Closing.

**2.1. Power and Authorization.** The Purchaser has the power, authority and capacity to execute and deliver this Agreement, to perform his or her obligations hereunder, and to consummate the Stock Purchase contemplated hereby.

**2.2. Valid and Enforceable Agreement; No Violations.** This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the

Purchaser, enforceable against the Purchaser in accordance with its terms, except that such enforcement may be subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally, and (b) general principles of equity, whether such enforceability is considered in a proceeding at law or in equity (the "**Enforceability Exceptions**"). This Agreement and the consummation of the Stock Purchase will not materially violate, conflict with or result in a breach of or default under (i) any agreement or instrument to which the Purchaser is a party or by which the Purchaser or any of his or her assets are bound, or (ii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to the Purchaser.

2.3. **Accredited Investor.** The Purchaser is an "accredited investor" within the meaning of Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the "**Securities Act**"), and is acquiring the Series B Preferred hereunder for investment for his or her own account and not with a view to, or for resale in connection with, any distribution thereof in a manner that would violate the registration requirements of the Securities Act.

2.4. **No Public Market.** The Purchaser acknowledges and agrees that no public market exists for the Series B Preferred and the share of Series B Preferred is subject to transfer restrictions as set forth in the Series B COD.

2.5. **Transfer Restrictions.** The Purchaser acknowledges and agrees as follows:

(a) The Series B Preferred has not been registered for sale under the Securities Act, in reliance on Section 4(a)(2) of the Securities Act; the Company does not currently intend to register the Series B Preferred under the Securities Act at any time in the future.

(b) The Purchaser understands that there are substantial restrictions on the transferability of the Series B Preferred and that the book-entry certificate representing the Series B Preferred will bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such certificates or other instruments):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND NEITHER SUCH SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS (1) A REGISTRATION STATEMENT WITH RESPECT THERETO IS EFFECTIVE UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR (2) AN EXEMPTION FROM SUCH REGISTRATION EXISTS AND THE COMPANY RECEIVES AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR TRANSFERRED IN THE MANNER CONTEMPLATED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES REPRESENTED HEREBY ARE ALSO SUBJECT TO TRANSFER RESTRICTIONS AS SET FORTH IN THE CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS AND LIMITATIONS OF SERIES B PREFERRED STOCK.

### Article III: Covenants, Representations and Warranties of the Company

The Company hereby covenants as follows, and makes the following representations and warranties, each of which is and shall be true and correct on the date hereof and at the Closing, to the Purchaser, and all such covenants, representations and warranties shall survive the Closing.

**3.1. Power and Authorization.** The Company is duly incorporated, validly existing and in good standing under the laws of its state of incorporation, and has the power, authority and capacity to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the Stock Purchase contemplated hereby.

**3.2. Valid and Enforceable Agreement; No Violations.** This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, except that such enforcement may be subject to the Enforceability Exceptions. The issuance of the Series B Preferred has been duly authorized by the Company. This Agreement, the issuance of the Series B Preferred and consummation of the Stock Purchase will not violate, conflict with or result in a breach of or default under (a) the charter, bylaws or other organizational documents of the Company, (b) any agreement or instrument to which the Company is a party or by which the Company or any of its assets are bound, or (c) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to the Company.

**3.3. Securities Law Matters.** Assuming the accuracy of the Purchaser's representations and warranties hereunder, the Series B Preferred issued pursuant to the Stock Purchase will be (i) exempt from the registration requirements of the Securities Act pursuant to Section 4(a)(2) of the Securities Act, and (ii) issued in compliance with all applicable state and federal laws concerning the issuance of the Series B Preferred.

**3.4. Validity of the Series B Preferred.** The share of Series B Preferred to be issued pursuant to this Agreement at the Closing (a) have been duly authorized by the Company and, upon its issuance pursuant to the Stock Purchase in accordance with the terms of this Agreement, the Series B Preferred will be validly issued, fully paid and non-assessable and (b) will not, as of the date of issuance, be subject to any preemptive, participation, rights of first refusal or other similar rights.

### Article IV: Conditions to Company's Obligations at Closing

The Company's obligation to complete the Stock Purchase and deliver the Series B Preferred to the Purchaser in exchange for the Purchase Price shall be subject to the following conditions to the extent not waived by the Company:

**4.1. Representation and Warranties.** The representations and warranties made by the Purchaser in Article II hereof shall be true and correct in all material respects (except to the extent any such representation and warranty is qualified by materiality, in which case, such representation and warranty shall be true and correct in all respects as so qualified) as of, and as if made on, the date of this Agreement and as of the Closing Date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date.

**4.2. Performance.** The Purchaser shall have performed in all material respects all obligations and covenants herein required to be performed by it at or prior to the Closing.

## Article V: Conditions to Purchaser's Obligations at Closing

The Purchaser's obligation to deliver the Purchase Price and accept delivery of the Series B Preferred and to effect the Stock Purchase shall be subject to the following conditions to the extent not waived by the Purchaser:

5.1. **Representations and Warranties.** The representations and warranties made by the Company in Article III hereof shall be true and correct in all material respects (except to the extent any such representation and warranty is qualified by materiality, in which case, such representation and warranty shall be true and correct in all respects as so qualified) as of, and as if made on, the date of this Agreement and as of the Closing Date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date.

5.2. **Performance.** The Company shall have performed in all material respects all obligations and covenants herein required to be performed by it at or prior to the Closing.

5.3. **Judgments.** No judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any governmental authority, shall have been issued, and no action or proceeding shall have been instituted by any governmental authority, enjoining or preventing the consummation of the transactions contemplated hereby.

5.4. **Certificate of Designation.** The Company shall have filed the Series B COD with the Secretary of State of the State of Delaware, and the Series B COD shall remain in full force and effect as of the Closing.

## Article VI: Voting Agreement

6.1. **Voting Agreement.** Purchaser hereby covenants and agrees to vote the share of Series B Preferred (which shall have 300,000,000 votes) on any Reverse Stock Split Proposal (as defined in the Series B COD) in the same proportion as shares of Common Stock are voted (excluding any shares of Common Stock that are not voted, whether due to abstentions, broker non-votes or otherwise) on such proposal; provided, however, that unless and until at least one-third of the outstanding shares of Common Stock on the record date set for the meeting of stockholders at which the Reverse Stock Split Proposal is presented are present in person or represented by proxy at such meeting, Purchaser will not vote the share of Series B Preferred on such Reverse Stock Split Proposal.

## Article VII: Miscellaneous

7.1. **Entire Agreement.** This Agreement and any other documents and agreements executed in connection with this Agreement or the Stock Purchase, including the Series B COD, embody the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous oral or written agreements, representations, warranties, contracts, correspondence, conversations, memoranda and understandings between or among the parties or any of their agents, representatives or affiliates relative to such subject matter, including, without limitation, any term sheets, emails or draft documents. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Company and the Purchaser and their respective successors and permitted assigns; *provided, however*, that neither this Agreement nor any of the rights hereunder may be assigned without the prior written consent of the other party to this Agreement, and any attempted assignment of this Agreement or any of such rights without such consent shall be void and of no effect.

7.2. **Amendment.** This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties to this Agreement.

7.3. **Construction.** References in the singular shall include the plural, and vice versa, unless the context otherwise requires. References in the masculine shall include the feminine and neuter, and vice versa, unless the context otherwise requires. Headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meanings of the provisions hereof. No party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all language in all parts of this Agreement shall be construed in accordance with its fair meaning, and not strictly for or against any party.

7.4. **Costs and Expenses.** The Purchaser and the Company shall each pay their own respective costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement, including, but not limited to, attorneys' fees.

7.5. **Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt, or (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth on the signature page or **Exhibit A**, or to such e-mail address, facsimile number or address as subsequently modified by written notice given in accordance with this Section 7.5.

7.6. **Governing Law.** This Agreement shall in all respects be construed in accordance with and governed by the substantive laws of the State of Delaware, without reference to its choice of law rules.

7.7. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

7.8. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, the Uniform Electronic Transactions Act or other applicable law, *e.g.*, [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Signature pages follow]

**IN WITNESS WHEREOF**, the undersigned has executed, or caused to be executed on its behalf by an agent there unto duly authorized, this Purchase Agreement as of the date first above written.

**Biocept, Inc.**

By: /s/ Darrell Taylor  
Name: Darrell Taylor, Esq.  
Title: Chief Legal Officer and Chief Compliance  
Officer, Corporate Secretary  
Address: 9955 Mesa Rim Road  
San Diego, CA 92121

**IN WITNESS WHEREOF**, the undersigned has executed, or caused to be executed on its behalf by an agent there unto duly authorized, this Purchase Agreement as of the date first above written.

**PURCHASER:**

/s/ Samuel D. Riccitelli  
\_\_\_\_\_  
Samuel D. Riccitelli

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**EXHIBIT A**

**BIOCEPT, INC.**

**CERTIFICATE OF DESIGNATION  
OF  
PREFERENCES, RIGHTS AND LIMITATIONS OF  
SERIES B PREFERRED STOCK**

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware