

---

---

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

---

**FORM 8-K**

---

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

**Date of Report (Date of earliest event reported): September 29, 2023**

---

**VERU INC.**

(Exact name of registrant as specified in its charter)

---

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

**1-13602**  
(Commission  
File Number)

**39-1144397**  
(IRS Employer  
Identification No.)

**2916 N. Miami Avenue, Suite 1000, Miami, Florida 33127**  
Address of principal executive offices (Zip Code)

**Registrant's telephone number, including area code: (305) 509-6897**

**Not Applicable**  
(Former name or former address, if changed since last report.)

---

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 (see General Instruction A.2. below):

- 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, \$0.01 par value per share	VERU	NASDAQ Capital Market

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.

---

---

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

On September 29, 2023, Veru Inc. (the “Company”) entered into an Amendment to Asset Purchase Agreement (the “Amendment”) with Blue Water Biotech Inc. f/k/a Blue Water Vaccines Inc. (the “Purchaser”). The Amendment amends the Asset Purchase Agreement, dated as of April 19, 2023 (the “Asset Purchase Agreement”), between the Company and the Purchaser by providing that the promissory note for the \$4 million installment of the purchase price due September 30, 2023, will be deemed paid and fully satisfied upon (1) the payment to the Company of the sum of \$1,000,000 in immediately available funds on September 29, 2023, and (2) the issuance to the Company by October 3, 2023 of 3,000 shares of Series A Convertible Preferred Stock (the “Series A Preferred Stock”) of the Purchaser. The Company received such \$1,000,000 payment on September 29, 2023.

The terms of the Series A Purchaser Preferred Stock are governed by a Certificate of Designations filed with the Delaware Secretary of State by the Purchaser on September 29, 2023. Pursuant to the Certificate of Designations, each share of Series A Preferred Stock is convertible by the Company at any time and from time to time from and after one year from the date of issuance of the Series A Preferred Stock into that number of shares of the Purchaser’s common stock determined by dividing the Stated Value of \$1,000 per share by the Conversion Price of \$0.5254 per share, subject to adjustment as provided in the Certificate of Designations. The Series A Preferred Stock issued to the Company is initially convertible into an aggregate of approximately 5,709,935 shares of the Purchaser’s common stock, subject to certain shareholder approval limitations specified in the Certificate of Designations. The Purchaser has agreed in the Amendment to use commercially reasonable efforts to obtain such shareholder approval by December 31, 2023. The Series A Preferred Stock is entitled to share ratably in any dividends paid on the Purchaser’s common stock (on an as-if-converted-to-common-stock basis), has no voting rights except as to certain significant matters specified in the Certificate of Designations, and has a liquidation preference equal to the Stated Value of \$1,000 per share plus any accrued but unpaid dividends thereon. The Series A Preferred Stock is redeemable in whole or in part at the Purchaser’s option at any time. The Purchaser also agreed to include the shares of common stock issuable upon conversion of the Series A Preferred Stock in the next resale registration statement filed with the Securities and Exchange Commission.

There can be no assurance as to (1) whether and when the Company will receive the future installment payments of purchase price or sales milestone payments under the Asset Purchase Agreement and the extent of the risk of a future default by the Purchaser in performing its payment obligations, (2) the ability of the Purchaser to obtain the requisite approval of its shareholders to the conversion of all of the shares of Series A Preferred Stock, and (3) whether and when the Company will be able to receive any cash proceeds from the Series A Preferred Stock, whether from sales of shares of the Purchaser’s common stock issuable upon conversion of the Series A Preferred Stock or otherwise, and the amount of any such cash proceeds.

The description of the Amendment (including the Certificate of Designations) set forth herein is qualified in its entirety by reference to the full text of the Amendment (including the Certificate of Designations), a copy of which is attached as [Exhibit 10.1](#) hereto and incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits.**

(d) [Exhibits](#).

<u>Exhibit No.</u>	<u>Document</u>
10.1	<a href="#">Amendment to Asset Purchase Agreement, dated as of September 29, 2023, between Veru Inc. and Blue Water Biotech Inc.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

---

**SIGNATURES**

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.

Date: October 2, 2023

VERU INC.

By: \_\_\_\_\_/s/ Michele Greco

Michele Greco  
Chief Financial Officer and  
Chief Administrative Officer

**AMENDMENT TO**  
**ASSET PURCHASE AGREEMENT**

This Amendment to Asset Purchase Agreement (the “**Amendment**”) is made effective as of September 29, 2023 by and between Veru Inc., a Wisconsin corporation (the “**Seller**”), and Blue Water Biotech, Inc., a Delaware corporation (“**Buyer**”). Seller and Buyer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.” Capitalized terms used but not defined herein shall have the meanings set forth in the APA (as defined below).

**WITNESSETH:**

**WHEREAS**, the Parties entered into that certain Asset Purchase Agreement (the “**APA**”), dated April 19, 2023; and

**WHEREAS**, the parties desire to modify the terms of Note A (attached as Exhibit A to the APA) as more fully described herein.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Notwithstanding anything to the contrary set forth in Note A, the Parties covenant and agree that Note A shall be deemed paid and satisfied in full upon (i) the payment to Seller of the sum of \$1,000,000 in immediately available funds on the date hereof, to the account of the Seller previously provided by Seller to Buyer, and (ii) the issuance to Seller by October 3, 2023 hereof of 3,000 shares (the “**Shares**”) of Series A Convertible Preferred Stock, par value \$0.00001 per share (the “**Preferred Stock**”), of the Buyer, convertible into the number of shares of the Buyer’s common stock, par value \$0.00001 per share (the “**Common Stock**”) equal to \$3,000,000 divided by the closing price of the Common Stock on September 28, 2023, containing the rights and preferences set forth in the Certificate of Designations attached hereto as Exhibit A (the “**Certificate of Designations**”). The Company shall use its commercially reasonable efforts to obtain Shareholder Approval (as defined in the Certificate of Designation) by December 31, 2023. The Preferred Stock shall convert to common stock of the Buyer one year from the date of issuance, if such stockholder approval has been obtained. The Preferred Stock will not be registered with the SEC under the Securities Act. On the date hereof, Buyer shall (a) duly file the Certificate of Designations with the Delaware Secretary of State and (b) issue to Seller a certificate representing the Shares to be issued hereunder.

2. Buyer represents and warrants to Seller that (a) all corporate action required to be taken by Buyer’s Board of Directors in order to authorize the Company to enter into this Amendment, and to issue the Shares and the Common Stock issuable upon conversion of the Shares (the “**Underlying Shares**”), has been taken, (b) the Shares, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Amendment, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under applicable state and federal securities laws, and (c) the Underlying Shares have been duly reserved for issuance, and upon issuance in accordance with the terms of the Certificate of Designations, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under applicable federal and state securities laws.

---

3. The Underlying Shares shall be included for registration in the Buyer's next resale registration statement filed with the Securities and Exchange Commission (the "SEC") pursuant to the Securities Act of 1933, as amended (the "Securities Act").

4. With a view to making available to Seller the benefits of Rule 144 promulgated under the Securities Act, as such rule may be amended from time to time ("Rule 144"), and other rules and regulations of the SEC that may at any time permit Seller to sell the Underlying Shares without registration, from January 1, 2024 until Seller would be permitted to resell all Underlying Shares that are issuable to Seller pursuant to this Agreement and the Certificate of Designations pursuant to the last sentence of Rule 144(b)(1)(i), Seller covenants that it will (a) file in a timely manner all reports and other documents required, if any, to be filed by it under the Securities Exchange Act of 1934, as amended, and the rules and regulations adopted thereunder and (b) make available information necessary to comply with Rule 144, if available with respect to resales of such Underlying Shares under the Securities Act, at all times, all to the extent required from time to time to enable Seller sell such Underlying Shares without registration under the Securities Act within the limitation of the exemptions provided by Rule 144. Upon the written request of Seller, Buyer will deliver to such holder a written statement as to Buyer's compliance with such requirements. Buyer shall take such action as reasonably necessary to cooperate in any sale of any such Underlying Shares by Seller in accordance with Rule 144, including arranging for any instructions or legal opinions in an appropriate form under Rule 144 to Buyer's stock transfer agent.

5. Seller covenants and agrees that, as of the date of this Amendment, there is no default or event of default under Note B or Note C.

6. The terms and provisions of this Amendment control, supersede and amend any conflicting terms and provisions contained in the APA or any Exhibit thereto. Except for the express modifications made in this Amendment, the APA and its Exhibits continue in full force in effect. All references to the APA shall be deemed references to the APA as supplemented and modified hereby.

7. This Amendment may be executed in one or more counterparts and by facsimile or other electronic transmission, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

---

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed effective as of the date first written above.

**SELLER:**

**VERU INC.**

By: /s/ Mitchell S. Steiner  
Name: Mitchell S. Steiner, MD, FACS  
Title: Chairman, President & CEO

**BUYER:**

**BLUE WATER BIOTECH, INC.**

By: /s/ Erin Henderson  
Name: Erin Henderson  
Title: Chief Business Officer

Exhibit A  
**CERTIFICATE OF DESIGNATIONS,  
PREFERENCES AND RIGHTS  
OF  
SERIES A CONVERTIBLE PREFERRED STOCK  
OF  
BLUE WATER BIOTECH, INC.**

---

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

The undersigned officer of Blue Water Biotech, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), do hereby certify that:

1. She is the Chief Business Officer of the Corporation.
2. The Corporation is authorized to issue 10,000,000 shares of preferred stock, of which 1,150,000 were authorized as Series Seed Preferred, of which 1,146,138 were issued.
3. That pursuant to the authority conferred upon the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, as amended (the "Certificate of Incorporation"), the Board of Directors authorized the series of preferred stock hereinafter provided for and has adopted the following resolution creating a series of 10,000 shares of preferred stock designated as "Series A Convertible Preferred Stock":

**WHEREAS**, the Certificate of Incorporation provides for a class of its authorized stock known as preferred stock, consisting of 10,000,000 shares, \$0.00001 par value per share, issuable from time to time in one or more series;

**WHEREAS**, the Board of Directors has the full and complete authority to establish one or more series or classes and to issue shares of preferred stock, and to fix, determine and vary the voting rights, designations, preferences, restrictions, qualifications, privileges, limitation, options, conversion rights and other special rights of each series or class of preferred stock, including, but not limited to, dividend rates and manner of payment, preferential amounts payable upon voluntary or involuntary liquidation, voting rights, conversion rights, redemption prices, terms and conditions, and sinking fund and stock purchase prices, terms and conditions; and

**WHEREAS**, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of up to 10,000 shares of Series A Convertible Preferred Stock which the Corporation has the authority to issue, as follows:

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Directors does hereby provide for the issuance of a series of Series A Convertible Preferred stock for cash or exchange of other securities, indebtedness, rights or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

1. Designation and Amount. The shares of Series A Convertible Preferred Stock shall have a par value of \$0.00001 per share and shall be designated as "Series A Convertible Preferred Stock" and the number of shares constituting the Series A Convertible Preferred Stock shall be up to 10,000 shares. The Series A Convertible Preferred Stock (the "Preferred Stock") shall be offered for sale at a purchase price of \$1,000 per share and shall have a stated value of \$1,000 per share (the "Stated Value").

2. Voting. Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the holders of a majority of the then outstanding shares of Preferred Stock voting as a separate class, (a) either directly or indirectly, by amendment, merger, consolidation or otherwise, alter, amend or repeal any provision of this Certificate, (b) authorize or create any class of equity securities ranking as to distribution of assets upon a Liquidation (as defined in Section 7) senior to the Preferred Stock, (c) enter into, create, incur, assume or suffer to exist any indebtedness for borrowed money, except for purchase money indebtedness, that by its terms is expressly senior in right of payment to the Corporation's obligations to the holders of Preferred Stock (each such holder, a "Holder" and collectively, the "Holders") under this Certificate or (d) enter into any agreement with respect to any of the foregoing.

3. Conversion.

a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after one (1) year from the date of issuance (the "Original Issue Date") into that number of shares of the Corporation's common stock, par value \$0.00001 per share (the "Common Stock") (subject to the limitations set forth in Section 3(d)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. A Holder shall effect any such conversion by providing the Corporation with the form of conversion notice attached hereto as **Annex A** (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by .pdf via email such Notice of Conversion to the Corporation (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of



Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Conversion Price. The conversion price for the Preferred Stock shall equal \$0.5254, subject to adjustment herein (the "Conversion Price").

c) Mechanics of Conversion

i. Delivery of Conversion Shares Upon Conversion. Not later than five (5) Trading Days after each Conversion Date, the Corporation shall deliver, or cause to be delivered, to the converting Holder such number of Conversion Shares being acquired upon the conversion of the Preferred Stock. As used herein, "Trading Day" means a day on which the NASDAQ Stock Market is open for business.

ii. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 8) upon the conversion of the then outstanding shares of Preferred Stock.

iii. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

iv. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

(d) Issuance Limitations. Notwithstanding anything herein to the contrary, if the Corporation has not obtained Shareholder Approval (as defined below), then the Corporation may not issue, upon conversion of the Preferred Stock, a number of shares of Common Stock which, when aggregated with any shares of Common Stock issued on or after the Original Issue Date and prior to such Conversion Date, would exceed 3,744,209 shares of Common Stock (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) (such number of shares, the "Issuable Maximum"). Each Holder shall be entitled to a portion of the Issuable Maximum equal to the quotient obtained by dividing (x) the original Stated Value of such Holder's Preferred Stock by (y) the aggregate Stated Value of all Preferred Stock issued on the Original Issue Date to all Holders. Such portion shall be adjusted upward ratably in the event a Holder no longer holds any Preferred Stock and the amount of shares issued to such Holder pursuant to such Holder's Preferred Stock was less than such Holder's pro-rata share of the Issuable Maximum. "Shareholder Approval" means the affirmative vote of the holders of the Corporation's capital stock by the required vote under the Delaware General Corporation Law and NASDAQ Listing Rule 5635, and any successor thereto, or any similar rule of any other stock exchange on which the Common Stock may be listed, as applicable, to approve the conversion of the Preferred Stock described herein pursuant to the such rule.

4. Dividends. Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of Preferred Stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. No other dividends shall be paid on shares of Preferred Stock. Dividends shall cease to accrue with respect to any shares of Preferred Stock that are canceled, retired or redeemed by the Corporation in accordance with this Certificate.

5. Transferability. The holders of Preferred Stock shall not, directly or indirectly, sell, give, assign, hypothecate, pledge, encumber, grant a security interest in or otherwise dispose of (whether by operation of law or otherwise) (each a "Transfer") the Preferred Stock, in whole or in part, or any right, title or interest herein or hereto, except in accordance with the provisions of this Certificate. Any attempt to Transfer the Preferred Stock or any rights hereunder in violation of the preceding sentence shall be null and void ab initio and the Corporation shall not register any such Transfer. Upon the Transfer of the Preferred Stock, in whole or in part, through the use of an assignment form in a form reasonably satisfactory to the Corporation, and in accordance with applicable law or regulation, and the payment by the holder of funds sufficient to pay any transfer tax, the Corporation shall issue and register the Preferred Stock in the name of the new holder or, in the event the Preferred Stock is transferred in part, the Corporation shall deliver new certificates of like tenor registered in the names of each of the current holder and the transferee in amounts that give effect to such partial Transfer. Notwithstanding any other provision of this Certificate, no Transfer may be made pursuant to this Section 5 unless (a) the Transfer complies in all respects with the applicable provisions of this Certificate and (b) the Transfer complies in all respects with applicable federal and state securities laws, including, without limitation, the Securities Act of 1933, as amended (the "Securities Act"). If requested by the Corporation in its reasonable judgment, unless such Transfer has been registered under the Securities Act, the holder shall supply to the Corporation an opinion of counsel, at the holder's expense, to the effect that such Transfer is not required to be registered under the Securities Act.

6. Redemption. The Corporation shall have the right to redeem in cash any outstanding shares of Preferred Stock along with accrued but unpaid dividends beginning immediately after issuance of such shares of Preferred Stock. In the event that there is more than one holder of Preferred Stock and the Corporation desires to conduct a redemption, such redemption shall be done on a pro rata basis among all of the holders of Preferred Stock. The Corporation shall effect a redemption by sending a notice to each holder of such Preferred Stock indicating the date of such redemption and the number of shares being redeemed and providing each holder with a check or wire for the redemption amount. The holders shall not be required to return their Preferred Stock certificate following a redemption, such redemption to be reflected on the Company's Preferred Stock registry with evidence of payment of the redemption amount being conclusive evidence of the redemption of shares of Preferred Stock. The holder of Preferred Stock shall not under any circumstances have any right to require redemption. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Preferred Stock.

7. Liquidation Preference. Each share of Preferred Stock will have a liquidation preference equal to the Stated Value plus any accrued but unpaid dividends thereon (the "Liquidation Preference"). In the event of a liquidation, dissolution or winding up of the Corporation (which shall include any merger, reorganization, sale of assets in which control of the Corporation is transferred or event which results in all or substantially all of the Corporation's assets being transferred) (a "Liquidation"), the holders of Preferred Stock shall be entitled to receive out of the assets of the Corporation, before any payment is made to the holders of the Corporation's common stock and either in preference to or pari pasu with the holders of any other series of preferred stock that may be issued in the future, a per share amount equal to the Liquidation Preference. If the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the holders of Preferred Stock shall be ratably distributed among the holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. Any remaining assets of the Corporation following payment of the Liquidation Preference to the holders of Preferred Stock shall be distributed to the holders of the Corporation's common stock and any junior series of preferred stock then outstanding.

---

8. Certain Adjustments.

(a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 8(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Preferred Stock (without regard to any limitations on conversion hereof) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

(c) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of

Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 3(d) on the conversion of this Preferred Stock), the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 3(d) on the conversion of this Preferred Stock). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Corporation under this Certificate of Designation in accordance with the provisions of this Section 8(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in

form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction). Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Corporation herein.

(d) Calculations. All calculations under this Section 8 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 8, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

9. Miscellaneous.

(a) Amendments in Writing. Except as otherwise provided herein, the provisions of the Preferred Stock may be amended and the Corporation may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Corporation has obtained the written consent of the holders of a majority of the then outstanding shares of Preferred Stock.

*[Remainder of page intentionally left blank]*

---

**IN WITNESS WHEREOF**, the Corporation has caused this Certificate of Designations, Preferences and Rights to be signed in its name and on its behalf on this 29th day of September, 2023 by a duly authorized officer of the Corporation.

BLUE WATER BIOTECH, INC.

By: \_\_\_\_\_  
Name: Erin Henderson  
Title: Chief Business Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT  
SHARES OF SERIES A CONVERTIBLE PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock ("Preferred Stock") indicated below into shares of common stock, par value \$0.00001 per share (the "Common Stock"), of Blue Water Biotech, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required by the Corporation. No fee will be charged to the undersigned for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

Or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

[HOLDER]

By: \_\_\_\_\_

Name:

Title: