

**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): November 16, 2022**

**LM FUNDING AMERICA, INC.**

(Exact name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-37605**  
(Commission File Number)

**47-3844457**  
(IRS Employer  
Identification No.)

**1200 West Platt Street  
Suite 100  
Tampa, Florida**  
(Address of Principal Executive Offices)

**33606**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: 813 222-8996**

(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:

- 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 \$0.001 per share	LMFA	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.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

***Amendment of Executive Employment Agreements***

On November 16, 2022, LM Funding America, Inc. (the “Company”) entered into (i) Amendment No. 1 to Amended and Restated Employment Agreement by and between the Company and Bruce Rodgers, the Chairman of the Board of Directors, Chief Executive Officer, and President of the Company (the “Rodgers Amendment”), and (ii) Amendment No. 1 to Amended and Restated Employment Agreement by and between the Company and Richard Russell, the Chief Financial Officer of the Company (the “Russell Amendment”) and, collectively with the Rodgers Amendment, the “Amendments”). The Amendments make certain changes (as described below) to the Amended and Restated Employment Agreement dated October 27, 2021, by and between the Company and Mr. Bruce Rodgers (the “Rodgers Agreement”), and the Amended and Restated Employment Agreement dated October 27, 2021, by and between the Company and Mr. Russell (the “Russell Agreement”), and, together with the Rodgers Agreement, the “Agreements”), as applicable.

The Amendments amend and modify the Agreements by deleting provisions in the Agreements that granted each of Mr. Russell and Mr. Bruce Rodgers certain bonuses upon a change of control of the Company. Further, the Amendments modify the severance provisions of the Agreements to provide that, upon the termination of Mr. Bruce Rodgers or Mr. Russell by the Company without cause (or upon termination by them of their own employment upon a “good reason event,” as defined in the Agreements), they will be entitled to receive, in addition to any accrued salary and bonus, the sum of two years of such executive’s salary plus the average bonus paid for the preceding three years, which sum will be paid over a period of two years, as well as reimbursements for premium payments paid or payable by such executive for continuing healthcare coverage for up to 24 months following the executive’s termination.

The foregoing description is qualified in its entirety by reference to the Amendments, copies of which are filed as Exhibit 10.1 and Exhibit 10.2 to this Current Report on Form 8-K and are incorporated herein by reference.

***Cancellation of Stock Options***

On November 18, 2022, the Company entered into Stock Option Cancellation Agreements (the “Cancellation Agreements”) with each of Mr. Bruce Rodgers and Mr. Russell, pursuant to which such individuals surrendered and cancelled certain previously granted stock options (the “Cancelled Options”) to purchase shares of the Company’s common stock in order to make additional shares available under the Company’s 2021 Omnibus Incentive Plan for future equity grants to Company personnel. Pursuant to the terms of the Cancellation Agreements, each of Mr. Bruce Rodgers, Mr. Russell, and the Company acknowledged and agreed that the surrender and cancellation of the Cancelled Options was without any expectation to receive, and was without any obligation on the Company to pay or grant, any cash, equity awards or other consideration presently or in the future in regard to the cancellation of the Cancelled Options.

The Cancelled Options that were surrendered had an exercise price of \$5.95 per share. The number of shares underlying the Cancelled Options held by each of Mr. Bruce Rodgers and Mr. Russell were 1,800,000, with an aggregate total of 3,600,000 shares underlying the Cancelled Options.

The foregoing description of the Cancellation Agreements is qualified in its entirety by reference to the form of Stock Option Cancellation Agreement, a copy of which is filed as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated herein by reference.

***Resignation and Appointment of Directors***

Effective November 16, 2022, Mr. Joel E. Rodgers resigned from his position as a member of the board of directors of the Company. There is no disagreement between the Company and Mr. Joel Rodgers on any matter relating to the Company’s operations, policies, or practices.

Effective November 16, 2022, the Company’s board of directors appointed Tian “Todd” Zhang to the Company’s board of directors to fill the vacancy created by the resignation of Mr. Joel Rodgers. Mr. Zhang was appointed as a “Class II” director for a term that ends at the 2024 annual meeting of stockholders.

Mr. Zhang has served in a variety of corporate counsel roles where he has years of experience with matters involving securities, corporate governance, employee benefits, acquisitions, and compliance. On November 28, 2022, Mr. Zhang will assume the role of Vice President, Associate General Counsel for Intertape Polymer Group, Inc. Prior to that, Mr. Zhang served as Director, Senior Counsel and Assistant Secretary at Bloomin’ Brands, Inc. from September 2020 to November 18, 2022, as Director, Corporate Counsel at TECO Energy, Inc. from July 2018 through August 2020, and as an associate with the law firm DLA Piper LLP from April 2017 to June 2018. Prior to his time with DLA Piper LLP, Mr. Zhang held various other corporate attorney roles at public and private companies. Mr. Zhang obtained his Juris Doctor from Stetson University College of Law in 2011 and his Bachelor’s Degree from the University of Florida in 2007.

---

Mr. Zhang brings to the Board of Directors many years of compliance and corporate governance experience, including experience with large public companies, which we believe qualifies him to serve as one of our directors.

Mr. Zhang has not yet been appointed as a member of any committee of the Board of Directors. He will be eligible to receive compensation pursuant to the Company's non-employee director compensation plan, as described below. There are no family relationships between Mr. Zhang and any director or executive officer of the Company, and he has no direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

#### ***Amendments to Director Compensation Program***

On November 18, 2022, the Board of Directors of the Company approved certain amendments to the Company's Non-Employee Director Compensation Program (the "Amended Program"), effective immediately. Pursuant to the Amended Program, each non-employee director of the Company will receive an annual cash retainer of \$66,000 (or \$99,000 for audit committee members) payable in arrears in equal quarterly payments, pro-rated for partial years. Non-employee directors will also receive an annual stock option award to purchase a number of shares equal to \$66,000 (or \$99,000 for audit committee members) divided by the option exercise price (which will be equal to the fair market value of the Company's common stock on the date of grant), which annual awards will vest one-half on the 180th day after the grant date and one-half on the first anniversary of the grant date. The annual option award will be granted on the day of the Company's annual stockholder meeting each year. Upon initial election or appointment to the Board of Directors (or on such later date as is determined by the Board of Directors), non-employee directors will also automatically receive stock options to purchase shares under the Company's equity incentive plan equal to \$25,000 divided by the exercise price of the option, with such exercise price being equal to the grant date fair value of the company's common stock.

The foregoing description is qualified in its entirety by reference to the Amended Program, a copy of which is filed as Exhibit 10.4 to this Current Report on Form 8-K and is incorporated herein by reference.

#### **Item 9.01 Financial Statements and Exhibits.**

##### **(d) Exhibits**

<b>Exhibit Number</b>	<b>Description</b>
10.1	<a href="#">Amendment No. 1 to Amended and Restated Employment Agreement, dated November 16, 2022, by and between the Company and Bruce Rodgers</a>
10.2	<a href="#">Amendment No. 1 to Amended and Restated Employment Agreement, dated November 16, 2022, by and between the Company and Richard Russell</a>
10.3	<a href="#">Form of Stock Option Cancellation Agreement</a>
10.4	<a href="#">Non-Employee Director Compensation Program, as amended on November 18, 2022</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

\*\*\*

#### **Forward-Looking Statements**

*This Current Report on Form 8-K may contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These statements involve risks and uncertainty. Words such as "anticipate," "estimate," "expect," "intend," "plan," and "project" and other similar words and expressions are intended to signify forward-looking statements. Forward-looking statements are not guarantees of future results and conditions but rather are subject to various risks and uncertainties. Such statements are based on the Company's current expectations and are subject to a number of risks and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. Investors are cautioned that there can be no assurance actual results or business conditions will not differ materially from those projected or suggested in such forward-looking statements as a result of various risks and uncertainties. Investors should refer to the risks detailed from time to time in the reports the Company files with the SEC, including the Company's Annual Report on Form 10-K for the year ended December 31, 2021, as well as other filings on Form 10-Q and periodic filings on Form 8-K, for additional factors that could cause actual results to differ materially from those stated or implied by such forward-looking statements. The Company disclaims any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise, unless required by law.*

**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.

LM Funding America, Inc.

Date: November 18, 2022

By: /s/ Richard Russell  
Richard Russell, CFO

---



**AMENDMENT NO. 1**  
**TO AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This is Amendment No. 1, dated November 16, 2022 (this "Amendment No. 1"), to that certain Amended and Restated Employment Agreement dated October 27, 2021 (the "Employment Agreement"), between LM Funding America, Inc., a Delaware corporation (the "Company"), and Bruce M. Rodgers, an individual (the "Executive").

Capitalized terms used in this Amendment No. 1 and not otherwise defined herein shall have the meanings ascribed thereto in the Employment Agreement.

**Background**

**WHEREAS**, pursuant to the terms of the Employment Agreement, Executive is employed as the Chief Executive Officer of the Company.

**WHEREAS**, the Company and the Executive desire to amend the Employment Agreement in the manner set forth herein in order to, among other things, make certain changes to the Executive's compensation and benefits as originally specified in the Employment Agreement.

**NOW, THEREFORE**, the Parties hereto intending to be legally bound hereby, and in consideration of the mutual covenants herein contained, agree as follows:

**Terms**

**1. Section 3. Compensation:**

a. Section 3(d) of the Employment Agreement is hereby deleted in its entirety.

b. Section 3(e) of the Employment Agreement is hereby deleted in its entirety.

**2. Section 4. Termination:**

a. Section 4(b)(iii)(C) of the Employment Agreement is hereby deleted in its entirety and replaced with the following:

“(C) Executive (or Executive’s legal representative) shall be entitled to receive in cash the sum of (i) an amount equal to two (2) times Executive’s Salary (at the rate in effect immediately prior to the termination, and without taking into account any reductions that would have given rise to Good Reason termination by Executive), and (ii) the average annual bonus earned by Executive for each of the three (3) completed fiscal years immediately before the Termination Date, which sum shall be payable in equal installments in accordance with the

---

Company's customary payroll procedures over the 24-month period following the Termination Date;"

b. New Section 4(b)(iii)(E) is hereby added to the Employment Agreement and reads as follows:

"(E) Company shall reimburse Executive (subject to applicable tax and other withholdings) the premium payments paid or payable by Executive for continuing healthcare coverage for Executive and his family under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") for up to 24-months following the Termination Date (if Executive elects COBRA coverage)."

3. **Section 16. Section 409A:** The first sentence in Section 16 of the Employment Agreement is hereby amended and restated in its entirety to read as follows:

"This Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("**Section 409A**"), and shall be construed accordingly."

4. Except as expressly modified by this Amendment No. 1, all terms and conditions of the Employment Agreement remain in full force and effect in accordance with the terms thereof.

5. This Amendment No. 1 may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which when taken 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, 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.

6. This Amendment No. 1, together with the Employment Agreement, contains the final, complete, and exclusive expression of the parties' understanding and agreement concerning the matters contemplated herein and supersedes any prior or contemporaneous agreement of representation, oral, or written, among them.

7. This instrument shall be binding upon, and shall insure to the benefit of, each of the parties' respective personal representatives, heirs, successors, and assigns.

8. This instrument shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida and any disputes arising hereunder shall be resolved in the manner set forth in Section 12 of the Employment Agreement.

[signatures follow]

---

IN WITNESS HEREOF, the parties have executed this Amendment No. 1 on the day and year first written above.

**LM FUNDING AMERICA, INC.**

By: /s/ Richard Russell  
Name: Richard Russell  
Title: Chief Financial Officer

**EXECUTIVE**

By: /s/ Bruce M. Rodgers  
Name: Bruce M. Rodgers, individually

---



**AMENDMENT NO. 1**  
**TO AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This is Amendment No. 1, dated November 16, 2022 (this "Amendment No. 1"), to that certain Amended and Restated Employment Agreement dated October 27, 2021 (the "Employment Agreement"), between LM Funding America, Inc., a Delaware corporation (the "Company"), and Richard Russell, an individual (the "Executive").

Capitalized terms used in this Amendment No. 1 and not otherwise defined herein shall have the meanings ascribed thereto in the Employment Agreement.

**Background**

**WHEREAS**, pursuant to the terms of the Employment Agreement, Executive is employed as the Chief Financial Officer of the Company.

**WHEREAS**, the Company and the Executive desire to amend the Employment Agreement in the manner set forth herein in order to, among other things, make certain changes to the Executive's compensation and benefits as originally specified in the Employment Agreement.

**NOW, THEREFORE**, the Parties hereto intending to be legally bound hereby, and in consideration of the mutual covenants herein contained, agree as follows:

**Terms**

**1. Section 3. Compensation:**

a. Section 3(d) of the Employment Agreement is hereby deleted in its entirety.

b. Section 3(e) of the Employment Agreement is hereby deleted in its entirety.

**2. Section 4. Termination:**

a. Section 4(b)(iii)(C) of the Employment Agreement is hereby deleted in its entirety and replaced with the following:

“(C) Executive (or Executive’s legal representative) shall be entitled to receive in cash the sum of (i) an amount equal to two (2) times Executive’s Salary (at the rate in effect immediately prior to the termination, and without taking into account any reductions that would have given rise to Good Reason termination by Executive), and (ii) the average annual bonus earned by Executive for each of the three (3) completed fiscal years immediately before the Termination Date, which sum shall be payable in equal installments in accordance with the

---

Company's customary payroll procedures over the 24-month period following the Termination Date;"

b. New Section 4(b)(iii)(E) is hereby added to the Employment Agreement and reads as follows:

"(E) Company shall reimburse Executive (subject to applicable tax and other withholdings) the premium payments paid or payable by Executive for continuing healthcare coverage for Executive and his family under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") for up to 24-months following the Termination Date (if Executive elects COBRA coverage)."

3. **Section 16. Section 409A:** The first sentence in Section 16 of the Employment Agreement is hereby amended and restated in its entirety to read as follows:

"This Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("**Section 409A**"), and shall be construed accordingly."

4. Except as expressly modified by this Amendment No. 1, all terms and conditions of the Employment Agreement remain in full force and effect in accordance with the terms thereof.

5. This Amendment No. 1 may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which when taken 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, 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.

6. This Amendment No. 1, together with the Employment Agreement, contains the final, complete, and exclusive expression of the parties' understanding and agreement concerning the matters contemplated herein and supersedes any prior or contemporaneous agreement of representation, oral, or written, among them.

7. This instrument shall be binding upon, and shall insure to the benefit of, each of the parties' respective personal representatives, heirs, successors, and assigns.

8. This instrument shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida and any disputes arising hereunder shall be resolved in the manner set forth in Section 12 of the Employment Agreement.

[signatures follow]

---

IN WITNESS HEREOF, the parties have executed this Amendment No. 1 on the day and year first written above.

**LM FUNDING AMERICA, INC.**

By: /s/ Bruce M. Rodgers  
Name: Bruce M. Rodgers  
Title: Chief Executive Officer and Chairman

**EXECUTIVE**

By: /s/ Richard Russell  
Name: Richard Russell, individually

---



**LM FUNDING AMERICA, INC.  
STOCK OPTION CANCELLATION AGREEMENT**

THIS STOCK OPTION CANCELLATION AGREEMENT (this “Agreement”), is made effective as of November 18, 2022, between LM Funding America, Inc., a Delaware corporation (the “Company”), and \_\_\_\_\_ (the “Employee”).

WHEREAS, the Employee believes that it is in the best interest of the Company and its shareholders to voluntarily cancel the existing Company stock option held by Employee set forth on Exhibit A hereto (the “Cancelled Option”) that has relatively low incentive or retention value at this time so that additional shares can become available for grant in the future under the Company’s 2021 Omnibus Incentive Plan (the “Plan”), which the Company may use for future equity grants to Company personnel in order to recruit, retain and motivate such personnel; and

WHEREAS, the Company is relying on the Employee’s surrender and cancellation of the Cancelled Option in making administrative determinations regarding the Plan.

NOW THEREFORE, the parties hereby agree as follows:

1. Cancellation of Outstanding Option. The Employee hereby surrenders the Cancelled Option for cancellation, and the Company hereby accepts such surrender and cancellation. By execution of this Agreement, the parties have taken all steps necessary to cancel the Cancelled Option.

2. No Expectation or Obligation. The Company and Employee acknowledge and agree that the surrender and cancellation of the Cancelled Option described herein shall be without any expectation of the Employee to receive, and without imposing any obligation on the Company to pay or grant, any cash, equity awards or other consideration presently or in the future in regard to the cancellation of the Cancelled Option.

3. Reliance. The Employee acknowledges and agrees that the Company is relying on the provisions of Section 1 and 2 herein in connection with administration of the Plan, including without limitation determinations regarding the nature of future grants under the Plan.

4. Miscellaneous. This Agreement contains all of the understanding between the Company and Employee concerning the cancellation of the option. The Company and Employee have made no promises, agreements, conditions, or understanding relating to this subject matter, either orally or in writing, that are not included in this Agreement. This Agreement may be executed in counterparty, each of which when signed by the Company and Employee will be deemed an original and all of which together will be deemed the same agreement. This Agreement shall be governed and construed exclusively in accordance with the laws of the State of Delaware applicable.

*[Signature Page Follows]*

---

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the date first set forth above.

LM FUNDING AMERICA, INC.

By: \_  
Name:  
Title:

Agreed and acknowledged as  
of the date set forth below:

\_\_\_\_\_  
Name of Employee

---

Exhibit A

**Description of Cancelled Option**

**Name**

**Grant Date**

**Number of Option Shares**

**Exercise Price**

---



## LM FUNDING AMERICA, INC.

## NON-EMPLOYEE DIRECTOR COMPENSATION PROGRAM

(Amended and Effective November 18, 2022)

Non-employee members of the board of directors (the “*Board*”) of LM Funding America, Inc. (the “*Company*”) shall receive cash and equity compensation as set forth in this Non-Employee Director Compensation Program (this “*Program*”). This Program has been adopted under the Company’s 2021 Omnibus Incentive Plan (the “*Equity Plan*”). The cash and equity compensation described in this Program shall be paid or be made, as applicable, automatically and without further action of the Board, to each member of the Board who is not an employee of the Company or any parent or subsidiary of the Company (each, a “*Non-Employee Director*”) who is entitled to receive such cash or equity compensation, unless such Non-Employee Director declines the receipt of such cash or equity compensation by written notice to the Company. This Program shall remain in effect until it is revised or rescinded by further action of the Board. This Program may be amended, modified or terminated by the Board at any time in its sole discretion. The terms and conditions of this Program shall supersede any prior cash and/or equity compensation arrangements for service as a member of the Board between the Company and any of its Non-Employee Directors. No Non-Employee Director shall have any rights hereunder, except with respect to equity awards to be automatically granted pursuant to the Program. Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Equity Plan.

1. Cash Compensation.

(a) Annual Retainers. Each Non-Employee Director shall receive an annual cash retainer of \$66,000 for service on the Board.

(b) Additional Annual Retainers for Audit Committee Service. In addition, a Non-Employee Director serving as a member of the Audit Committee shall receive an additional annual retainer of \$33,000 for such service.

(c) Payment of Retainers. The annual retainers described in Sections 1(a) and 1(b) shall be earned on a quarterly basis based on a calendar quarter and shall be paid by the Company in arrears not later than the fifteenth day following the end of each calendar quarter. In the event a Non-Employee Director does not serve as a Non-Employee Director, or in the applicable positions described in Section 1(a) or 1(b), for an entire calendar quarter, the retainer paid to such Non-Employee Director shall be prorated for the portion of such calendar quarter actually served as a Non-Employee Director, or in such position, as applicable.

2. Equity Compensation. Non-Employee Directors shall be granted the equity awards described below. The awards described below shall be granted under and shall be subject to the terms and provisions of the Equity Plan, or any other applicable Company equity incentive plan then-maintained by the Company, and shall be granted subject to the execution and delivery of award agreements, including attached exhibits, in substantially the forms previously approved by the Board. All applicable terms of the Equity Plan apply to this Program as if fully set forth herein, and all grants of stock awards hereby are subject in all respects to the terms of the Equity Plan and the applicable award agreement.

(a) Initial Awards. Each Non-Employee Director who is initially elected or appointed to the Board shall be automatically granted a number of stock options to purchase shares of the Company’s common stock under the Equity Plan, or any other applicable Company equity incentive plan

---

then-maintained by the Company, equal to (i) \$25,000, divided by (ii) the exercise price of the option. Such options will have an exercise price equal to the Fair Market Value (as defined in the Equity Plan) of the Company's common stock on the date of grant. The awards described in this Section 2(a) shall be referred to as "**Initial Awards**." No Non-Employee Director shall be granted more than one Initial Award. Each Initial Award will be granted on the date of the initial election or appointment to the Board or on such other date thereafter as is determined by the Board.

(b) Subsequent Awards for All Non-Employee Directors. A Non-Employee Director who (i) is serving on the Board as of the date of any annual meeting of the Company's stockholders and has been serving as a Non-Employee Director for at least three months as of the date of such meeting, and (ii) will continue to serve as a Non-Employee Director immediately following such meeting, shall, on the date of such annual meeting, be automatically granted a number of stock options to purchase shares of the Company's common stock under the Equity Plan, or any other applicable Company equity incentive plan then-maintained by the Company, equal to (A) \$66,000 (or \$99,000 for Non-Employee Directors who are members of the Audit Committee on the date of option grant), less the dollar value of any Initial Award paid during the preceding 12 months, divided by (B) the exercise price of the option. Such options will have an exercise price equal to the Fair Market Value (as defined in the Equity Plan) of the Company's common stock on the date of grant. The awards described in this Section 2(b) shall be referred to as "**Subsequent Awards**." A Non-Employee Director elected for the first time to the Board at an annual meeting of the Company's stockholders shall only receive a Subsequent Award in connection with such election, and shall not receive any Initial Award on the date of such meeting.

(c) Termination of Employment of Employee Directors. Members of the Board who are employees of the Company or any parent or subsidiary of the Company who subsequently terminate their employment with the Company and any parent or subsidiary of the Company and remain on the Board will not receive an Initial Award pursuant to Section 2(a) above, but to the extent that they are otherwise entitled, will receive, after termination from employment with the Company and any parent or subsidiary of the Company, Subsequent Awards as described in Section 2(b) above.

(d) Vesting of Awards Granted to Non-Employee Directors. Each Initial Award and Subsequent Award shall vest and become exercisable as follows: one-half the shares subject to the award shall vest within 180 days of the grant date, and one half of the shares subject to the award shall vest on the first anniversary of the grant date. Unvested awards shall become fully vested upon a Change of Control.

(e) Stockholder Approval of Equity Plan. No stock options granted under this Program shall be exercisable unless and until the Equity Plan is approved by the Company's stockholders.

3. Compensation Limits. Notwithstanding anything to the contrary in this Program, all compensation payable under this Program will be subject to any limits on the maximum amount of Non-Employee Director compensation set forth in the Equity Plan, as in effect from time to time.

4. Reimbursements. The Company shall reimburse each Non-Employee Director for all reasonable, documented, out-of-pocket travel and other business expenses incurred by such Non-Employee Director in the performance of his or her duties to the Company in accordance with the Company's applicable expense reimbursement policies and procedures as in effect from time to time.

\* \* \* \* \*

---

