

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): December 1, 2021

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 1000
Tampa, Florida 33606
(Address of principal executive offices, including zip code)

(813) 222-8996
(Registrant's telephone number, including area code)

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	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 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2). Emerging growth company

If an emerging growth company, indicate by check mark if 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 Material Definitive Agreement.

On December 1, 2021, LM Funding America, Inc. (the “**Company**”) entered into a Secured Promissory Note and Loan Agreement (the “**Note**”) with Symbiont.io, Inc., a Delaware corporation (“**Symbiont**”). Pursuant to the terms of the Note, the Company agreed to make loans to Symbiont in an aggregate principal amount of up to \$3,000,000.00 (the “**Loans**”) to be used by Symbiont for working capital purposes. The Company funded the first loan to Symbiont in the amount of \$2,000,000.00 simultaneously with the execution of the Note and, upon the occurrence of certain triggering events, may loan to Symbiont up to an additional \$1,000,000.00. The outstanding principal amount of the Loans will bear interest at a rate of 16% per annum. The outstanding principal, plus any accrued and unpaid interest, becomes due and payable on December 1, 2022. The Note is secured by a first priority perfected security interest in the assets of Symbiont.

Concurrently with the execution of the Note, the Company and Symbiont entered into a First Refusal and Purchase Option Agreement, dated December 1, 2021 (the “**ROFR Agreement**”), to provide the Company with certain rights relating to the potential purchase of the capital stock or assets of Symbiont. Pursuant to the terms of the ROFR Agreement, in the event that Symbiont expects to accept a third-party offer that would result in a sale of Symbiont, then the Company will have the first right and option to purchase, upon the same terms and conditions as the third-party offer, the assets or capital stock of Symbiont, subject to certain terms and exclusions as described in the ROFR Agreement. The Company’s rights under the ROFR Agreement are assignable to third parties. The ROFR Agreement will expire on December 1, 2022.

Also on December 1, 2021, Symbiont issued to the Company a Common Stock Warrant (the “**Warrant**”) in connection with the Note. The Warrant entitles the Company to purchase from Symbiont up to 700,000 fully paid and nonassessable shares of Common Stock, par value \$0.0001 per share, of Symbiont (the “**Common Stock**”). The Warrant is immediately exercisable at a purchase price of \$3.0642 per share of Common Stock, subject to adjustment in certain circumstances, and will expire on 4:00 p.m. Eastern Time on December 1, 2026. The Warrant includes anti-dilution protection upon the issuance of any Common Stock, securities convertible into Common Stock, or certain other issuances at a price below the then-existing exercise price of the Warrant, with certain exceptions.

The foregoing descriptions of the Note, the ROFR Agreement, and the Warrant, which are each effective as of December 1, 2021, are summary in nature and are each qualified by reference to the full text of each respective agreement, copies of which are attached as Exhibits 10.1, 10.2, and 10.3 to this Current Report on Form 8-K.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

Exhibit Number	Description
10.1	Secured Promissory Note and Loan Agreement
10.2	First Refusal and Purchase option Agreement
10.3	Common Stock Warrant

EX-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, 2020, 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.

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.

LM Funding America, Inc.

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

Dated: December 7, 2021

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THE SECURITIES NOR ANY INTEREST OR PARTICIPATION THEREIN MAY BE OFFERED FOR SALE, SOLD, TRANSFERRED, OR ASSIGNED: (1) IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR APPLICABLE STATE SECURITIES LAWS OR (2) IN THE ABSENCE OF AN OPINION OF COUNSEL, IN A FORM REASONABLY ACCEPTABLE TO THE ISSUER, THAT REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT.

SECURED PROMISSORY NOTE AND LOAN AGREEMENT

\$3,000,000.00

December 1, 2021

FOR VALUE RECEIVED, **SYMBIONT.IO, INC.**, a Delaware corporation with an address at 632 Broadway, 5th Floor, New York, New York 10012 (the “**Borrower**”), promises to pay to the order of **LM FUNDING AMERICA, INC.**, a Delaware corporation, or its successors, transferees or assignees (“**Lender**”), in lawful money of the United States of America the principal sum of Three Million and No/Dollars (\$3,000,000.00), or such lesser principal amount as may be outstanding hereunder in accordance with the terms hereof on the earlier of (i) the Maturity Date (as hereinafter defined), or (ii) upon the occurrence and during the continuance of an Event of Default, together with all accrued and unpaid amounts due and payable to Lender pursuant to the provisions of this Secured Promissory Note and Loan Agreement (this “**Note**”). This Note amends and restates that certain Secured Promissory Note and Loan Agreement of even date herewith in the aggregate principal amount of \$3,000,000 issued by Borrower to Lender, \$2,000,000 of which amount is the principal outstanding as of the date hereof.

All payments under this Note shall be made in lawful money of the United States, in immediately available funds and without set-off, deduction or counterclaim.

The Borrower hereby waives presentment, notice of dishonor, protest and any other notice or formality with respect to this Note except for such notice as provided herein.

The following is a statement of the rights of Lender and the conditions to which this Note is subject, and to which Lender, by the acceptance of this Note, agrees:

1. Advances; Commitment; Interest

(a) *Advances and Commitment.* Subject to the terms and conditions set forth herein, Lender agrees to make loans (“**Loans**”) in dollars to the Borrower from time to time during the Availability Period in an aggregate principal amount up to \$3,000,000.00 in the following manner: (i) on the date of this Note, Lender shall fund a loan to Borrower in the amount of Two Million and No/Dollars (\$2,000,000.00); and 4883-9350-4517.4

(ii) upon the occurrence of a Triggering Event (as hereinafter defined) and upon the written request of Borrower in the manner set forth in **Section 1(b)** below (and so long as no Event of Default then exists), Lender will loan an additional One Million and No/Dollars (\$1,000,000.00). For purposes of this Note, the “**Availability Period**” means the period commencing on the date of this Note and ending on the earlier of (i) the Maturity Date and (ii) the date when, upon the occurrence and during the continuance of an Event of Default, all Obligations are declared due and payable by Lender or made automatically due and payable, in each case, in accordance with the terms hereof. For purposes hereof, a “**Triggering Event**” means Borrower becoming obligated to fund the payment described in Section 4.4 of the First Refusal and Purchase Option Agreement of even date herewith between Borrower and Lender (the “**First Refusal Agreement**”).

(b) *Borrowing Procedures; Requests for Loans*. Upon the occurrence of a Triggering Event, Borrower may request an additional Loan (the “**Additional Loan**”) by notifying Lender of such request in writing (delivered by hand, overnight mail, or email) in a form approved by Lender and signed by the Borrower not later than 12:00 p.m., Eastern time, not less than three (3) business days before the date of the proposed Loan (each, a “**Loan Request**”). The proceeds from the Additional Loan will be used solely to fund the payment specified in Section 4.4 of the First Refusal Agreement.

(c) *Repayment Terms*.

(i) Borrower and Lender each acknowledge that the purpose of this lending relationship is to enable Borrower to provide working capital to be used in the ordinary course of Borrower’s business, and, with respect to the Additional Loan, to fund the Borrower’s obligations under Section 4.4 of the First Refusal Agreement (the “**Purpose**”).

(ii) The aggregate unpaid principal amount of the Loans, all accrued and unpaid interest and all other amounts payable under this Note shall be due and payable on December 1, 2022 (the “**Maturity Date**”).

(d) *Prepayment*. The Borrower may prepay this Note in whole or in part without penalty at any time.

(e) *Interest Rate*. Except as otherwise provided herein, the outstanding principal amount of the Loans made hereunder shall bear interest at the Applicable Rate from the date the Loans were made until the Loans are paid in full, whether at maturity, upon acceleration, by prepayment, or otherwise.

(f) *Interest Payment Dates*. Interest shall be payable in arrears to Lender on the Maturity Date.

(g) *Computation of Interest*. All computations of interest shall be made on the basis of a year of 365 days and the actual number of days elapsed. Interest shall accrue on each Loan on the day on which such Loan is made, and shall not accrue on the Loans for the day on which they are paid. Interest shall be calculated on a simple-interest basis.

2. Events of Default. The occurrence of any of the following shall constitute an “**Event of Default**” under this Note:

(a) *Failure to Pay*. The Borrower shall fail (i) to pay when due any payment on the due date hereunder to the extent such payment is due before the Maturity Date, or (ii) to pay on the Maturity Date the entire remaining unpaid amounts due hereunder; or

(b) *Breaches of Certain Covenants.* The Borrower shall fail to observe or perform any obligation under **Sections 5(a) or (b)** or **Section 6** or Borrower materially breaches the First Refusal Agreement; or

(c) *Breaches of Other Covenants.* The Borrower shall fail to observe or perform any other covenant, obligation, condition or agreement contained in this Note (other than those specified in **Section 2(b)**) and such failure shall continue for thirty (30) days after the earlier to occur of (i) Borrower's receipt of written notice of such failure and (ii) the date on which the Borrower has knowledge of such failure; or

(d) *Representations and Warranties.* Any representation, warranty, certificate, or other statement (financial or otherwise) made or furnished by or on behalf of the Borrower to Lender in writing in connection with this Note, or as an inducement to Lender to enter into this Note, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished; or

(e) *Default on Other Indebtedness.* Defaults shall exist under any other agreements of the Borrower with Lender or under any other agreement with any third party or parties which consists of the failure to pay any Indebtedness when due or which results in a right by Lender or any such third party or parties, whether or not exercised, to accelerate the maturity of such Indebtedness of the Borrower, in each case, in an aggregate amount in excess of One Hundred Thousand Dollars (\$100,000); or

(f) *Voluntary Bankruptcy or Insolvency Proceedings.* The Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) admit in writing its inability to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vi) take any action for the purpose of effecting any of the foregoing; or

(g) *Involuntary Bankruptcy or Insolvency Proceedings.* Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Borrower, or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Borrower, if any, or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within sixty (60) days of commencement; or

(h) *Judgments.* A final judgment or order for the payment of money in excess of One Hundred Thousand Dollars (\$100,000), exclusive of any amounts fully covered by insurance (less any applicable deductible) and as to which the insurer has acknowledged its responsibility to cover such judgment or order, shall be rendered against the Borrower and the same shall remain undischarged for a period of forty-five (45) days during which execution shall not be effectively stayed, or any judgment, writ, assessment, warrant of attachment, or execution or similar process shall be issued or levied against a substantial part of the property of the Borrower, if any and such judgment, writ, or similar process shall not be released, stayed, vacated or otherwise dismissed within forty-five (45) days after issue or levy; or

(i) *Material Adverse Effect.* Any circumstance occurs that would reasonably be expected to have a Material Adverse Effect.

3. Rights of Lender upon Default.

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(a) *Notice of Default.* Upon the occurrence of any Event of Default and at any time thereafter during the continuance of such Event of Default, Lender may, by written notice to the Borrower, declare all outstanding Obligations payable by the Borrower hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding.

(b) *Conversion.* Upon the occurrence of any Event of Default, Lender may, under its sole and absolute discretion, elect to convert the total outstanding principal and accrued but unpaid interest into shares of common stock of Borrower at a conversion price per share (the "**Conversion Price**") equal to three and 642/10,000 dollars (\$3.0642) (subject to adjustment for any stock splits, reverse stock splits and similar changes in the capital stock of Borrower after the date hereof) by delivery of written notice to Borrower within thirty (30) calendar days of the delivery of the notice of the Event of Default by Lender to Borrower. In the event the Borrower issues additional shares of its common stock, or shares of another class of equity securities which are convertible into its shares of common stock, in exchange for consideration per share in an amount less than the Conversion Price (as adjusted for stock splits, reverse stock splits and similar changes in the capital stock of Borrower after the date hereof), then Borrower shall either (i) issue Lender, concurrently with such issue, the number of shares of common stock necessary to ensure that Lender has the number of shares of common stock that it would have had if it purchased the common stock in such subsequent offering at such lower purchase price, or (ii) adjust the conversion price per share as it relates to Lender to the lowest price at which additional common stock of Borrower is purchased or is convertible.

(c) *Effect of Bankruptcy.* Upon the occurrence of any Event of Default described in **Sections 2(f) and 2(g)**, immediately and without notice, all outstanding Obligations payable by the Borrower hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding.

(d) *No Further Obligations.* In addition to the foregoing remedies, upon the occurrence and during the continuance of any Event of Default, (i) Lender shall have no obligation to fund any further Loans under this Note and (ii) Lender may exercise any other right, power or remedy granted to it by this Note or otherwise permitted to it by law, either by suit in equity or by action at law, or both.

4. The Borrower's Representations and Warranties. The Borrower represents and warrants to Lender that:

(a) *Due Incorporation, Qualification, etc.* The Borrower (i) is a duly organized, validly existing and in good standing under the laws of the State of Delaware; and (ii) has the power and authority to own, lease and operate its properties and carry on its business as now conducted. Borrower further represents and warrants that it has no subsidiaries and does not control, directly or indirectly, or have any direct or indirect equity participation in any corporation, partnership, limited liability company, trust, or other business association.

(b) *Authority.* The execution, delivery and performance by the Borrower of this Note and the consummation of the transactions contemplated thereby (i) are within the Borrower's powers and (ii) have been duly authorized by all necessary actions on the part of the Borrower.

(c) *Enforceability.* This Note constitutes, or will constitute, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as limited by

bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(d) *Non-Contravention.* The execution and delivery by the Borrower of this Note and the performance and consummation of the transactions contemplated thereby do not and will not (i) violate the Borrower's Organic Documents or any judgment, order, writ, decree, statute, rule or regulation applicable to the Borrower; (ii) contravene any applicable laws, (iii) violate any provision of, or result in the breach or the acceleration of, or entitle any other Person to accelerate (whether after the giving of notice or lapse of time or both), any material mortgage, indenture, agreement, instrument or contract to which the Borrower is a party or by which it is bound; or (iv) result in the creation or imposition of any Lien upon any property, asset or revenue of the Borrower or the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license, authorization or approval applicable to the Borrower, its business or operations, or any of its assets or properties (other than the Lien in favor of Lender pursuant hereto).

(e) *Approvals.* No consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or other Person (including, without limitation, the shareholders of any Person) is required in connection with (i) the execution and delivery of this Note by the Borrower, or (ii) the performance and consummation of the transactions contemplated thereby.

(f) *Litigation.* No actions (including, without limitation, derivative actions), suits, proceedings or investigations are pending or threatened in writing against the Borrower at law or in equity in any court or before any other governmental authority that seeks to enjoin, either directly or indirectly, the execution, delivery or performance by the Borrower of this Note or the transactions contemplated thereby.

(g) *Solvency.* The Borrower is Solvent, both before and after giving effect to this Note.

(h) *Financial Statements.* Complete copies of Borrower's unaudited interim financial statements consisting of the balance sheet of Borrower at October 31, 2021 (the "**Balance Sheet Date**") and the related statements of income and retained earnings, stockholders' equity and cash flow for the period then ended (the "**Financial Statements**") have been delivered to Lender. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes. The Financial Statements are based on the books and records of Borrower, and fairly present in all material respects the financial condition of Borrower as of the respective dates they were prepared and the results of the operations of Borrower for the periods indicated.

(i) *Undisclosed Liabilities.* Borrower has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise, except (a) those which are adequately reflected or reserved against in the Financial Statements as of the Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

(j) *Capitalization.* As of the date hereof, Borrower's authorized capital stock consists 55,000,000 shares of common stock, of which 54,020,952 shares are designated as "Voting Common Stock" and 979,048 shares are designated as "Nonvoting Common Stock, and 25,940,066 shares of preferred stock, of which 937,500 shares are designated as "Series Seed Preferred Stock", 4,673,884 shares are designated as "Series A Preferred Stock," 3,723,372 shares are designated as "Series A1 Preferred Stock", 15,626,262 shares are designated as "Voting Series B Preferred Stock", and 979,048 shares are designated as "Nonvoting Series B Preferred Stock." Of the Voting Common Stock, (i) 15,413,456 shares are issued and outstanding, (ii)

9,827,584 shares are reserved for the future issuance of awards under the Company's 2014 Equity Incentive Plan (the "Plan") or are subject to outstanding stock options under the Plan, and (iv) 195,810 shares are issuable upon the exercise of outstanding warrants. None of the authorized shares of Nonvoting Common Stock are issued and outstanding. All of the authorized shares of the Series Seed Preferred Stock are issued and outstanding. All of the authorized shares of the Series A Preferred Stock are issued and outstanding. All of the authorized shares of the Series A1 Preferred Stock are issued and outstanding. 14,226,907 of the authorized shares of the Voting Series B Preferred Stock are issued and outstanding. 636,246 of the authorized shares of the Non-Voting Series B Preferred Stock are issued and outstanding. All of the outstanding shares of capital stock of Borrower have been duly authorized, are validly issued, fully paid and non-assessable. Other than the foregoing, there are no outstanding or authorized shares, options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of Borrower or obligating Borrower to issue or sell any shares of capital stock of, or any other interest in, Borrower.

(k) *Conversion of Note and Issuance of Securities.* The issuance of shares of common stock of Borrower pursuant to the terms of this Note has been duly authorized and, upon the conversion of this Note and issuance of shares of common stock hereunder, the shares of common stock will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes, Liens, charges and other encumbrances with respect to the issue thereof. Subject to the accuracy of the representations and warranties of Lender, the offer and issuance by Borrower of the shares of common stock is exempt from registration under the Securities Act. Upon receipt of the shares of common stock of Borrower, Lender shall have good and marketable title to such shares.

(l) *No Material Adverse Effect.* As of the date hereof, there have been no events, occurrences, or developments that have had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(m) *Intellectual Property Rights.* Borrower owns or possesses adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, original works, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor (the "**Intellectual Property Rights**") necessary to conduct its business as now conducted and as presently proposed to be conducted, and Borrower is not in violation of the Intellectual Property Rights of any third party. None of Borrower's Intellectual Property Rights have expired, terminated or been abandoned, or are expected to expire, terminate or be abandoned, within two (2) years from the date hereof, except where such expiration, termination or abandonment would not have a Material Adverse Effect. Borrower has no knowledge of any infringement by Borrower of Intellectual Property Rights of others. Borrower has taken reasonable security measures to protect the secrecy, confidentiality and value of all of its Intellectual Property Rights, except where failure to take such measures would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(n) *Conduct of Business.* Borrower is not in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to Borrower, and Borrower will not conduct its business in violation of any of the foregoing, except in all cases for possible violations which could not, individually or in the aggregate, have a Material Adverse Effect. Borrower possesses all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct its business, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and Borrower has not received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(o) *Title.* Borrower has title to all real property, and has good and marketable title to all personal property, owned by it which is material to the business of Borrower, in each case, free and clear of all Liens, encumbrances and defects except those that do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by Borrower. Any real property and facilities held under lease by Borrower are in full force and effect, with such exceptions as would not reasonably be expected to have a Material Adverse Effect.

(p) *Sufficiency of Assets.* The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of Borrower are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles, intellectual property rights, software and other items of tangible and intangible personal property currently owned or leased by Borrower, together with all other properties and assets of Borrower, are sufficient for the continued conduct of the Borrower's business after the date hereof in substantially the same manner as conducted prior to the date hereof and constitute all of the rights, property and assets necessary to conduct the business of Borrower as currently conducted.

(q) *Tax Status.* Except for occurrences that would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, Borrower (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of Borrower know of no basis for any such claim.

(r) *Illegal or Unauthorized Payments; Political Contributions.* Neither Borrower nor, to Borrower's knowledge (after reasonable inquiry of its executive officers and directors), any of the officers, directors, employees, agents or other representatives of Borrower or any other business entity or enterprise with which Borrower is or has been affiliated or associated has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office except for personal political contributions not involving the direct or indirect use of funds of Borrower.

(s) *Money Laundering.* Borrower is in compliance with, and has not previously violated, the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations.

(t) *Accuracy of Information Furnished.* This Note and none of the other certificates, statements or information furnished to Lender by or on behalf of the Borrower in connection with this Note or the transactions contemplated thereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

5. **Affirmative Covenants.** The Borrower covenants and agrees with Lender that until the Obligations (other than inchoate indemnity obligations) are paid in full, the Borrower will perform or cause to be performed the covenants set forth below.

(a) **Notice Requirements.** The Borrower shall deliver to Lender, (i) prompt written notice of the occurrence of any Event of Default, including a statement of a Responsible Officer setting forth details of such Event of Default and the action which the Borrower has taken or proposes to take with respect thereto; and (ii) prompt written notice of any litigation or governmental proceedings pending or threatened in writing against the Borrower that if adversely determined (A) would (alone or in the aggregate) reasonably be expected to result in liabilities in excess of \$100,000 or (B) seeks to enjoin, either directly or indirectly, the execution, delivery or performance by the Borrower of this Note or the transactions contemplated thereby.

(b) **Maintenance of Properties.** The Borrower will maintain, preserve, protect and keep its properties in good repair, working order and condition (ordinary wear and tear excepted), and make necessary repairs, renewals and replacements so that the business carried on by the Borrower may be properly conducted at all times, unless the Borrower determines in good faith that the continued maintenance of such property is no longer economically desirable, necessary or useful to the business of the Borrower.

(c) **Insurance.** The Borrower shall (i) carry and maintain insurance at its expense of the types and in the amounts customarily carried by others engaged in substantially the same business as the Borrower and operating in the same geographic area as the Borrower, including, but not limited to, fire, public liability, property damage and worker's compensation, such insurance to be in such form as is carried with companies reasonably satisfactory to Lender, and (ii) deliver to Lender from time to time, as Lender may request, schedules or insurance certificates setting forth all insurance then in effect.

(d) **Governmental Charges.** The Borrower shall promptly pay and discharge when due all Taxes, levies, assessments, fees, claims or other charges imposed by any governmental authority upon or relating to (i) the Borrower, (ii) this Note, (iii) employees, payroll, income or gross receipts of the Borrower, (iv) the ownership or use of any assets by the Borrower or (v) any other aspect of the business of the Borrower to the date upon which penalties accrue thereon, except as may be contested in good faith by the appropriate procedures and for which adequate reserves in accordance with GAAP have been set aside.

(e) **Use of Proceeds.** The Borrower shall use the proceeds of this Note solely in connection with the Purpose.

(f) **General Business Operations.** The Borrower shall (i) preserve and maintain its corporate existence and all of its rights, privileges and franchises reasonably necessary to the conduct of its business, (ii) conduct its business activities in compliance with all applicable laws, (iii) perform in all material respects its obligations under Material Agreements to which the Borrower is a party, (iv) take all actions to ensure that all Material Agreements remain in full force and effect unless the Borrower determines in good faith that the continuance of such Material Agreement is no longer economically desirable, necessary or useful to the business of the Borrower.

(g) **Books and Records.** The Borrower will keep books and records in accordance with GAAP which accurately reflect in all material respects all of its business affairs and transactions and permit Lender or any of its representatives, at reasonable times and intervals upon reasonable notice to the Borrower, to visit the Borrower's offices, to discuss the Borrower's financial or other matters. In addition, Borrower shall on a monthly basis make available to Lender a report of (i) all cash in-flows and cash out-flows from Borrower's deposit accounts, (2) a reconciliation of all expenses incurred to the operating budget of Borrower, (3) an accounts payable ageing, (4) a list of the outstanding principal of all debts and other liabilities, and (5) such

other information regarding Borrower's financial condition as Lender may reasonably request. Borrower shall make its chief financial officer (or equivalent officer) available to Lender by telephone or videoconference during normal business hours on reasonable advance notice.

6. **Negative Covenants.** The Borrower covenants and agrees with Lender that until the Obligations (other than inchoate indemnity obligations) are paid in full, the Borrower will perform or cause to be performed the covenants set forth below.

(a) **Mergers, Acquisitions, Etc.** Except in the event of the contemplated internal corporate reorganization of Borrower to create a holding company (the "**Corporate Reorg**"), Borrower shall not consolidate with or merge into any other Person or permit any other Person to merge into it, or acquire all or substantially all of the assets or capital stock of any other Person without the consent of Lender, which consent shall not be unreasonably withheld, conditioned, or delayed.

(b) **Affiliate Transactions.** Except in the event of the Corporate Reorg, the Borrower shall not enter into or consummate any transaction of any kind with any of its Affiliates other than transactions on overall terms, whether consummated as one transaction or a series of related transactions, at least as favorable to the Borrower as an arms-length transaction with Persons that are not Affiliates.

(c) **Change in Business.** The Borrower will not without the consent of Lender engage in any business other than its present business or a business reasonably related or incidental thereto, or a business that is in support of the present business or a business reasonably related or incidental thereto, which consent shall not be unreasonably withheld, conditioned, or delayed.

(d) **Modification of Charter Documents.** Except in the event of the Corporate Reorg, the Borrower will not consent to any amendment, supplement, waiver or other modification of, or enter into any forbearance from exercising any rights with respect to, the terms or provisions contained in any Organic Documents of the Borrower, if the result would have an adverse effect on the rights or remedies of Lender.

7. **Granting of Security Interest.** Borrower hereby pledges, assigns and grants to Lender, to secure the payment and the performance of this Note, the Loans, and the Obligations, a first priority security interest in and Lien on, and a right of set-off against, the following property and assets (collectively, the "**Collateral**"), but not including the Excluded Collateral (as hereinafter defined), wherever located, whether now or hereafter existing, owned or acquired by Borrower, and all proceeds and products thereof:

All goods, accounts, equipment, inventory, contract rights or rights to payment of money, leases, intellectual property, license agreements, franchise agreements, general intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and all books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Borrower hereby represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a valid, first priority perfected security interest in the Collateral. Lender's security interest in the Collateral shall continue until the Obligations (other than contingent obligations of Borrower hereunder that will survive payment in full of the Obligations and termination of this Note by express terms) are repaid in full. Upon payment in full of all amounts due under this Note or upon conversion of this Note, this Note and all obligations of Borrower hereunder (other than contingent obligations of Borrower hereunder that will survive payment in full of the Obligations and termination of this Note by express

terms) shall automatically terminate, and all rights to the Collateral shall revert to the granting party and Lender shall, at Borrower's sole cost and expense, release its security interest in the Collateral.

8. Authorization to File Financing Statements. Borrower hereby authorizes Lender to file financing statements or take any other action required to memorialize or perfect Lender's security interest in the Collateral at Borrower's expense, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Lender's interest or rights under this Note, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of this Note, by Borrower, or any other Person, shall be deemed to violate the rights of Lender under the UCC, and including entering into one or more deposit account control agreements in customary form.

9. Definitions. As used in this Note, the following capitalized terms have the following meanings:

"Affiliate" of any Person shall mean any other Person which, directly or indirectly, Controls, is Controlled by or is under common Control with such Person. **"Control"** (and its correlatives) by any Person means the power of such Person, directly or indirectly, (i) to vote 10% or more of the Voting Securities (determined on a fully diluted basis) of another Person, or (ii) to direct or cause the direction of the management and policies of such other Person (whether by contract or otherwise).

"Applicable Rate" shall mean the rate equal to sixteen percent (16%) per annum.

"Availability Period" shall have the meaning given in **Section 1(a)** hereof.

"Balance Sheet Date" shall have the meaning given in **Section 4(h)** hereof.

"Borrower" shall have the meaning given in the introductory paragraph of this Note.

"Conversion Price" has the meaning given in **Section 3** hereof.

"Event of Default" has the meaning given in **Section 2** hereof.

"Excluded Collateral" shall mean proceeds of the Lawsuit.

"Financial Statements" shall have the meaning given in **Section 4(h)** hereof.

"GAAP" shall mean generally accepted accounting principles in the United States.

"Governmental Authority" shall mean any national, supranational, federal, state, county, provincial, local, municipal or other government or political subdivision thereof (including any regulatory agency), whether domestic or foreign, and any agency, authority, commission, ministry, instrumentality, regulatory body, court, tribunal, arbitrator, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to any such government.

"Indebtedness" shall mean (i) all obligations of such Person for borrowed money or advances and all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (ii) all obligations, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn,

and banker's acceptances issued for the account of such Person; (iii) capital lease and purchase money obligations; and (iv) contingent Obligations.

"Intellectual Property Rights" shall have the meaning given in **Section 4(m)** hereof.

"Lawsuit" means the action captioned *Symbiont.io, Inc. v. Ipreo Holdings LLC, et al.*, Del. Ch., C.A. No. 2019-0407-JTL and all related appeals.

"Lender" shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the holder of this Note.

"Lien" shall mean, with respect to any property, any security interest, mortgage, pledge, lien, claim, charge or other encumbrance.

"Loans" shall have the meaning given in **Section 1(a)** hereof.

"Material Adverse Effect" shall mean a material adverse effect on (i) the business, condition (financial or otherwise), operations, performance, properties or prospects of the Borrower, (ii) the rights and remedies of Lender under the Note or (iii) the ability of the Borrower to perform its Obligations under the Note.

"Material Agreements" shall mean (i) each contract or agreement to which the Borrower is a party involving aggregate payments of more than \$50,000, whether such payments are being made by the Borrower to a non-Affiliated Person, or by a non-Affiliated Person to the Borrower; and (ii) any other contract or agreement material to the business, operations, assets, prospects, conditions (financial or otherwise), performance or liabilities of the Borrower.

"Maturity Date" shall have the meaning set forth in **Section 1(c)**.

"Note" shall have the meaning set forth in the introductory paragraph.

"Obligations" shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Borrower to Lender of every kind and description, now existing or hereafter arising under or pursuant to the terms of this Note, including, all interest, fees, charges, expenses, reasonable attorneys' fees and costs and reasonable accountants' fees and costs chargeable to and payable by the Borrower hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 *et seq.*), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

"Organic Documents" shall mean, relative to the Borrower, its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, limited liability agreement, operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to the Borrower's equity interests.

"Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

“**Purpose**” shall have the meaning set forth in **Section 1(c)**.

“**Responsible Officer**” means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president, vice president (or the equivalent thereof), chief financial officer or treasurer.

“**Solvent**” shall mean, with respect to any Person on a particular date, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay as such debts and liabilities mature, (iv) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which the property of such Person would constitute an unreasonably small capital and (v) such Person has not executed this Note, or made any transfer or incurred any obligations hereunder or thereunder, with actual intent to hinder, delay or defraud either present or future creditors.

“**Taxes**” shall mean all income, documentary, stamp or other taxes, duties, levies, imposts, charges, assessments, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, and all interest, penalties or similar liabilities with respect thereto.

“**Triggering Event**” shall have the meaning set forth in **Section 1(a)**.

10. Miscellaneous.

(a) *Successors and Assigns; Transfer of this Note .*

(i) Subject to the restrictions on transfer described in this **Section 10(a)**, the rights and obligations of the Borrower and Lender shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

(ii) Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Borrower without the prior written consent of Lender. Lender may assign this Note upon written notice to Borrower.

(b) *Waiver and Amendment.* This Note may not be modified except by written instrument signed by the Borrower and Lender.

(c) *Notices.* All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and emailed, mailed or delivered to each party at the respective addresses of the parties as set forth on the signature page hereto, or at such other address or email address as the Borrower shall have furnished to Lender in writing. All such notices and communications will be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one business day after being deposited with an overnight courier service of recognized standing or (iv) four days after being deposited in the U.S. mail, first class with postage prepaid.

(d) *Payment.* Payments shall be made in lawful tender of the United States.

(e) *Tax Withholding.* Any and all payments by or on account of any obligation of the Borrower under this Note shall be made without deduction or withholding for any taxes, except as required by

applicable law. If any applicable law requires the deduction or withholding of any tax from any such payment, then the Borrower shall be entitled to deduct and withhold such tax from any amounts payable or otherwise deliverable pursuant to this Note and shall timely pay the full amount deducted or withheld to the applicable Governmental Authority. The amount payable by the Borrower to Lender shall be increased as necessary so that after such deduction or withholding has been made (including such deduction and withholding applicable to additional sums payable under this **Section 10(e)**), Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made. Borrower shall be responsible for and shall satisfy all Florida documentary stamp taxes that may be due with respect to this Note.

(f) *Usury.* In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note.

(g) *Expenses; Waivers.* If action is instituted to collect this Note, the Borrower promises to pay all costs and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred in connection with such action. The Borrower hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.

(h) *Governing Law; Entire Agreement.* THIS NOTE, AND ALL ACTIONS ARISING OUT OF OR IN CONNECTION WITH THIS NOTE, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK. This Note constitutes the entire understanding among the parties hereto with respect to the subject matter thereof and supersedes any prior agreements, written or oral, with respect thereto.

(i) *Jurisdiction and Venue.* THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS NOTE SHALL BE TRIED AND LITIGATED ONLY IN THE STATE OF FLORIDA AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE STATE OF FLORIDA; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE LENDER ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH OF LENDER AND THE BORROWER WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 10(I).

(j) *Waiver of Jury Trial; Judicial Reference.* BY ACCEPTANCE OF THIS NOTE, LENDER HEREBY AGREES AND THE BORROWER HEREBY AGREES TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE.

(k) *Severability.* Any provision of this Note which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Note or affecting the validity or enforceability of such provision in any other jurisdiction.

(l) *Counterparts.* This Note may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Note.

11. Lender's Investment Representations.

(a) *Experience.* Lender is experienced in investing in securities of development stage companies and acknowledges that the investment represented by this Note involves significant risks. Lender is able to bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of this lending relationship.

(b) *Purchase Entirely for Its Own Account.* Lender is acquiring this debt security for investment for its own account and not with the view to, or for resale in connection with, any distribution thereof. Lender understands that the debt securities represented by this Note have not been registered under the Securities Act by reason of a specific exemption from the registration provisions of the Act that depends upon, among other things, Lender's bona fide nature of the investment intent as expressed herein.

(c) *Rule 144.* Lender acknowledges that the Borrower's debt securities are "restricted securities" under Rule 144 promulgated under the Securities Act inasmuch as they are being acquired from Borrower in a transaction not involving a public offering and that under such laws and applicable regulations such securities may not be transferred or resold except as permitted under the Securities Act and the applicable state securities laws, pursuant to registration or an exemption therefrom. Lender represents that it is aware of the provisions of Rule 144 promulgated under the Securities Act and understands the resale limitations imposed thereby and by the Securities Act. Lender also understands that Borrower is issuing this Note in reliance upon Lender's representations and warranties contained herein and that any federal or state exemption is contingent upon the accuracy of Lender's representations and warranties in this Note.

(d) *No Public Market.* Lender understands that no public market now exists for any of the debt securities issued by Borrower and that there can be no assurance that a public market will ever exist for the debt securities.

(e) *Access to Data.* Lender has had an opportunity to discuss Borrower's business, management, and financial affairs with its management and the opportunity to review Borrower's business plans. Lender understands that such discussions, as well as any written information issued by Borrower, were intended to describe the aspects of Borrower's business and prospects which it believes to be material but were not necessarily a thorough or exhaustive description.

(f) *Accredited Investor.* Unless otherwise disclosed to Borrower in writing by Lender, Lender represents that it is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act.

(g) *No "Bad Actor" Disqualification Events.* Lender is not subject to any disqualifying event described in Rule 506(d)(1)(i)-(viii) of the Securities Act (a "**Disqualifying Event**"), except for Disqualification Events covered by Rule 506(d)(2)(ii) or (iii) under the Securities Act, and disclosed in writing in reasonable detail to Borrower.

(Signature Page Follows)

The Borrower and Lender have caused this Note to be issued as of the date first written above.

BORROWER:

SYMBIONT.IO, INC.
a Delaware corporation

By: /s/ Mark Smith

Name: Mark Smith

Title: CEO

Address:

632 Broadway, 5th Floor

New York, New York 10004

Email: mark.smith@symbiont.io

LENDER:

LM FUNDING AMERICA, INC.,
a Delaware corporation

By: /s/ Bruce Rodgers

Name: Bruce Rodgers

Title: CEO

Address:

1200 West Platt Street, Suite 100

Tampa, Florida 33606

Email: bruce@lmfunding.com

[Signature page to Secured Promissory Note and Loan Agreement]

FIRST REFUSAL AND PURCHASE OPTION AGREEMENT

This **FIRST REFUSAL AND PURCHASE OPTION AGREEMENT** (this "**Agreement**") is made and entered into as of December 1, 2021, by and among **LM FUNDING AMERICA, INC.**, a Delaware corporation ("**LMFA**") and **SYMBIONT.IO, INC.**, a Delaware corporation ("**Symbiont**").

RECITALS

- A. Concurrently herewith, LMFA and Symbiont have entered into a Promissory Note and Loan Agreement pursuant to which LMFA has agreed to loan to Symbiont up to an aggregate of \$3.0 million dollars to fund Symbiont's working capital needs (the "**Loan Agreement**").
- B. As an inducement for LMFA to enter into the Loan Agreement, Symbiont has agreed to grant LMFA certain rights relating to the potential purchase and sale of the capital stock or assets of Symbiont, all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

1.1 **Definitions.** In this Agreement, unless the context clearly requires otherwise, the following terms have the following meanings, and all other capitalized terms have the meaning ascribed elsewhere in this Agreement:

"**Affiliate**" means a Person directly or indirectly controlling or controlled by or under direct or indirect common control with a party to this Agreement. For purposes of the preceding sentence, "control" when used with respect to a Person means the power to direct management and policies of the Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise.

"**Amended Certificate**" means the Fourth Amended and Restated Certificate of Incorporation (as amended) of Symbiont in effect as of the date hereof.

"**Deemed Liquidation Event**" has the meaning ascribed to such term in the Amended Certificate, provided that an election made with respect to an event pursuant to clause (x) and/or clause (y) of Subsection 2.3.1 of Section B of Article Fourth of the Amended Certificate shall not result in such event not being deemed to be a "Deemed Liquidation Event" for purposes of this Agreement.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, governmental body, unincorporated organization, trust, association or other entity.

"**Symbiont Equity Interest**" means any of the issued and outstanding capital stock and other equity interests in Symbiont, including any rights to purchase or otherwise acquire any equity interests in Symbiont.

SECTION 2. RIGHT OF FIRST REFUSAL

2.1 **Right of First Refusal.** In the event that Symbiont's Board of Directors expects to approve a transaction that would result in a Deemed Liquidation Event as a result of a bona fide offer (a "**Third-Party Offer**") from a third party (a "**Third-Party Offeror**"), then LMFA shall have the first right and option to purchase (which right and option may be assigned by LMFA to a third party upon written notice to

Symbiont), upon materially the same terms and conditions as the Third-Party Offer, the Symbiont assets or the Symbiont Equity Interests (as the case may be) that are proposed to be transferred and sold pursuant to the Third-Party Offer. Symbiont shall notify LMFA in writing (an “**Offer Notice**”) of the Third-Party Offer expected to be approved and the material terms and conditions included in the Third-Party Offer, which Offer Notice shall include an offer to sell, subject to negotiation of definitive agreements referenced below, the Symbiont assets or Symbiont Equity Interests (as the case may be) to LMFA upon the same material economic and business terms and conditions as the Third-Party Offer.

2.2 **Exercise of Right of First Refusal.** LMFA may exercise its right and option described in Section 2.1 above by delivering to Symbiont, within thirty (30) days after delivery of the Offer Notice (for purposes of this Section 2, the “**Acceptance Period**”), a written notice accepting the offer described in the Offer Notice upon materially the same terms described in the Offer Notice (an “**Acceptance Notice**”). Upon the timely delivery of an Acceptance Notice, LMFA and Symbiont shall in good faith work to promptly negotiate, execute, and deliver definitive agreements for the applicable Deemed Liquidation Event within one hundred twenty (120) days of receipt of the Acceptance Notice, with such definitive agreements containing materially the same terms and conditions as the Third-Party Offer plus such other terms and conditions as are customary in transactions of such type or otherwise agreed to by the parties.

2.3 **Permitted Transfers after Acceptance Period.** If LMFA does not deliver to Symbiont an Acceptance Notice during the Acceptance Period, then Symbiont may complete the Deemed Liquidation Event with the Third-Party Offeror upon the same terms set forth in the Third-Party Offer and Offer Notice, but only if the definitive agreement with respect to the Deemed Liquidation Event is executed during the ninety (90) day period following the expiration of the Acceptance Period. If the definitive agreement with respect to such Deemed Liquidation Event is not executed during such ninety (90) day period, then the provisions of this Section 2 (including Sections 2.1 and 2.2 thereof) shall once again apply to any proposed Deemed Liquidation Event thereafter.

2.4 **Expiration of Right of First Refusal.** The rights of LMFA under this Section 2 shall expire on the first (1st) anniversary of the date of this Agreement, provided that LMFA shall have the rights hereunder with respect to any Third-Party Offer received by Symbiont before the first (1st) anniversary of the date of this Agreement.

2.5 **Exclusion.** For the avoidance of doubt, the right of first refusal set forth in this Section 2 shall not apply to a sale of Symbiont equity interests in connection with a bona fide financing to raise working capital for Symbiont which does not result in a Deemed Liquidation Event.

SECTION 3. SECURED LOAN AND REORGANIZATION

3.1 **Potential Third-Party Loan.** LMFA acknowledges that, as of the date of this Agreement, Symbiont is negotiating a proposed secured loan on terms previously communicated to LMFA (the “**Third-Party Loan**”). As a condition to closing of the Third-Party Loan (the “**Loan Closing**”), the applicable lender may require that Symbiont undergo a corporate reorganization under which a holding will be formed to hold all of the equity interest in Symbiont (the “**Corporate Reorganization**”).

3.2 **Consent.** Subject to Section 4.1 hereof, LMFA hereby consents to the transactions contemplated by the Third-Party Loan and the Corporate Reorganization, each on substantially the same terms and in the same amount as previously communicated to LMFA in writing, and acknowledges and agrees that in the event that Symbiont proceeds with such transactions, (i) the amounts outstanding under the Loan Agreement will be repaid out of the proceeds of the Third-Party Loan and (ii) the obligations set forth hereunder may be transferred to a new holding company of Symbiont and (iii) LFMA will take all actions reasonably requested by Symbiont to release any liens filed on Symbiont’s assets in connection with the

Loan Agreement upon the payment in full of the loan evidenced by the Loan Agreement.

SECTION 4. FURTHER COVENANTS

4.1 **Non-Circumvention.** Neither Stockholders nor Symbiont will take any action or pursue any transaction intended to circumvent the rights and privileges granted to LMFA hereunder.

4.2 **Information Rights.** Upon receipt of a Third-Party Offer, Symbiont will immediately notify LMFA of such Third-Party Offer and provide LMFA with a copy thereof. In addition, from and after the delivery to LMFA of an Offer Notice, upon the request of LMFA, Symbiont will provide any information, including financial statements, relating to Symbiont and its business that LMFA may request to assist LMFA in making its decision whether to exercise its rights under this Agreement.

4.3 **Funding of Extension Payment.** In the event that LMF Acquisition, Inc., a Delaware corporation that is a special purpose acquisition company (“**LMAO**”) sponsored by LMFAO Sponsor, LLC, a Delaware limited liability company and subsidiary of LMFA (“**Sponsor**”), enters into a letter of intent or definitive business combination agreement with Symbiont for a business combination transaction at any time in the future, and in the event that Sponsor is required to make a payment of approximately \$1,000,000 for an “Extension” within the meaning of and pursuant to Section 9.1(c) of the Amended and Restated Certificate of Incorporation of LMAO (as may be amended from time to time) prior to the completion of such business combination, then Symbiont agrees that it will fund and pay such Extension fee for and on behalf of Sponsor. Such amount will be loaned to Symbiont as set forth in the Loan Agreement. This covenant is made in consideration of the expense and time associated with the pursuit by Sponsor and LMAO of such a business combination.

SECTION 5. MISCELLANEOUS

5.1 **Assignment.** This Agreement (or any of the rights hereunder) may be assigned by LMFA to a third party upon written notice to Symbiont, in which event all references to LMFA set forth herein shall be deemed a reference to the assignee with respect to this Agreement (if the entire Agreement is assigned) or with respect to the assigned rights included herein. This Agreement may not be assigned by Symbiont without the prior written consent of LMFA. This Agreement will inure to the benefit of and be binding upon each of the parties and their respective permitted successors and permitted assigns.

5.2 **Notices.** Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing (email shall suffice) and shall be deemed given and effective on the earliest of: (a) the time of transmission, if such notice or communication is delivered by email at the email address as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via email at the email address as set forth on the signature pages attached hereto on a day that is not a Business Day or later than 5:30 p.m. (New York City time) on any Business Day, (c) the second (2nd) Business Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto. As used herein “Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

5.3 **Remedies Not Exclusive; No Waiver; Amendments.** Except as otherwise specifically provided herein, no remedy referred to in this Agreement is intended to be exclusive. No delay by a party in exercising any of their respective rights or remedies hereunder shall be deemed to be a waiver of such rights or remedies. No waiver by a party of any rights under this Agreement or breach by another party hereunder

shall in any way be a waiver of any such rights in the future or any future breach . Any waiver, amendment or modification of this Agreement must be in writing and signed by the party against whom enforcement is sought.

5.4 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. It is the intention of the parties that this Agreement would have been executed without reference to any provisions that may, for any reason, be held to be invalid or unenforceable.

5.5 **Governing Law; Venue.** This Agreement and the rights of the parties hereto shall be governed by the laws of the State of New York without regard to principles of conflict of laws. All disputes arising from or relating to this Agreement shall be resolved exclusively in the state or federal courts located in the State of New York in Manhattan.

5.6 **Counterparts and Execution.** This Agreement may be executed and delivered in one or more counterparts, which may be executed and delivered by facsimile transmission or electronic image transfer, and each counterpart when so executed and delivered will be deemed an original, and all such counterparts will together constitute one and the same document.

5.7 **Entire Agreement; Sections of this Agreement.** This Agreement constitutes the final expression of the agreement of the parties, and is intended as the complete and exclusive statement of the terms of the parties agreement with regard to the subject matter hereof. This Agreement supersedes all prior and concurrent proposals, promises, representations, negotiations, discussions and agreements that may have been made in connection with the subject matter hereof. Whenever this Agreement refers to a "Section", such reference is to a section of this Agreement unless otherwise indicated herein.

[signatures follow]

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

LM FUNDING AMERICA, INC.

By: /s/ Bruce Rodgers

Name: Bruce Rodgers

Title: CEO

Address for Notices:
1200 West Platt Street, Suite 100
Tampa, Florida 33606
Email: bruce@lmfunding.com

SYMBIONT.IO, INC.

By: /s/ Mark Smith

Name: Mark Smith

Title: CEO

Address for Notices:
632 Broadway, 5th Floor
New York, New York 10004
Email: mark.smith@symbiont.io

THIS WARRANT AND THE SHARES OF CAPITAL STOCK ISSUED UPON ANY EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR ANY APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED BY ANY PERSON, INCLUDING A PLEDGEE, UNLESS (1) EITHER (A) A REGISTRATION WITH RESPECT THERETO SHALL BE EFFECTIVE UNDER THE SECURITIES ACT, OR (B) THE COMPANY SHALL HAVE RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT IS AVAILABLE, AND (2) THERE SHALL HAVE BEEN COMPLIANCE WITH ALL APPLICABLE STATE SECURITIES OR “BLUE SKY” LAWS.

December 1, 2021

SYMBIONT.IO, INC.
COMMON STOCK WARRANT

SYMBIONT.IO, INC., a Delaware corporation (the “**Company**”), hereby certifies that, for value received, LM Funding America Inc., a Delaware corporation and its permitted successors and assigns (the “**Holder**”), is entitled, subject to the terms set forth in this Common Stock Warrant (this “**Warrant**”), to purchase from the Company up to 700,000 fully paid and nonassessable shares (the “**Shares**”) of Common Stock, par value \$0.0001 per share, of the Company (the “**Common Stock**”) at a purchase price per share of \$3.0642 (as adjusted from time to time as provided herein, the “**Exercise Price**”).

1. Defined Terms. For purposes of this Warrant, the following terms shall have the meanings ascribed thereto:

(a) “**Amended Certificate**” means the Fourth Amended and Restated Certificate of Incorporation (as amended) of the Company in effect as of the date hereof.

(b) “**Board**” means the board of directors of the Company.

(c) “**Convertible Securities**” means any securities (directly or indirectly) convertible into or exchangeable for Common Stock, but excluding Options.

(d) “**Deemed Liquidation Event**” has the meaning ascribed to such term in the Amended Certificate, provided that an election made with respect to an event pursuant to clause (x) and/or clause (y) of Subsection 2.3.1 of Section B of Article Fourth of the Amended Certificate shall not result in such event not being deemed to be a “Deemed Liquidation Event” for purposes of this Warrant.

(e) “**Exempted Securities**” has the meaning ascribed to such term in Subsection 4.4.1 of Section B of Article Fourth of the Amended Certificate.

(f) “**Expiration Time**” means the earlier to occur 4:00 p.m. Eastern time on December 1, 2026.

(g) "Note" means that certain Secured Promissory Note and Loan Agreement in the aggregate principal amount of up to \$3.0 million, dated as of the date hereof (as amended, modified or supplemented), by and among the Company and the Holder.

(h) "Options" means any warrants or other rights or options to subscribe for or purchase Common Stock or Convertible Securities.

2. Exercise of Warrant.

(a) This Warrant may be exercised with respect to Shares, in full or in part at any time or from time to time, for Shares until the Expiration Time by the Holder by surrender of this Warrant and the exercise notice annexed hereto as Exhibit A duly executed by such Holder, to the Company at its principal office, accompanied by payment, in cash, wire transfer of immediately available funds in the amount obtained by multiplying (a) the number of Shares designated by the holder in the notice of exercise by (b) the Exercise Price then in effect. On any partial exercise, the Company at its expense will forthwith issue and deliver to or upon the order of the holder hereof a new Warrant or Warrants of like tenor, in the name of the holder hereof or as such holder (upon payment by such holder of any applicable transfer taxes and subject to applicable securities laws) may request, providing in the aggregate on the face or faces thereof for the number of shares, or percentage of equity, as applicable, for which such Warrant or Warrants may still be exercised.

(b) Net Exercise. In lieu of cash exercising this Warrant, the Holder may elect to receive Shares equal to the value of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the principal office of the Company together with notice of such election, in which event the Company shall issue to the Holder a number of Shares computed using the following formula:

$$X = \frac{Y(A - B)}{A}$$

Where

X -- The number of Shares to be issued to the Holder.

Y -- The number of Shares purchasable under this Warrant in respect of which the net exercise election is made pursuant to this Section 2(b).

A -- The fair market value of one Share.

B -- The Exercise Price (as adjusted to the date of such calculations).

For purposes of this Section 2, the fair market value of a Share shall mean the average of the closing bid and asked prices of Shares quoted in the over-the-counter market in which the Shares are traded or the closing price quoted on any exchange on which the Shares are listed, whichever is applicable, as published in the New York Edition of *The Wall Street Journal* for the ten (10) trading days prior to the date of determination of fair market value (or such shorter period of time during which such stock was traded over-the-counter or on such exchange or, in the case of an initial public offering of the Company, the "price to the public" set forth in the final registration statement). If the Shares are not traded on the over-the-counter market or on an exchange, the fair market value shall be the price per Share that the Company could obtain from a willing buyer for Shares sold by the Company from authorized but unissued Shares, as such prices shall be determined in good faith and on a reasonable basis by the Board. In the event of a Deemed Liquidation Event, the fair market value of a Share shall be determined with respect to the value ascribed to a Share in such Deemed Liquidation Event.

3. No Fractional Shares. Notwithstanding anything to the contrary contained in this Warrant, no fraction of a share of capital stock of the Company shall be issued upon exercise of this Warrant. In lieu of receiving from the Company any fraction of a share of capital stock of the Company resulting from the exercise of this Warrant, the Holder shall receive cash in an amount equal to such fraction multiplied by the then fair market value of such share of capital stock as determined by the Board.

4. Delivery of Stock Certificates, etc., on Exercise. As soon as practicable after the exercise of this Warrant, the Company at its expense (including the payment by it of any applicable issue or stamp taxes) shall cause to be issued in the name of and delivered to the Holder, or as the Holder (upon payment by the Holder of any applicable transfer taxes and subject to applicable securities laws) may direct, a certificate or certificates for the number of fully paid and nonassessable shares of Common Stock that the Holder shall be entitled to receive on such exercise, in such denominations as may be requested by the Holder.

5. Covenants as to Common Stock. The Company covenants that all shares of Common Stock which may be issued upon the exercise of this Warrant shall, upon issuance, be validly issued, fully paid and non-assessable and free from all taxes, liens and charges with respect to the issuance thereof, except for such encumbrances as to which the Holder may have otherwise in writing agreed. The Company shall at all times have authorized and reserved, free from preemptive rights, a sufficient number of shares of Common Stock to permit the exercise of this Warrant in full.

6. Investment Agreements. As a condition to the exercise of this Warrant, the Holder shall execute and deliver to the Company a counterpart signature page to any investors rights' agreement, voting agreement, right of first refusal and co-sale agreement and/or other similar stockholders' agreement then-in effect among the Company and its stockholders, to the extent required in accordance with the terms of such agreement(s).

7. No Stockholder Rights; No Transfer of Warrant. This Warrant shall not entitle the Holder to any voting rights or other rights as a stockholder of the Company. This Warrant and all rights hereunder shall not be transferable without the written consent of the Company; provided that the Holder may transfer this Warrant and all rights hereunder to an affiliate of Holder with notice thereof to the Company.

8. Adjustments to Shares and Exercise Price.

(a) Adjustments for Subdivisions, Combinations, Dividends and Distributions of Common Stock. If at any time after the date of this Warrant (x) the then outstanding shares of Common Stock shall be subdivided (by stock-split, reclassification or otherwise) or (y) the Company shall issue or make, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution of additional shares of Common Stock payable on then outstanding shares of Common Stock, then, concurrently with, in the case of clause (x), the effectiveness of such subdivision, and, in the case of clause (y), the issuance or the making of such dividend or other distribution or as of the close of business on such record date (whichever is earlier), the number of Shares (then in effect) shall be increased, and the Exercise Price (then in effect) shall be decreased, in proportion to the increase in the number of then outstanding shares of Common Stock as a result of such subdivision, dividend or distribution of Common Stock, as the case may be. Notwithstanding the foregoing, if, in the case of clause (y), a dividend is not issued or a distribution is not made on the record date fixed therefor, then the number of Shares (then in effect) and the Exercise Price (then in effect) shall be readjusted to such number and such amount, respectively, as existed immediately prior to the fixing of such record date. If at any time after the date of this Warrant the then outstanding shares of Common Stock shall be combined (by consolidation, reclassification or otherwise), then, concurrently with the effectiveness of such combination, the number of Shares (then in effect) shall be decreased, and the Exercise Price (then in effect) shall be increased, in

proportion to the decrease in the number of then outstanding shares of Common Stock as a result of such combination.

(b) Adjustments for Reorganization, Reclassification, Exchange and Substitution. If the Common Stock shall be converted into or exchanged for the same number or a different number of shares of any class or series of capital stock of the Company other than Common Stock or for other securities or property (whether by reorganization, reclassification or otherwise), then, concurrently with the effectiveness of such conversion or exchange:

(i) this Warrant shall be exercisable for, in lieu of the Shares, such other class or series of capital stock or other securities or property into which or for which the Common Stock was so converted or exchanged, and in such number of shares of such other class or series of capital stock or such amount of other securities or property, as the case may be, that is equivalent to the number of shares of such other class or series of capital stock or such amount of other securities or property into which or for which the Shares would have otherwise been converted or exchanged had they been outstanding at the time of such conversion or exchange;

(ii) the Exercise Price shall be adjusted to equal the quotient obtained from dividing (x) the product of the Shares and the Exercise Price (each as in effect immediately prior to such conversion or exchange) by (y) the number of shares of such other class or series of capital stock or such amount of other securities or property for which this Warrant shall be exercisable pursuant to clause (i) above; and

(iii) appropriate adjustment (as determined in good faith by the Board) shall be made in the application of the terms of this Warrant with respect to the rights and interests of the Holder, to the end that the provisions set forth herein shall be applicable, as nearly as they reasonably may be, in relation to any shares of capital stock or other securities or property deliverable upon the exercise of this Warrant.

(c) Adjustment Upon Issuance of Shares of Common Stock. If, at any time while this Warrant is outstanding (the “**Adjustment Period**”), the Company issues or sells, or in accordance with this Section 8 is deemed to have issued or sold, any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding any Exempted Securities issued or sold or deemed to have been issued or sold) for a consideration per share (the “**New Issuance Price**”) less than a price equal to the Exercise Price in effect immediately prior to such issue or sale or deemed issuance or sale (such Exercise Price then in effect is referred to as the “**Applicable Price**”) (the foregoing a “**Dilutive Issuance**”), then immediately after such Dilutive Issuance, the Exercise Price then in effect shall be reduced to an amount equal to the New Issuance Price. For all purposes of the foregoing (including, without limitation, determining the adjusted Exercise Price and consideration per share under this Section 8(c)), the following shall be applicable:

(i) Issuance of Options. If, during the Adjustment Period, the Company in any manner grants or sells any Options and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option (such shares of Common Stock issuable upon such exercise of any Option or upon conversion, exercise or exchange of any Convertible Securities, the “**Convertible Securities Shares**”) is less than the Applicable Price, then such Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 8(c)(i), the “lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option” shall be equal to (A) the sum of (1) the lowest amount of consideration (if any) received or receivable by the Company with respect to any one Convertible Securities Share upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option and (2) the lowest exercise price set forth in such Option for which one Convertible Securities Share is issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible

Securities issuable upon exercise of any such Option, minus (B) the sum of all amounts paid or payable to the holder of such Option (or any other Person), with respect to any one Convertible Securities Share, upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Option (or any other Person), with respect to any one Convertible Securities Share. Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such Convertible Securities Share or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such Convertible Securities Share upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If, during the Adjustment Period, the Company in any manner issues or sells any Convertible Securities (other than Excluded Securities) and the lowest price per share for which one Convertible Securities Share is issuable upon the conversion, exercise or exchange thereof is less than the Applicable Price, then such Convertible Securities Share shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 8(c)(ii), the “lowest price per share for which one Convertible Securities Share is issuable upon the conversion, exercise or exchange thereof” shall be equal to (A) the sum of (1) the lowest amount of consideration (if any) received or receivable by the Company with respect to one Convertible Securities Share upon the issuance or sale of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security and (2) the lowest conversion price set forth in such Convertible Security for which one Convertible Securities Share is issuable upon conversion, exercise or exchange thereof, minus (B) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person), with respect to any one Convertible Securities Share, upon the issuance or sale of such Convertible Security plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Convertible Security (or any other Person), with respect to any one Convertible Securities Share. Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such Convertible Securities Share upon conversion, exercise or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Exercise Price has been or is to be made pursuant to other provisions of this Section 8(c), except as contemplated below, no further adjustment of the Exercise Price shall be made by reason of such issue or sale.

(iii) Change in Option Price or Rate of Conversion. If, during the Adjustment Period, the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time, the Exercise Price in effect at the time of such increase or decrease shall be adjusted to the Exercise Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 8(c)(iii), if the terms of any Option or Convertible Security that was outstanding as of the date of issuance of this Warrant

are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Convertible Securities Shares deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 8(c) shall be made if such adjustment would result in an increase of the Exercise Price then in effect.

(d) Certificate of Adjustment. Whenever any adjustment is required pursuant to this Section 8, the Company shall, within thirty (30) days of the date on which the circumstances giving rise to the adjustment occurred, prepare and furnish to the Holder a certificate setting forth (x) the number of Shares and the Exercise Price, each as then in effect, (y) each adjustment (showing in detail the facts upon which such adjustment is based) made to the number of Shares and the Exercise Price since the date of this Warrant, and (z) to the extent this Warrant is no longer exercisable for Common Stock, the kind and amount of securities, assets or property for which the Warrant may be exercisable.

9. Lost, Stolen, Mutilated or Destroyed Warrant. If this Warrant is lost, stolen, mutilated or destroyed, the Company shall, upon request of the Holder, issue a new warrant of like tenor, provided that the Holder (i) submits an affidavit made to the Company that this Warrant has been lost, stolen or destroyed, as the case may be, (ii) executes an agreement to indemnify the Company from any loss incurred by the Company in connection with this Warrant, and (iii) in the case of a mutilated Warrant, surrenders to the Company such mutilated Warrant.

10. Notice of Certain Events. If a Deemed Liquidation Event shall be effected, then (i) if not expressly exercised pursuant to Section 2 prior to such Deemed Liquidation Event, this Warrant shall be cancelled without any payment therefor immediately prior to the consummation of such Deemed Liquidation Event and Holder's right to purchase the Shares shall terminate immediately. The Company shall provide or cause to be provided to the Holder written notice of such event no less than ten (10) business days prior to the consummation of a Deemed Liquidation Event.

11. 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 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 (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) 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 hereof, or to such email address, or address as subsequently modified by written notice given in accordance with this Section 11. If notice is given to the Company, a copy (which shall not constitute notice) shall also be sent via email to Odell Girton Siegel LLC, notices@ogslawllc.com, Attn: Robert Odell.

12. No Impairment. The Company shall not, by amendment of its certificate of incorporation, or through any reclassification, recapitalization event, consolidation, merger, sale or conveyance of assets, dissolution, liquidation, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance of performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder.

13. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware, without giving effect to conflicts of laws principles. The substantially

prevailing party in such dispute shall be entitled to recover from the losing party such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

(b) Dispute Resolution. Any dispute arising out of this Warrant shall be resolved by arbitration in accordance with the terms of Section 10(i) of the Note.

(c) Entire Agreement; Amendment; Waiver. This Warrant (including any exhibits attached hereto) constitutes the entire understanding between the Company and the Holder with respect to the subject matter hereof. No modification or amendment to this Warrant, nor any waiver of any rights under this Warrant, shall be effective unless done in writing and signed by the Company and the Holder. A waiver or consent given by any party to this Warrant on any one occasion is effective only in that instance and shall not be construed as a bar to or a waiver of any right on any other occasion.

(d) Severability. In case any provision of this Warrant is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Warrant, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it shall be valid, legal, and enforceable to the maximum extent permitted by law.

(e) Counterparts. This Warrant may be executed in two (2) or more 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, *e.g.*, 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.

(f) Headings and Captions. The headings and captions of various sections of this Warrant are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Common Stock Warrant as of the date first above written.

COMPANY:

SYMBIONT.IO, INC.

/s/ Mark Smith
Mark Smith
CEO

Accepted and agreed:

LM FUNDING AMERICA, INC.

/s/ Bruce Rodgers
Bruce Rodgers
CEO

4877-2385-7669.4

EXHIBIT A

EXERCISE FORM

(To be signed only on exercise of Warrant)

The undersigned hereby irrevocably elects to exercise the right to purchase represented by the within Warrant for, and to purchase thereunder, _____ shares of the stock provided for therein, and requests that certificates for such shares be issued in the name of:

(Please print name, address, and tax identification number)

and, if said number of shares shall not be all the shares purchasable thereunder, that a new Warrant for the balance remaining of the shares purchasable under the within Warrant be registered in the name of the undersigned holder of the within Warrant or his Assignee as below indicated and delivered to the address stated below.

The undersigned hereby acknowledges and agrees to be bound by the Adoption Agreement attached hereto as Schedule I and which is incorporated herein.

NAME OF HOLDER OR ASSIGNEE: _____
(Please print)

ADDRESS OF HOLDER
OR ASSIGNEE: _____

SIGNATURE OF HOLDER: _____

DATED: _____

Note: The above signature must correspond with the name exactly as written upon the face of the within Warrant in every particular, without alteration or enlargement or any change whatever, unless the within Warrant has been assigned