

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K
ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2015

Commission file number 000-53851

Mobivity Holdings Corp.
(Exact Name of Registrant as Specified in Its Charter)

Nevada
(State or Other Jurisdiction of
Incorporation or Organization)

26-3439095
(I.R.S. Employer
Identification No.)

55 North Arizona Place, #310
Chandler, Arizona 85225
(Address of Principal Executive Offices and Zip Code)

(877) 282-7660
(Telephone Number)

Securities registered pursuant to Section 12 (b) of the Act:
None

Securities registered pursuant to section 12 (g) of the Act:
Common Stock, \$.001 par value

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes No

The aggregate market value of the voting and non-voting common equity held by non-affiliates as of June 30, 2015 was \$27,306,782.

As of March 23, 2016, the registrant had 29,803,007 shares of common stock issued and outstanding.

MOBIVITY HOLDINGS CORP.
ANNUAL REPORT ON FORM 10-K
FISCAL YEAR ENDED December 31, 2015
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FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K, or Form 10-K, contains “forward-looking statements” that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially and adversely from those expressed or implied by such forward-looking statements. The forward-looking statements are contained principally in Item 1—“Business,” Item 1.A—“Risk Factors” and Item 7—“Management’s Discussion and Analysis of Financial Condition and Results of Operations” but appear throughout the Form 10-K. Examples of forward-looking statements include, but are not limited to our expectations, beliefs or intentions regarding our potential product offerings, business, financial condition, results of operations, strategies or prospects and other matters that do not relate strictly to historical facts or statements of assumptions underlying any of the foregoing. These statements are often identified by the use of words such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “ongoing,” “opportunity,” “plan,” “potential,” “predicts,” “seek,” “should,” “will,” or “would,” and similar expressions and variations or negatives of these words. These forward-looking statements are based on the expectations, estimates, projections, beliefs and assumptions of our management based on information currently available to management, all of which are subject to change. Such forward-looking statements are subject to risks, uncertainties and other factors that are difficult to predict and could cause our actual results and the timing of certain events to differ materially and adversely from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below in Item 1.A – “Risk Factors”. Furthermore, such forward-looking statements speak only as of the date of this Form 10-K. We undertake no obligation to update or revise publicly any forward-looking statements to reflect events or circumstances after the date of such statements for any reason, except as otherwise required by law.

Part I

Item 1. Business

General Information

Mobivity Holdings Corp. (the “Company” or “we”) is in the business of developing and operating proprietary platforms over which brands and enterprises can conduct national and localized, data-driven mobile marketing campaigns. Our proprietary platforms, consisting of software available to phones, tablets PCs, and Point of Sale (“POS”) systems, allow resellers, brands and enterprises to market their products and services to consumers through text messages sent directly to the consumers via mobile phones, mobile smartphone applications, and dynamically printed receipt content. We generate revenue by charging the resellers, brands and enterprises a per-message transactional fee, through fixed or variable software licensing fees, or via advertising fees. We help restaurant and retail brands realize their strategy of growing their business by increasing customer frequency, engagement and spend. Mobivity's analytics and products provide solutions that allow brands to take validated marketing actions across all channels, based on real customer behavior to create personalized, relevant, localized and targeted campaigns. With national clients such as Subway, Sonic, Jamba Juice, Chick-fil-A, and Baskin-Robbins, Mobivity's goal is to unlock the power of internal and external customer data to create a system that provides data driven insight to continually adapt and enhance communications with customers.

According to the U.S. Census Bureau, only 7% of commerce in the US occurs online which means 93% is still happening in the physical world. We believe that brands, and in particular restaurant and retail brands, need a better way to tie marketing activities to customer purchases, and then use the information to build a more relevant, personal experience for each customer, at a local and national level. Mobivity is giving brands the ability to connect (and measure) marketing communications in the physical world by unlocking POS and mobile data and marrying it with other traditional tactics to create a closed loop: in some cases increasing response rates from 0.05% to 5% (or greater); improving online advertising conversion by 10X; and increasing revenue per ad by more than 2.5X.

Mobivity’s solution addresses the offline marketing problem and makes personalized marketing automation possible for offline commerce. Digital marketing is highly dynamic and personally targeted. According to studies published by McKinsey & Company, Point Drive, and the National Advertising Institute, targeted advertising generates conversion rates more than eleven times higher than non-targeted advertising, more than double the revenue per advertisement, and is 250% more efficient than non-targeted advertising. Combined with purchase data and analytics gathered by Mobivity’s products and platforms, Mobivity customers are able to quickly transform traditionally low marketing campaign response rates to exponentially higher response rates.

Mobile phone users represent a large and captive audience. While televisions, radios, and even PCs are often shared by multiple consumers, mobile phones are personal devices representing a unique and individual address to the end user. We believe that the future of digital media will be significantly influenced by mobile phones where a direct, personal conversation can be had with the world’s largest target audience. According to a report published by comScore in January 2014, more U.S. Internet users accessed the Internet through mobile devices than through PCs. Additionally, consumers now spend more time using the mobile Internet on smartphones than using the Internet via PCs according to the 2014 Digital Consumer Report published by Nielsen.

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Our “C4” Mobile Marketing and customer relationship management platform is a Web-hosted software solution enabling our clients to develop, execute, and manage a variety of marketing engagements to a consumer’s mobile phone. Our C4 solution allows our clients to communicate directly with their customers through Short Messaging Service, or SMS, multi-media messaging, smartphone application development and interactive voice response interactions, all of which are facilitated via a set of graphical user interfaces operated from any Web browser.

Our C4 platform also allows our customers to deploy and administer our “Stampt” mobile device loyalty application. Stampt is a smartphone replacement for “Buy 10, Get 1 free” punch cards. Consumers no longer need to worry about forgetting paper-based loyalty punch cards. Stampt makes it easy to receive all of the rewards consumers want from their favorite businesses. Consumers can use Stampt throughout the United States to earn free sandwiches, coffee, pizza, frozen yogurt, donuts, bagels and more. Stampt’s nearby feature shows consumers all of the rewards they can earn at nearby businesses. From the Stampt mobile device application, consumers simply tap any business to learn more about that business and to see all of the loyalty points they have earned at that business. Consumers can keep track of all of the rewards they are close to earning through the “my cards” feature displayed in the application’s interface. Once a consumer has earned all of the Stampts they need for a reward, they simply show the cashier and click “tap to redeem” button from the application interface on their device. Our customers can create and manage any Stampt program from the C4 platform’s set of Web-based interfaces.

Our “SmartReceipt” solution enables our customers with the ability to control the content on receipts printed from their point of sale, or POS system. SmartReceipt is a software application that is installed on the POS, or directly onto receipt printer platforms, such as Epson’s OmniLink product, which dynamically controls what is printed on receipts such as coupons, announcements, or other calls-to-action, such as invitations to participate in a survey. SmartReceipt includes a Web-based interface where users can design receipt content and implement business rules to dictate what receipt content is printed in particular situations. All receipt content is also transmitted to SmartReceipt’s server back-end for storage and analysis. Our SmartReceipt solution is fully integratable with our C4 platform and allows our customers to print SMS marketing or Stampt mobile application calls-to-action on receipts.

We also offer our clients reporting and analytics capabilities through the C4 solution which allows our clients to assess and optimize their mobile marketing and SmartReceipt campaigns. Our proprietary platform connects to all wireless carriers so that any consumer, on any wireless service (for example, Verizon), can join our customer’s SMS mobile marketing campaign. Once the consumer has subscribed to our customer’s SMS mobile marketing campaign, our C4 Web-based software solution serves as a tool by which our customers can initiate messages and other communications back to their subscribed consumers, as well as configure and administer their mobile marketing campaigns.

Company Strategy

Our objective is to build an industry-leading Software-as-a-Service (SaaS) product that connects consumers to merchants and brands. The key elements to our strategy are:

- *Exploit the competitive advantages and operating leverage of our technology platform.* The core of our business is our proprietary “SmartReceipt” receipt intercept technology. Several years of development went into designing SmartReceipt such that the process of intercepting receipt data and controlling the receipt printer is scalable, portable to a wide variety of POS platforms, and does not impact the print speed of other performance characteristics of a typical receipt printer. Furthermore, we believe the transmission of receipt data to Mobivity’s cloud-based data stores presents a very competitive and innovative method of enabling POS data access. Additionally, we believe that our C4 SMS text messaging platform is more advanced than technologies offered by our competitors and provides us with a significant competitive advantage. With more than seven years of development, we believe that our C4 platform operates SMS text messaging transactions at a “least cost” relative to competitors while also being capable of supporting SMS text messaging transactional volume necessary to support our goal of several thousand end users. Additionally, our C4 platform supports interactive voice response, or, capabilities that we believe are unique to our solution and will allow Mobivity to deliver additional capabilities beyond SMS text messaging that will be unique and valuable to the marketplace. Our C4 platform also provides features that allow our customers to manage their Stampt mobile device application in conjunction with SMS text messaging campaigns, which we believe is a unique combination of both SMS text messaging and mobile device application management.
- *Evolve our sales and customer support infrastructure to uniquely serve very large customer implementations such as franchise-based brands who operate a large number of locations.* Over the past few years we have focused our efforts on the development of our technology and solutions with the goal of selling and supporting small and medium-sized businesses. Going forward, we intend to increase significantly our investments in sales and customer support resources tailored to selling to customers that operate franchise brands.
- *Acquire complementary businesses and technologies.* We will continue to search and identify unique opportunities which we believe will enhance our product features and functionality, revenue goals, and technology. We intend to target companies with some or all of the following characteristics: (1) an established revenue base; (2) strong pipeline and growth prospects;

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(3) break-even or positive cash flow; (4) opportunities for substantial expense reductions through integration into our platform; (5) strong sales teams; and (6) technology and services that further build out and differentiate our platform. Our acquisitions have historically been consummated through the issuance of a combination of our common stock and cash.

Build our intellectual property portfolio. We currently have five issued patents that we believe have significant potential application in the mobile marketing industry. We plan to continue our investment in building a strong intellectual property portfolio.

While these are the key elements of our current strategy, there can be no guarantees that our strategy will not change or that our strategy will be successful.

Recent Developments

We have entered into the following material transactions since January 1, 2015.

March 2015 Private Placement.

In March 2015, we conducted a private placement of 4,805,000 units of our securities at a price of \$1.00 per unit. Each unit consisted of one share of our common stock and a common stock purchase warrant to purchase one-quarter share of our common stock, over a five year period, at an exercise price of \$1.20 per share. Emerging Growth Equities, Ltd. acted as placement agent for the private placement and received \$234,500 in commissions and warrants to purchase an aggregate of 234,500 units, exercisable over a period of five years from the closing date, at an exercise price of \$1.00 per unit. Pursuant to the terms of the offering, we entered into registration rights agreement with the investors pursuant to which we filed with the SEC a resale registration statement covering the common shares made part of the units. The SEC declared the registration statement effective on September 10, 2015.

LiveLenz Acquisition

On January 15, 2016, we acquired all of the outstanding capital stock of LiveLenz Inc., a Nova Scotia corporation (“LiveLenz”), pursuant to an agreement dated January 15, 2016 among the Company and the stockholders of LiveLenz. Pursuant to the agreement, we acquired all of the capital stock of LiveLenz in consideration of our issuance of 1,000,000 shares (“Consideration Shares”) of our common stock to the LiveLenz stockholders and our issuance of an additional 15,000 share of our common stock in satisfaction of certain liabilities of LiveLenz. The agreement included customary representations, warranties, and covenants by us and the LiveLenz stockholders, including the LiveLenz stockholders’ agreement to indemnify us against certain claims or losses resulting from certain breaches of representations, warranties or covenants by the LiveLenz stockholders in the agreement. Pursuant to the agreement, the LiveLenz stockholders have agreed to adjust the number of Consideration Shares downward based on LiveLenz’ working capital as of the closing and in the event of any claims for indemnification by us. The LiveLenz stockholders have agreed that 100% of the Consideration Shares will be escrowed for a period of 18 month and subject to forfeiture based on indemnification claims by us or the final determination of LiveLenz’ working capital as of the closing date.

2016 Private Placement

In March 2016, we conducted the private placement of 3,256,000 shares of our common stock, at a price of \$0.60 per share, for the gross proceeds of \$1,953,600. The offering was conducted by our management and no commission or other selling fees were paid by us. Pursuant to the terms of the offering, we entered into registration rights agreement with the investors pursuant to which we agreed to file with the SEC a resale registration statement covering the common shares by May 31, 2016.

Working Capital Line of Credit Facility

In March 2016, we entered into a Working Capital Line of Credit Facility (the “Facility”) with Silicon Valley Bank to provide up to \$2 million to finance our general working capital needs. The Facility is funded based on cash on deposit balances and advances against our accounts receivable based on customer invoicing. Interest on Facility borrowings is calculated at rates between the prime rate minus 1.75% and prime rate plus 3.75% based on the borrowing base formula used at the time of borrowing. The Facility contains standard events of default, including payment defaults, breaches of representations, breaches of affirmative or negative covenants, and bankruptcy. There are no financial covenants and as of the date of this report there are no borrowings under the Facility.

Industry Background

We believe industry trends point to a shift in the local marketing industry in both how merchants and brands market their products and services to local customers. We believe that consumers are transitioning to new digital channels and moving away from legacy marketing channels. It is this transition that we believe has created an opportunity for new and innovative local marketing services and

technologies to evolve. We believe that consumers are increasingly devoting their attention and lifestyle to mobile devices and that marketers will need new products, technologies, and services tailored for consumer's mobile devices.

Traditional marketing using television, radio and print lacks targeting and offline marketing audiences are declining annually based on research published by Forrester in a February 2015 study. Nielsen reports that television viewers in the key 18-49 year old age demographic are down in 2015, as are all television viewing households, and DVR usage has reduced television advertisement effectiveness by 30% over the past year. Radio listenership is down 15% from 2014 and 2015 radio advertising spend was down nearly 2% year over year. Yellow Pages use was down 22% in 2015 according to the Local Search Association findings and online news readers surpassed print for the first time in 2015. According to a Strategy Analytics Advertising Forecast in February of 2015, \$124 billion is spent annually on traditional, offline marketing media sources that lack specific targeting and are declining in size and effectiveness.

Mobile marketing campaigns use multiple channels to reach the consumer, including mobile web sites, mobile applications, mobile messaging and mobile video, all of which can be integrated into interactive campaigns. Each channel can link to additional mobile content or channels, as well as to complementing traditional media. Mobile marketing provides a powerful, instant and interactive response path in that consumers may send a keyword to a short code via SMS, or register on a mobile web site. This makes the mobile phone a precisely targeted communication channel, where users are highly engaged with content. As a result, the mobile channel is believed to be a highly effective campaign tool and its response levels are high compared to other media. We believe that mobile is valuable as a stand-alone medium for marketing, but it is also well suited for a vital role in fully integrated cross-media campaign plans, including TV, print, radio, outdoor, cinema, online and direct mail. We believe that the future of digital media will be significantly influenced by mobile phones where a direct, personal conversation can be had with the world's largest network.

The Mobivity Solution

Our mobile marketing platform is designed to allow brands to operate mobile marketing campaigns, as well as resellers to market their own mobile marketing platform under their own brand identity. As of the date of this report, we have approximately 19,000 customers utilizing our mobile marketing platform and we deliver on their behalf an average of 28 million SMS text messages per month. We have approximately 29,000 additional customers using our Smart Receipt solution and we process on their behalf an average of 42 million receipt transactions per month. Our customers are spread over all industries that market to individual consumers and range in size from national franchisers to the single site family-owned business. Our clients access our "C4" solution through a standard Web browser that allows them to directly conduct the setup, messaging, and ongoing customer relationship management with the consumers they market to. Our customers are given a dedicated support representative along with account credentials to access their own C4 account from any Web browser.

Campaign Setup: Initially, our clients will use their own C4 account on our proprietary platform to design their mobile marketing campaign for purposes of attracting customers to subscribe for the customer's mobile messaging service. In compliance with federal and state laws relating to mobile marketing, marketers typically attract customers to their mobile messaging service through media communications distributed through non-mobile devices, media, other than mobile devices, including store signage, billboards, other forms of print media, and digital media not directed through a mobile device. Our C4 solution also allows for the creation and design of digital display graphics that can be displayed on television screens, digital scoreboards, or other digital screens where an animated or more graphically rich solicitation may be desired. Digital displays are particularly useful on large digital scoreboard displays at sporting events. Through these various forms of communication, customers of our clients will be invited to subscribe to SMS text messaging communications (for example, "Join our mobile VIP club! Text "Pizza" to 12345") or to set-up loyalty offers through our Stampt smartphone loyalty application (for example, "Download Stampt, use your iPhone or Android phone to join our loyalty program – buy five sandwiches and get one free!"). Consumers responding to these communications will be directed to our clients' own C4 account on our proprietary platform, where our platform records and stores the consumer's relevant information for access by our client stores. Once the consumer has subscribed to our customer's mobile marketing campaign, our C4 solution serves as a tool by which our customers can initiate messages and other communications back to their subscribed consumers, as well as configure and administer their mobile marketing campaigns.

Messaging. Our C4 platform allows for marketers to instantly message their subscribers via SMS text messaging or "push" messaging to users of the Stampt smartphone application. Our platform is designed to be a fully automated, self-executing tool where our clients access their own C4 account on our proprietary platform, design and create their mobile marketing message, designate to whom among their list of opted-in consumers the message will be sent and then select the time (or times) the message will be distributed. Each customer is assigned a dedicated support representative to provide support in this process, however the platform is designed to provide the customer with the ability to design and carry-out the entire campaign through their remote online access to our platform. Our customers are provided with an instant communication channel to alert their subscribers of events, specials, or other announcements. Our C4 platform provides various messaging tools for marketers to create and initiate these messages in real-time or for future broadcasts. The solution also allows the

marketer to connect to Facebook or Twitter accounts so that their messaging broadcasts can be promoted to select social media channels if desired.

- *Customer Relationship Management (CRM).* Our C4 solution offers our customers a variety of CRM services, including the success rate for each media campaign designed to attract subscribers to the customer's mobile marketing campaign, historical data and success rate with regard to each mobile message sent. The subscriber records and through various reporting features offered by the CRM function provide marketers with quick access to a variety of useful data points. Tracking subscriber and messaging activity over time is useful in handling customer inquiries or issues with the marketing program or to gain insights into subscriber behavior. For example, a marketer might want to examine how the total number of subscribers gained from a recent promotion of their call-to-action. The Mobivity solution provides various default reports while allowing for Mobivity customers to request custom reports tailored for their specific needs.
- *Stampt Smartphone Loyalty Application.* Stampt is a smartphone application available to both iPhone and Android smartphones. The application is acquired by consumers via download from the Apple App Store or Google Play market service. Once installed, consumers can view local merchants who are setup on our C4 platform to offer mobile loyalty cards. Mobile loyalty cards allow consumers using Stampt to visit merchants and participate in loyalty programs (for example, "buy 10, get 1 free") that are setup by merchants using the Mobivity solution. Consumers can also receive instant offers sent from merchants through our platform's messaging features. The Stampt application allows consumers to register purchases by using the Stampt application on their smartphone to take a quick picture of a special code that the merchant provides at the time of purchase. The purchase is also registered on the merchant's own account on our C4 platform. The Stampt application instantly verifies the consumer's location at the related merchant's location of business and registers the purchase. Purchases are then depicted on the Stampt application so the consumer and the merchant know how many purchases are required to earn a reward.
- *Smart Receipt.* Our SmartReceipt solution enables our customers the ability to control the content on receipts printed from their point of sale, or POS system. SmartReceipt is a software application that is installed on the POS which dynamically controls what is printed on receipts such as coupons, announcements, or other calls-to-action such as invitations to participate in a survey. SmartReceipt includes a Web-based interface where users can design receipt content and implement business rules to dictate what receipt content is printed in particular situations. All receipt content is also transmitted to SmartReceipt's server back-end for storage and analysis. Our C4 solution integrates with SmartReceipt by supporting SMS marketing or Stampt mobile application calls-to-action which can be printed on receipt content by SmartReceipt.
- *Resellers.* Our platform can be white-labeled to allow for resellers or agents to market and deliver their own branded mobile marketing solution complete with all of the features of the C4 platform. Resellers are provisioned their own Web-based administration system whereby they can create and track their own customers' use of the product.

In the future, we intend to develop additional platform features that with the goal of driving additional value to the evolving mobile marketing industry.

Marketing and Sales

We market and sell the services offered over our proprietary C4 platform directly through our own sales force, via resellers, and in some cases through agents.

- *Direct Sales.* Our direct sales force is predominantly comprised of four sales representatives employed by us to promote and sell our services in various geographical areas.
- *Resellers.* We sell our services via wholesale pricing of licensing and transactional fees to 55 various resellers who market and sell the Mobivity services under their own brand.
- *Agents.* We also engage eight independent agents to market and sell our services under the Mobivity brand in return for payment of a commission or revenue share for customers they introduce to us.
- In addition to our direct and indirect sales channels, we also market our services online through our Website, Facebook, Twitter, LinkedIn, and other online channels. We also participate in various trade and industry events to build awareness and promote exposure to our services and brand.

Our services are predominantly marketed and sold in the form of a recurring software licensing fee that is determined by desired features and the number of physical locations our customers would like to deploy the services in. For example, a customer who exclusively utilizes our SMS text messaging feature for one location will pay a much lower recurring licensing fee than a marketer who desires our full breadth of product features and needs to drive localized marketing campaigns across 50 locations in various cities or locales.

In addition to license fees, we also arrange for a transaction fee in special cases where our customers require greater bandwidth or throughput to process large volumes of mobile messaging transactions. For example, a customer may want to utilize our services for a major sporting event when there may be tens of thousands of fans who are expecting a “score alert” sent to their mobile phone via a SMS text message. In this case, the required resources to facilitate a large number of SMS messages in a short period of time is much higher and therefore we may charge an additional per-SMS text message fee to our customer.

Research and Development

We have developed an internal and external software development team with many years of experience in the mobile advertising and marketing industries. As of the date of this report, we have four full time and two part time employees engaged in engineering and software developments and one full-time employee engaged in quality assurance and testing in our development centers located at our facilities in San Diego, CA, not including our Director of Engineering and Chief Technology Officer. We have two full time employees engaged in engineering and software development at our corporate headquarters in Chandler, AZ and Nova Scotia. We have one full time product specialist located in Washington. Additionally, we have software development and engineering contractors located in California, Mexico, Australia and Spain that are used on an as needed basis. We also contract with various outsourced development and engineering partners in the United States. Our research and development activities are focused on enhancements to our platform, including extending our technology into payment processing, location based services, application analytics, and other technical opportunities in the evolving mobile industry.

Our total engineering, research and development expenditures in 2015 and 2014 were \$728,741 and \$1,346,198, respectively.

Competition

Although the market for mobile marketing software and solutions is relatively new, it is very competitive. We compete with companies of all sizes in select geographies that offer solutions that compete with various elements of our platform and offering, such as SMS text messaging service providers or providers of mobile smartphone applications. We also compete at times with interactive and traditional advertising agencies that perform mobile marketing as part of their services to their customers. Many of these entities have significantly greater resources than we do. In addition, we compete with traditional offline coupon and discount services, as well as television, radio, newspapers, magazines and other traditional media companies that provide coupon and discount products and services to their retail enterprise customers.

Many of the leading providers of online services have begun to develop or acquire mobile marketing platforms with features similar to ours. For example, in May 2010, Google, Inc. acquired Admob, Inc. and in January 2010 Apple, Inc. acquired Quattro Wireless. Each of the acquired companies was engaged in mobile marketing. In addition, we believe that Facebook, AOL, Microsoft and Yahoo! have each begun to develop mobile marketing platforms.

We believe that the key competitive factors that differentiate us from our competitors include:

- *Demonstrable experience and competence.* We have been providing mobile marketing services since 2006. In 2009, Sybase, an international enterprise software and services company, awarded us their Innovator of the Year. Major brands such as Sonic, Subway, Jamba Juice, Chick-Fil-A, and Baskin Robbins have selected Mobivity’s products and services.
- *Competitive pricing.* We believe we are one of the few mobile marketing providers in the industry that can provide SMS text messaging services at a flat licensing fee structure rather than charging for every SMS text message transaction processed. We also believe that we have a “least cost” operating advantage that competitors may find challenging to compete with.
- *Scalability.* We believe that our platform is more scalable than most if not all of our competitors. Many of our customers require large volumes of mobile marketing messages to be transacted and a high quantity of end users operating our Web-based product features. We have grown our monthly messaging volume from less than 1 million SMS text messages per month in 2010 to more than 28 million per month as of the date of this report. The number of customers utilizing our Web-based products has also grown from less than 100 in 2010 to more than 19,000 as of the date of this report.

Seasonality

Our business, as is typical of companies in our industry, is highly seasonal. This is primarily due to traditional marketing and advertising spending being heaviest during the holiday season while brands, advertising agencies, mobile operators and media companies often close out annual budgets towards the end of the calendar year. Seasonal trends have historically contributed to, and we anticipate will continue to contribute to fluctuations in our quarterly results, including fluctuations in sequential revenue growth rates.

Intellectual Property

We regard the protection of our developed technologies and intellectual property rights as an important element of our business operations and crucial to our success. We rely primarily on a combination of patent laws, trademark laws, copyright laws, trade secrets, confidentiality procedures and contractual provisions to protect our proprietary technology. We require our employees, consultants and advisors to enter into confidentiality agreements. These agreements provide that all confidential information developed or made known to the individual during the course of the individual's relationship with us is to be kept confidential and not disclosed to third parties except under specific circumstances. In the case of our employees, the agreements provide that all of the technology which is conceived by the individual during the course of employment is our exclusive property. The development of our technology and many of our processes are dependent upon the knowledge, experience and skills of key scientific and technical personnel.

As of the date of this report we own five patents. U.S. Patent numbers 7,991,388 B1 and 8,244,216 B1 were issued on August 2, 2011 and August 14, 2012, respectively. These patents cover a geo-bio-metric personal identification number, a service that authenticates a user from a feature phone or smart phone using a number of mobile attainable attributes: geolocation, facial image, accelerometer (which measures the physical orientation or movement of the device itself), and text messaging. The purpose of the geo-bio-metric PIN service is to authenticate a user while verifying the following: the user is currently using his or her other phone; the user is at the location that their phone is at; the user is not at another location and using their phone through a proxy; and an impostor is not using the phone.

In March 2011, we acquired US Patent number 6,788,769 B1 which covers a method and system for using telephone numbers as a key to address email and online content without the use of a look-up database. Using this system, a phone number is used to access a website or an email address in exactly the same way it is used to dial a telephone.

U.S. Patent numbers 8,463,306 and 8,818,434 were issued on June 11, 2013 and August 26, 2014, respectively. These patents cover a method and system for testing a SMS text messaging network. The method and system allows for real-time testing of the initiation and completion of SMS text messages and any delivery delays across the major American mobile phone carriers, and accurately measures the progress on SMS broadcasts and records when a broadcast has been completed.

Our issued and any future patents that we may issue may not survive a legal challenge to their scope, validity or enforceability, or provide significant protection for us. The failure of our patents, or the failure of our copyright and trade secret laws to adequately protect our technology, might make it easier for our competitors to offer similar products or technologies. In addition, patents may not issue from any of our current or any future applications.

Government Regulation

The growth and development of the mobile messaging market and the market for electronic storage of personal information has resulted in a variety of stringent consumer protection laws, many of which impose significant burdens on companies that store personal information. Depending on the products and services that they offer, mobile data service providers may be subject to regulations and laws applicable to providers of mobile, Internet and VOIP services, including domestic and international laws and regulations relating to user privacy and data protection, defamation, pricing, advertising, taxation, gambling, sweepstakes, promotions, billing, real estate, consumer protection, accessibility, content regulation, quality of services, telecommunications, mobile, television and intellectual property ownership and infringement. We expect that the regulation of our industry generally will continue to increase and that we will be required to devote increasing amounts of legal and other resources to address this regulation. In addition, the application of existing domestic and international laws and regulations relating to issues such as user privacy and data protection, marketing, advertising, consumer protection and mobile disclosures in many instances is unclear or unsettled.

In addition to its regulation of wireless telecommunications providers generally, the U.S. Federal Communications Commission, or FCC, has examined, or is currently examining, how and when consumers enroll in mobile services, what types of disclosures consumers receive, what services consumers are purchasing and how much consumers are charged. In addition, the Federal Trade Commission, or FTC, has been asked to regulate how mobile marketers can use consumers' personal information. Consumer advocates claim that many consumers do not know when their information is being collected from cell phones and how such information is retained, used and shared with other companies. Consumer groups have asked the FTC to: identify practices that may compromise privacy and consumer welfare; examine opt-in procedures to ensure consumers are aware of what data is at issue and how it will be used; investigate marketing tactics that target children; and create policies to halt abusive practices. The FTC has expressed interest, in particular, in the mobile environment and services that collect sensitive data, such as location-based information.

The principal laws and regulations that pertain to us and our customers in connection with their utilization of our platform, include:

- *Deceptive Trade Practice Law in the U.S.* The FTC and state attorneys general are given broad powers by legislatures to curb unfair and deceptive trade practices. These laws and regulations apply to mobile marketing campaigns and behavioral

advertising. The general guideline is that all material terms and conditions of the offer must be "clearly and conspicuously" disclosed to the consumer prior to the buying decision. The balancing of the desire to capture a potential customer's attention, while providing adequate disclosure, can be challenging in the mobile context due to the lack of screen space available to provide required disclosures.

Behavioral Advertising. Behavioral advertising is a technique used by online publishers and advertisers to increase the effectiveness of their campaigns. Behavioral advertising uses information collected from an individual's web-browsing behavior, such as the pages they have visited or the searches they have made, to select which advertisements to display to that individual. This data can be valuable for online marketers looking to personalize advertising initiatives or to provide geo-tags through mobile devices. Many businesses adhere to industry self-governing principles, including an opt-out regime whereby information may be collected until an individual indicates that he or she no longer agrees to have this information collected. The FTC and EU member states are considering regulations in this area, which may include implementation of a more rigorous opt-in regime. An opt-in policy would prohibit businesses from collecting and using information from individuals who have not voluntarily consented. Among other things, the implementation of an opt-in regime could require substantial technical support and negatively impact the market for our mobile advertising products and services. A few states have also introduced bills in recent years that would restrict behavioral advertising within the state. These bills would likely have the practical effect of regulating behavioral advertising nationwide because of the difficulties behind implementing state-specific policies or identifying the location of a particular consumer. There have also been a large number of class action suits filed against companies engaged in behavioral advertising.

Behavioral Advertising-Privacy Regulation. Our business is affected by U.S. federal and state, as well as EU member state and foreign country, laws and regulations governing the collection, use, retention, sharing and security of data that we receive from and about our users. In recent years, regulation has focused on the collection, use, disclosure and security of information that may be used to identify or that actually identifies an individual, such as an Internet Protocol address or a name. Although the mobile and Internet advertising privacy practices are currently largely self-regulated in the U.S., the FTC has conducted numerous discussions on this subject and suggested that more rigorous privacy regulation is appropriate, including regulation of non-personally identifiable information which could, with other information, be used to identify an individual. Within the EU, member state data protection authorities typically regard IP addresses as personal information, and legislation adopted recently in the EU requires consent for the placement of a cookie on a user device. In addition, EU data protection authorities are following with interest the FTC's discussions regarding behavioral advertising and may follow suit by imposing additional privacy requirements for mobile advertising practices.

Marketing-Privacy Regulation. In addition, there are U.S. federal and state laws and EU member state and other country laws that govern SMS and telecommunications-based marketing, generally requiring senders to transmit messages (including those sent to mobile devices) only to recipients who have specifically consented to receiving such messages. U.S. federal, EU member state and other country laws also govern e-mail marketing, generally imposing an opt-out requirement for emails sent within an existing business relationship.

SMS and Location-Based Marketing Best Practices and Guidelines. We voluntarily comply with the guidelines of the Mobile Marketing Association, or MMA, a global association of 700 agencies, advertisers, mobile device manufacturers, wireless operators and service providers and others interested in the potential of marketing via the mobile channel. The MMA has published a code of conduct and best practices guidelines for use by those involved in mobile messaging activities. The guidelines were developed by a collaboration of the major carriers and they require adherence to them as a condition of service. We voluntarily comply with the MMA code of conduct, which generally require notice and user consent for delivery of location-based services. In addition, the Cellular Telephone Industry Association, or CTIA, has developed Best Practices and Guidelines to promote and protect user privacy regarding location-based services.

TCPA. The United States Telephone Consumer Protection Act, or TCPA, prohibits unsolicited voice and text calls to cell phones through the use of an automatic telephone-dialing system (ATDS) unless the recipient has given prior consent. The statute also prohibits companies from initiating telephone solicitations to individuals on the national Do-Not-Call list, and restricts the hours when such messages may be sent. Violations of the TCPA can result in statutory damages of \$500 per violation (i.e., for each individual text message). U.S. state laws impose additional regulations on voice and text calls. We believe that our platform does not employ an ATDS within the meaning of the TCPA based on case law construing that term.

CAN-SPAM. The U.S. Controlling the Assault of Non-Solicited Pornography and Marketing Act, or CAN SPAM Act, prohibits all commercial e-mail messages, as defined in the law, to mobile phones unless the device owner has given "express prior authorization." Recipients of such messages must also be allowed to opt-out of receiving future messages the same way they opted-in. Senders have ten business days to honor opt-out requests. The FCC has compiled a list of domain names used by wireless service providers to which marketers may not send commercial e-mail messages. Senders have 30 days from the date the domain name is posted on the FCC site to stop sending unauthorized commercial e-mail to addresses containing the

domain name. Violators are subject to fines of up to \$6.0 million and up to one year in jail for some spamming activities. Carriers, the FTC, the FCC, and State Attorneys General may bring lawsuits to enforce alleged violations of the Act.

Communications Privacy Acts. Foreign and U.S. federal and state laws impose liability for intercepting communications while in transit or accessing the contents of communications while in storage. EU member state laws also require consent for our receiving this information, and if our carrier customers fail to obtain such consent we could be subjected to civil or even criminal penalties.

Security Breach Notification Requirements. EU member state laws require notice to the member state data protection authority of a data security breach involving personal data if the breach poses a risk to individuals. In addition, Germany enacted a broad requirement to notify individuals in the event of a data security breach that is likely to be followed by notification requirements to data subjects in other EU member states. In the U.S., various states have enacted data breach notification laws, which require notification of individuals and sometimes state regulatory bodies in the event of breaches involving certain defined categories of personal information. Japan and Uruguay have also enacted security breach notice requirements. This new trend suggests that breach notice statutes may be enacted in other jurisdictions, including by the U.S. at the federal level, as well.

Children. The Children's Online Privacy Protection Act prohibit the knowing collection of personal information from children under the age of 13 without verifiable parental consent, and strictly regulate the transmission of requests for personal information to such children. Other countries do not recognize the ability of children to consent to the collection of personal information. In addition, it is likely that behavioral advertising regulations will impose special restrictions on use of information collected from minors for this purpose.

Employees

As of March 15, 2016, we had 63 employees, consisting of 15 full-time and two part-time in research and development, 36 full-time and one part-time in sales and marketing, and eight full-time and one part-time in general and administrative.

Item 1A. Risk Factors.

Risks Relating to Our Business

We may need additional financing to execute our business plan and fund operations, which additional financing may not be available on reasonable terms or at all. As of December 31, 2015, we had working capital of \$406,384. We received proceeds from our March 2016 financing of approximately \$2 million and entered into a working capital line of credit facility with our bank to provide up to \$2 million. While we believe that our working capital on hand will be sufficient to fund our 12 month plan of operations, there can be no assurance that we will not require significant additional capital within 12 months. Also, we expect that we may require additional capital beyond the next 12 months unless we are able to achieve and maintain a profitable operation. In the event we require additional capital we will endeavor to raise additional funds through various financing sources, including the sale of our equity and debt securities and the procurement of commercial debt financing. However, there can be no guarantees that such funds will be available on commercially reasonable terms, if at all. If such financing is not available on satisfactory terms, we may be unable to expand or continue our business as desired and operating results may be adversely affected. Any debt financing will increase expenses and must be repaid regardless of operating results and may involve restrictions limiting our operating flexibility. If we issue equity securities to raise additional funds, the percentage ownership of our existing stockholders will be reduced and our stockholders may experience additional dilution in net book value per share.

Our ability to obtain needed financing may be impaired by such factors as the capital markets, both generally and specifically in our industry, and the fact that we are not yet profitable, which could impact the availability or cost of future financings. If the amount of capital we are able to raise from financing activities, together with our revenues from operations, is not sufficient to satisfy our capital needs, we may be required to reduce or even cease operations.

Our sales efforts to large enterprises require significant time and effort and could hinder our ability to expand our customer base and increase revenue. Attracting new customers to our large enterprise division requires substantial time and expense, especially in an industry that is so heavily dependent on personal relationships with executives. We cannot assure that we will be successful in establishing new relationships, or maintaining or advancing our current relationships. For example, it may be difficult to identify, engage and market to customers who do not currently perform mobile marketing or advertising or are unfamiliar with our current services or platform. Further, many of our customers typically require input from one or more internal levels of approval. As a result, during our sales effort, we must identify multiple people involved in the purchasing decision and devote a sufficient amount of time to presenting our products and services to those individuals. The complexity of our services often requires us to spend substantial time and effort assisting potential customers in evaluating our products and services including providing demonstrations and benchmarking against other available technologies. We expect that our sales process will become less burdensome as our products and services

become more widely known and used. However, if this change does not occur, we will not be able to expand our sales effort as quickly as anticipated and our sales will be adversely affected.

We may not be able to enhance our mobile marketing and advertising platform to keep pace with technological and market developments, or to remain competitive against potential new entrants in our markets. The market for mobile marketing and advertising services is emerging and is characterized by rapid technological change, evolving industry standards, frequent new product introductions and short product life cycles. Our current platform and services may not in the future be acceptable to marketers and advertisers. To keep pace with technological developments, satisfy increasing customer requirements and achieve acceptance of our marketing and advertising campaigns, we will need to enhance our current mobile marketing solutions and continue to develop and introduce on a timely basis new, innovative mobile marketing services offering compatibility, enhanced features and functionality on a timely basis at competitive prices. Our inability, for technological or other reasons, to enhance, develop, introduce and deliver compelling mobile marketing services in a timely manner, or at all, in response to changing market conditions, technologies or customer expectations could have a material adverse effect on our operating results or could result in our mobile marketing services platform becoming obsolete. Our ability to compete successfully will depend in large measure on our ability to maintain a technically skilled development and engineering staff and to adapt to technological changes and advances in the industry, including providing for the continued compatibility of our mobile marketing services platform with evolving industry standards and protocols. In addition, as we believe the mobile marketing market is likely to grow substantially, other companies which are larger and have significantly more capital to invest than us may emerge as competitors. For example, in May 2010, Google, Inc. acquired Admob, Inc. Similarly, in January 2010, Apple, Inc. acquired Quattro Wireless, Inc. New entrants could seek to gain market share by introducing new technology or reducing pricing. This may make it more difficult for us to sell our products and services, and could result in increased pricing pressure, reduced profit margins, increased sales and marketing expenses or the loss of market share or expected market share, any of which may significantly harm our business, operating results and financial condition.

Our services are provided on mobile communications networks that are owned and operated by third parties who we do not control and the failure of any of these networks would adversely affect our ability to deliver our services to our customers. Our mobile marketing and advertising platform is dependent on the reliability of mobile operators who maintain sophisticated and complex mobile networks. Such mobile networks have historically, and particularly in recent years, been subject to both rapid growth and technological change. If the network of a mobile operator with which we are integrated should fail, including because of new technology incompatibility, the degradation of network performance under the strain of too many mobile consumers using it, or a general failure from natural disaster or political or regulatory shut-down, we will not be able provide our services to our customers through such mobile network. This in turn, would impair our reputation and business, potentially resulting in a material, adverse effect on our financial results.

If our mobile marketing and advertising services platform does not scale as anticipated, our business will be harmed. We must be able to continue to scale to support potential ongoing substantial increases in the number of users in our actual commercial environment, and maintain a stable service infrastructure and reliable service delivery for our mobile marketing and advertising campaigns. In addition, we must continue to expand our service infrastructure to handle growth in customers and usage. If our mobile marketing services platform does not efficiently and effectively scale to support and manage a substantial increase in the number of users while maintaining a high level of performance, the quality of our services could decline and our business will be seriously harmed. In addition, if we are unable to secure data center space with appropriate power, cooling and bandwidth capacity, we may not be able to efficiently and effectively scale our business to manage the addition of new customers and overall mobile marketing campaigns.

The success of our business depends, in part, on wireless carriers continuing to accept our customers' messages for delivery to their subscriber base. We depend on wireless carriers to deliver our customers' messages to their subscriber base. Wireless carriers often impose standards of conduct or practice that significantly exceed current legal requirements and potentially classify our messages as "spam," even where we do not agree with that conclusion. In addition, the wireless carriers use technical and other measures to attempt to block non-compliant senders from transmitting messages to their customers; for example, wireless carriers block short codes or Internet Protocol addresses associated with those senders. There can be no guarantee that we, or short codes registered to us, will not be blocked or blacklisted or that we will be able to successfully remove ourselves from those lists. Although our services typically require customers to opt-in to a campaign, minimizing the risk that our customers' messages will be characterized as spam, blocking of this type could interfere with our ability to market products and services of our customers and communicate with end users and could undermine the effectiveness of our customers' marketing campaigns. To date we have not experienced any material blocking of our messages by wireless carriers, but any such blocking could have an adverse effect on our business and results of operations.

We depend on third party providers for a reliable Internet infrastructure and the failure of these third parties, or the Internet in general, for any reason would significantly impair our ability to conduct our business. We outsource all of our data center facility management to third parties who host the actual servers and provide power and security in multiple data centers in each geographic location. These third party facilities require uninterrupted access to the Internet. If the operation of our servers is interrupted for any reason, including natural disaster, financial insolvency of a third party provider, or malicious electronic intrusion into the data center,

our business would be significantly damaged. As has occurred with many Internet-based businesses, on occasion in the past, we have been subject to "denial-of-service" attacks in which unknown individuals bombarded our computer servers with requests for data, thereby degrading the servers' performance. While we have historically been successful in relatively quickly identifying and neutralizing these attacks, we cannot be certain that we will be able to do so in the future. If either a third party facility failed, or our ability to access the Internet was interfered with because of the failure of Internet equipment in general or we become subject to malicious attacks of computer intruders, our business and operating results will be materially adversely affected.

Failure to adequately manage our growth may seriously harm our business. We operate in an emerging technology market and have experienced, and may continue to experience, significant growth in our business. If we do not effectively manage our growth, the quality of our products and services may suffer, which could negatively affect our brand and operating results. Our growth has placed, and is expected to continue to place, a significant strain on our managerial, administrative, operational and financial resources and our infrastructure. Our future success will depend, in part, upon the ability of our senior management to manage growth effectively. This will require us to, among other things:

- implement additional management information systems;
- develop additional levels of management within our company;
- locate additional office space in various countries; and
- maintain close coordination among our engineering, operations, legal, finance, sales and marketing and customer service and support organizations.

Moreover, as our sales increase, we may be required to concurrently deploy our services infrastructure at multiple additional locations or provide increased levels of customization. As a result, we may lack the resources to deploy our mobile marketing services on a timely and cost-effective basis. Failure to accomplish any of these requirements would seriously harm our ability to deliver our mobile marketing services platform in a timely fashion, fulfill existing customer commitments or attract and retain new customers.

The gathering, transmission, storage and sharing or use of personal information could give rise to liabilities or additional costs of operation as a result of governmental regulation, legal requirements, civil actions or differing views of personal privacy rights. We transmit and store a large volume of personal information in the course of providing our services. Federal, state and international laws and regulations govern the collection, use, retention, sharing and security of data that we receive from our customers and their users. Any failure, or perceived failure, by us to comply with U.S. federal, state, or international privacy or consumer protection-related laws, regulations or industry self-regulatory principles could result in proceedings or actions against us by governmental entities or others, which could potentially have an adverse effect on our business, operating results and financial condition. Additionally, we may also be contractually liable to indemnify and hold harmless our customers from the costs or consequences of inadvertent or unauthorized disclosure of their customers' personal data which we store or handle as part of providing our services.

The interpretation and application of privacy, data protection and data retention laws and regulations are currently unsettled in the U.S. and internationally, particularly with regard to location-based services, use of customer data to target advertisements and communication with consumers via mobile devices. Such laws may be interpreted and applied inconsistently from country to country and inconsistently with our current data protection policies and practices. Complying with these varying international requirements could cause us to incur substantial costs or require us to change our business practices in a manner adverse to our business, operating results or financial condition.

As privacy and data protection have become more sensitive issues, we may also become exposed to potential liabilities as a result of differing views on the privacy of personal information. These and other privacy concerns, including security breaches, could adversely impact our business, operating results and financial condition.

In the U.S., we have voluntarily agreed to comply with wireless carrier technological and other requirements for access to their customers' mobile devices, and also trade association guidelines and codes of conduct addressing the provision of location-based services, delivery of promotional content to mobile devices and tracking of users or devices for the purpose of delivering targeted advertising. We could be adversely affected by changes to these requirements, guidelines and codes, including in ways that are inconsistent with our practices or in conflict with the rules or guidelines in other jurisdictions.

We currently rely on a small concentration of customers to use our products to generate our revenues, and the loss or change in any of these significant relationships could materially reduce our revenues. Although we believe we have a good relationship with these customers, our contracts with these customers are short-term in nature. Should these customers choose to terminate their contracts with us or if material events occur that are detrimental to these customers or their operations, it could have a significant negative impact on our financial performance.

Risks Related to our Common Stock

There has been a limited trading market for our common stock. There has been a limited trading market for our common stock on the Over-the-Counter Bulletin Board. The lack of an active market may impair the ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active market may also reduce the fair market value of your shares. An inactive market may also impair our ability to raise capital by selling shares of capital stock and may impair our ability to acquire other companies or technologies by using common stock as consideration.

The market price of our common stock may be, and is likely to continue to be, highly volatile and subject to wide fluctuations. The market price of our common stock is likely to be highly volatile and could be subject to wide fluctuations in response to a number of factors that are beyond our control, including:

- dilution caused by our issuance of additional shares of common stock and other forms of equity securities, which we expect to make in connection with future acquisitions or capital financings to fund our operations and growth, to attract and retain valuable personnel and in connection with future strategic partnerships with other companies;
- announcements of new acquisitions or other business initiatives by our competitors;
- our ability to take advantage of new acquisitions or other business initiatives;
- quarterly variations in our revenues and operating expenses;
- changes in the valuation of similarly situated companies, both in our industry and in other industries;
- changes in analysts' estimates affecting us, our competitors and/or our industry;
- changes in the accounting methods used in or otherwise affecting our industry;
- additions and departures of key personnel;
- announcements by relevant governments pertaining to additional quota restrictions; and
- fluctuations in interest rates and the availability of capital in the capital markets.

Some of these factors are beyond our control, and the impact of these risks, singly or in the aggregate, may result in material adverse changes to the market price of our common stock and/or our results of operations and financial condition.

We do not expect to pay dividends in the foreseeable future. We do not intend to declare dividends for the foreseeable future, as we anticipate that we will reinvest any future earnings in the development and growth of our business. Therefore, investors will not receive any funds unless they sell their common stock, and stockholders may be unable to sell their shares on favorable terms or at all. Investors cannot be assured of a positive return on investment or that they will not lose the entire amount of their investment in the common stock.

Our common stock may be considered to be a "penny stock" and, as such, any the market for our common stock may be further limited by certain SEC rules applicable to penny stocks. To the extent the price of our common stock remains below \$5.00 per share or we have a net tangible assets of \$2,000,000 or less, our common shares will be subject to certain "penny stock" rules promulgated by the SEC. Those rules impose certain sales practice requirements on brokers who sell penny stock to persons other than established customers and accredited investors (generally institutions with assets in excess of \$5,000,000 or individuals with net worth in excess of \$1,000,000). For transactions covered by the penny stock rules, the broker must make a special suitability determination for the purchaser and receive the purchaser's written consent to the transaction prior to the sale. Furthermore, the penny stock rules generally require, among other things, that brokers engaged in secondary trading of penny stocks provide customers with written disclosure documents, monthly statements of the market value of penny stocks, disclosure of the bid and asked prices and disclosure of the compensation to the brokerage firm and disclosure of the sales person working for the brokerage firm. These rules and regulations adversely affect the ability of brokers to sell our common shares and limit the liquidity of our securities.

We are a "smaller reporting company" and, as such are allowed to provide less disclosure than larger public companies. We are currently a "smaller reporting company," meaning that we are not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent company that is not a smaller reporting company and have a public float of less than \$75 million and annual revenues of less than \$50 million during the most recently completed fiscal year. As a "smaller reporting company", we are able to provide simplified executive compensation disclosures in our SEC filings, are exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that independent registered public accounting firms provide an attestation report on the effectiveness

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of internal control over financial reporting, and have certain other decreased disclosure obligations in their SEC filings, including, among other things, only being required to provide two years of audited financial statements in annual reports. Decreased disclosures in our SEC filings due to our status as a “smaller reporting company” may make it harder for investors to analyze our results of operations and financial prospects.

Item 1B. Unresolved Staff Comments.

Not applicable.

Item 2. Properties.

We have a lease through December 2020 for 10,395 square feet of office space located at 55 N. Arizona Ave., Suite 310, Chandler, Arizona. Monthly rental payments, including common area maintenance charges, are \$17,974.

We have a lease through January 2018 for approximately 3,023 square feet of office space in San Diego, California at a monthly expense of \$10,127, excluding common area maintenance charges.

We have a month-to-month lease of 518 square feet of office space located in Dartmouth, Nova Scotia, at a monthly rental expense of approximately \$500 per month, including common area maintenance charges.

Item 3. Legal Proceedings.

As of the date of this report, there are no pending legal proceedings to which we or our properties are subject, except for routine litigation incurred in the normal course of business.

Item 4. Not applicable.

Part II

Item 5. Market for Registrant’s Common Equity, Related Stockholder Matter and Issuer Purchases of Equity Securities

Our common stock is quoted on the OTC Bulletin Board under the stock symbol “MFON”.

Our common stock trades only sporadically and has experienced in the past, and is expected to experience in the future, significant price and volume volatility.

The following table shows the reported high and low closing bid quotations per share for our common stock based on information provided by the OTC Bulletin Board for the periods indicated. Quotations reflect inter-dealer prices, without markup, markdown or commissions and may not represent actual transactions.

Year Ended December 31, 2015	High	Low
Fourth Quarter	\$ 0.79	\$ 0.41
Third Quarter	\$ 1.00	\$ 0.55
Second Quarter	\$ 1.20	\$ 0.75
First Quarter	\$ 1.49	\$ 1.12
Year Ended December 31, 2014	High	Low
Fourth Quarter	\$ 1.66	\$ 1.07
Third Quarter	\$ 1.38	\$ 0.86
Second Quarter	\$ 1.50	\$ 1.05
First Quarter	\$ 1.89	\$ 1.39

Holders of Record

As of March 23, 2016, there were 354 holders of record of our common stock, not including shares held in street name.

Dividend Policy

We have not paid any cash dividends since our inception and do not contemplate paying dividends in the foreseeable future. It is anticipated that earnings, if any, will be retained for the operation of our business.

Stock Repurchases

We did not repurchase any of our common stock in 2015 or 2014.

Securities Authorized for Issuance Under Equity Compensation Plans

The following table sets forth additional information as of December 31, 2015 with respect to the shares of common stock that may be issued upon the exercise of options and other rights under our existing equity compensation plans and arrangements in effect as of December 31, 2015. The information includes the number of shares covered by, and the weighted average exercise price of, outstanding options and the number of shares remaining available for future grant, excluding the shares to be issued upon exercise of outstanding options.

Plan Category	Number of securities to be issued upon exercise of outstanding options	Weighted-average exercise price of outstanding options	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans not approved by security holders ⁽¹⁾	5,043,228	\$ 1.37	1,041,787
Equity compensation plans approved by security holders	-	-	-
Total	5,043,228	\$ 1.37	1,041,787

(1) Comprised of our 2010 Incentive Stock Plan and our 2013 Incentive Stock Plan

Item 6. Selected Financial Data

As a smaller reporting company, as defined by Section 10(f)(1) of Regulation S-K, we are not required to provide the information set forth in this Item.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the financial statements and the related notes and other information that are included elsewhere in this Form 10-K. This discussion contains forward looking statements based upon current expectations that involve risks and uncertainties, such as our plans, objectives, expectations, and intentions. Actual results and the timing of events could differ materially from those anticipated in these forward looking statements as a result of a number of factors, including those set forth under the cautionary note regarding "Forward Looking Statements" contained in Item 1.A – "Risk Factors".

Overview

We are in the business of developing and operating proprietary platforms over which resellers, brands and enterprises can conduct localized mobile marketing campaigns. Our proprietary platforms allow resellers, brands and enterprises to market their products and services to consumers through text messages sent directly to the consumers' mobile phones, content on printed receipts, mobile device applications, which consists of software available to both phones and tablet PCs. We generate revenue by charging the brands and enterprises a per-message transactional fee, or through fixed or variable software licensing fees. Our customers include national franchisers, professional sports teams and associations and other national brands such as Sonic, Subway, Jamba Juice, Chick-Fil-A, Baskin Robbins, and others.

Mobile phone users represent a large and captive audience. While televisions, radios, and even PCs are often shared by multiple consumers, mobile phones are personal devices representing a unique and individual address to the end user. We believe that the

future of digital media will be significantly influenced by mobile phones where a direct, personal conversation can be had with the world's largest target audience. According to a report published by International Data Corporation (IDC), by 2015, more U.S. Internet users will access the Internet through mobile devices than through PCs or other wireline devices (Worldwide New Media Market Model 1H-2012 Highlights: Internet Becomes Ever More Mobile, Ever Less PC-Based (IDC #237459)). The IDC study further reports that the number of people accessing the Internet, in the U.S., through PCs will shrink from 240 million consumers in 2012 to 225 million in 2016. At the same time, the number of mobile users will increase from 174 million to 265 million. We believe the future of mobile applications and services includes banking, commerce, advertising, video, games and just about every other aspect of both on and offline life.

Our "C4" Mobile Marketing and customer relationship management platform is a Web-hosted software solution enabling our clients to develop, execute, and manage a variety of marketing engagements, to a consumer's mobile phone. Our C4 solution allows our clients to communicate directly with their customers through Short Messaging Service, or SMS, multi-media messaging, and interactive voice response interactions, all of which are facilitated via a set of graphical user interfaces operated from any Web browser.

Our C4 platform also allows our customers to deploy and administer our "Stampt" mobile device loyalty application. Stampt is a smartphone replacement for "Buy 10, Get 1 free" punch cards. Consumers no longer need to worry about forgetting paper-based loyalty punch cards. Stampt makes it easy to receive all of the rewards consumers want from their favorite businesses. Consumers can use Stampt throughout the United States to earn free sandwiches, coffee, pizza, frozen yogurt, donuts, bagels and more.

Stampt's nearby feature shows consumers all of the rewards they can earn at nearby businesses. From the Stampt mobile device application, consumers simply tap any business to learn more about that business and to see all of the loyalty points they have earned at that business. Consumers can keep track of all of the rewards they are close to earning through the "my cards" feature displayed in the application's interface. Once a consumer has earned all of the Stampt's they need for a reward, they simply show the cashier and click "tap to redeem" button from the application interface on their device. Our customers can create and manage any Stampt program from the C4 platform's set of Web-based interfaces.

Our SmartReceipt solution enables our customers with the ability to control the content on receipts printed from their point of sale, or POS system. SmartReceipt is a software application that is installed on the POS which dynamically controls what is printed on receipts such as coupons, announcements, or other calls-to-action such as invitations to participate in a survey. Receipt includes a Web-based interface where users can design receipt content and implement business rules to dictate what receipt content is printed in particular situations. All receipt content is also transmitted to SmartReceipt's server back-end for storage and analysis. Our C4 solution integrates with SmartReceipt by support SMS marketing or Stampt mobile application calls-to-action which can be printed on receipt content by SmartReceipt.

We also offer our clients reporting and analytics capabilities through the C4 solution which allows our clients to assess the effectiveness of their mobile marketing campaigns and design more effective campaigns. Our proprietary platform connects to all wireless carriers so that any consumer, on any wireless service (for example, Verizon), can join our customer's mobile marketing campaign. Once the consumer has subscribed to our customer's mobile marketing campaign, our C4 Web-based software solution serves as a tool by which our customers can initiate messages and other communications back to their subscribed consumers, as well as configure and administer their mobile marketing campaigns.

We believe that mobile devices are emerging as an important interactive channel for brands to reach consumers since it is the only media platform that has access to the consumer virtually anytime and anywhere. According to eMarketer's article, published August 1, 2013 (<http://www.emarketer.com/Article/Digital-Set-Surpass-TV-Time-Spent-with-US-Media/1010096>), U.S. adults now spend more time on their mobile device than any other digital channel such as PCs. eMarketer also reports that U.S. adults already spend more time on their mobile phone than viewing print or listening to radio combined. We believe that brands and advertising agencies are recognizing the unique benefits of the mobile channel and they are increasingly integrating mobile media within their overall advertising and marketing campaigns. Our objective is to become the industry leader in connecting brands and enterprises to consumers' mobile phones.

Recent Events

2016 Securities Purchase Agreement

In March 2016, we conducted the private placement of 3,256,000 shares of our common stock, at a price of \$0.60 per share, for the gross proceeds of \$1,953,600. The offering was conducted by our management and no commission or other selling fees were paid by us. Pursuant to the terms of the offering, we entered into registration rights agreement with the investors pursuant to which we agreed to file with the SEC a resale registration statement covering the common shares by May 31, 2016.

Working Capital Line of Credit Facility

In March 2016, we entered into a Working Capital Line of Credit Facility (the “Facility”) with Silicon Valley Bank to provide up to \$2 million to finance our general working capital needs. The Facility is funded based on cash on deposit balances and advances against our accounts receivable based on customer invoicing. Interest on Facility borrowings is calculated at rates between the prime rate minus 1.75% and prime rate plus 3.75% based on the borrowing base formula used at the time of borrowing. The Facility contains standard events of default, including payment defaults, breaches of representations, breaches of affirmative or negative covenants, and bankruptcy. There are no financial covenants and as of the date of this report there are no borrowings under the Facility.

LiveLenz Acquisition

On January 15, 2016, we acquired all of the outstanding capital stock of LiveLenz Inc., a Nova Scotia corporation (“LiveLenz”), pursuant to an agreement dated January 15, 2016 among the Company and the stockholders of LiveLenz. Pursuant to the agreement, we acquired all of the capital stock of LiveLenz in consideration of our issuance of 1,000,000 shares (“Consideration Shares”) of our common stock to the LiveLenz stockholders and our issuance of an additional 15,000 share of our common stock in satisfaction of certain liabilities of LiveLenz. The agreement included customary representations, warranties, and covenants by us and the LiveLenz stockholders, including the LiveLenz stockholders’ agreement to indemnify us against certain claims or losses resulting from certain breaches of representations, warranties or covenants by the LiveLenz stockholders in the agreement. Pursuant to the agreement, the LiveLenz stockholders have agreed to adjust the number of Consideration Shares downward based on LiveLenz’ working capital as of the closing and in the event of any claims for indemnification by us. The LiveLenz stockholders have agreed that 100% of the Consideration Shares will be escrowed for a period of 18 months and subject to forfeiture based on indemnification claims by us or the final determination of LiveLenz’ working capital as of the closing date.

2015 Securities Purchase Agreement

In March 2015, we conducted the private placement of our securities for the gross proceeds of \$4,805,000. In the private placement, we sold 4,805,000 units of our securities at a price of \$1.00 per unit. Each unit consists of one share of our common stock and a common stock purchase warrant to purchase one-quarter share of our common stock, over a five year period, at an exercise price of \$1.20 per share. We entered into a Registration Rights Agreement with the investors, pursuant to which we agreed to cause a resale registration statement covering the common shares made part of the units to be filed by April 30, 2015. The Registration Rights Agreement also provides that we must make certain payments as liquidated damages to the investors if it fails to timely file the registration statement and cause it to become effective. The Registration Rights Agreement was declared effective as of September 10, 2015 and liquidated damages in regards to the timely filing of the registration statement have been waived.

Emerging Growth Equities, Ltd. (“EGE”) acted as placement agent for the private placement and received \$234,500 in commissions from us. In addition, for its services as placement agent, we issued to EGE warrants to purchase an aggregate of 234,500 units, as defined above, exercisable for a period of five years from the closing date, at an exercise price of \$1.00 per unit.

2014 Smart Receipt Acquisition

On March 12, 2014, we acquired all of the assets of SmartReceipt, Inc. in exchange for: (1) our payment at closing of \$2.212 million of cash, net of a \$150,000 loan made by us to SmartReceipt in January 2014; (2) our issuance of 504,884 shares of our common stock; and (3) our earn-out payment of 200% of the “eligible revenue” over the 12 month period following the close of the transaction (“earn-out period”). The “eligible revenue” will consist of: 100% of our revenue derived during the earn out period from the sale of SmartReceipt products and services to certain SmartReceipt clients as of the close (the “designated SmartReceipt clients”); plus 50% of our revenue derived during the earn out period from the sale of our products and services to the designated SmartReceipt clients, plus 50% of our revenue derived during the earn out period from the sale of SmartReceipt products and services to our clients who are not designated SmartReceipt clients. The earn-out payment will be payable in our common shares at a rate of \$1.38 per share, representing the volume weighted average trading price of our common stock for the 90 trading days preceding the initial close.

2014 Securities Purchase Agreement

In March 2014, we conducted the private placement of 5,413,000 units of our securities at a price of \$1.00 per unit for the gross proceeds of up to \$5,413,000. Each unit consisted of one share of our common stock and a common stock purchase warrant to purchase one-quarter share of our common stock, over a five year period, at an exercise price of \$1.20 per share. We entered into a Registration Rights Agreement with the investors, pursuant to which we agreed to cause a resale registration statement covering the common shares made part of the units to be filed by May 15, 2014. The Registration Rights Agreement also provides that we must make certain payments as liquidated damages to the investors if we fail to timely file the registration statement and cause it to become effective. EGE acted as placement agent for the private placement and received \$370,685 in commissions from us. In addition, for its services as placement agent, we issued to EGE warrants to purchase an aggregate of 370,685 units, as defined above, exercisable for a period of five years from the closing date, at an exercise price of \$1.00 per unit.

Results of Operations

Year Ended December 31, 2015 Compared to Year Ended December 31, 2014

Revenues

Revenues consist of several different lines of business. These include, 800 hosted call-in (“IVR”); short message service (“SMS”); Stamp (our loyalty application); Smart Receipt; point-of-purchase (“POP”) marketing display; campaign revenue which is derived from a flat monthly subscription fee associated with “text-to-win” campaigns by our customers; Ad Model revenues which are paid on a per coupon redemption basis, and other revenues.

Revenues for 2015 were \$4,618,988, an increase of \$618,786, or 15.5%, compared to 2014. The net increase is primarily attributable to revenues attributed to Smart Receipt and SMS of \$697,837. This increase was offset by decreases in IVR, Stamp and campaign revenues, which decreased \$127,540 compared to 2014.

Cost of Revenues

Cost of revenues for 2015 was \$1,192,491, an increase of \$125,574, or 11.8%, compared to 2014. This increase is primarily due to higher startup and application fees on new contracts whose return on investment is not immediately realized. These are offset by lower IVR cost of revenues in proportion to the decline in revenues.

General and Administrative

General and administrative expenses consist primarily of salaries and personnel related expenses, stock-based compensation expense, consulting costs and other expenses.

General and administrative expenses increased \$285,050, or 6.7%, during 2015 compared to 2014. The increase in general and administrative expense was primarily due to increased personnel expenses, facilities expenses, and bad debt expense.

Personnel related expenses increased \$631,680, due to increased management and support headcount as compared to 2014. Facilities expense increased \$94,211 primarily related to the lease termination charge, increased rent at the corporate headquarters and additional leased office space located in San Diego, California. Bad debt expense increased by \$201,633 due to past due amounts on a large contract. These increases were offset primarily by decreases in stock based compensation of \$507,381. Consulting expenses decreased \$104,185 related to the SmartReceipt acquisition in 2014. Legal fees decreased \$43,216 due to lower legal costs associated with our business activities during the period. Investor relations fees decreased \$21,428 due to the engagement of a new investor relations firm in September 2014. Accounting fees decreased \$79,878 due to the prior year additional costs related to the acquisition of Smart Receipt and bringing some previously outsourced activities in house.

Sales and Marketing Expense

Sales and marketing expenses consist primarily of salaries and personnel related expenses, stock-based compensation expense, sales travel, consulting costs and other expenses.

Sales and marketing expenses increased \$129,938, or 3.3%, during 2015 compared to 2014. The change was primarily due to personnel related expenses increasing by \$532,344 and an increase in trade show expense of \$40,988. These increases were offset by decreased stock based compensation of \$363,087 and travel and entertainment expenses of \$114,568 over the prior year.

Engineering, Research, and Development Expense

Engineering, research, and development expenses consist primarily of salaries and personnel related expenses, stock-based compensation expense, consulting costs and other expenses.

Engineering, research, and development expenses decreased \$617,457, or 45.9%, during 2015 compared to 2014. The decrease was primarily due to the capitalization of production costs incurred in relation to internal software development (see notes 1 and 4) and lower consulting costs of \$224,339 as compared to 2014. These decreases were partially offset by increased personnel costs primarily related to an increase in staffing to support the Company’s growth.

Depreciation and Amortization Expense

Depreciation and amortization expense consists of depreciation on our equipment and amortization of our intangible assets.

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Depreciation and amortization expense decreased \$54,595, or 13.1%, during 2015 compared to 2014 as a result of a decrease in amortization expense from our acquired intangible assets of SmartReceipt in 2014.

Goodwill Impairment and Intangible Asset Impairment

During 2015 and 2014, we recorded goodwill impairment charges of \$0 and \$4,078,693, respectively, relating to our recent acquisitions. Also during 2015 and 2014, we recorded intangible asset impairment charges of \$21,188 and \$961,436, respectively. The impairment charges were based on our valuation of these acquired assets at December 31, 2015 and 2014.

Interest Expense

Interest expense consists of stated or implied interest expense on our notes payable, amortization of note discounts, and amortization of deferred financing costs.

Interest expense increased \$847 or 100%, during 2015 compared to 2014.

Change in Fair Market Value of Derivative Liabilities

The change in fair value of derivative liabilities for 2015 and 2014 was a gain of \$42,659 and \$63,517, respectively.

The value of the derivative liabilities at any given date is based primarily on the value and volatility of our common stock, among other less significant factors. In periods when our stock price or volatility rises, we expect to record a loss in the change in fair value of the derivative liabilities. The conversion of convertible notes payable into common shares in June 2013, reducing the number of warrants subject to derivative liability treatment, significantly reduced our ongoing exposure to derivative liability valuation adjustments. All warrants which included embedded derivative liabilities have expired at December 31, 2015, which was the primary cause of the gain during 2015.

Gain on Adjustment in Contingent Consideration

The gain on adjustment in contingent consideration for 2015 and 2014 was a gain of \$89,740 and \$1,492,000, respectively. The gains relate to a decrease in the fair value of the contingent consideration resulting from re-measurement of the SmartReceipt and Stamp earn-out liabilities.

Liquidity and Capital Resources

As of December 31, 2015, we had current assets of \$1,465,830, including \$634,129 in cash, and current liabilities of \$1,059,446, resulting in working capital of \$406,384. Since December 31, 2015, we have entered into a Working Capital Line of Credit Facility with Silicon Valley Bank to provide up to \$2 million to finance our general working capital needs. In addition, our working capital has increased as a result of our gross receipts from our private placement of approximately \$2 million of securities in March 2016, partially offset by continuing losses from operations. We believe that as of the date of this report, we have working capital on hand that is adequate to support our working capital for at least the next 12 months. However, there can be no assurance that we will not require additional capital within the next 12 months. If we require additional capital, we will seek to obtain this through the sale of our securities and, if available, bank lines of credit. However, there can be no assurance we will be able to obtain access to capital as and when needed and, if so, the terms of any available financing may not be subject to commercially reasonable terms.

Cash Flows

	Years ended December 31,	
	2015	2014
Net cash provided by (used in):		
Operating activities	\$ (4,001,430)	\$ (4,298,302)
Investing activities	(783,171)	(2,403,283)
Financing activities	4,570,500	4,977,130
Net change in cash	<u>\$ (214,101)</u>	<u>\$ (1,724,455)</u>

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Operating Activities

We used cash in operating activities totaling \$4,001,430 in 2015 and \$4,298,302 in 2014, respectively. The decrease in cash used in operating activities in 2015 compared to 2014 was due primarily to a higher gross margin during 2015.

Investing Activities

Investing activities during 2015 includes \$736,665 of capitalized software development costs and \$46,506 of equipment purchases. Investing activities during 2014 includes \$2,368,019 in cash consideration used in our acquisitions and the remainder relates to additions to fixed assets and capitalized patent costs.

Financing Activities

Financing activities for 2015 include net proceeds from the sale of common stock units of \$4,570,500. Financing activities for 2014 include net proceeds from the sale of common stock units of \$4,977,130.

Critical Accounting Policies and Estimates

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires the use of estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Our management periodically evaluates the estimates and judgments made, including those related to share based compensation and valuation of the derivative liability. Management bases its estimates and judgments on historical experience and on various factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates.

The following critical accounting policies affect the more significant judgments and estimates used in the preparation of the Company's consolidated financial statements.

Revenue Recognition and Concentrations

Our SmartReceipt and C4 Mobile Marketing and customer relationship management are hosted solutions. We generate revenue from licensing our software to clients in our software as a service model, per-message and per-minute transactional fees, and customized professional services. We recognize license/subscription fees over the period of the contract, service fees as the services are performed, and per-message or per-minute transaction revenue when the transaction takes place. We recognize revenue at the time that the services are rendered, the selling price is fixed, and collection is reasonably assured, provided no significant obligations remain. We consider authoritative guidance on multiple deliverables in determining whether each deliverable represents a separate unit of accounting. Some customers are billed on a month to month basis with no contractual term and are collected by credit card. Revenue is recognized at the time that the services are rendered and the selling price is fixed with a set range of plans. Cash received in advance of the performance of services is recorded as deferred revenue.

We generate revenue from the Stamp App through customer agreements with business owners. Revenue is principally derived from monthly subscription fees which provide a license for unlimited use of the Stamp App by the business owners and their customers. The subscription fee is billed each month to the business owner. Revenue is recognized monthly as the subscription revenues are billed. There are no per-minute or transaction fees associated with the Stamp App.

During the years ended December 31, 2015 and 2014, one customer accounted for 31% and 29% of our revenues, respectively.

Share-based compensation expense

Share-based compensation cost is measured at the date of grant, based on the calculated fair value of the stock-based award, and is recognized as expense over the employee's requisite service period (generally the vesting period of the award). We estimate the fair value of employee stock options granted using the Black-Scholes Option Pricing Model. Key assumptions used to estimate the fair value of stock options include the exercise price of the award, the fair value of the our common stock on the date of grant, the expected option term, the risk free interest rate at the date of grant, the expected volatility and the expected annual dividend yield on our Company's common stock. We use comparable public company data among other information to estimate the expected price volatility and the expected forfeiture rate.

Derivative Financial Instruments

We do not use derivative instruments to hedge exposures to cash flow, market or foreign currency risks.

We review the terms of the common stock, warrants and convertible debt we issue to determine whether there are embedded derivative instruments, including embedded conversion options, which are required to be bifurcated and accounted for separately as derivative financial instruments. In circumstances where the host instrument contains more than one embedded derivative instrument, including the conversion option, that is required to be bifurcated, the bifurcated derivative instruments are accounted for as a single, compound derivative instrument.

Bifurcated embedded derivatives are initially recorded at fair value and are then revalued at each reporting date with changes in the fair value reported as non-operating income or expense. When the equity or convertible debt instruments contain embedded derivative instruments that are to be bifurcated and accounted for as liabilities, the total proceeds received are first allocated to the fair value of all the bifurcated derivative instruments. The remaining proceeds, if any, are then allocated to the host instruments themselves, usually resulting in those instruments being recorded at a discount from their face value.

The fair value of the derivatives is estimated using a Monte Carlo simulation model. The model utilizes a series of inputs and assumptions to arrive at a fair value at the date of inception and each reporting period. Some of the key assumptions include the likelihood of future financing, stock price volatility, and discount rates.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements.

Item 8. Financial Statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors
Mobivity Holdings Corp.
Chandler, AZ 85225

We have audited the accompanying consolidated balance sheets of Mobivity Holdings Corp. (the “Company”) as of December 31, 2015 and 2014 and the related statements of operations, stockholders' equity (deficit) and cash flows for the twelve month periods then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial positions of the Company as of December 31, 2015 and 2014 and the results of its operations and cash flows for the periods described above in conformity with accounting principles generally accepted in the United States of America.

/s/ M&K CPAS, PLLC
www.mkacpas.com
Houston, Texas
March 30, 2016

Mobivity Holdings Corp.
Consolidated Balance Sheets

	December 31,	
	2015	2014
ASSETS		
Current assets		
Cash	\$ 634,129	\$ 848,230
Accounts receivable, net of allowance for doubtful accounts of \$237,383 and \$90,869, respectively	700,356	384,566
Other current assets	131,345	104,214
Total current assets	1,465,830	1,337,010
Goodwill	1,921,072	1,921,072
Intangible assets, net	2,373,689	2,010,952
Other assets	173,022	99,476
TOTAL ASSETS	\$ 5,933,613	\$ 5,368,510
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities		
Accounts payable	\$ 375,363	\$ 412,551
Accrued and deferred personnel compensation	414,314	185,214
Deferred revenue and customer deposits	72,624	180,941
Derivative liabilities	-	42,659
Other current liabilities	197,145	43,525
Earn-out payable	-	840,000
Total current liabilities	1,059,446	1,704,890
Total liabilities	1,059,446	1,704,890
Commitments and Contingencies (See Note 12)		
Stockholders' equity (deficit)		
Common stock, \$0.001 par value; 50,000,000 shares authorized; 28,787,991 and 22,748,193 shares issued and outstanding	28,788	22,748
Equity payable	100,862	100,862
Additional paid-in capital	69,903,527	62,565,974
Accumulated deficit	(65,159,010)	(59,025,964)
Total stockholders' equity (deficit)	4,874,167	3,663,620
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)	\$ 5,933,613	\$ 5,368,510

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Consolidated Statements of Operations

	<u>Years ended December 31,</u>	
	<u>2015</u>	<u>2014</u>
Revenues		
Revenues	\$ 4,618,988	\$ 4,000,202
Cost of revenues	1,192,491	1,066,917
Gross margin	3,426,497	2,933,285
Operating expenses		
General and administrative	4,555,895	4,270,845
Sales and marketing	4,024,971	3,895,033
Engineering, research, and development	728,741	1,346,198
Depreciation and amortization	361,840	416,435
Total operating expenses	9,671,447	9,928,511
Loss from operations	(6,244,950)	(6,995,226)
Other income/(expense)		
Interest income	1,540	2,131
Interest expense	(847)	-
Goodwill impairment	-	(4,078,693)
Intangible asset impairment	(21,188)	(961,436)
Change in fair value of derivative liabilities	42,659	63,517
Gain on debt extinguishment	-	36,943
Gain on adjustment in contingent consideration	89,740	1,492,000
Total other income/(expense)	111,904	(3,445,538)
Loss before income taxes	(6,133,046)	(10,440,764)
Income tax expense	-	-
Net loss	\$ (6,133,046)	\$ (10,440,764)
Net loss per share - basic and diluted	\$ (0.23)	\$ (0.49)
Weighted average number of shares during the period - basic and diluted	26,684,927	21,203,563

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Consolidated Statement of Stockholders' Equity (Deficit)

	Common Stock		Equity Payable	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Dollars				
Balance, December 31, 2013	16,319,878	\$ 16,320	\$ 108,170	\$ 54,452,697	\$ (48,585,200)	\$ 5,991,987
Issuance of common stock for financing, net of transaction costs of \$448,635	5,413,000	5,413	-	4,971,717	-	4,977,130
Issuance of common stock for acquisition	504,884	505	-	672,000	-	672,505
Issuance of common stock and warrants for services	510,431	510	(7,308)	536,225	-	529,427
Stock based compensation	-	-	-	1,933,335	-	1,933,335
Net loss	-	-	-	-	(10,440,764)	(10,440,764)
Balance, December 31, 2014	22,748,193	\$ 22,748	\$ 100,862	\$ 62,565,974	\$ (59,025,964)	\$ 3,663,620
Issuance of common stock for financing, including transaction costs of \$234,500	4,805,000	4,805	-	4,565,695	-	4,570,500
Issuance of common stock for services	310,870	311	-	362,690	-	363,001
Issuance of common stock for earnout	903,928	904	-	749,356	-	750,260
Stock based compensation	20,000	20	-	1,659,812	-	1,659,832
Net loss	-	-	-	-	(6,133,046)	(6,133,046)
Balance, December 31, 2015	28,787,991	\$ 28,788	\$ 100,862	\$ 69,903,527	\$ (65,159,010)	\$ 4,874,167

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Consolidated Statements of Cash Flows

	Years ended December 31,	
	2015	2014
<u>OPERATING ACTIVITIES</u>		
Net loss	\$ (6,133,046)	\$ (10,440,764)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Bad debt expense	206,147	4,514
Common stock issued for services	363,001	529,427
Stock-based compensation	1,659,832	1,933,335
Depreciation and amortization expense	361,840	416,435
Gain on fair value of derivative liabilities	(42,659)	(63,517)
Loss on disposal of fixed assets	6,943	680
Gain on adjustment in contingent consideration	(89,740)	(1,492,000)
Gain on debt extinguishment	-	(36,943)
Goodwill impairment	-	4,078,693
Intangible asset impairment	21,188	961,436
Increase (decrease) in cash resulting from changes in:		
Accounts receivable	(527,569)	58,883
Other current assets	(21,499)	30,268
Other Assets	(43,083)	(1,835)
Accounts payable	(37,188)	(131,098)
Accrued and deferred personnel compensation	229,100	(5,827)
Deferred revenue and customer deposits	(108,317)	(147,142)
Other liabilities	153,620	7,153
<i>Net cash used in operating activities</i>	<u>(4,001,430)</u>	<u>(4,298,302)</u>
<u>INVESTING ACTIVITIES</u>		
Purchases of equipment	(46,506)	(35,264)
Capitalized software development costs	(736,665)	-
Acquisitions	-	(2,368,019)
<i>Net cash used in investing activities</i>	<u>(783,171)</u>	<u>(2,403,283)</u>
<u>FINANCING ACTIVITIES</u>		
Proceeds from issuance of common stock, net of issuance costs	4,570,500	4,977,130
<i>Net cash provided by financing activities</i>	<u>4,570,500</u>	<u>4,977,130</u>
<i>Net change in cash</i>	(214,101)	(1,724,455)
<i>Cash at beginning of period</i>	<u>848,230</u>	<u>2,572,685</u>
<i>Cash at end of period</i>	<u>\$ 634,129</u>	<u>\$ 848,230</u>

Supplemental disclosures:

Cash paid during period for :

Interest	\$ 847	\$ -
Non-cash investing and financing activities:		
Issuance of common stock for acquisitions	\$ -	\$ 672,505
Issuance of common stock for earn-out payable	\$ 750,260	\$ -
Earn-out payable recorded for acquisition	\$ -	\$ 2,273,000

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Notes to Consolidated Financial Statements

1. The Company and Summary of Significant Accounting Policies

The Company

We develop and operate proprietary platforms over which resellers, brands and enterprises can conduct localized mobile marketing campaigns. Our proprietary platforms allow resellers, brands and enterprises to market their products and services to consumers through text messages sent directly to the consumers' mobile phones and mobile smartphone applications, consisting of software available to both phones and tablets PCs. Our customers include national franchisers, professional sports teams and associations and other national brands such as Sonic, Subway, Jamba Juice, Chick-Fil-A, Baskin Robbins and others.

Our "C4" Mobile Marketing and customer relationship management platform is a Web-hosted software solution enabling our clients to develop, execute, and manage a variety of marketing engagements to a consumer's mobile phone. Our C4 solution allows our clients to communicate directly with their customers through Short Messaging Service, or SMS, multi-media messaging, smartphone application development and interactive voice response interactions, all of which are facilitated via a set of graphical user interfaces operated from any Web browser.

Our C4 platform also allows our customers to deploy and administer our "Stampt" mobile device loyalty application. Stampt is a smartphone replacement for "Buy 10, Get 1 free" punch cards. Consumers no longer need to worry about forgetting paper-based loyalty punch cards. Stampt makes it easy to receive all of the rewards consumers want from their favorite businesses. Consumers can use Stampt throughout the United States to earn free sandwiches, coffee, pizza, frozen yogurt, donuts, bagels and more. Stampt's nearby feature shows consumers all of the rewards they can earn at nearby businesses. From the Stampt mobile device application, consumers simply tap any business to learn more about that business and to see all of the loyalty points they have earned at that business. Consumers can keep track of all of the rewards they are close to earning through the "my cards" feature displayed in the application's interface. Once a consumer has earned all of the Stampts they need for a reward, they simply show the cashier and click "tap to redeem" button from the application interface on their device. Our customers can create and manage any Stampt program from the C4 platform's set of Web-based interfaces.

We generate revenue by charging the resellers, brands and enterprises a per-message transactional fee, or through fixed or variable software licensing fees.

Our SmartReceipt solution enables our customers with the ability to control the content on receipts printed from their point of sale, or POS system. SmartReceipt is a software application that is installed on the POS which dynamically controls what is printed on receipts such as coupons, announcements, or other calls-to-action such as invitations to participate in a survey. SmartReceipt includes a Web-based interface where users can design receipt content and implement business rules to dictate what receipt content is printed in particular situations. All receipt content is also transmitted to SmartReceipt's server back-end for storage and analysis. Our SmartReceipt solution is fully integratable with our C4 platform and allows our customers to print on receipts SMS marketing or Stampt mobile application calls-to-actions.

Liquidity

We have \$0.6 million of cash as of December 31, 2015. We had a net loss of \$6.1 million for the year then ended, and we used \$4.0 million of cash in our operating activities during 2015. Based on our projected 2016 results and, if necessary, our ability to reduce certain variable operating expenses, we believe that our existing capital, together with the \$2 million of securities from our private placement in March 2016 and our \$2 million Working Capital Line of Credit (see Note 15), and anticipated cash flows from operations, will be sufficient to finance our operations through the first quarter of 2017.

If our cash reserves prove insufficient to sustain operations, we plan to raise additional capital by selling shares of capital stock or other equity or debt securities. However, there are no commitments or arrangements for future financings in place at this time, and we can give no assurance that such capital will be available on favorable terms or at all. We may need additional financing thereafter until we can achieve profitability. If we cannot, we will be forced to curtail our operations or possibly be forced to evaluate a sale or liquidation of our assets. Any future financing may involve substantial dilution to existing investors.

Although we are actively pursuing financing opportunities, we may not be able to raise cash on terms acceptable to us or at all. There can be no assurance that we will be successful in obtaining additional funding. Financings, if available, may be on terms that are dilutive to our shareholders, and the prices at which new investors would be willing to purchase our securities may be lower than the current price of our ordinary shares. The holders of new securities may also receive rights, preferences or privileges that are senior to those of existing holders of our ordinary shares. If additional financing is not available or is not available on acceptable terms, we will have to curtail our operations in the short term.

Principles of Consolidation and Basis of Presentation

The accompanying financial statements are consolidated and include the financial statements of Mobivity Holdings Corp. and our wholly-owned subsidiary. Intercompany transactions are eliminated.

Use of Estimates

Preparation of our consolidated financial statements in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP) requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying disclosures. These estimates are based on management's best knowledge of current events and actions we may undertake in the future. Significant estimates used are those related to: stock-based compensation; valuation of acquired assets, intangible assets and liabilities; useful lives for depreciation and amortization of long-lived assets; future cash flows associated with impairment testing for goodwill, indefinite-lived intangible assets and other long-lived assets; valuation of derivative liabilities; valuation allowance for deferred tax assets; and contingencies.

Actual results may ultimately differ from estimates, although management does not generally believe such differences would materially affect the consolidated financial statements in any individual year. However, in regard to ongoing impairment testing of goodwill and indefinite-lived intangible assets, significant deterioration in future cash flow projections or other assumptions used in estimating fair values versus those anticipated at the time of the initial valuations, could result in impairment charges that materially affect the consolidated financial statements in a given year.

Reclassifications

Certain prior year amounts have been reclassified to conform to the current year's presentation. The reclassifications had no effect on previously reported net loss.

Acquisitions

We account for acquired businesses using the purchase method of accounting. Under the purchase method, our consolidated financial statements reflect the operations of an acquired business starting from the completion of the acquisition. In addition, the assets acquired and liabilities assumed are recorded at the date of acquisition at their respective estimated fair values, with any excess of the purchase price over the estimated fair values of the net assets acquired recorded as goodwill.

Cash and Cash Equivalents

We minimize our credit risk associated with cash by periodically evaluating the credit quality of our primary financial institution. Our balances at times may exceed federally insured limits. We have not experienced any losses on our cash accounts.

Accounts Receivable, Allowance for Doubtful Accounts and Concentrations

Accounts receivable are carried at their estimated collectible amounts. We grant unsecured credit to substantially all of our customers. Ongoing credit evaluations are performed and potential credit losses are charged to operations at the time the account receivable is estimated to be uncollectible. Since we cannot necessarily predict future changes in the financial stability of our customers, we cannot guarantee that our reserves will continue to be adequate.

As of December 31, 2015 and 2014, we recorded an allowance for doubtful accounts of \$237,383 and \$90,869, respectively.

From time to time, we may have a limited number of customers with individually large amounts due. Any unanticipated change in one of the customer's credit worthiness could have a material effect on the results of operations in the period in which such changes or events occurred.

As of December 31, 2015, we had two customers whose balance represented 39% of total accounts receivable. As of December 31, 2014, we had one customer whose balance represented 23% of total accounts receivable.

Goodwill and Intangible Assets

Goodwill is tested for impairment at a minimum on an annual basis. Goodwill is tested for impairment at the reporting unit level by first performing a qualitative assessment to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying value. If the reporting unit does not pass the qualitative assessment, then the reporting unit's carrying value is compared to its fair value. The fair values of the reporting units are estimated using market and discounted cash flow approaches. Goodwill is

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considered impaired if the carrying value of the reporting unit exceeds its fair value. The discounted cash flow approach uses expected future operating results. Failure to achieve these expected results may cause a future impairment of goodwill at the reporting unit.

We conducted our annual impairment tests of goodwill as of December 31, 2015 and 2014. As a result of these tests, we recorded impairment charges to our goodwill during the years ended December 31, 2015 and 2014 of \$0 and \$4,078,693, respectively.

Intangible assets consist of patents and trademarks, purchased customer contracts, purchased customer and merchant relationships, purchased trade names, purchased technology, and non-compete agreements. Intangible assets are amortized over the period of estimated benefit using the straight-line method and estimated useful lives ranging from ten to twenty years. No significant residual value is estimated for intangible assets. We evaluate long-lived assets (including intangible assets) for impairment whenever events or changes in circumstances indicate that the carrying amount of a long-lived asset may not be recoverable. An asset is considered impaired if its carrying amount exceeds the undiscounted future net cash flow the asset is expected to generate.

The Company's evaluation of its long-lived assets completed during the years ended December 31, 2015 and 2014 resulted in impairment charges of \$21,188 and \$961,436, respectively.

Software Development Costs

Software development costs include direct costs incurred for internally developed products and payments made to independent software developers and/or contract engineers. The Company accounts for software development costs in accordance with the FASB guidance for the costs of computer software to be sold, leased, or otherwise marketed ("ASC Subtopic 985-20"). Software development costs are capitalized once the technological feasibility of a product is established and such costs are determined to be recoverable. Technological feasibility of a product encompasses technical design documentation and integration documentation, or the completed and tested product design and working model. Software development costs are capitalized once technological feasibility of a product is established and such costs are determined to be recoverable against future revenues. Technological feasibility is evaluated on a project-by-project basis. Amounts related to software development that are not capitalized are charged immediately to the appropriate expense account. Amounts that are considered 'research and development' that are not capitalized are immediately charged to engineering, research, and development expense.

Capitalized costs for those products that are cancelled or abandoned are charged to product development expense in the period of cancellation. Commencing upon product release, capitalized software development costs are amortized to "Amortization Expense - Development" based on the straight-line method over a twenty-four month period.

The Company evaluates the future recoverability of capitalized software development costs on an annual basis. For products that have been released in prior years, the primary evaluation criterion is ongoing relations with the customer.

Derivative Financial Instruments

We do not use derivative instruments to hedge exposures to cash flow, market or foreign currency risks.

We review the terms of the common stock, warrants and convertible debt we issue to determine whether there are embedded derivative instruments, including embedded conversion options, which are required to be bifurcated and accounted for separately as derivative financial instruments. In circumstances where the host instrument contains more than one embedded derivative instrument, including the conversion option, that is required to be bifurcated, the bifurcated derivative instruments are accounted for as a single, compound derivative instrument.

Bifurcated embedded derivatives are initially recorded at fair value and are then revalued at each reporting date with changes in the fair value reported as non-operating income or expense. When the equity or convertible debt instruments contain embedded derivative instruments that are to be bifurcated and accounted for as liabilities, the total proceeds received are first allocated to the fair value of all the bifurcated derivative instruments. The remaining proceeds, if any, are then allocated to the host instruments themselves, usually resulting in those instruments being recorded at a discount from their face value.

The fair value of the derivatives is estimated using a Monte Carlo simulation model. The model utilizes a series of inputs and assumptions to arrive at a fair value at the date of inception and each reporting period. Some of the key assumptions include the likelihood of future financing, stock price volatility, and discount rates.

Revenue Recognition and Concentrations

Our SmartReceipt and C4 Mobile Marketing and customer relationship management are hosted solutions. We generate revenue from licensing our software to clients in our software as a service model, per-message and per-minute transactional fees, and customized professional services. We recognize license/subscription fees over the period of the contract, service fees as the services are

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performed, and per-message or per-minute transaction revenue when the transaction takes place. We recognize revenue at the time that the services are rendered, the selling price is fixed, and collection is reasonably assured, provided no significant obligations remain. We consider authoritative guidance on multiple deliverables in determining whether each deliverable represents a separate unit of accounting. Some customers are billed on a month to month basis with no contractual term and are collected by credit card. Revenue is recognized at the time that the services are rendered and the selling price is fixed with a set range of plans. Cash received in advance of the performance of services is recorded as deferred revenue.

We generate revenue from the Stamp App through customer agreements with business owners. Revenue is principally derived from monthly subscription fees which provide a license for unlimited use of the Stamp App by the business owners and their customers. The subscription fee is billed each month to the business owner. Revenue is recognized monthly as the subscription revenues are billed. There are no per-minute or transaction fees associated with the Stamp App.

During the years ended December 31, 2015 and 2014, one customer accounted for 31% and 29% of our revenues, respectively.

Stock-based Compensation

We primarily issue stock-based awards to employees in the form of stock options. We determine compensation expense associated with stock options based on the estimated grant date fair value method using the Black-Scholes valuation model. We generally recognize compensation expense using a straight-line amortization method over the respective vesting period for awards that are ultimately expected to vest. Accordingly, stock-based compensation expense for 2015 and 2014 has been reduced for estimated forfeitures. When estimating forfeitures, we consider voluntary termination behaviors as well as trends of actual option forfeitures.

Research and Development Expenditures

Research and development expenditures are expensed as incurred, and consist primarily of compensation costs, outside services, and expensed materials.

Advertising Expense

Direct advertising costs are expensed as incurred, and consist primarily of E-commerce advertisements and other direct costs. Advertising expense was \$38,394 and \$20,677 for years ended December 31, 2015 and 2014, respectively.

Income Taxes

We account for income taxes using the assets and liability method, which recognizes deferred tax assets and liabilities determined based on the difference between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are established to reduce deferred tax assets when, based on available objective evidence, it is more likely than not that the benefit of such assets will not be realized. We recognize in the consolidated financial statements only those tax positions determined to be more likely than not of being sustained.

Computation of Net Loss per Common Share

Basic net loss per share is based upon the weighted average number of common shares outstanding. Diluted net loss per share is based on the assumption that all potential common stock equivalents (convertible notes payable, stock options, and warrants) are converted or exercised. The calculation of diluted net loss per share excludes potential common stock equivalents if the effect is anti-dilutive. Our weighted average common shares outstanding for basic and diluted are the same because the effect of the potential common stock equivalents is anti-dilutive.

We had the following dilutive common stock equivalents as of December 31, 2015 and 2014 which were excluded from the calculation because their effect was anti-dilutive.

	December 31,	
	2015	2014
Outstanding employee options	5,043,228	5,382,923
Outstanding restricted stock units	653,937	591,436
Outstanding non-employee warrants	33,333	150,001
Outstanding warrants	8,347,272	7,019,840
	<u>14,077,770</u>	<u>13,144,200</u>

Recent Accounting Pronouncements

Accounting standards promulgated by the FASB are subject to change. Changes in such standards may have an impact on the Company's future financial statements. The following are a summary of recent accounting developments.

In November 2015, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2015-17, "Balance Sheet Classification of Deferred Taxes", which requires that deferred tax liabilities and assets be classified as non-current on the balance sheet. ASU 2015-17 is effective in fiscal years beginning after December 15, 2016. Early adoption is permitted on either a prospective or retrospective basis. The Company has elected early adoption as of the interim period beginning October 1, 2015, effective for the annual period ended December 31, 2015, and has selected the prospective application. Prior periods have not been retrospectively adjusted.

In September 2015, the FASB issued ASU No. 2015-16, "Business Combinations (Topic 805): Simplifying the Accounting for Measurement-Period Adjustments", which requires the acquirer in a business combination to recognize in the reporting period in which adjustment amounts are determined, any adjustments to provisional amounts that are identified during the measurement period, calculated as if the accounting had been completed at the acquisition date. Prior to the issuance of ASU 2015-16, an acquirer was required to restate prior period financial statements as of the acquisition date for adjustments to provisional amounts. ASU 2015-16 is effective for annual and interim periods beginning after December 15, 2015. The adoption of ASU 2015-16 is not expected to have a material impact on our financial position or results of operations.

In August 2015, the FASB issued ASU No. 2015-14, "Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date". This amendment defers the effective date of the previously issued ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606), until the interim and annual reporting periods beginning after December 15, 2017. The FASB's ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606), was issued in three parts: (a) Section A, "Summary and Amendments That Create Revenue from Contracts with Customers (Topic 606) and Other Assets and Deferred Costs-Contracts with Customers (Subtopic 340-40)," (b) Section B, "Conforming Amendments to Other Topics and Subtopics in the Codification and Status Tables" and (c) Section C, "Background Information and Basis for Conclusions." The core principle of the new guidance is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Earlier application is permitted for interim and annual reporting periods beginning after December 15, 2016. The Company intends to adopt the provisions of ASU 2015-14 for interim and annual reporting periods beginning after December 15, 2017. The Company is currently evaluating the impact of the adoption of ASU 2015-14 on its consolidated financial statements.

In July 2015, the FASB, issued ASU No. 2015-11, "Inventory (Topic 330): Simplifying the Measurement of Inventory", which requires an entity to measure inventory within the scope of the ASU at the lower of cost and net realizable value. The amendments in ASU 2015-11 are effective for fiscal years beginning after December 15, 2016, including interim periods within that reporting period. Earlier adoption is permitted. The adoption of ASU 2015-11 is not expected to have a material impact on our financial position or results of operations.

In April 2015, the FASB issued ASU 2015-05 regarding Subtopic 350-40, "Intangibles - Goodwill and Other - Internal-Use Software." The amendments in ASU 2015-05 provide guidance to customers about whether a cloud computing arrangement includes a software license. If a cloud computing arrangement includes a software license, the customer should account for the software license element of the arrangement consistent with other software licenses. If a cloud computing arrangement does not include a software license, the customer should account for the arrangement as a service contract. The amendments in ASU 2015-05 are effective for annual and interim periods beginning after December 15, 2015. Early adoption is permitted. The amendments in ASU 2015-05 may be applied either prospectively to all arrangements entered into or materially modified after the effective date or retrospectively. The adoption of ASU 2015-05 is not expected to have a material impact on our financial position or results of operations.

In November 2014, the FASB issued ASU No. 2014-16, "Derivatives and Hedging (Topic 815) - Determining Whether the Host Contract in a Hybrid Financial Instrument Issued in the Form of a Share is More Akin to Debt or to Equity". ASU 2014-16 was issued to clarify how current U.S GAAP should be interpreted in evaluating the economic characteristics and risk of a host contract in a hybrid financial instrument that is issued in the form of a share. In addition, ASU 2014-16 was issued to clarify that in evaluating the nature of a host contract, an entity should assess the substance of the relevant terms and features (that is, the relative strength of the debt-like or equity-like terms and features given the facts and circumstances) when considering how to weight those terms and features. The effects of initially adopting ASU 2014-16 should be applied on a modified retrospective basis to existing hybrid financial instruments issued in a form of a share as of the beginning of the fiscal year for which the amendments are effective. Retrospective application is permitted to all relevant prior periods. ASU 2014-16 is effective fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. Early adoption in an interim period is permitted. The adoption of ASU 2014-16 is not expected to have a material impact on our financial position or results of operations.

In August 2014, The FASB issued ASU No. 2014-15, "Presentation of Financial Statements – Going Concerns (Subtopic 205-40):

Disclosures of Uncertainties about an Entity's Ability to Continue as a Going Concern". The amendments require management to assess an entity's ability to continue as a going concern by incorporating and expanding upon certain principles that are currently in U.S. auditing standards. Specifically, the amendments (1) provide a definition of the term substantial doubt, (2) require an evaluation every reporting period including interim periods, (3) provide principles for considering the mitigating effect of management's plans, (4) require certain disclosures when substantial doubt is alleviated as a result of consideration of management's plans, (5) require an express statement and other disclosures when substantial doubt is not alleviated, and (6) require an assessment for a period of one year after the date that the financial statements are issued (or available to be issued). The amendments in this Update are effective for the annual period ending after December 15, 2016, and for annual periods and interim periods thereafter. Early application is permitted. The adoption of ASU 2014-15 is not expected to have a material impact on our financial position or results of operations.

In June 2014, the FASB issued ASU No. 2014-12, "Compensation – Stock Compensation (Topic 718): Accounting for Share-Based Payments When the Terms of an Award Provide That a Performance Target Could Be Achieved after the Requisite Service Period". The new guidance requires that share-based compensation that require a specific performance target to be achieved in order for employees to become eligible to vest in the awards and that could be achieved after an employee completes the requisite service period be treated as a performance condition. As such, the performance target should not be reflected in estimating the grant-date fair value of the award. Compensation costs should be recognized in the period in which it becomes probable that the performance target will be achieved and should represent the compensation cost attributable to the period(s) for which the requisite service has already been rendered. If the performance target becomes probable of being achieved before the end of the requisite service period, the remaining unrecognized compensation cost should be recognized prospectively over the remaining requisite service period. The total amount of compensation cost recognized during and after the requisite service period should reflect the number of awards that are expected to vest and should be adjusted to reflect those awards that ultimately vest. The requisite service period ends when the employee can cease rendering service and still be eligible to vest in the award if the performance target is achieved. This new guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2015. Early adoption is permitted. Entities may apply the amendments in this Update either (a) prospectively to all awards granted or modified after the effective date or (b) retrospectively to all awards with performance targets that are outstanding as of the beginning of the earliest annual period presented in the financial statements and to all new or modified awards thereafter. The adoption of ASU 2014-12 is not expected to have a material impact on our financial position or results of operations.

2. Acquisitions

We completed the following acquisitions in furtherance of our strategy to acquire small, privately owned enterprises in the mobile marketing sector through asset purchase structures. We made the acquisitions to expand our market presence and product offerings.

The purchase consideration for each acquisition was allocated to the tangible assets and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values on the acquisition date, with the remaining unallocated consideration recorded as goodwill. An independent valuation expert assisted us in determining these fair values.

We have included the financial results of these acquisitions in our consolidated financial statements from the date of acquisition.

SmartReceipt

In March 2014, we acquired all the assets of SmartReceipt, Inc. in exchange for: (1) our payment at closing of \$2.212 million of cash, net of a \$150,000 loan made by us to SmartReceipt in January 2014; (2) our issuance of 504,884 shares of its \$0.001 par value common stock; and (3) our earn-out payment of 200% of the "eligible revenue" of us over the 12 month period following the close of the transaction ("earn-out period"). The "eligible revenue" will consist of: 100% our revenue derived during the earn out period from the sale of SmartReceipt products and services to certain SmartReceipt clients as of the close (the "designated SmartReceipt clients"); plus 50% of our revenue derived during the earn out period from the sale of our products and services to the designated SmartReceipt clients, plus 50% of our revenue derived during the earn out period from the sale of SmartReceipt products and services to our clients who are not designated SmartReceipt clients. The earn-out payment will be payable in our common shares at the rate of \$1.85 per share, representing the volume weighted average trading price of our common stock for the 90 trading days preceding the initial close of the transactions under the Asset Purchase Agreement. During 2015, the earn-out payable was settled for 903,928 shares of our Common Stock.

The acquisition was accounted for as a business combination and we valued all assets and liabilities acquired at their fair values on the date of acquisition. An independent valuation expert assisted us in determining these fair values. The assets and liabilities of the acquired entity were recorded at their estimated fair values at the date of the acquisition.

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The allocation of the purchase price to assets and liabilities based upon fair value determinations was as follows:

Accounts receivable, net	\$	161,664
Other assets		6,620
Customer relationships		2,010,000
Developed technology		260,000
Trade name		176,000
Goodwill		2,890,801
Total assets acquired		<u>5,505,085</u>
Liabilities assumed		<u>(191,561)</u>
Net assets acquired	\$	<u>5,313,524</u>

The purchase price consists of the following:

Cash	\$	2,368,019
Earn Out		2,273,000
Common stock		<u>672,505</u>
Total purchase price	\$	<u>5,313,524</u>

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The following information presents unaudited pro forma consolidated results of operations for the year ended December 31, 2014 as if the SmartReceipt acquisition described above had occurred on January 1, 2014. The following unaudited pro forma financial information gives effect to certain adjustments, including the increase in stock based compensation expense that had not been valued prior to acquisition. The pro forma financial information is not necessarily indicative of the operating results that would have occurred if the acquisition been consummated as of the date indicated, nor are they necessarily indicative of future operating results.

Mobivity Holdings Corp.
Unaudited Pro Forma Condensed Consolidated Statement of Operations
For the year ended December 31, 2014

	<u>Mobivity</u>	<u>SR</u>	<u>Pro forma adjustments</u>	<u>Pro forma combined</u>
Revenues				
Revenues	\$ 4,000,202	\$ 214,139	\$ -	\$ 4,214,341
Cost of revenues	1,066,917	54,410	-	1,121,327
Gross margin	2,933,285	159,729	-	3,093,014
Operating expenses				
General and administrative	4,270,844	231,084	4,230 ^(a)	4,506,158
Sales and marketing	3,895,033	60,077	-	3,955,110
Engineering, research, and development	1,346,198	139,649	-	1,485,847
Depreciation and amortization	416,436	403	-	416,839
Goodwill impairment	4,078,693	-	-	4,078,693
Intangible asset impairment	961,436	-	-	961,436
Total operating expenses	14,968,640	431,213	4,230	15,404,083
Loss from operations	(12,035,355)	(271,484)	(4,230)	(12,311,069)
Other income/(expense)				
Interest income	2,131	-	-	2,131
Change in fair value of derivative liabilities	63,517	-	-	63,517
Gain on debt extinguishment	36,943	-	-	36,943
Gain on adjustment of contingent consideration	1,492,000	-	-	1,492,000
Total other income/(expense)	1,594,591	-	-	1,594,591
Loss before income taxes	(10,440,764)	(271,484)	(4,230)	(10,716,478)
Income tax expense	-	-	-	-
Net loss	\$ (10,440,764)	\$ (271,484)	\$ (4,230)	\$ (10,716,478)
Net loss per share - basic and diluted	\$ (0.49)			\$ (0.52)
Weighted average number of shares during the period -basic and diluted	21,203,563			20,796,889

Pro Forma Adjustments

The following pro forma adjustments are based on the value of the tangible and intangible assets acquired as determined by an independent valuation firm.

(a) Represents stock based compensation in conjunction with the transaction.

3. Goodwill and Intangible Assets

Goodwill

The following table presents goodwill and impairment for the years ended December 31, 2015 and 2014:

	Goodwill
December 31, 2013	\$ 3,108,964
Acquired	2,890,801
Impairment	<u>(4,078,693)</u>
December 31, 2014	1,921,072
Acquired	-
Impairment	-
December 31, 2015	<u>\$ 1,921,072</u>

We conducted our annual impairment test of goodwill as of December 31, 2015 and 2014, which resulted in impairment charges of \$0 and \$4,078,693, respectively.

Intangible assets

The following table presents components of identifiable intangible assets for the years ended December 31, 2015 and 2014:

	December 31, 2015				December 31, 2014			
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)
Patents and trademarks	\$ 117,000	\$ (38,069)	\$ 78,931	15	\$ 142,000	\$ (33,048)	\$ 108,952	20
Customer contracts	628,502	(628,502)	-	-	628,502	(628,502)	-	-
Customer and merchant relationships	2,830,139	(1,456,626)	1,373,513	10	2,830,139	(1,290,139)	1,540,000	10
Trade name	353,192	(217,625)	135,567	10	353,192	(201,192)	152,000	10
Acquired technology	686,135	(498,837)	187,298	10	686,135	(476,135)	210,000	10
Non-compete agreement	90,462	(90,462)	-	-	90,462	(90,462)	-	-
	<u>\$ 4,705,430</u>	<u>\$ (2,930,121)</u>	<u>\$ 1,775,309</u>		<u>\$ 4,730,430</u>	<u>\$ (2,719,478)</u>	<u>\$ 2,010,952</u>	

During the years ended December 31, 2015 and 2014, we recorded amortization expense related to our intangible assets of \$214,455 and \$408,928, respectively, which is included in depreciation and amortization in the consolidated statement of operations.

During the years ended December 31, 2015 and 2014, we recorded impairment charges related to our intangible assets of \$21,188 and \$961,436, respectively.

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Expected future intangible asset amortization as of December 31, 2015 is as follows:

Year ending December 31,	Amount
2016	\$ 213,519
2017	213,519
2018	213,519
2019	213,520
2020	213,520
Thereafter	707,712
Total	\$ 1,775,309

4. Software Development Costs

The Company has capitalized certain costs for software developed or obtained for internal use during the application development stage as it relates to specific contracts. The amounts capitalized include external direct costs of services used in developing internal-use software and for payroll and payroll-related costs of employees directly associated with the development activities.

The following table presents details of our software development costs for the years ended December 31, 2015 and 2014:

	December 31, 2015				December 31, 2014			
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)
Software Development Costs	\$ 736,666	\$ (138,286)	\$ 598,380	2	\$ -	\$ -	\$ -	-
	<u>\$ 736,666</u>	<u>\$ (138,286)</u>	<u>\$ 598,380</u>		<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	

Software development costs are being amortized on a straight line basis over their estimated useful life of two years.

During the year ended December 31, 2015, we recorded amortization expense for software development costs of \$138,286.

The estimated future amortization expense of software development costs as of December 31, 2015 is as follows:

Year ending December 31,	Amount
2016	\$ 368,328
2017	219,769
2018	10,283
2019	-
2020	-
Thereafter	-
Total	\$ 598,380

5. Derivative Liabilities

We completed a private placement in September 2011 for the sale of units consisting of shares of common stock and warrants to purchase our common stock. Both the common shares and the warrants contain anti-dilutive, or down round, price protection. We recorded derivative liabilities related to the down round price protection on the common shares and the warrants at the issuance date.

The down round price protection on the common shares expired in August 2012 and the down round protection for the warrant terminates when the warrant expires or is exercised.

Our derivative liability at December 31, 2014 related to these warrants.

The fair values of our derivative liabilities are estimated at the issuance date and are revalued at each subsequent reporting date using a Monte Carlo simulation discussed below.

At December 31, 2014, we recorded a current derivative liability of \$42,659, which is detailed by instrument type in the table below.

The net change in fair value of the derivative liabilities for the years ended December 31, 2015 and 2014 were gains of \$42,659 and \$63,517, respectively.

The following table presents the derivative liabilities by instrument type as of December 31, 2015 and 2014:

Derivative Value by Instrument Type	December 31,	
	2015	2014
Common Stock and Warrants	\$ -	\$ 42,659
	<u>\$ -</u>	<u>\$ 42,659</u>

The following table presents details of the Company's derivative liabilities from December 31, 2013 to December 31, 2015:

Balance December 31, 2013	\$ 106,176
Change in fair value of derivative liabilities	(63,517)
Balance December 31, 2014	42,659
Change in fair value of derivative liabilities	(42,659)
Balance December 31, 2015	<u>\$ -</u>

An independent valuation expert calculated the fair value of the compound embedded derivatives using a complex, customized Monte Carlo simulation model suitable to value path dependent American options. The model uses the risk neutral methodology adapted to value corporate securities. This model utilized subjective and theoretical assumptions that can materially affect fair values from period to period.

As of December 31, 2015, all of the warrants subject to derivative treatment have expired.

6. Notes Payable and Interest Expense

Cherry Family Trust Note

This note was issued on March 1, 2007, for the principal amount of \$20,000, interest accrues at the rate of 9% compounded annually, with a maturity date of December 31, 2008. There was no accrued interest as of December 31, 2015 and 2014. A court order was issued December 7, 2007 that related to a summary judgment in favor of the Company, stemming from litigation between the Company and Mr. Cherry. Accordingly, we have extinguished the note payable and related accrued interest in the amounts of \$20,000 and \$16,943, respectively, during 2014 and recorded a gain on debt extinguishment of \$36,943.

Summary of Notes Payable and Accrued Interest

Interest Expense

The following table summarizes interest expense for the years ended December 31, 2015 and 2014:

	December 31,	
	2015	2014
Other interest expense	\$ 847	\$ -
Total interest expense	\$ 847	\$ -

7. Common Stock and Equity Payable

Common Stock

2014

In March 2014, we issued 5,413,000 shares of common stock at \$1.00 per unit to accredited investors for the gross proceeds of \$5,413,000. Each unit consisted of one share of our common stock and a common stock purchase warrant to purchase one-quarter share of our common stock, over a five year period, at an exercise price of \$1.20 per share. The units included warrants for the purchase of 1,353,238 shares of common stock at \$1.20 per share. The warrants were valued at \$1,320,569 and expire in 2019. We entered into a Registration Rights Agreement with the investors, pursuant to which we agreed to cause a resale registration statement covering the common shares made part of the units.

Emerging Growth Equities, Ltd. (“EGE”) acted as placement agent for the private placement and received \$370,685 in commissions from us. In addition, we issued warrants for the purchase of 370,685 common stock units at \$1.00 per unit to a placement agent in connection with the equity placements. Each unit consists of one share of the Company’s common stock and a common stock purchase warrant to purchase one-quarter share of the Company’s common stock, over a five year period, at an exercise price of \$1.20 per share.

In March 2014, we issued 504,884 shares at \$1.44 per share in connection with the acquisition of SmartReceipt. See Note 2.

In September 2014, we issued 500,000 shares of common stock at \$1.01 per share for services and recorded share-based compensation of \$505,000 in general and administrative expense.

In October 2014, we issued 2,137 accrued shares of common stock at \$3.42 per share for services that had been recorded in 2013 as equity payable.

In October 2014, we issued 10,431 shares of common stock at \$3.42 per share for services and recorded share-based compensation of \$35,673 in general and administrative expense.

2015

On January 13, 2015, Michael Bynum, president and a member of the board of directors of Mobivity Holdings Corp, resigned as an officer, director and employee of the Company and all subsidiaries. In connection with Mr. Bynum's resignation, he and the Company entered into a customary separation agreement providing for mutual releases and other standard covenants and acknowledgements. In addition, the separation agreement modified Mr. Bynum's rights to severance under his employment agreement dated May 17, 2013 with the Company. Pursuant to his employment agreement, Mr. Bynum was entitled to one year of salary, or \$200,000, upon his resignation. However, under the separation agreement, Mr. Bynum agreed to accept 260,870 shares of the common stock of the Company in lieu of cash severance. The shares were valued on the closing market price on the date of the separation agreement of January 9, 2015 of \$1.15 which provided a fair market value of the share consideration of \$300,001. In addition, pursuant to his employment agreement, Mr. Bynum's options would continue to vest for three months following his resignation and all vested options would remain exercisable for a period of six months following his resignation. However, under the separation agreement, Mr. Bynum agreed that his options would cease vesting upon his resignation, all unvested options would expire upon resignation and all vested options would remain exercisable for a period of 12 months following his resignation.

On January 21, 2015, the board of directors of the Company appointed William Van Epps to serve as executive chairman of the Company. In connection with the appointment, the Company entered into an employment agreement dated January 19, 2015 with Mr. Van Epps. Pursuant to his employment agreement, the Company has agreed to pay Mr. Van Epps a base salary \$310,000, subject to annual review by the board. The Company has also agreed to pay Mr. Van Epps a signing bonus of 50,000 shares of the Company’s

common stock. The shares were valued on the closing market price on the date of the employment agreement of January 19, 2015 of \$1.26 which provided a fair market value of the share consideration of \$63,000.

In March 2015, we conducted the private placement of our securities for the gross proceeds of \$4,805,000. In the private placement, we sold 4,805,000 units of our securities at a price of \$1.00 per unit for the net proceeds of \$4,570,500 (after deducting offering costs of \$234,500). Each unit consists of one share of our common stock and a common stock purchase warrant to purchase one-quarter share of our common stock, over a five-year period, at an exercise price of \$1.20 per share and grant date fair value of \$0.93. We entered into a Registration Rights Agreement with the investors, pursuant to which we agreed to cause a resale registration statement covering the common shares made part of the units to be filed by April 30, 2015. The Registration Rights Agreement also provides that we must make certain payments as liquidated damages to the investors if it fails to timely file the registration statement and cause it to become effective. The Registration Rights Agreement was declared effective as of September 10, 2015. As of the date of this filing, liquidated damages in regards to the timely filing of the registration statement have been waived.

EGE acted as placement agent for the private placement and received \$234,500 in commissions from us. In addition, for its services as placement agent, we issued to EGE warrants to purchase an aggregate of 234,500 units, as defined above, exercisable for a period of five years from the closing date, at an exercise price of \$1.00 per unit.

On July 31, 2015 we issued 903,928 shares of our common stock in satisfaction of the SmartReceipt earn-out payable. The earn-out payment was at the rate of \$1.85 per share as further described in Note 12.

On August 14, 2015 we issued 20,000 Restricted Stock Units to a former employee at \$1.18 per share for services and recorded share-based compensation of \$23,800 in general and administrative expense.

8. Stock-based Plans and Stock-based Compensation

Stock-based Plans

We have the 2010 Incentive Stock Option Plan and the 2013 Incentive Stock Option Plan under which we have granted stock options to our directors, officers and employees. At December 31, 2015, 5,043,228 shares were authorized under the plans and 1,041,787 shares were available for future grant.

We believe that such awards better align the interests of our directors, officers and employees with those of our shareholders. Option awards are generally granted with an exercise price that equals the fair market value of our stock at the date of grant. These option awards generally vest based on four years of continuous service and have five-year or 10-year contractual terms.

The following table summarizes stock option activity under our stock-based plans as of and for the year ended December 31, 2015:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2013	5,669,589	\$ 2.08	8.67	\$ 415,529
Granted	2,333,500	\$ 1.48	-	\$ -
Exercised	-	\$ -	-	\$ -
Forfeit/canceled	(2,554,004)	\$ 2.18	-	\$ -
Expired	(66,162)	\$ 3.23	-	\$ -
Outstanding at December 31, 2014	5,382,923	\$ 1.76	8.10	\$ 35,425
Granted	3,348,000	\$ 1.05	-	\$ -
Exercised	-	\$ -	-	\$ -
Forfeit/canceled	(2,511,522)	\$ 1.60	-	\$ -
Expired	(1,176,173)	\$ 1.82	-	\$ -
Outstanding at December 31, 2015	5,043,228	\$ 1.37	8.12	\$ 209,690
Expected to vest at December 31, 2015	4,083,553	\$ 1.47	7.83	\$ 71,743
Exercisable at December 31, 2015	1,604,604	\$ 1.80	6.17	\$ -
Unrecognized expense at December 31, 2015	\$ 3,420,632			

The aggregate intrinsic value of options was calculated as the difference between the exercise price of the underlying awards and the quoted price of our common stock. At December 31, 2015, options to purchase 646,500 shares of common stock were in-the-money.

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The weighted average grant-date fair value of options granted during the years 2015 and 2014 was \$0.93 and \$1.20, respectively.

2014

On February 27, 2014, the Company granted one employee 180,000 options to purchase shares of the Company common stock at the closing price as of February 27, 2014 of \$1.40 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter, and are exercisable until February 27, 2024. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.26 was \$226,800.

On April 2, 2014, the Company granted three employees 202,500 options to purchase shares of the Company common stock at the closing price as of April 2, 2014 of \$1.32 per share. The options vest in forty-eight equal monthly installments following the grant date and are exercisable until April 2, 2024. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.19 was \$240,975.

On April 15, 2014, the Company granted six employees 16,000 options to purchase shares of the Company common stock at the closing price as of April 15, 2014 of \$1.44 per share. The options vest in forty-eight equal monthly installments following the grant date and are exercisable until April 15, 2024. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.30 was \$20,800.

On April 15, 2014, the Company granted two employees 5,000 options to purchase shares of the Company common stock at the closing price as of April 15, 2014 of \$1.44 per share. The options vest 25% on the first anniversary of the grant, then equally in thirty-six monthly installments thereafter and are exercisable until April 15, 2024. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.30 was \$6,500.

On August 11, 2014, the Company granted five employees 212,500 options to purchase shares of the Company common stock at the closing price as of August 11, 2014 of \$0.94 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until August 11, 2024. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$0.85 was \$180,625.

On September 29, 2014, the Company granted seven employees 182,500 options to purchase shares of the Company common stock at the closing price as of September 29, 2014 of \$1.15 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until September 29, 2024. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.04 was \$189,800.

On November 13, 2014 the Company amended an Option Agreement dated June 17, 2013 (the “**Option Agreement**”) pursuant to which Tom Tolbert was granted the right to purchase up to 1,391,087 shares of common stock of the Company. Options to purchase 391,085 Shares that were subject to vesting as of the date of the Amendment were cancelled. In furtherance of the cancellation, the Company granted to Mr. Tolbert options to purchase all or any part of 1,000,000 shares of the Company’s Common Stock upon the following terms and conditions: Options to purchase 650,000 Shares shall vest and first become exercisable as of the date of the Amendment and the balance of Options to purchase 350,000 Shares shall vest and first become exercisable in 47 equal monthly installments of Options to purchase 7,292 Shares commencing on December 13, 2014 and on the 13th of the next 47 months and the remaining Options to purchase 7,276 Shares shall vest and first become exercisable on November 13, 2018. All other provisions of the Option Agreement remain in full force and effect.

On November 18, 2014, the Company granted three employees 250,000 options to purchase shares of the Company common stock at the closing price as of November 18, 2014 of \$1.48 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until November 18, 2024. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.48 was \$370,000.

On December 30, 2014, the Company granted three employees 185,000 options to purchase shares of the Company common stock at the closing price as of December 30, 2014 of \$1.23 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until December 30, 2024. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.11 was \$205,350.

2015

On January 1, 2015, the Company granted one employee 15,000 options to purchase shares of the Company common stock at the closing price as of January 1, 2015 of \$1.19 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until January 1, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.07 was \$16,050.

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On January 22, 2015, the Company granted one employee 900,000 options to purchase shares of the Company common stock at the closing price as of January 22, 2015 of \$1.28 per share. The options vest in forty-eight equal monthly installments following the grant date and are exercisable until January 22, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.15 was \$1,035,000.

On January 22, 2015, the Company granted three employees 471,500 options to purchase shares of the Company common stock at the closing price as of January 22, 2015 of \$1.28 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until January 22, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.15 was \$542,225.

On February 11, 2015, the Company granted one employee 3,000 options to purchase shares of the Company common stock at the closing price as of February 11, 2015 of \$1.20 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until February 11, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.08 was \$3,240.

On February 16, 2015, the Company granted one employee 300,000 options to purchase shares of the Company common stock at the closing price as of February 16, 2015 of \$1.30 per share. The options vest in forty-eight equal monthly installments following the grant date and are exercisable until February 16, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.17 was \$351,000.

On March 2, 2015, the Company granted one employee 100,000 options to purchase shares of the Company common stock at the closing price as of March 2, 2015 of \$1.20 per share. The options vest in forty-eight equal monthly installments following the grant date and are exercisable until March 2, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.08 was \$108,000.

On April 16, 2015, the Company granted five employees 445,000 options to purchase shares of the Company common stock at the closing price as of April 16, 2015 of \$1.20 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until April 16, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$1.08 was \$480,600.

On April 27, 2015, the Company granted one employee 20,000 options to purchase shares of the Company common stock at the closing price as of April 27, 2015 of \$1.10 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until April 27, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$0.99 was \$19,800.

On May 4, 2015, the Company granted two employees 25,000 options to purchase shares of the Company common stock at the closing price as of May 4, 2015 of \$1.00 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until May 4, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$0.90 was \$22,500.

On May 13, 2015, the Company granted one employee 20,000 options to purchase shares of the Company common stock at the closing price as of May 13, 2015 of \$0.99 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until May 13, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$0.89 was \$17,800.

On June 1, 2015, the Company granted one employee 2,000 options to purchase shares of the Company common stock at the closing price as of June 1, 2015 of \$0.85 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until June 1, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$0.77 was \$1,540.

On August 20, 2015, the Company granted three employees 400,000 options to purchase shares of the Company common stock at the closing price as of August 20, 2015 of \$0.75 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until August 20, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 132% and a call option value of \$0.67 was \$268,000.

On October 16, 2015, the Company granted 18 employees 514,000 options to purchase shares of the Company common stock at the closing price as of October 16, 2015 of \$0.48 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until October 16, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 116% and a call option value of \$0.36 was \$185,040.

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On November 19, 2015, the Company granted four employees 132,500 options to purchase shares of the Company common stock at the closing price as of November 19, 2015 of \$0.41 per share. The options vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until November 19, 2025. The total estimated value using the Black-Scholes Model, based on a volatility rate of 116% and a call option value of \$0.31 was \$41,075.

Stock-based Compensation Expense

The impact on our results of operations of recording stock-based compensation expense for years ended December 31, 2015 and 2014 was as follows:

	Years ended December 31,	
	2015	2014
General and administrative	\$ 821,410	\$ 948,567
Sales and marketing	229,698	592,785
Engineering, research, and development	112,447	44,908
	<u>\$ 1,163,555</u>	<u>\$ 1,586,261</u>

As of December 31, 2015, there was approximately \$3,420,632 of unearned stock-based compensation that will be expensed from 2016 through 2020. If there are any modifications or cancellations of the underlying unvested awards, we may be required to accelerate, increase or cancel all or a portion of the remaining unearned stock-based compensation expense. Future unearned stock-based compensation will increase to the extent we grant additional equity awards.

Stock Option Valuation Assumptions

We calculated the fair value of each stock option award on the date of grant using the Black-Scholes option pricing model. The ranges of assumptions were used for the years ended December 31, 2015 and 2014:

	Years ended December 31,	
	2015	2014
Risk-free interest rate	1.48% to 1.85%	1.57% to 2.10%
Expected life (years)	3.02 to 6.08	4.66 to 6.08
Dividend yield	-	-
Expected volatility	114.5% to 132.0%	132.0% to 132.0%

The risk-free interest rate assumption is based upon published interest rates appropriate for the expected life of our employee stock options.

The expected life of the stock options represents the weighted-average period that the stock options are expected to remain outstanding and was determined based on historical experience of similar awards, giving consideration to the contractual terms of the stock-based awards, vesting schedules and expectations of future employee behavior as influenced by changes to the terms of its stock-based awards.

The dividend yield assumption is based on our history of not paying dividends and no future expectations of dividend payouts.

The expected volatility in 2015 and 2014 is based on the historical publicly traded price of our common stock.

Restricted stock units

The following table summarizes restricted stock unit activity under our stock-based plans as of and for the year ended December 31, 2015:

	Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2013	-	\$ -	-	\$ -
Awarded	591,436	\$ 0.75	-	\$ -
Released	-	\$ -	-	\$ -
Forfeit	-	\$ -	-	\$ -
Outstanding at December 31, 2014	591,436	\$ 0.75	0.89	\$ 305,572
Awarded	82,501	\$ 0.29	-	\$ -
Released	(20,000)	\$ 1.18	-	\$ -
Forfeit	-	\$ -	-	\$ -
Outstanding at December 31, 2015	653,937	\$ 0.32	0.08	\$ 339,570
Expected to vest at December 31, 2015	29,730	\$ 0.32	0.08	
Unrecognized expense at December 31, 2015	\$ 37,501			

2014

On July 17, 2014, the Company granted 4 independent directors a total of 231,391 restricted stock units. All units are vested by December 31, 2014. The units were valued based on the closing stock price on the date of grant. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will, to the extent the Participant's rights with respect to the Restricted Stock Unit have become vested in accordance with Paragraph 3, be issued to the Participant upon the earliest to occur of (A) July 17, 2017, (B) a Change in Control of the Company, and (C) the termination of the Participant's employment with the Company.

On October 2, 2014, the Company granted one independent director a total of 11,743 restricted stock units. All units are vested by December 31, 2014. The units were valued based on the closing stock price on the date of grant. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will, to the extent the Participant's rights with respect to the Restricted Stock Unit have become vested in accordance with Paragraph 3, be issued to the Participant upon the earliest to occur of (A) October 2, 2017, (B) a Change in Control of the Company, and (C) the termination of the Participant's employment with the Company.

On October 10, 2014 the Company granted five independent directors a total of 34,670 restricted stock units. All units are vested by December 31, 2014. The units were valued based on the closing stock price on the date of grant. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will, to the extent the Participant's rights with respect to the Restricted Stock Unit have become vested in accordance with Paragraph 3, be issued to the Participant upon the earliest to occur of (A) October 10, 2017, (B) a Change in Control of the Company, and (C) the termination of the Participant's employment with the Company.

On November 6, 2014 the Company granted one independent director a total of 5,768 restricted stock units. All units are vested by December 31, 2014. The units were valued based on the closing stock price on the date of grant. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will, to the extent the Participant's rights with respect to the Restricted Stock Unit have become vested in accordance with Paragraph 3, be issued to the Participant upon the earliest to occur of (A) November 6, 2017, (B) a Change in Control of the Company, and (C) the termination of the Participant's employment with the Company.

On November 6, 2014 the Company granted one independent director a total of 37,593 restricted stock units. The units were valued based on the closing stock price on the date of grant. All units vested equally in 12 monthly installments beginning January 31, 2015. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will, to the extent the Participant's rights with respect to the Restricted Stock Unit have become vested in accordance with Paragraph 3, be issued to the Participant upon the earliest to occur of (A) November 6, 2017, (B) a Change in Control of the Company, and (C) the termination of the Participant's employment with the Company.

On November 18, 2014 the Company granted one independent director a total of 13,514 restricted stock units. All units are vested by December 31, 2014. The units were valued based on the closing stock price on the date of grant. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will, to the extent the Participant's rights with respect to the Restricted Stock Unit have become vested in accordance with Paragraph 3, be issued to the Participant upon the earliest to occur of

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(A) November 6, 2017, (B) a Change in Control of the Company, and (C) the termination of the Participant's employment with the Company.

On November 18, 2014 the Company granted five independent directors a total of 256,757 restricted stock units. The units were valued based on the closing stock price on the date of grant. All units vested equally in 12 monthly installments beginning January 31, 2015. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will, to the extent the Participant's rights with respect to the Restricted Stock Unit have become vested in accordance with Paragraph 3, be issued to the Participant upon the earliest to occur of (A) November 17, 2017, (B) a Change in Control of the Company, and (C) the termination of the Participant's employment with the Company.

2015

On January 22, 2015 the Company granted three independent directors a total of 62,501 restricted stock units. The units were valued based on the closing stock price on the date of grant. All units vest equally in 12 monthly installments beginning January 31, 2015. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will be issued to the director upon the earliest to occur of (A) January 22, 2018, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On February 10, 2015 the Company granted an employee 20,000 restricted stock units in accordance with a separation agreement. The units were valued based on the closing stock price on the date of grant. All units vest equally in 6 monthly installments beginning on the grant date. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement were issued on August 14, 2015 in accordance with the agreement.

Restricted Stock Unit Compensation Expense

The impact on our results of operations of recording stock-based compensation expense for years ended December 31, 2015 and 2014 was as follows:

	Years ended December 31,	
	2015	2014
General and administrative	\$ 496,278	\$ 347,074
	<u>\$ 496,278</u>	<u>\$ 347,074</u>

9. Warrants to Purchase Common Stock

The following table summarizes non-employee warrant activity under our stock-based plans as of and for the year ended December 31, 2015:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2013	150,556	\$ 1.97	-
Granted	-	\$ -	-
Exercised	-	\$ -	-
Canceled/forfeited/expired	(555)	\$ 10.50	-
Outstanding at December 31, 2014	150,001	\$ 1.92	-
Granted	-	\$ -	-
Exercised	-	\$ -	-
Canceled/forfeited/expired	(116,668)	\$ 1.92	-
Outstanding at December 31, 2015	<u>33,333</u>	<u>\$ 1.92</u>	<u>-</u>
Expected to vest at December 31, 2015	-	\$ -	-
Warrants exercisable	33,333	\$ 1.92	-

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The following table summarizes investor warrant activity as of and for the year ended December 31, 2015:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2013	5,295,905	\$ 1.20	4.39
Granted	1,723,935	\$ 1.20	4.20
Exercised	-	\$ -	-
Canceled/forfeited/expired	-	\$ -	-
Outstanding at December 31, 2014	7,019,840	\$ 1.20	3.18
Granted	1,435,750	\$ 1.19	4.17
Exercised	-	\$ -	-
Canceled/forfeited/expired	(108,318)	\$ -	-
Outstanding at December 31, 2015	8,347,272	\$ 1.20	3.00

Warrants Issued to Non-Employees

We issued warrants to purchase 150,835 shares of common stock to non-employees in 2010 and 2011. The valuation assumptions used are consistent with the valuation information for options above.

We recorded stock-based compensation expense of \$331 and \$5,844 in general and administrative expense for the year ended December 31, 2015 and 2014, respectively.

Warrants with Price Protection

In 2011, we issued warrants for the purchase of 114,784 shares of common stock at \$2.00 per share in connection with a private placement. In 2012, we issued warrants for the purchase of 25,588 shares of common stock at \$2.00 per share in connection with the conversion of a portion of our Bridge Notes. These warrants are exercisable for four years from the date of issuance, and contain anti-dilution, or down round, price protection as long as the warrants remain outstanding. The current exercise price of these warrants is \$1.20 per share as a result of the price protection guarantee contained in the warrant agreements.

Warrants Issued in 2014

In March 2014, we issued warrants for the purchase of 1,353,250 shares of common stock at \$1.20 per share in connection with a private placement. The warrants are exercisable for the five years from the date of issuance.

In March 2014, we issued warrants for the purchase of 370,685 common stock units at \$1.00 per unit to a placement agent in connection with the equity placements. Each unit consists of one share of the Company's common stock and a common stock purchase warrant to purchase one-quarter share of the Company's common stock, over a five-year period, at an exercise price of \$1.20 per share. At March 31, 2014, the value of the 370,685 warrants was \$448,705. As part of the private placement share units issued, 1,353,238 warrants were issued to investors valued at \$1,320,569 which expire in 2019.

As of December 31, 2014, we have warrants issued in 2014 to purchase 7,019,840 shares of common stock at \$1.20 per share that are outstanding. Of this amount, warrants to purchase 86,949 shares of common stock will expire in 2015, warrants to purchase 55,598 shares of common stock expire in 2016, warrants to purchase 5,153,358 shares of common stock expire in 2018 and warrants to purchase 1,723,935 shares of common stock expire in 2019.

Warrants Issued in 2015

In March 2015, we issued warrants to the purchase of 1,201,250 common stock units at \$1.20 per share in connection with the equity financing. The grant date fair value of the warrants was \$4,462,482 or \$0.93 per share. Additionally, we issued to EGE warrants to purchase an aggregate of 234,500 units, exercisable for a period of five years from the closing date, at an exercise price of \$1.00 per unit.

As of December 31, 2015, we have warrants to purchase 8,112,772 and 234,500 shares of common stock at \$1.20 and \$1.00 per share, respectively, which are outstanding. Of this amount, warrants to purchase 34,229 shares expire in 2016, warrants to purchase 5,153,358 shares expire in 2018, warrants to purchase 1,723,935 shares expire in 2019, and warrants to purchase 1,435,750 shares expire in 2020.

10. **Income Taxes**

For the years ended December 31, 2015 and 2014 the provisions for income taxes were as follows:

	<u>2015</u>	<u>2014</u>
Federal – current	\$ -	\$ -
State – current	-	-
Total	\$ -	\$ -

Under ASC 740, deferred income tax assets and liabilities reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes.

Significant components of our net deferred tax assets and liabilities as of December 31, 2015 and 2014 are as follows:

	<u>2015</u>	<u>2014</u>
Deferred tax assets (liabilities):		
Net operating loss carryforwards	\$ 9,896,000	\$ 7,837,000
Stock based compensation	3,534,000	2,716,000
Accrued compensation	54,000	47,000
Derivative Liability	-	17,000
Depreciation and amortization	6,063,000	6,617,000
Other	58,000	20,000
Total deferred tax assets	19,605,000	17,254,000
Valuation allowance for net deferred tax assets	(19,605,000)	(17,254,000)
Total	\$ -	\$ -

The Company has provided a valuation allowance against deferred tax assets recorded as of December 31, 2015 and 2014 due to uncertainties regarding the realization of such assets.

The net change in the total valuation allowance for the year ended December 31, 2015 was an increase of approximately \$2,351,000. The net change in the total valuation allowance for the year ended December 31, 2014 was an increase of approximately \$4,054,000. In assessing the valuation of deferred tax assets, the Company considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during periods in which those temporary differences become deductible. The Company considers projected future taxable income and planning strategies in making this assessment. Based on the level of historical operating results and projections for the taxable income for the future, the Company has determined that it is more likely than not that the deferred tax assets will not be realized. Accordingly, the Company has recorded a valuation allowance to reduce deferred tax assets to zero. There can be no assurance that the Company will ever be able to realize the benefit of some or all of the federal and state loss carryforwards, either due to ongoing operating losses or due to ownership changes, which limit the usefulness of the loss carryforwards.

As of December 31, 2015, the Company has available net operating loss carryforwards of approximately \$28,000,000 for federal income tax purposes, which will start to expire in 2026. The net operating loss carryforwards for state purposes are approximately \$28,000,000 and will start to expire in 2016.

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The difference between the provision for income taxes and income taxes computed using the U.S. federal income tax rate for the years ended December 31, 2015 and 2014 was as follows:

	2015	2014
Computed expected tax expense	\$ (2,085,000)	\$ (3,548,000)
State taxes, net of federal benefit	(343,000)	(594,000)
Other	77,000	88,000
Change in valuation allowance	2,351,000	4,054,000
Total	\$ -	\$ -

The Company has determined that during 2010 it experienced a “change of ownership” as defined by Section 382 of the Internal Revenue Code. As such, utilization of net operating loss carryforwards and credits generated before the 2010 change in ownership will be limited to approximately \$207,000 per year until such carryforwards are fully utilized. The pre change net operating loss carryforward was approximately \$7,000,000.

The Company files income tax returns in the U.S. federal jurisdiction and California. Because the Company is carrying forward federal and state net operating losses from 2006, the Company is subject to U.S. federal and state income tax examinations by tax authorities for all years since 2006. The Company does not have a liability for any uncertain tax positions. As of December 31, 2015, no accrued interest or penalties are recorded in the financial statements.

11. Fair Value Measurements of Financial Instruments

The following table summarizes our financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2015:

Description	Level 1	Level 2	Level 3	Gains (Losses)
Goodwill (non-recurring)	\$ -	\$ -	\$ 1,921,072	\$ -
Intangibles, net (non-recurring)	\$ -	\$ -	\$ 2,373,689	\$ (21,188)
Derivative liabilities (recurring)	\$ -	\$ -	\$ -	\$ 42,659
Earn-out payable (recurring)	\$ -	\$ -	\$ -	\$ 89,740

The following table summarizes our financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2014:

Description	Level 1	Level 2	Level 3	Gains (Losses)
Goodwill (non-recurring)	\$ -	\$ -	\$ 1,921,072	\$ (4,078,693)
Intangibles, net (non-recurring)	\$ -	\$ -	\$ 2,010,952	\$ (961,436)
Derivative liabilities (recurring)	\$ -	\$ -	\$ 42,659	\$ 63,517
Earn-out payable (recurring)	\$ -	\$ -	\$ 840,000	\$ 1,492,000

The Company recorded goodwill, intangible assets and an earn-out payable as a result its business combinations, and these assets were valued with the assistance of a valuation consultant and consisted of Level 3 valuation techniques.

The Company recorded derivative liabilities as a result of: (i) the variable maturity conversion feature in its convertible notes payable; (ii) the additional security issuance feature in its convertible notes payable notes, common stock and warrants; and (iii) warrants issued to non-employees that were treated as derivative liabilities. These liabilities were valued with the assistance of a valuation consultant using a Monte-Carlo simulation model. The assumptions used in the Monte-Carlo simulation used to value the derivative liabilities involve expected volatility in the Company’s common stock, estimated probabilities related to the occurrence of a future financing, and interest rates. As all the assumptions employed to measure these liabilities are based on management’s judgment using internal and external data, this fair value determination is classified in Level 3 of the valuation hierarchy.

The Company’s financial instruments consist of cash, accounts receivable, accounts payable, and accrued liabilities. The estimated fair value of cash, accounts receivable, accounts payable and accrued liabilities approximate their carrying amounts due to the short-term nature of these instruments. None of these instruments are held for trading purposes.

12. Commitments and Contingencies

Lease Abandonment

On June 8, 2015, the Company incurred a lease abandonment charge of \$54,849 for year ended December 31, 2015, for the former corporate headquarters located at 58 W. Buffalo St. Suite #200 in Chandler, Arizona. Due to the growth of the Company, occupancy has been taken under a new leased space. The Company estimated the liability under operating lease agreements and accrued lease abandonment costs in accordance with Accounting Standards Codification (“ASC”) 420, Exit or Disposal Cost Obligation (“ASC 420”), as the Company has no future economic benefit from the abandoned space and the lease terminated November 30, 2015. All leased space related to this lease was abandoned and ceased to be used by the Company on June 30, 2015.

Litigation

As of the date of this report, there are no pending legal proceedings to which we or our properties are subject, except for routine litigation incurred in the normal course of business.

Operating Lease

The Company has a lease agreement for 10,395 square feet, for its office facilities in Chandler, AZ through December 2020. Monthly rental payments, including common area maintenance charges, are \$17,974.

The Company also has a lease through January 2018 for approximately 3,023 square feet of office space in San Diego, California at a monthly expense of \$10,127, excluding common area maintenance charges.

The minimum lease payments that are required over the next five years are shown below.

Minimum Lease Payments	
2016	\$ 345,163
2017	354,290
2018	231,357
2019	232,155
2020	237,353
Thereafter	-
	<u>\$ 1,400,318</u>

Rent expense was \$342,784 and \$248,573 for the years ended December 31, 2015 and 2014.

13. Employee Benefit Plan

The Company has an employee savings plan (the “Plan”) pursuant to Section 401(k) of the Internal Revenue Code (the “Code”), covering all of its employees. Participants in the Plan may contribute a percentage of compensation, but not in excess of the maximum allowed under the Code. The Company may make contributions at the discretion of its Board of Directors. During the years ended December 31, 2015 and 2014, the Company made no contributions to the Plan.

14. Related Party Transactions

As discussed previously, we conducted the private placement of our securities during the year ended December 31, 2015 for the gross proceeds of \$4,805,000. Two officers of the company participated in the private placement investing a total of \$75,000, resulting in 75,000 common stock shares and 18,750 of common stock purchase warrants.

15. Subsequent Events

Acquisition

On January 15, 2016, the Company, acquired all of the outstanding capital stock of LiveLenz Inc., a Nova Scotia corporation (“LiveLenz”), pursuant to an agreement dated January 15, 2016 among the Company and the stockholders of LiveLenz. Pursuant to the agreement, the Company acquired all of the capital stock of LiveLenz in consideration of the Company’s issuance of 1,000,000 shares (“Consideration Shares”) of its \$0.001 par value common stock to the LiveLenz stockholders and the Company’s issuance of an

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additional 15,000 share of its common stock in satisfaction of certain liabilities of LiveLenz. The agreement includes customary representations, warranties, and covenants by the Company and the LiveLenz stockholders, including the LiveLenz stockholders' agreement to indemnify the Company against certain claims or losses resulting from certain breaches of representations, warranties or covenants by the LiveLenz stockholders in the agreement. Pursuant to the agreement, the LiveLenz stockholders have agreed to adjust the number of Consideration Shares downward based on LiveLenz' working capital as of the closing and in the event of any claims for indemnification by the Company. The LiveLenz stockholders have agreed that 100% of the Consideration Shares will be escrowed for a period of 18 month and subject to forfeiture based on indemnification claims of the Company or the final determination of LiveLenz' working capital as of the closing date.

2016 Private Placement

In March 2016, the Company conducted the private placement of its securities for the gross proceeds of \$1,953,600. In the private placement, the Company sold 3,256,000 units of our securities at a price of \$0.60 per share. The Company entered into a Registration Rights Agreement with the investors, pursuant to which it agreed to cause a resale registration statement to be filed by May 31, 2016.

Working Capital Line of Credit Facility

On March 30, 2016, the Company entered into a Working Capital Line of Credit Facility (the "Facility") with a bank to provide up to \$2 million to finance the Company's general working capital needs. The Facility is funded based on cash on deposit balances and advances against the Company's accounts receivable based on customer invoicing. Interest on Facility borrowings is calculated at rates between the Prime Rate minus 1.75% and Prime Rate plus 3.75% based on the borrowing base formula used at the time of borrowing. The Facility contains standard events of default, including payment defaults, breaches of representations, breaches of affirmative or negative covenants, and bankruptcy. There are no financial covenants and as of the date of this filing there are no borrowings under the Facility.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Securities Exchange Act of 1934 (the "Exchange Act") is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's ("SEC") rules and forms. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management to allow timely decisions regarding required disclosure.

As required by paragraph (b) of Rules 13a-15 or 15d-15 under the Exchange Act, our management, with the participation of our president (our principal executive officer) and our chief financial officer (our principal financial officer and principal accounting officer) evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this annual report, being December 31, 2015 (the "Evaluation Date"). Based on such evaluation and subject to the foregoing, such officers have concluded that, as of the Evaluation Date, the Company's disclosure controls and procedures are effective at the reasonable assurance level to ensure that information required to be disclosed by the Company in the reports that the Company files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and to ensure that information required to be disclosed by the Company in the reports that the Company files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within our company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. The term "internal control over financial reporting" is defined as a process designed by, or under the supervision of, an issuer's principal executive and principal financial officers, or persons performing similar functions, and effected by the issuer's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- (1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and
- (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer.

Under the supervision of our Chief Executive Officer, being our principal executive officer, and our Chief Financial Officer, being our principal financial officer and principal accounting officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2015 using the criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). This evaluation included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Based on this evaluation under the criteria established in Internal Control – Integrated Framework, our management concluded that our internal control over financial reporting was effective as of December 31, 2015.

This annual report does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. Management's report is not subject to attestation by our registered, public accounting firm pursuant to the rules of the Securities and Exchange Commission that permit us to provide only management's report in this annual report.

Changes in Internal Control

There was no change in our internal control over financial reporting, as defined in Rules 13a-15(f) under the Exchange Act, that occurred during the fiscal quarter ended December 31, 2015 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

PART III

Item 10. Directors and Executive Officers

Directors and Executive Officers

The following table sets forth information concerning our executive officers and directors, including their ages, as of March 15, 2016:

Name	Age	Position
Dennis Becker	42	Chief Executive Officer and Director
Christopher Meinerz	49	Chief Financial Officer
William Van Epps	68	Executive Chairman and Director
John Harris	67	Lead Director and Chairman of Compensation Committee
David Jaques	60	Chairman of Audit Committee and Director
Phillip Guarascio	74	Chairman of Governance and Nominating Committee and Director
Doug Schneider	53	Director
Tom Akin	63	Director

Dennis Becker - Chief Executive Officer and Director

Dennis Becker was appointed our Chief Executive Officer and a Director effective as of our acquisition of Mobivity, Inc. in November 2010. Mr. Becker has also served as President and Chief Executive Officer of Mobivity, Inc. since September, 2007. He was a founder of Frontieric Corporation, a pioneer in providing complex call routing and merchant processing applications, where he was Chief Executive Officer from 2002 to 2005. Mr. Becker was also Chief Executive Officer of Bexel Technologies, which served solutions to large enterprises, from 1999 to 2001. Mr. Becker studied Computer Science at the University of Oregon and served in the United States Air Force.

Mr. Becker has extensive knowledge of the mobile message marketing industry. As a result of these and other professional qualifications, we have concluded that Mr. Becker is qualified to serve as a director.

Christopher Meinerz - Chief Financial Officer

On February 16, 2015, the board of directors of the Company appointed Christopher Meinerz to serve as Chief Financial Officer of the Company. Prior to joining the Company, Mr. Meinerz served as Director, Chief Financial Officer, Chief Compliance Officer, Secretary and Treasurer of Spindle, Inc., a mobile marketing and payment processing company based in Scottsdale, Arizona, from April 2014 to February 2015. Prior to his role with Spindle, Inc., Mr. Meinerz served as Chief Financial Officer and Chief Compliance Officer at Next Generation Insurance Group (“NGI”), a national specialty insurance marketing firm located in Phoenix, Arizona, from October 2011 to April 2014. Before his tenure at NGI, Mr. Meinerz was Executive Vice President of Finance and Treasury for DDi Corp., an Anaheim, California-based provider of circuit board engineering and manufacturing services, from March 2010 to October 2011. In addition, Mr. Meinerz served as global Vice President of Finance for eTelecare of Scottsdale, Arizona, from January 2006 to December 2009, where he successfully helped launch that company’s initial public offering in 2007. Mr. Meinerz is a graduate of the University of Wisconsin with degrees in accounting and finance and is a Certified Public Accountant. He began his career in public accounting with BDO Seidman in Chicago, Illinois, and Grant Thornton in Madison, Wisconsin.

William Van Epps – Executive Chairman and Director

On January 21, 2015, the board of directors of the Company appointed William Van Epps to serve as Executive Chairman of the Company. Mr. Van Epps was initially appointed to the Company’s board of directors on October 2, 2014. Prior to joining the Company, Mr. Van Epps served as Chief Executive Officer of Agile Pursuits Franchising, Inc., a wholly-owned subsidiary of The Procter and Gamble Company, from December 2009 to October 2011, where he established Tide Dry Cleaners and Mr. Clean Car

Wash operations. Prior to his experience at Agile Pursuits Franchising, Inc., Mr. Van Epps served as president at Papa John's International Inc. from April 2006 to April 2009, and as Chief Operating Officer and Senior Vice President of Papa John's International Inc. from January 2004 to April 2006, where he was responsible for domestic corporate and franchised restaurant operations and international operations. Mr. Van Epps also served as managing director of International at Papa John's International from September 2001 to January 2004. Prior to joining Papa John's, he served as president of the International Division of Yorkshire Global Restaurants from August 1999 to August 2001, where he was responsible for the international development of Long John Silvers and A&W restaurants. From August 1993 to August 1999, Mr. Van Epps served as president of the International Division at AFC Enterprises where he developed international brand deployments for Popeye's, Church's Chicken, Cinnabon, Seattle Coffee Co., and Chesapeake Bakery Cafe. Mr. Van Epps began his career working alongside Pizza Hut founder, Frank Carney, where, from March 1974 through February 1981, he helped expand Pizza Hut into Hong Kong, Thailand and Singapore while also overseeing stores in Australia, New Zealand, as well as a joint venture in Japan.

Mr. Van Epps has extensive knowledge of business development, retail and restaurant operations, and corporate management. As a result of these and other professional qualifications, we have concluded that Mr. Van Epps is qualified to serve as a director.

John Harris – Non-Executive Chairman and Chairman of Compensation Committee

Mr. Harris has been a director since January 2011. Mr. Harris has served as an operating partner with Glendon Todd Capital, a Dallas based private equity firm since February 2011. From 2010 to 2012 Mr. Harris was CEO and investor with Chemical Information Services, a leading provider of database services to the chemical and pharmaceutical industries. From 2006 to 2009, Mr. Harris was President and CEO of eTelecare Global Solutions; a business process outsourcing (“BPO”) company delivering technical support, sales, and customer care services to the Fortune 1000 market. In that capacity, he successfully led the company’s IPO, privatization and ultimate merger in 2009 that created a \$1 billion BPO services company. Previously, Mr. Harris served in various executive level positions with Electronic Data Systems over a 25 year period. Mr. Harris graduated from the University of West Georgia with a BBA and MBA and is on the Board of Advisors to the Richardson School of Business. He has held board positions with a number of public and private telecommunications and technology services companies, and he currently sits on the boards of Premier Global Services, The Hackett Group, DG FastChannel and BancTec Corporation. He is a member of the compensation committee of the board of each of these companies and sits on the audit committee of the board of DG FastChannel.

Mr. Harris has extensive knowledge of corporate management. As a result of these and other professional qualifications, we have concluded that Mr. Harris is qualified to serve as a director.

David Jaques – Chairman of Audit Committee and Director

David Jaques has served as a director since December 2011. Mr. Jaques has held senior financial positions in banking, corporate and venture capital. In his early career, he held various positions with Barclays Bank in London and provided advisory services in currency and interest rate risk management to the bank’s corporate clients. He held a similar role at Barclays Bank, New York from 1988 to 1993. He was Senior Vice President and Treasurer of Silicon Valley Bank between 1994 and 1999; founding CFO for PayPal from 1999 to 2001 and CFO of BlueRun Ventures from 2001 to 2008. Since 2008 he has provided CFO consulting services with Greenough Consulting Group and holds a board position at UBL Interactive, Inc. (UBLI.PK).

Mr. Jaques has extensive knowledge of finance and accounting. As a result of these and other professional qualifications, we have concluded that Mr. Jaques is qualified to serve as a director.

Phillip Guarascio - Chairman of Governance and Nominating Committee and Director

Mr. Guarascio has served as a director since March 2014. Mr. Guarascio has been the Chairman and Chief Executive Officer of PG Ventures LLC since May 2000 where he serves as a marketing and advertising business consultant. He was Lead Executive, Marketing and Sales at the National Football League from 2003-2007 and has been a consultant for the William Morris Agency since October 2001. For 16 years, Mr. Guarascio was with General Motors where he served as Vice President of Corporate Advertising and Marketing primarily responsible for worldwide advertising resource management, managing consolidated media placement and before that as General Manager of Marketing and Advertising for General Motors' North American Operations. Mr. Guarascio introduced the GM Card and managed the General Motors corporate brand to a 20 percent increase in customer purchase consideration. He joined General Motors in 1985 after 21 years with the New York advertising agency, D'Arcy, Masius, Benton & Bowles.

Mr. Guarascio has extensive experience in the marketing and advertising industry. Based on this and other professional qualifications, we have concluded that Mr. Guarascio is qualified to serve as a director.

Doug Schneider - Director

Mr. Schneider has been a director since December 2010. Mr. Schneider has a twenty year track record of leadership and success in launching, building, and managing high-tech service oriented companies. He has served as Executive Vice President of the SMB Solutions for the Melbourne IT Group since July 2012 and oversees a \$75MM per year hosting and domain registration business across North American and Asia Pacific. From 2011 to 2012, Mr. Schneider served as CEO for Transaction Wireless, a venture backed technology company where he still resides on the board. From 2007 to 2010, Mr. Schneider was the CEO of Genea Energy, a clean tech company that provides an innovative and comprehensive SaaS based energy services platform for commercial office building portfolios. Mr. Schneider received a Bachelor's degree in Mechanical Engineering from University of California, Davis and an M.B.A. from the Kellogg School of Management at Northwestern University. He also serves as an industry advisor to Pelion Venture Partners, a venture capital firm focused on the information technology sector.

Mr. Schneider has extensive knowledge of corporate management. As a result of these and other professional qualifications, we have concluded that Mr. Schneider is qualified to serve as a director.

Thomas Akin - Director

Mr. Akin has been a director since March 2015. Mr. Akin has been the Managing General Partner of Talkot Partners I, Talkot Partners II, LLC, Talkot Crossover Fund, LP, and Talkot Capital LLC since 1996 and was appointed as a director in March 2015. Mr. Akin served as the Chief Executive Officer of Dynex Capital Inc, from February 04, 2008 to 2013. Mr. Akin had been with Merrill Lynch and Co., including served as its Managing Director of the Western United States for Merrill Lynch Institutional Services from 1991 to 1994 and as Regional Director of the San Francisco and Los Angeles regions for Merrill Lynch Institutional Services from 1981 to 1991. Mr. Akin had been with Salomon Brothers from 1978 to 1981. He has been an Executive Chairman of Dynex Capital Inc. since January 01, 2014 and has been its the Chairman since May 30, 2003. He served as the Chairman of Infotec since 2001. Mr. Akin has been a Director of Acacia Technologies Group of Acacia Research Corp. since May 1998, Dynex Capital Inc, since May 2003, Acacia Research Corp. since May 1998 and eFax.com, Inc. since July 1996. He serves as a Director of ADX. He served as a Director CombiMatrix Corporation since May 1998. Mr. Akin holds a B.A. in Biology from the University of California at Santa Cruz and an M.B.A. from the University of California at Los Angeles.

Because Mr. Akin has extensive experience as a professional investor and public company director, we have concluded that Mr. Akin is qualified to serve as a director.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, requires our directors and executive officers, and persons who beneficially own more than ten percent of a registered class of our equity securities, to file with the SEC initial reports of ownership and reports of changes of ownership of common stock and our other equity securities. Officers, directors and greater than ten percent stockholders are required by SEC regulation to furnish us with copies of all Section 16(a) forms they file.

To our knowledge, based solely on a review of the copies of such reports furnished to us and written representations that no other reports were required, during the fiscal year ended December 31, 2015, our officers, directors and greater than ten percent beneficial owners complied with all Section 16(a) filing requirements applicable to them.

Additional Information about our Board and its Committees

All of our directors except Mr. Becker and Mr. Van Epps are considered by our board of directors to be “independent” as defined in Rule 5605 of the NASDAQ Marketplace Rules.

Audit Committee

During the year ended December 31, 2015, our audit committee was comprised of David Jaques, Tom Akin, and Doug Schneider. Mr. Jaques currently serves as the audit committee chair. All members of our audit committee are independent, as independence for audit committee members is defined in Rule 5605 of the NASDAQ Marketplace Rules.

Compensation Committee

During the year ended December 31, 2015, our compensation committee was comprised of John Harris, Phil Guarscio and Tom Akin. Mr. Harris currently serves as compensation committee chair.

Committee Interlocks and Insider Participation

None of our executive officers serve on the board of directors of another entity, whose executive officers serves on our board of directors.

Code of Ethics

We have adopted a code of ethics for all our employees, including our chief executive officer, principal financial officer and principal accounting officer or controller, and/or persons performing similar functions, which is available on our website, under the link entitled “Code of Ethics”.

Item 11. Executive Compensation

The following table summarizes the total compensation earned by our Chief Executive Officer and our other two most highly paid executive officers for the years ended December 31, 2015 and 2014.

Summary Compensation Table*

Name and Principal Position	Year	Salary	Bonus	Stock Awards (1)	Option Awards (1)	All Other Compensation	Total
Dennis Becker, CEO	2015	\$ 275,908	\$ 44,960	\$ -	\$ 115,000	\$ -	\$ 435,868
	2014	\$ 214,915	\$ -	\$ -	\$ -	\$ -	\$ 214,915
Christopher Meinerz, CFO (2)	2015	\$ 160,404	\$ 4,196	\$ -	\$ 351,000	\$ -	\$ 515,600
William Van Epps, Executive Chairman (3)	2015	\$ 286,371	\$ 27,385	\$ 63,000	\$ 1,035,000	\$ 77,436	\$ 1,489,191
	2014	\$ -	\$ -	\$ 161,369	\$ -	\$ -	\$ 161,369

* In accordance with the rules and regulations promulgated by the Securities and Exchange Commission, the table omits columns that are not applicable.

- (1) The value of the stock and stock option compensation was computed using the Black-Scholes Option Pricing Model and represents the aggregate grant date fair value computed in accordance with ASC Topic 718. For information on the method and assumptions used to calculate the compensation costs, see Note 8 to our audited consolidated financial statements contained herein.
- (2) Christopher Meinerz was appointed Chief Financial Officer effective February 16, 2015. Amounts in the table above reflect his compensation after his appointment and through December 31, 2015.
- (3) William Van Epps was appointed Executive Chairman on January 21, 2015. Amounts in the table above reflect his compensation after his appointment and through December 31, 2015 with the exception of previously issued restricted stock awards as reflected.

The following table presents the outstanding option awards held by each of our named executive officers as of December 31, 2015, including the value of the options awards.

Outstanding Equity Awards at December 31, 2015*

Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Equity Incentive Plan Awards; Number of Securities Underlying Unexercised Unearned Options (#) Unexercisable	Option Exercise Price	Option Expiration Date
Dennis Becker, CEO	-	100,000	\$ 1.28	1/22/2025
Dennis Becker, CEO	782,487	469,491	\$ 1.80	6/17/2023
Christopher Meinerz, CFO	62,500	237,500	\$ 1.30	2/16/2025
William Van Epps, Executive Chairman	206,250	693,750	\$ 1.28	1/22/2025

* In accordance with the rules and regulations promulgated by the Securities and Exchange Commission, the table omits columns that are not applicable.

Employment Agreements

William Van Epps

On January 19, 2015, we entered into an employment agreement with William Van Epps. Under the terms of the agreement, Mr. Van Epps will serve as our Executive Chairman and receive a base salary of \$310,000, subject to annual review by the board. The Company also agreed to pay Mr. Van Epps a signing bonus of 50,000 shares of the Company's common stock. Mr. Van Epps will be eligible for annual performance bonuses of up to 100% of his base salary for meeting key performance requirements, quotas, and assigned objectives determined annually by the board. Pursuant to his employment agreement with the Company, Mr. Van Epps is eligible to participate in all benefits, plans, and programs, including improvements or modifications of the same, which are now, or

may hereafter be, available to other executive employees of Company. Mr. Van Epps' employment agreement contains standard provisions concerning noncompetition, nondisclosure and indemnification.

Pursuant to Mr. Van Epps' employment agreement, the Company has granted Mr. Van Epps an option to purchase 900,000 shares of Company common stock, over a five year period from the date of grant, at an exercise price of \$1.28 per share. The options will vest and first become exercisable at the rate of 1/48th per month over a 48 month period commencing on the date of grant. Mr. Van Epps' options shall otherwise be on terms and conditions contained in the Company's current equity incentive plan.

In the event Mr. Van Epps' employment with the Company is terminated by the Company without cause, the Company shall pay Mr. Van Epps, in addition to all other amounts then due and payable, 12 additional monthly installments of his base salary.

Effective March 11, 2016, the board amended the agreement with Mr. Van Epps to pay him an annual base salary of \$310,000 through December 31, 2016 and \$120,000 during the twelve months ending December 31, 2017. Effective January 1, 2018, Mr. Van Epps' base salary will consist of the standard director compensation payable to the Company's independent directors as determined by the compensation committee of the board at the time. Mr. Van Epps will not be eligible for bonuses under the agreement for periods following December 31, 2016, except as determined by the compensation committee. If the agreement is terminated by the Company without cause, then, in addition to the payments set forth above, Mr. Van Epps' stock options shall continue to vest for 12 months following the date of termination and the option to exercise such stock options shall be extended from the 12 month anniversary of the termination date.

Dennis Becker

On January 11, 2011, we entered into an employment agreement with Dennis Becker. Under the terms of the agreement, Mr. Becker will serve as our President and Chief Executive Officer for an initial term of three years from December 24, 2010 (the "Effective Date"). Unless terminated no less than 90 days prior to the expiration date by either party, the agreement is renewed automatically for successive one year periods. Under the agreement, Mr. Becker is paid a base annual salary of \$120,000. The base salary is subject to an annual increase at the sole discretion our board of directors. In addition to regular annual increases, the base salary will be increased by \$30,000 (up to a cumulative maximum of \$60,000) for each acquisition of the stock or all or substantially all of the assets of a third party entity, or the formation of joint ventures resulting in operating cash flows minus capital expenditures and dividends of no less than \$25,000 during a three month period ending six months after the completion of each such acquisition or formation of such joint venture. In addition, his salary will be increased to \$225,000 in the event we complete a financing transaction of no less than \$3,000,000 and we complete one acquisition. The board may further award him, at its sole discretion, an annual bonus of up to 50% of his base salary and grant him stock options.

Effective March 30, 2015, based on the successful results of the March 2015 capital raise, the board increased Mr. Becker's annual base salary by \$50,000 to \$275,000, awarded him a bonus payment of \$30,000, and also granted him options to purchase 100,000 shares of our common stock at an exercise price of \$1.28 with 25% vesting after 1 year from date of grant and 1/36 per month afterwards.

If the agreement is terminated by us without cause (as defined in the agreement) or the we notify Mr. Becker that we will not renew the agreement, we will be required to pay him a severance payment equal to six months of his base salary payable in regular intervals following such termination or expiration of the agreement.

The agreement includes non-compete, non-solicitation, intellectual property assignment and confidentiality provisions that are customary in our industry.

Christopher Meinerz

On February 16, 2015, the board of directors of Mobivity Holdings Corp. (the "Company") appointed Christopher Meinerz to serve as Chief Financial Officer of the Company. In connection with the appointment, the Company entered into an employment agreement dated February 16, 2015 with Mr. Meinerz.

Pursuant to his employment agreement, the Company has agreed to pay Mr. Meinerz an annual base salary of \$190,000, subject to annual review by the board. Mr. Meinerz will be eligible for annual performance bonuses of up to 25% of his base salary for meeting key performance requirements, quotas, and assigned objectives determined annually by the board. Also pursuant to his employment agreement with the Company, Mr. Meinerz is eligible to participate in all benefits, plans, and programs, including improvements or modifications of the same, which are now, or may hereafter be, available to other executive employees of Company. Mr. Meinerz's employment agreement contains standard provisions concerning noncompetition, nondisclosure and indemnification.

Pursuant to Mr. Meinerz's employment agreement, the Company has granted Mr. Meinerz an option to purchase 300,000 shares of Company common stock, over a ten year period from the date of grant, at an exercise price of \$1.30 per share, representing the closing

price of the Company's common stock on February 16, 2015. The options will vest and first become exercisable at the rate of 1/48th per month over a 48 month period commencing on the date of grant. Mr. Meinerz's options shall otherwise be on terms and conditions contained in the Company's current equity incentive plan.

In the event Mr. Meinerz's employment with the Company is terminated by the Company without cause, the Company shall pay Mr. Meinerz, in addition to all other amounts then due and payable, six (6) additional monthly installments of his base salary.

The agreement includes non-compete, non-solicitation, intellectual property assignment and confidentiality provisions that are customary in our industry.

Non-Employee Director Compensation

2015 Director Compensation Table

Name	Fees Earned	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	Deferred Compensation Earnings	All Other Compensation	Total
David Jaques	-	54,054 ⁽¹⁾	-	-	-	-	54,054
David Jaques	-	7,813 ⁽²⁾	-	-	-	-	7,813
Doug Schneider	-	50,676 ⁽¹⁾	-	-	-	-	50,676
John Harris	-	54,054 ⁽¹⁾	-	-	-	-	54,054
John Harris	-	46,875 ⁽²⁾	-	-	-	-	46,875
Phil Guarascio	-	54,054 ⁽¹⁾	-	-	-	-	54,054
Phil Guarascio	-	7,813 ⁽²⁾	-	-	-	-	7,813

- (1) Compensation related to a restricted stock unit granted for services in 2015 of 212,838 shares. The shares of Common Stock associated with the restricted stock unit evidenced by this Agreement will, to the extent the holder's rights with respect to the restricted stock unit have become vested in accordance with Paragraph 3, be issued to the Participant upon the earliest to occur of (A) settlement date of three years from date of grant, (B) a Change in Control of the Company, and (C) the termination of the Participant's employment with the Company. As of December 31, 2015, 195,107 units have vested.
- (2) Compensation related to a restricted stock unit granted for services in 2015 of 62,501 shares. The shares of Common Stock associated with the restricted stock unit evidenced by this Agreement will, to the extent the holder's rights with respect to the restricted stock unit have become vested in accordance with Paragraph 3, be issued to the Participant upon the earliest to occur of (A) settlement date of three years from date of grant, (B) a Change in Control of the Company, and (C) the termination of the Participant's employment with the Company. As of December 31, 2015, 57,293 units have vested.

Item 12. Security Ownership of Certain Beneficial Owners and Management

The following table sets forth as of March 15, 2016, certain information regarding the beneficial ownership of our common stock. The table sets forth the beneficial ownership of (i) each person who, to our knowledge, beneficially owns more than 5% of our outstanding shares of Common Stock; (ii) each of our directors and executive officers; and (iii) all of our executive officers and directors as a group. The number of shares owned includes all shares beneficially owned by such persons, as calculated in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The number of shares beneficially owned by a person includes shares of common stock underlying options or warrants held by that person that are currently exercisable or exercisable within 60 days of March 15, 2016. The shares issuable pursuant to the exercise of those options or warrants are deemed outstanding for computing the percentage ownership of the person holding those options and warrants but are not deemed outstanding

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for the purposes of computing the percentage ownership of any other person. Unless otherwise indicated, the address of each shareholder is c/o the Company, 55 N. Arizona Place, Suite 310, Chandler, AZ 85225.

Name of Beneficial Owner	Shares Beneficially Owned	Percentage of Shares Beneficially Owned (1)
Dennis Becker (2)	2,384,004	8 %
Christopher Meinerz (3)	87,500	*
David Jaques (4)	152,735	1
Doug Schneider (5)	190,991	1 %
John Harris (6)	226,761	1 %
Phil Guarascio (7)	138,864	*
William Van Epps (8)	509,117	2 %
Thomas Akin (9)	2,697,425	9 %
Executive Officers and Directors as a Group (eight persons)	6,387,397	21 %
5% Beneficial Owners		
Porter Partners LP	1,651,774	6 %

* Denotes less than 1%

- (1) Applicable percentage of ownership is based upon 29,803,007 shares of common stock outstanding as of March 15, 2016.
- (2) Includes 918,068 shares of common stock issuable pursuant to presently exercisable stock options that will vest within 60 days of March 15, 2016.
- (3) Includes 87,500 shares of common stock issuable pursuant to presently exercisable stock options that will vest within 60 days of March 15, 2016.
- (4) Includes 127,735 shares of common stock issuable upon settlement of restricted stock units that will vest within 60 days of March 15, 2016.
- (5) Includes 116,544 shares of common stock issuable upon settlement of restricted stock units that will vest within 60 days of March 15, 2016. Includes 74,447 shares of common stock owned of record by The Schneider Family Trust.
- (6) Includes 180,927 shares of common stock issuable upon settlement of restricted stock units that will vest within 60 days of March 15, 2016.
- (7) Includes 113,864 shares of common stock issuable upon settlement of restricted stock units that will vest within 60 days of March 15, 2016.
- (8) Includes 146,867 shares of common stock issuable upon settlement of restricted stock units that will vest within 60 days of March 15, 2016. Includes 281,250 shares of common stock issuable pursuant to presently exercisable stock options that will vest within 60 days of March 15, 2016.
- (9) Includes 1,688,925 shares of Common Stock owned of record by Talkot Fund, L.P.

Item 13. Certain Relationships and Related Transactions, and Director Independence

Certain Relationships and Related Transactions

We had no transactions or series of transactions since January 1, 2012, and we have no currently proposed transactions, to which we have been or are proposed to be a party, in which the amount involved in the transaction or series of transactions exceeds the lesser of \$120,000 or one percent of the average of our total assets as of December 31, 2015 and December 31, 2014, and in which any of our directors, executive officers or persons who we know held more than five percent of any class of our capital stock, including their immediate family members, had or will have a direct or indirect material interest, other than as described below or compensation arrangements that are described under "Employment Agreements" above.

The board conducts an appropriate review of and oversees all related party transactions on a continuing basis and reviews potential conflict of interest situations where appropriate. The board has not adopted formal standards to apply when it reviews, approves or ratifies any related party transaction. However, the board has followed the following standards: (i) all related party transactions must be fair and reasonable to us and on terms comparable to those reasonably expected to be agreed to with independent third parties for the same goods and/or services at the time they are authorized by the board and (ii) all related party transactions should be authorized, approved or ratified by the affirmative vote of a majority of the directors who have no interest, either directly or indirectly, in any such related party transaction.

Indemnification Agreements with Directors and Executive Officers

We have entered into indemnity agreements with certain directors, officers and other key employees of ours under which we agreed to indemnify those individuals under the circumstances and to the extent provided for in the agreements, for expenses, damages, judgments, fines, settlements and any other amounts they may be required to pay in actions, suits or proceedings which they are or may be made a party or threatened to be made a party by reason of their position as a director, officer or other agent of ours, and otherwise to the fullest extent permitted under Nevada law and our bylaws. We also have an insurance policy covering our directors and executive officers with respect to certain liabilities, including liabilities arising under the Securities Act of 1933, as amended, or otherwise. We believe that these provisions and insurance coverage are necessary to attract and retain qualified directors, officers and other key employees.

Item 14. Principal Accounting Fees and Services

The following table represents aggregate fees billed to us for the years ended December 31, 2015 and 2014 by M&K, CPAs, our principal auditors for such periods. All fees described below were approved by the board of directors.

	2015	2014
Audit Fees	\$ 72,500	\$ 59,500
Audit-Related Fees	-	-
Tax Fees	3,900	3,900
All Other Fees	7,500	37,250
Total Fees	\$ 83,900	\$ 100,650

Other Fees consist of charges related to the audits of our acquisition targets FDI and SmartReceipt, and the review of our filing on Form S-1 registration statements filed in 2014 and 2015.

Board of Directors' Pre-Approval Policies and Procedures

The board of directors has adopted a policy for the pre-approval of audit and non-audit services rendered by our independent auditors, M&K CPAs. The policy generally pre-approves specified services in the defined categories of audit services, audit-related services and tax services up to specified amounts. Pre-approval may also be given as part of the board's approval of the scope of the engagement of the independent auditors or on an individual explicit case-by-case basis before the independent auditors are engaged to provide each service.

The board of directors has determined that the rendering of the services other than audit services by M&K CPAs is compatible with maintaining the principal accountant's independence.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(1) Financial Statements

The Financial Statements of Mobivity Holdings Corp. and Report of Independent Registered Public Accounting Firm are included in a separate section of this Form 10-K beginning on page F-1.

(a)(2) Financial Statement Schedules

The schedules required to be filed by this item have been omitted because of the absence of conditions under which they are required, or because the required information is included in the financial statements or the notes thereto.

(a)(3) Exhibits

Exhibit Number	Description
3.1	Articles of Incorporation (2)
3.2	Bylaws (2)
3.3	Amendment to Bylaws (3)
3.4	Articles of Merger filed August 6, 2012 (6)
3.5	Amendment No. 2 to the Bylaws, effective as of May 20, 2013 (17)

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3.6	Amendment to Articles of Incorporation filed with the Nevada Secretary of State on November 12, 2013 (9)
4.1	Form of Warrant issued as part of Secured Subordinated Promissory Note, effective as of April 1, 2011 (1)
4.2	Form of Common Stock Purchase Warrant issued pursuant to Convertible Secured Promissory Note Conversion Agreement dated as of June 17, 2013 (7)
4.3	Form of Common Stock Purchase Warrant issued pursuant to Securities Purchase Agreement dated March 10, 2014 (10)
4.6	Form of Common Stock Purchase Warrant issued pursuant to Securities Purchase Agreement dated March 2, 2015 (13)
10.1	Employment Agreement dated December 24, 2010 with Dennis Becker (4)**
10.2	Form of Registration Rights Agreement for 2012 10% Senior Secured Promissory Bridge Note (5)
10.3	Registration Rights Agreement by and among the Company and the purchasers identified on the signature pages thereto, dated as of June 17, 2013 (7)
10.4	2013 Stock Incentive Plan of the Company adopted July 18, 2013 (8) **
10.5	Asset Purchase Agreement dated March 12, 2014 between Company and SmartReceipt, Inc. (10)
10.6	Form of Securities Purchase Agreement dated March 10, 2014 between the Company and the investors named herein (10)
10.7	Form of Registration Rights Agreement dated March 10, 2014 between the Company and the investors named herein (10)
10.8	Amendment No. 1 dated November 13, 2014 To Employment Agreement Dated May 20, 2014 with Tom Tolbert (11)**
10.9	Employment Agreement dated January 21, 2015 with William Van Epps (18) **
10.10	Employment Agreement dated February 16, 2015 with Christopher Meinerz (12) **
10.11	Form of Securities Purchase Agreement dated March 2, 2015 between the Company and the investors named herein (13)
10.12	Form of Registration Rights Agreement dated March 2, 2015 between the Company and the investors named herein (13)
10.13	Sublease Agreement dated May 8, 2015 between the Company and MTC Holdings, Inc. (15)
10.14	Agreement dated January 15, 2016 between the Company and the shareholders of LiveLenz, Inc. (16)
10.15	Form of Securities Purchase Agreement dated March 7, 2016 between the Company and the investors named herein *
10.16	Form of Registration Rights Agreement dated March 7, 2016 between the Company and the investors named herein *
10.17	Loan and Security Agreement dated March 30, 2016 is among Silicon Valley Bank, Mobivity, Inc. and the Company *
21.1	List of Subsidiaries (14)
31.1	Certification of Dennis Becker, Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
31.2	Certification of Christopher Meinerz, Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
32.1	Certification of Dennis Becker, Chief Executive Officer, and Christopher Meinerz, Chief Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*
101.INS	XBRL Instance Document*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document*

* Filed herewith

** Indicates management compensatory plan, contract or arrangement

- (1) Incorporated by reference to the Company's Annual Report on Form 10-K filed on April 14, 2011
- (2) Incorporated by reference to the Registration Statement on Form S-1 filed with the SEC on October 20, 2008, File No. 333-154455
- (3) Incorporated by reference to the Company's Current Report on Form 8-K filed December 2, 2011
- (4) Incorporated by reference to the Company's Current Report on Form 8-K filed January 18, 2011
- (5) Incorporated by reference to the Company's Current Report on Form 8-K filed June 4, 2012
- (6) Incorporated by reference to the Company's Current Report on Form 8-K filed October 19, 2012
- (7) Incorporated by reference to the Company's Current Report on Form 8-K filed June 20, 2013
- (8) Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed August 14, 2013
- (9) Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed November 14, 2013

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- (10) Incorporated by reference to the Company's Current Report on Form 8-K filed March 18, 2014
- (11) Incorporated by reference to the Company's Current Report on Form 8-K filed November 24, 2014
- (12) Incorporated by reference to the Company's Current Report on Form 8-K filed February 20, 2015
- (13) Incorporated by reference to the Company's Current Report on Form 8-K filed March 6, 2015
- (14) Incorporated by reference to the Registration Statement on Form S-1 filed with the SEC on August 16, 2013, File No. 333-190692
- (15) Incorporated by reference to the Registration Statement on Form S-1 filed with the SEC on August 24, 2015, File No. 333-203751
- (16) Incorporated by reference to the Company's Current Report on Form 8-K filed January 22, 2016
- (17) Incorporated by reference to the Company's Current Report on Form 8-K filed May 24, 2013
- (18) Incorporated by reference to the Company's Current Report on Form 10-K filed March 31, 2015

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

DATE: March 30, 2016

MOBIVITY HOLDINGS CORP.

/s/ Dennis Becker
Dennis Becker
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Dennis Becker</u>	Chief Executive Officer and Director	March 30, 2016
<u>/s/ Christopher Meinerz</u>	Chief Financial Officer	March 30, 2016
<u>/s/ William Van Epps</u>	Executive Chairman and Director	March 30, 2016
<u>/s/ Phillip Guarascio</u>	Director	March 30, 2016
<u>/s/ John Harris</u>	Director	March 30, 2016
<u>/s/ David Jaques</u>	Director	March 30, 2016
<u>/s/ Doug Schneider</u>	Director	March 30, 2016
<u>/s/ Thomas Akin</u>	Director	March 30, 2016

SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (the “**Agreement**”) is dated as of the 7th day of March, 2016, by and between **MOBIVITY HOLDINGS CORP.**, a Nevada corporation (the “**Company**”), and each individual or entity named on the Schedule of Buyers attached hereto (each such individual or entity, individually, a “**Buyer**” and all of such individuals or entities, collectively, the “**Buyers**”).

RECITALS

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the “**Securities Act**”), and Rule 506(b) promulgated thereunder, the Company desires to issue and sell to each Buyer, and each Buyer, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties hereinafter expressed and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, each intending to be legally bound, agree as follows:

ARTICLE I
RECITALS, EXHIBITS, SCHEDULES

The foregoing recitals are true and correct and, together with the Schedules and Exhibits referred to hereafter, are hereby incorporated into this Agreement by this reference.

ARTICLE II
DEFINITIONS

For purposes of this Agreement, except as otherwise expressly provided or otherwise defined elsewhere in this Agreement, or unless the context otherwise requires, the capitalized terms in this Agreement shall have the meanings assigned to them in this Article as follows:

2.1 “**Affiliate**” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person as such terms are used in and construed under Rule 405 under the Securities Act.

2.2 “**Assets**” means all of the properties and assets of the Company or of its wholly owned subsidiary, Mobivity, Inc. (“**Operating Sub**”), whether real, personal or mixed, tangible or intangible, wherever located, whether now owned or hereafter acquired.

2.3 “**Claims**” means any Proceedings, Judgments, Obligations, threats, losses, damages, deficiencies, settlements, assessments, charges, costs and expenses of any nature or kind.

2.4 “**Common Stock**” means the Company’s common stock, \$0.001 par value per share.

2.5 “**Consent**” means any consent, approval, order or authorization of, or any declaration, filing or registration with, or any application or report to, or any waiver by, or any other action (whether similar or dissimilar to any of the foregoing) of, by or with, any Person, which is necessary in order to take a specified action or actions, in a specified manner and/or to achieve a specific result.

2.6 “**Contract**” means any written or oral contract, agreement, order or commitment of any nature whatsoever, including, any sales order, purchase order, lease, sublease, license agreement, services agreement, loan agreement, mortgage, security agreement, guarantee, management contract, employment agreement, consulting agreement, partnership agreement, shareholders agreement, buy-sell agreement, option, warrant, debenture, subscription, call or put.

2.7 “**Encumbrance**” means any lien, security interest, pledge, mortgage, easement, leasehold, assessment, tax, covenant, restriction, reservation, conditional sale, prior assignment, or any other encumbrance, claim, burden or charge of any nature whatsoever.

2.8 “**Environmental Requirements**” means all Laws and requirements relating to human, health, safety or protection of the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, or Hazardous Materials in the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), or otherwise relating to the treatment, storage, disposal, transport or handling of any Hazardous Materials.

2.9 “**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

2.10 “**GAAP**” means generally accepted accounting principles, methods and practices set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, and statements and pronouncements of the Financial Accounting Standards Board, the SEC or of such other Person as may be approved by a significant segment of the U.S. accounting profession, in each case as of the date or period at issue, and as applied in the U.S. to U.S. companies.

2.11 “**Governmental Authority**” means any foreign, federal, state or local government, or any political subdivision thereof, or any court, agency or other body, organization, group, stock market or exchange exercising any executive, legislative, judicial, quasi-judicial, regulatory or administrative function of government.

2.12 “**Hazardous Materials**” means: (i) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls (PCB’s); (ii) any chemicals, materials, substances or wastes which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants” or words of similar import, under any Law; and

(iii) any other chemical, material, substance, or waste, exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority.

2.13 “**Judgment**” means any order, writ, injunction, fine, citation, award, decree, or any other judgment of any nature whatsoever of any Governmental Authority.

2.14 “**Law**” means any provision of any law, statute, ordinance, code, constitution, charter, treaty, rule or regulation of any Governmental Authority.

2.15 “**Leases**” means all leases for real or personal property.

2.16 “**Material Adverse Effect**” means with respect to the event, item or question at issue, that such event, item or question would not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of this Agreement or any of the Transaction Documents; (ii) a material adverse effect on the results of operations, Assets, business or condition (financial or otherwise) or prospects of the Company or any of its subsidiaries, either individually or taken as a whole; (iii) a material adverse effect on the Company’s or its subsidiaries’ ability to perform, on a timely basis, its or their respective Obligations under this Agreement or any Transaction Documents; or (iv) a material adverse effect on the Buyer’s ability to sell or dispose of any of the Securities, whether on the Principal Trading Market, or otherwise, in accordance with applicable securities Laws.

2.17 “**Material Contract**” shall mean any Contract to which the Company or Operating Sub is a party or by which the Company or Operating Sub, or any of their Assets, are bound and which: (i) involves aggregate payments of Twenty-Five Thousand Dollars (\$25,000) or more to or from the Company or Operating Sub, as the applicable, following the date of this Agreement; (ii) involves delivery, purchase, licensing or provision, by or to the Company or Operating Sub, as applicable, following the date of this Agreement, of any goods, services, assets or other items having a value (or potential value) over the term of such Contract of Twenty-Five Thousand Dollars (\$25,000) or more or is otherwise material to the conduct of the Company’s or Operating Sub’s business as now conducted and as contemplated to be conducted in the future; (iii) involves a Lease; (iv) imposes any guaranty, surety or indemnification Obligations on the Company or Operating Sub; or (v) prohibits the Company or Operating Sub from engaging in any business or competing anywhere in the world.

2.18 “**Obligation**” means any debt, liability or obligation of any nature whatsoever, whether secured, unsecured, recourse, nonrecourse, liquidated, unliquidated, accrued, absolute, fixed, contingent, ascertained, unascertained, known, unknown or obligations under executory Contracts.

2.19 “**Ordinary Course of Business**” means the ordinary course of business consistent with past custom and practice (including with respect to quantity, quality and frequency).

2.20 “**Permit**” means any license, permit, approval, waiver, order, authorization, right or privilege of any nature whatsoever, granted, issued, approved or allowed by any Governmental Authority.

Exhibit 10.15

2.21 “**Person**” means any individual, sole proprietorship, joint venture, partnership, company, corporation, association, cooperation, trust, estate, Governmental Authority, or any other entity of any nature whatsoever.

2.22 “**Principal Trading Market**” shall mean the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, the OTC Markets, including the Bulletin Board and Pink Sheets, the NYSE Euronext or the New York Stock Exchange, whichever is at the time the principal trading exchange or market for the Common Stock.

2.23 “**Proceeding**” means any demand, claim, suit, action, litigation, investigation, audit, study, arbitration, administrative hearing, or any other proceeding of any nature whatsoever.

2.24 “**Real Property**” means any real estate, land, building, structure, improvement, fixture or other real property of any nature whatsoever, including, but not limited to, fee and leasehold interests.

2.25 “**Registration Rights Agreement**” means the Registration Rights Agreement, dated the date hereof, among the Company and the Buyers, in the form of Exhibit A attached hereto.

2.26 “**SEC**” means the United States Securities and Exchange Commission.

2.27 “**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

2.28 “**Shares**” means up to Three Million Three Hundred Thirty-Three Thousand Three Hundred Thirty-Five (3,333,335) shares of Common Stock issued or issuable to the Buyers pursuant to this Agreement.

2.29 “**Tax**” means (i) any foreign, federal, state or local income, profits, gross receipts, franchise, sales, use, occupancy, general property, real property, personal property, intangible property, transfer, fuel, excise, accumulated earnings, personal holding company, unemployment compensation, social security, withholding taxes, payroll taxes, or any other tax of any nature whatsoever, (ii) any foreign, federal, state or local organization fee, qualification fee, annual report fee, filing fee, occupation fee, assessment, rent, or any other fee or charge of any nature whatsoever, or (iii) any deficiency, interest or penalty imposed with respect to any of the foregoing.

2.30 “**Tax Return**” means any tax return, filing, declaration, information statement or other form or document required to be filed in connection with or with respect to any Tax.

2.31 “**Transaction Documents**” means this Agreement and the Registration Rights Agreement executed in connection with the transactions contemplated hereunder.

ARTICLE III
INTERPRETATION

In this Agreement, unless the express context otherwise requires: (i) the words “herein,” “hereof” and “hereunder” and words of similar import refer to this Agreement as a whole and not

to any particular provision of this Agreement; (ii) references to the words “ Article” or “Section” refer to the respective Articles and Sections of this Agreement, and references to “Exhibit” or “Schedule” refer to the respective Exhibits and Schedules annexed hereto; (iii) references to a “party” mean a party to this Agreement and include references to such party’s permitted successors and permitted assigns; (iv) references to a “third party” mean a Person not a party to this Agreement; (v) the terms “dollars” and “\$” means U.S. dollars; (vi) wherever the word “include,” “includes” or “including” is used in this Agreement, it will be deemed to be followed by the words “without limitation.”

ARTICLE IV
PURCHASE AND SALE

4.1 Sale and Issuance of Shares. Subject to the terms and conditions of this Agreement, each Buyer agrees, severally and not jointly, to purchase, and the Company agrees to sell and issue to each Buyer, the number of Shares set forth in the column designated “Number of Shares” opposite such Investor’s name on the Schedule of Buyers, which in the aggregate shall equal up to Two Million One Dollars (\$2,000,001) of Shares, at a cash purchase price of \$0.60 per Share (the “**Purchase Price**”). The Company’s agreement with each Buyer is a separate agreement, and the sale and issuance of the Shares to each Buyer is a separate sale and issuance.

4.2 Closing.

(a) The purchase, sale and issuance of the Shares shall take place at one or more closings (each of which is referred to in this Agreement as a “**Closing**” and the date of each is referred to in this Agreement as a “**Closing Date**”). The initial Closing (the “**Initial Closing**”) shall have a minimum total Purchase Price of not less than One Million Five Hundred Thousand Dollars (\$1,500,000) (the “**Minimum Purchase Proceeds**”). The Initial Closing shall take place at the offices of Greenberg Traurig, LLP, 3161 Michelson Drive, Suite 1000, Irvine, California 92612, or such other location as the parties shall mutually agree, no later than the second business day following the satisfaction or waiver of the conditions provided in Articles VIII and IX of this Agreement (“**Initial Closing Date**”).

(b) If less than all of the Shares are sold and issued at the Initial Closing, then, subject to the terms and conditions of this Agreement, the Company may sell and issue at one or more subsequent closings (each, a “**Subsequent Closing**”), within 90 days after the Initial Closing, up to the balance of the unissued Shares to such persons or entities as may be approved by the Company in its sole discretion. Any such sale and issuance in a Subsequent Closing shall be on the same terms and conditions as those contained herein, and such persons or entities shall, upon execution and delivery of the relevant signature pages, become parties to, and be bound by, this Agreement and the other Transaction Documents, without the need for an amendment to any of the Transaction Documents except to add such person’s or entity’s name to the appropriate exhibit to such Transaction Documents, and shall have the rights and obligations hereunder and thereunder, in each case as of the date of the applicable Subsequent Closing. Each Subsequent Closing shall take place at such date, time and place as shall be approved by the Company in its sole discretion.

4.3 Form of Payment; Delivery. At each Closing, Buyer shall deliver to the Company the “Purchase Price” opposite such Buyer’s name on the Schedule of Buyers in the form of wire transfers of immediately available U.S. funds.

ARTICLE V
BUYERS’ REPRESENTATIONS AND WARRANTIES

Each Buyer represents and warrants to the Company, that:

5.1 Investment Purpose. Each Buyer is acquiring the Shares for its own account for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the Securities Act; provided, however, that by making the representations herein, each Buyer reserves the right to dispose of the Shares at any time in accordance with or pursuant to an effective registration statement covering such Shares or an available exemption under the Securities Act. The Buyer acknowledges that a legend will be placed on the certificates representing the Shares in the following form:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND ARE “RESTRICTED SECURITIES” AS THAT TERM IS DEFINED IN RULE 144 UNDER THE SECURITIES ACT. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND THE APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER, THE AVAILABILITY OF WHICH IS TO BE ESTABLISHED TO THE REASONABLE SATISFACTION OF COUNSEL TO THE ISSUER.

5.2 Accredited Investor Status. Each Buyer is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D, as promulgated under the Securities Act.

5.3 Reliance on Exemptions. Each Buyer understands that the Shares are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities Laws and that the Company is relying in part upon the truth and accuracy of, and each Buyer’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of each Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of each Buyer to acquire the Shares.

5.4 Information. Each Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and other information each Buyer deemed material to making an informed investment decision regarding its purchase of the Shares, which have been requested by each Buyer. Buyer acknowledges that it has received and reviewed a copy of the Company’s Prospectus dated September 10, 2015, which was filed with the SEC on September 15, 2015, and all periodic reports subsequently filed by the Company with the SEC. Each Buyer and its advisors, if any, have been afforded the opportunity to ask

questions of the Company and its management. Neither such inquiries, nor any other due diligence investigations conducted by any Buyer or its advisors, if any, or its representatives, shall modify, amend or affect each Buyer's right to rely on the Company's and Operating Sub's representations and warranties contained in Article VI below. Each Buyer understands that its investment in the Shares involves a high degree of risk. Each Buyer is in a position regarding the Company, which, based upon employment, family relationship or economic bargaining power, enabled and enables such Buyer to obtain information from the Company in order to evaluate the merits and risks of this investment. Each Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Shares.

5.5 No Governmental Review. Each Buyer understands that no United States federal or state Governmental Authority has passed on or made any recommendation or endorsement of the Shares, or the fairness or suitability of the investment in the Shares, nor have such Governmental Authorities passed upon or endorsed the merits of the offering of the Shares.

5.6 Authorization, Enforcement. This Agreement has been duly and validly authorized, executed and delivered on behalf of each Buyer and is a valid and binding agreement of each Buyer, enforceable in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

5.7 General Solicitation. The Buyer is not purchasing the Shares as a result of any advertisement, article, notice or other communication regarding the Shares published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement. The Buyer represents that it has a relationship preceding its decision to purchase the Shares with the Company.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth and disclosed in the Company's disclosure schedules ("**Disclosure Schedules**") attached to this Agreement and made a part hereof, the Company and Operating Sub each hereby makes the following representations and warranties to the Buyer:

6.1 Subsidiaries. Except for a one hundred percent (100%) ownership in Operating Sub, the Company has no subsidiaries and the Company does not own, directly or indirectly, any outstanding voting securities of or other interests in, or have any control over, any other Person. With respect to Operating Sub, all representations and warranties in this Article VI and elsewhere in this Agreement shall be deemed repeated and re-made from and by Operating Sub, as if such representations and warranties were independently made by Operating Sub, in this Agreement (but modified as necessary in order to give effect to the intent of the parties that such representation and warranty is being made by the Operating Sub, rather than the Company, as applicable). In addition, each representation and warranty contained in this Article VI or otherwise set forth in this Agreement shall be deemed to mean and be construed to include the Company and each of its subsidiaries, as applicable, regardless of whether each of such representations and warranties in Article VI specifically refers to the Company's subsidiaries or not.

6.2 Organization. The Company and its subsidiaries are corporations, duly organized, validly existing and in good standing under the Laws of the jurisdiction in which they are incorporated. The Company has the full corporate power and authority and all necessary certificates, licenses, approvals and Permits to: (i) enter into and execute this Agreement and the Transaction Documents and to perform all of its Obligations hereunder and thereunder; and (ii) own and operate its Assets and properties and to conduct and carry on its business as and to the extent now conducted. The Company is duly qualified to transact business and is in good standing as a foreign corporation in each jurisdiction where the character of its business or the ownership or use and operation of its Assets or properties requires such qualification, except to the extent that failure to so qualify will not result in a Material Adverse Effect.

6.3 Authority and Approval of Agreement; Binding Effect . The execution and delivery by Company of this Agreement and the Transaction Documents, and the performance by Company of all of its Obligations hereunder and thereunder, including the issuance of the Shares, have been duly and validly authorized and approved by Company and its board of directors pursuant to all applicable Laws and no other corporate action or Consent on the part of Company, its board of directors, stockholders or any other Person is necessary or required by the Company to execute this Agreement and the Transaction Documents, consummate the transactions contemplated herein and therein, perform all of Company's Obligations hereunder and thereunder, or to issue the Shares. This Agreement and each of the Transaction Documents have been duly and validly executed by Company (and the officer executing this Agreement and all such other Transaction Documents is duly authorized to act and execute same on behalf of Company) and constitute the valid and legally binding agreements of Company, enforceable against Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

6.4 Capitalization. Immediately prior to the Initial Closing, the authorized capital stock of the Company will consist of 50,000,000 shares of Common Stock, of which 28,787,991 shares of Common Stock are issued and outstanding. All of such outstanding shares have been validly issued and are fully paid and nonassessable. The Common Stock is currently quoted on the OTCQB Market under the trading symbol "MFON". The Company has received no notice, either oral or written, with respect to the continued eligibility of the Common Stock for quotation on the Principal Trading Market, and the Company has maintained all requirements on its part for the continuation of such quotation. Except as set forth on **Schedule 6.4**, no shares of Common Stock are subject to preemptive rights or any other similar rights or any Encumbrances suffered or permitted by the Company. Except as set forth on **Schedule 6.4**, as of the date hereof: (i) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company or any of its subsidiaries, or Contracts, commitments, understandings or arrangements by which the Company or any of its subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its subsidiaries, or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company or any of its subsidiaries; (collectively, "**Derivative Securities**"); (ii) there are no outstanding debt securities, notes, credit agreements, credit facilities or other Contracts or instruments evidencing indebtedness

of the Company or any of its subsidiaries, or by which the Company or any of its subsidiaries is or may become bound; (iii) there are no outstanding registration statements with respect to the Company or any of its securities; (iv) there are no agreements or arrangements under which the Company or any of its subsidiaries is obligated to register the sale of any of their securities under the Securities Act (except pursuant to this Agreement); (v) there are no financing statements securing obligations filed in connection with the Company or any of its Assets; (vi) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by this Agreement or any related agreement or the consummation of the transactions described herein or therein; and (vii) there are no outstanding securities or instruments of the Company which contain any redemption or similar provisions, and there are no Contracts by which the Company is or may become bound to redeem a security of the Company. Except as set forth on **Schedule 6.4**, there are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders. **Schedule 6.4** sets forth a detailed calculation of the total number of shares of Common Stock outstanding as of the date hereof assuming (i) the issuance of Shares pursuant to this Agreement; (ii) the exercise in full of all outstanding Derivative Securities taking into account all applicable anti-dilution or similar adjustments or rights, including without limitation those resulting from the issuance of Shares pursuant to this Agreement; and (iii) the exercise of all Derivative Securities authorized for issuance, but not yet issued, under any plan of the Company.

6.5 No Conflicts; Consents and Approvals. The execution, delivery and performance of this Agreement and the Transaction Documents, and the consummation of the transactions contemplated hereby and thereby, including the issuance of any of the Shares, will not: (i) constitute a violation of or conflict with any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents; (ii) constitute a violation of, or a default or breach under (either immediately, upon notice, upon lapse of time, or both), or conflicts with, or gives to any other Person any rights of termination, amendment, acceleration or cancellation of, any provision of any Contract to which Company is a party or by which any of its Assets or properties may be bound; (iii) constitute a violation of, or a default or breach under (either immediately, upon notice, upon lapse of time, or both), or conflicts with, any Judgment; (iv) constitute a violation of, or conflict with, any Law (including United States federal and state securities Laws and the rules and regulations of any market or exchange on which the Common Stock is quoted); or (v) result in the loss or adverse modification of, or the imposition of any fine, penalty or other Encumbrance with respect to, any Permit granted or issued to, or otherwise held by or for the use of, Company or any of Company's Assets. The Company is not in violation of its articles of incorporation, bylaws or other organizational or governing documents and the Company is not in default or breach (and no event has occurred which with notice or lapse of time or both could put the Company in default or breach) under, and the Company has not taken any action or failed to take any action that would give to any other Person any rights of termination, amendment, acceleration or cancellation of, any Contract to which the Company is a party or by which any property or Assets of the Company are bound or affected. Except as specifically contemplated by this Agreement, the Company is not required to obtain any Consent of, from, or with any Governmental Authority, or any other Person, in order for it to execute, deliver or perform any of its Obligations under this Agreement or the Transaction Documents in accordance with the terms hereof or thereof, or to issue and sell the Shares in accordance with the terms hereof. All Consents which the Company is required to obtain pursuant

to the immediately preceding sentence have been obtained or effected on or prior to the date hereof. The Company is not aware of any facts or circumstances which might give rise to any of the foregoing.

6.6 Issuance of Shares. The Shares are duly authorized and, upon issuance in accordance with the terms hereof, shall be duly issued, fully paid and non-assessable, and free from all Encumbrances with respect to the issue thereof, and will be issued in compliance with all applicable United States federal and state securities Laws. Assuming the accuracy of the representations and warranties of the Buyers set forth in Article V above, the offer and sale by the Company of the Shares is exempt from: (i) the registration and prospectus delivery requirements of the Securities Act; and (ii) the registration and/or qualification provisions of all applicable state and provincial securities and “blue sky” laws.

6.7 SEC Documents; Financial Statements. The Common Stock is registered pursuant to Section 12 of the Exchange Act and the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC under the Exchange Act (all of the foregoing filed within the two (2) years preceding the date hereof or amended after the date hereof and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein, being hereinafter referred to as the “**SEC Documents**”). The Company is current with its filing obligations under the Exchange Act and all SEC Documents filed within the two (2) years preceding the date hereof have been filed on a timely basis or the Company has received a valid extension of such time of filing and has filed any such SEC Document prior to the expiration of any such extension. The Company represents and warrants that true and complete copies of the SEC Documents are available on the SEC’s website (www.sec.gov) at no charge to Buyers, and Buyers acknowledge that each of them may retrieve all SEC Documents from such website and each Buyer’s access to such SEC Documents through such website shall constitute delivery of the SEC Documents to Buyers; provided, however, that if any Buyer is unable to obtain any of such SEC Documents from such website at no charge, as result of such website not being available or any other reason beyond any Buyer’s control, then upon request from such Buyer, the Company shall deliver to such Buyer true and complete copies of such SEC Documents. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the statements made in any such SEC Documents is, or has been, required to be amended or updated under applicable Law (except as such statements have been amended or updated in subsequent filings prior the date hereof, which amendments or updates are also part of the SEC Documents). As of their respective dates, the financial statements of the Company included in the SEC Documents (“**Financial Statements**”) complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. All of the Financial Statements have been prepared in accordance with GAAP, consistently applied, during the periods involved (except: (i) as may be otherwise indicated in such Financial Statements or the notes thereto; or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements), and fairly present in all material respects the consolidated financial position of the Company as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended (subject, in the case of unaudited

Exhibit 10.15

statements, to normal year-end audit adjustments). To the knowledge of the Company and its officers, no other information provided by or on behalf of the Company to the Buyers which is not included in the SEC Documents contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstance under which they are or were made, not misleading.

6.8 Absence of Certain Changes. Since the date the last of the SEC Documents was filed with the SEC, none of the following have occurred:

(a) There has been no event or circumstance of any nature whatsoever that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect; or

(b) Any transaction, event, action, development, payment, or any other matter of any nature whatsoever entered into by the Company other than in the Ordinary Course of Business.

6.9 Absence of Litigation or Adverse Matters. That: (i) there is no Proceeding before or by any Governmental Authority or any other Person, pending, or the best of Company's knowledge, threatened or contemplated by, against or affecting the Company, its business or Assets; (ii) there is no outstanding Judgments against or affecting the Company, its business or Assets; (iii) the Company is not in breach or violation of any Contract; and (iv) the Company has not received any material complaint from any customer, supplier, vendor or employee.

6.10 Liabilities and Indebtedness of the Company. The Company does not have any Obligations of any nature whatsoever, except: (i) as disclosed in the Financial Statements; or (ii) Obligations incurred in the Ordinary Course of Business since the date of the last Financial Statements filed by the Company with the SEC which do not or would not, individually or in the aggregate, exceed Ten Thousand Dollars (\$10,000) or otherwise have a Material Adverse Effect.

6.11 Title to Assets. The Company has good and marketable title to, or a valid leasehold interest in, all of its Assets which are material to the business and operations of the Company as presently conducted, free and clear of all Encumbrances or restrictions on the transfer or use of same. Except as would not have a Material Adverse Effect, the Company's Assets are in good operating condition and repair, ordinary wear and tear excepted, and are free of any latent or patent defects which might impair their usefulness, and are suitable for the purposes for which they are currently used and for the purposes for which they are proposed to be used.

6.12 Real Estate.

(a) Real Property Ownership. The Company does not own any Real Property.

(b) Real Property Leases. Except for the Leases described in the SEC Documents (the "Company Leases"), the Company does not lease any other Real Property. With respect to each of the Company Leases: (i) the Company has been in peaceful possession of the property leased thereunder and neither the Company nor the landlord is in default thereunder; (ii) no waiver, indulgence or postponement of any of the Obligations thereunder has been granted by the Company or landlord thereunder; and (iii) there exists no event, occurrence, condition or act known to the Company which, upon notice or lapse of time or both, would be or could become a

default thereunder or which could result in the termination of the Company Leases, or any of them, or have a Material Adverse Effect on the business of the Company, its Assets or its operations or financial results. The Company has not violated nor breached any provision of any such Company Leases, and all Obligations required to be performed by the Company under any of such Company Leases have been fully, timely and properly performed. If requested by any of the Buyers, the Company has delivered to such Buyers true, correct and complete copies of all Company Leases, including all modifications and amendments thereto, whether in writing or otherwise. The Company has not received any written or oral notice to the effect that any of the Company Leases will not be renewed at the termination of the term of such Company Leases, or that any of such Company Leases will be renewed only at higher rents.

6.13 Material Contracts. A list of the Material Contracts is attached as **Schedule 6.13**. An accurate, current and complete copy of each of the Material Contracts has been furnished to Buyers and/or is readily available as part of the SEC Documents, and each of the Material Contracts constitutes the entire agreement of the respective parties thereto relating to the subject matter thereof. There are no outstanding offers, bids, proposals or quotations made by Company which, if accepted, would create a Material Contract with Company. Each of the Material Contracts is in full force and effect and is a valid and binding Obligation of the parties thereto in accordance with the terms and conditions thereof. To the knowledge of the Company and its officers, all Obligations required to be performed under the terms of each of the Material Contracts by any party thereto have been fully performed by all parties thereto, and no party to any Material Contracts is in default with respect to any term or condition thereof, nor has any event occurred which, through the passage of time or the giving of notice, or both, would constitute a default thereunder or would cause the acceleration or modification of any Obligation of any party thereto or the creation of any Encumbrance upon any of the Assets of the Company. Further, the Company has received no notice, nor does the Company have any knowledge, of any pending or contemplated termination of any of the Material Contracts and, no such termination is proposed or has been threatened, whether in writing or orally.

6.14 Compliance with Laws. The Company is and at all times has been in material compliance with all Laws. The Company has not received any notice that it is in violation of, has violated, or is under investigation with respect to, or has been threatened to be charged with, any violation of any Law.

6.15 Intellectual Property. The Company owns or possesses adequate and legally enforceable rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and all other intellectual property rights necessary to conduct its business as now conducted. The Company does not have any knowledge of any infringement by the Company of trademark, trade name rights, patents, patent rights, copyrights, inventions, licenses, service names, service marks, service mark registrations, trade secret or other intellectual property rights of others, and, to the knowledge of the Company, there is no Claim being made or brought against, or to the Company's knowledge, being threatened against, the Company regarding trademark, trade name, patents, patent rights, invention, copyright, license, service names, service marks, service mark registrations, trade secret or other intellectual property infringement; and the Company is unaware of any facts or circumstances which might give rise to any of the foregoing.

6.16 Labor and Employment Matters. The Company is not involved in any labor dispute or, to the knowledge of the Company, is any such dispute threatened. To the knowledge of the Company and its officers, none of the Company's employees is a member of a union and the Company believes that its relations with its employees are good. To the knowledge of the Company and its officers, the Company has complied in all material respects with all Laws relating to employment matters, civil rights and equal employment opportunities.

6.17 Employee Benefit Plans. Except as set forth in **Schedule 6.17**, the Company does not have and has not ever maintained, and has no Obligations with respect to any employee benefit plans or arrangements, including employee pension benefit plans, as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), multiemployer plans, as defined in Section 3(37) of ERISA, employee welfare benefit plans, as defined in Section 3(1) of ERISA, deferred compensation plans, stock option plans, bonus plans, stock purchase plans, hospitalization, disability and other insurance plans, severance or termination pay plans and policies, whether or not described in Section 3(3) of ERISA, in which employees, their spouses or dependents of the Company participate (collectively, the "**Employee Benefit Plans**"). To the Company's knowledge, all Employee Benefit Plans meet the minimum funding standards of Section 302 of ERISA, where applicable, and each such Employee Benefit Plan that is intended to be qualified within the meaning of Section 401 of the Internal Revenue Code of 1986 is qualified. No withdrawal liability has been incurred under any such Employee Benefit Plans and no "Reportable Event" or "Prohibited Transaction" (as such terms are defined in ERISA), has occurred with respect to any such Employee Benefit Plans, unless approved by the appropriate Governmental Authority. To the Company's knowledge, the Company has promptly paid and discharged all Obligations arising under ERISA of a character which if unpaid or unperformed might result in the imposition of an Encumbrance against any of its Assets or otherwise have a Material Adverse Effect.

6.18 Tax Matters. The Company has made and timely filed all Tax Returns required by any jurisdiction to which it is subject, and each such Tax Return has been prepared in compliance with all applicable Laws, and all such Tax Returns are true and accurate in all respects. Except and only to the extent that the Company has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported Taxes, the Company has timely paid all Taxes shown or determined to be due on such Tax Returns, except those being contested in good faith, and the Company has set aside on its books provision reasonably adequate for the payment of all Taxes for periods subsequent to the periods to which such Tax Returns 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 the Company know of no basis for any such claim. The Company has withheld and paid all Taxes to the appropriate Governmental Authority required to have been withheld and paid in connection with amounts paid or owing to any Person. There is no Proceeding or Claim for refund now in progress, pending or threatened against or with respect to the Company regarding Taxes.

6.19 Insurance. The Company is covered by valid, outstanding and enforceable policies of insurance which were issued to it by reputable insurers of recognized financial responsibility, covering its properties, Assets and businesses against losses and risks normally insured against by other corporations or entities in the same or similar lines of businesses as the Company is engaged and in coverage amounts which are prudent and typically and reasonably carried by such other

corporations or entities (the “**Insurance Policies**”). Such Insurance Policies are in full force and effect, and all premiums due thereon have been paid. None of the Insurance Policies will lapse or terminate as a result of the transactions contemplated by this Agreement. The Company has complied with the provisions of such Insurance Policies. The Company has not been refused any insurance coverage sought or applied for and the Company does not have any reason to believe that it will not be able to renew its existing Insurance Policies as and when such Insurance Policies expire or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not materially and adversely affect the condition, financial or otherwise, or the earnings, business or operations of the Company.

6.20 Permits. The Company possesses all Permits necessary to conduct its business, and the Company has not received any notice of, or is otherwise involved in any Proceedings relating to, the revocation or modification of any such Permits. All such Permits are valid and in full force and effect and the Company is in material compliance with the respective requirements of all such Permits.

6.21 Business Location. The Company has no office or place of business other than as identified on Schedule 6.21 and the Company’s principal places of business and chief executive offices are indicated on Schedule 6.21. All books and records of the Company and other material Assets of the Company are held or located at the principal offices of the Company indicated on Schedule 6.21.

6.22 Environmental Laws. The Company is and has at all times been in compliance with any and all applicable Environmental Requirements, and there are no pending Claims against the Company relating to any Environmental Requirements, nor to the best knowledge of the Company, is there any basis for any such Claims.

6.23 Illegal Payments. Neither the Company, nor any director, officer, agent, employee or other Person acting on behalf of the Company has, in the course of his actions for, or on behalf of, the Company: (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

6.24 Related Party Transactions. Except for arm’s length transactions pursuant to which the Company makes payments in the Ordinary Course of Business upon terms no less favorable than the Company could obtain from third parties, none of the officers, directors or employees of the Company, nor any stockholders who own, legally or beneficially, five percent (5%) or more of the issued and outstanding shares of any class of the Company’s capital stock (each a “**Material Shareholder**”), is presently a party to any transaction with the Company (other than for services as employees, officers and directors), including any Contract providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from, any officer, director or such employee or Material Shareholder or, to the best knowledge of the Company, any other Person in which any officer, director, or any such employee or Material Shareholder has a substantial or material interest in or of which any officer, director or

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employee of the Company or Material Shareholder is an officer, director, trustee or partner. There are no Claims or disputes of any nature or kind between the Company and any officer, director or employee of the Company or any Material Shareholder, or between any of them, relating to the Company and its business.

6.25 Internal Accounting Controls. Except as set forth in the SEC Documents, the Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to Assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for Assets is compared with the existing Assets at reasonable intervals and appropriate action is taken with respect to any differences.

6.26 Acknowledgment Regarding Buyers' Purchase of the Shares. The Company acknowledges and agrees that each Buyer is acting solely in the capacity of an arm's length purchaser with respect to this Agreement and the transactions contemplated hereby. The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and any advice given by any Buyer or any of its representatives or agents in connection with this Agreement and the transactions contemplated hereby is merely incidental to such Buyer's purchase of the Shares. The Company further represents to each Buyer that the Company's decision to enter into this Agreement has been based solely on the independent evaluation by the Company and its representatives.

6.27 Listing and Maintenance Requirements. The Company's Common Stock is registered pursuant to Section 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to the best of its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act, nor has the Company received any notification that the SEC is contemplating terminating such registration.

6.28 Brokerage Fees. There is no Person acting on behalf of the Company who is entitled to or has any claim for any financial advisory, brokerage or finder's fee or commission in connection with the execution of this Agreement or the consummation of the transactions contemplated hereby.

6.29 Full Disclosure. All the representations and warranties made by Company herein or in the Disclosure Schedules hereto, and all of the statements, documents or other information pertaining to the transaction contemplated herein made or given by Company, its agents or representatives, are complete and accurate, and do not omit any information required to make the statements and information provided, in light of the transaction contemplated herein and in light of the circumstances under which they were made, not misleading, accurate and meaningful.

ARTICLE VII COVENANTS

7.1 Best Efforts. Each party shall use its best efforts to timely satisfy each of the conditions to be satisfied by it as provided in Articles VIII and IX of this Agreement.

7.2 Form D. If required by applicable Law, the Company agrees to file a Form D with respect to the Shares as required under Regulation D of the Securities Act and to provide a copy thereof to each Buyer promptly after such filing. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary to qualify the Shares, or obtain an exemption for the Shares for sale to each of the Buyers at Closing pursuant to this Agreement under applicable securities or “Blue Sky” Laws of the states of the United States, and shall provide evidence of any such action so taken to the Buyers on or prior to the Closing Date.

7.3 Affirmative Covenants.

(a) Reporting Status; Listing. So long as any Buyer owns, legally or beneficially any of the Shares, the Company shall: (i) file in a timely manner all reports required to be filed under the Securities Act, the Exchange Act or any securities Laws and regulations thereof applicable to the Company of any state of the United States, or by the rules and regulations of the Principal Trading Market, and, to provide a copy thereof to the Buyer promptly after such filing upon the Buyer’s request; (ii) not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would otherwise permit such termination; (iii) if required by the rules and regulations of the Principal Trading Market, promptly secure the listing of any of the Shares upon the Principal Trading Market (subject to official notice of issuance) and, take all reasonable action under its control to maintain the continued listing, quotation and trading of its Common Stock on the Principal Trading Market, and the Company shall comply in all respects with the Company’s reporting, filing and other Obligations under the bylaws or rules of the Principal Trading Market, the Financial Industry Regulatory Authority, Inc. and such other Governmental Authorities, as applicable. The Company shall promptly provide to Buyers copies of any notices it receives from the SEC or any Principal Trading Market, to the extent that any such notices could in anyway have or be reasonably expected to have a Material Adverse Effect.

(b) Rule 144. With a view to making available to each Buyer the benefits of Rule 144 under the Securities Act (“**Rule 144**”), or any similar rule or regulation of the SEC that may at any time permit Buyers to sell any of the Shares to the public without registration, the Company represents and warrants that: (i) the Company is, and has been for a period of at least ninety (90) days immediately preceding the date hereof, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act; (ii) the Company has filed all required reports under Section 13 or 15(d) of the Exchange Act, as applicable, during the twelve (12) months preceding the Closing Date (or for such shorter period that the Company was required to file such reports); (iii) the Company is not an issuer defined as a “Shell Company” (as hereinafter defined); and (iv) if the Company has, at any time, been an issuer defined as a Shell Company, the Company has: (A) not been an issuer defined as a Shell Company for at least six (6) months prior to the Closing Date; and (B) has satisfied the requirements of Rule 144(i) (including, without limitation, the proper filing of “Form 10 information” at least six (6) months prior to the Closing Date). For the purposes hereof, the term “**Shell Company**” shall mean an issuer that meets the description set

forth under Rule 144(i)(1)(i). In addition, so long as any Buyer owns, legally or beneficially, any of the Shares, the Company shall, at its sole expense:

(i) Make, keep and ensure that adequate current public information with respect to the Company, as required in accordance with Rule 144, is publicly available;

(ii) furnish to each Buyer, promptly upon reasonable request: (A) a written statement by the Company that it has complied with the reporting requirements of Rule 144, the Securities Act and the Exchange Act; and (b) such other information as may be reasonably requested by each Buyer to permit each Buyer to sell any of the Shares pursuant to Rule 144 without limitation or restriction; and

(iii) promptly at the request of each Buyer, give the Company's transfer agent instructions to the effect that, upon the transfer agent's receipt from any Buyer of a certificate (a "**Rule 144 Certificate**") certifying that such Buyer's holding period (as determined in accordance with the provisions of Rule 144) for any portion of the Shares which such Buyer proposes to sell (the "**Securities Being Sold**") is not less than six (6) months, and receipt by the transfer agent of the "Rule 144 Opinion" (as hereinafter defined) from the Company or its counsel (or from such Buyer and its counsel as permitted below), the transfer agent is to effect the transfer of the Securities Being Sold and issue to such Buyer or transferee(s) thereof one or more stock certificates representing the transferred Securities Being Sold without any restrictive legend and without recording any restrictions on the transferability of such Securities Being Sold on the transfer agent's books and records. In this regard, upon each Buyer's request, the Company shall have an affirmative obligation to cause its counsel to promptly issue to the transfer agent a legal opinion providing that, based on the Rule 144 Certificate, the Securities Being Sold were or may be sold, as applicable, pursuant to the provisions of Rule 144, even in the absence of an effective registration statement (the "**Rule 144 Opinion**"). If the transfer agent requires any additional documentation in connection with any proposed transfer by any Buyer of any Securities Being Sold, the Company shall promptly deliver or cause to be delivered to the transfer agent or to any other Person, all such additional documentation as may be necessary to effectuate the transfer of the Securities Being Sold and the issuance of an unlegended certificate to any transferee thereof, all at the Company's expense.

(c) Matters With Respect to Shares and Transfer Agent.

(i) Removal of Restrictive Legends. In the event that any Buyer has any shares of the Company's Common Stock bearing any restrictive legends, and such Buyer, through its counsel or other representatives, submits to the Company's transfer agent ("**Transfer Agent**") any such shares for the removal of the restrictive legends thereon, whether in connection with a sale of such shares pursuant to any exemption to the registration requirements under the Securities Act, or otherwise, and the Company and or its counsel refuses or fails for any reason (except to the extent that such refusal or failure is based solely on applicable Law that would prevent the removal of such restrictive legends) to render an opinion of counsel or any other documents or certificates required for the removal of the restrictive legends, then the Company hereby agrees and acknowledges that such Buyer is hereby irrevocably and expressly authorized to have counsel to such Buyer render any and all opinions and other certificates or instruments which may be required for purposes of removing such restrictive legends, and the Company hereby

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irrevocably authorizes and directs the Transfer Agent to, without any further confirmation or instructions from the Company, issue any such shares without restrictive legends as instructed by such Buyer, and surrender to a common carrier for overnight delivery to the address as specified by such Buyer, certificates, registered in the name of such Buyer or its designees, representing the shares of Common Stock to which such Buyer is entitled, without any restrictive legends and otherwise freely transferable on the books and records of the Company.

(ii) Authorized Agent of the Company. The Company hereby irrevocably appoints each Buyer and each Buyer's counsel and its representatives, each as the Company's duly authorized agent and attorney-in-fact for the Company for the purposes of authorizing and instructing the Transfer Agent to process issuances, transfers and legend removals upon instructions from each Buyer, or any counsel or representatives of each Buyer, consistent with this Section 7.3(c). The authorization and power of attorney granted hereby is coupled with an interest and is irrevocable so long as any Buyer owns or has the right to receive, any shares of the Company's Common Stock hereunder. In this regard, the Company hereby confirms to the Transfer Agent and each Buyer that it can NOT and will NOT give instructions, including stop orders or otherwise, inconsistent with the terms of this Section 7.3(c) with regard to the matters contemplated herein, and that each Buyer shall have the absolute right to provide a copy of this Agreement to the Transfer Agent as evidence of the Company's irrevocable authority for each Buyer and Transfer Agent to process issuances, transfers and legend removals upon instructions from each Buyer, or any counsel or representatives of each Buyer, in each case as specifically contemplated in this Section 7.3(c), without any further instructions, orders or confirmations from the Company. In addition, if requested by any Buyer, the Company agrees to use its best good faith efforts to get an agreement executed by the Transfer Agent, reasonably acceptable to each Buyer, pursuant to which the Transfer Agent agrees and confirms that it will act in accordance with the terms of this Section 7.3(c).

(iii) Injunction and Specific Performance. The Company specifically acknowledges and agrees that in the event of a breach or threatened breach by the Company of any provision of this Section 7.3(c), each Buyer will be irreparably damaged and that damages at law would be an inadequate remedy if this Agreement were not specifically enforced. Therefore, in the event of a breach or threatened breach of any provision of this Section 7.3(c) by the Company, each Buyer shall be entitled to obtain, in addition to all other rights or remedies such Buyer may have, at law or in equity, an injunction restraining such breach, without being required to show any actual damage or to post any bond or other security, and/or to a decree for specific performance of the provisions of this Section 7.3(c).

7.4 Use of Proceeds. The Company shall use the net proceeds from the sale of the Shares for general corporate purposes, including general and administrative expenses, and for the repayment of any outstanding Indebtedness of the Company or any of its Subsidiaries.

7.5 Fees and Expenses. The Company agrees to pay to each Buyer (or any designee or agent of the Buyers), upon demand, or to otherwise be responsible for the payment of, any and all costs, fees, charges and expenses, including the reasonable fees, costs, expenses and disbursements of counsel for any Buyer, and of any experts and agents, which any Buyer may incur or which may otherwise be due and payable in connection with: (i) any documentary stamp taxes, intangibles taxes, recording fees, filing fees, or other similar taxes, fees or charges imposed by or due to any

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Governmental Authority in connection with this Agreement or any other Transaction Documents; (ii) the exercise or enforcement of any of the rights of any Buyer under this Agreement or the Transaction Documents; or (iii) the failure by the Company to perform or observe any of the provisions of this Agreement or any of the Transaction Documents. The provisions of this Subsection shall survive the termination of this Agreement.

7.6 Public Disclosure of Buyers. The Company shall not publicly disclose the name of any Buyer, or include the name of any Buyer in any filing with the SEC or any regulatory agency or Principal Trading Market, without the prior written consent of such Buyer except: (a) as required by federal securities law in connection with any registration statement contemplated by the Registration Rights Agreement or (b) to the extent such disclosure is required by Law or Principal Trading Market regulations, in which case the Company shall provide Buyers with prior written notice of such disclosure permitted under this clause (b).

7.7 Post-Closing Liabilities and Indebtedness of the Company. The Company agrees that for a period of twenty-four (24) months following the first Closing under this Agreement, the Company may not enter into any new Obligations, or renew or extend any existing Obligations, other than lines of credit in the ordinary course of business, without the written consent of a majority in interest of the Buyers hereto, which consent may be withheld in each Buyer's individual discretion. For purposes of this Section 7.7, "majority in interest" shall mean the Buyers who, at the time in question, in the aggregate own greater than 50% of the Shares.

ARTICLE VIII

CONDITIONS PRECEDENT TO THE COMPANY'S OBLIGATIONS TO SELL

The obligation of the Company hereunder to issue and sell the Shares to the Buyers at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion:

8.1 Buyers shall have executed the Transaction Documents that require Buyers' execution, and delivered them to the Company.

8.2 Each of the Buyers shall have paid the portion of the Purchase Price applicable to such Buyer to the Company.

8.3 The representations and warranties of the Buyers shall be true and correct in all material respects as of the date when made and as of the applicable Closing Date as though made at that time (except for representations and warranties that speak as of a specific date), and the Buyers shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Buyers at or prior to the applicable Closing Date.

8.4 The Company shall have obtained all governmental, regulatory or third party consents and approvals necessary for the sale of the Shares.

8.5 No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of

competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

8.6 Since the date of execution of this Agreement, no event or series of events shall have occurred that resulted, or could reasonably be expected to result, in a Material Adverse Effect.

8.7 Trading in the Common Stock shall not have been suspended by the U.S. Securities and Commission or any Principal Trading Market (except for any suspensions of trading of not more than one trading day solely to permit dissemination of material information regarding the Company) at any time since the date of execution of this Agreement.

8.8 The Company shall have received the Minimum Purchase Proceeds.

ARTICLE IX

CONDITIONS PRECEDENT TO THE BUYERS' OBLIGATIONS TO PURCHASE

The obligation of the Buyers hereunder to purchase the Shares at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions (in addition to any other conditions precedent elsewhere in this Agreement), provided that these conditions are for the Buyers' sole benefit and may be waived by the Buyers at any time in their sole discretion:

9.1 The Company shall have executed and delivered the Transaction Documents and delivered the same to the Buyers.

9.2 The Company shall have delivered to each Buyer a certificate registered in such Buyer's name representing the number of Shares that such Buyer is purchasing.

9.3 The representations and warranties of the Company and of Operating Sub shall be true and correct in all material respects (except to the extent that any of such representations and warranties are already qualified as to materiality in Article VI above, in which case, such representations and warranties shall be true and correct in all respects without further qualification) as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date) and the Company and Operating Sub shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company and Operating Sub at or prior to the Closing Date.

9.4 The Buyers shall have received an opinion of counsel to the Company, as of the Initial Closing Date, in a form satisfactory to the Buyers and their counsel.

9.5 The Company and Operating Sub shall have each executed and delivered to Buyers a closing certificate in substance and form required by Buyers, which closing certificate shall include and attach as exhibits: (i) a true copy of a certificate of good standing evidencing the formation and good standing of the Company and Operating Sub, as applicable, from the secretary of state (or comparable office) from the jurisdiction in which they are each incorporated, as of a date within ten (10) days of the Initial Closing Date; (ii) the Company's and Operating Sub's Articles of Incorporation; (iii) the Company's and Operating Sub's Bylaws; and (iv) copies of the resolutions of the board of directors of the Company and Operating Sub, consistent with Section

6.3, as adopted by the Company's and Operating Sub's board of directors in a form reasonably acceptable to Buyers.

9.6 No event shall have occurred which could reasonably be expected to have a Material Adverse Effect.

9.7 The Company shall have received the Minimum Purchase Proceeds.

ARTICLE X
INDEMNIFICATION

10.1 Company's Obligation to Indemnify. In consideration of the Buyers' execution and delivery of this Agreement and acquiring the Shares hereunder, and in addition to all of the Company's and Operating Sub's other obligations under this Agreement, the Company and Operating Sub, jointly and severally, hereby agree to defend and indemnify each Buyer and each Buyer's Affiliates and subsidiaries, and their respective directors, officers, employees, agents and representatives, and the successors and assigns of each of them (collectively, the "**Buyer Indemnified Parties**") and the Company and Operating Sub do hereby agree to hold the Buyer Indemnified Parties harmless, from and against any and all Claims made, brought or asserted against the Buyer Indemnified Parties, or any one of them, and the Company and Operating Sub hereby agree to pay or reimburse the Buyer Indemnified Parties for any and all Claims payable by any of the Buyer Indemnified Parties to any Person, including reasonable attorneys' and paralegals' fees and expenses, court costs, settlement amounts, costs of investigation and interest thereon from the time such amounts are due at the highest non-usurious rate of interest permitted by applicable Law, through all negotiations, mediations, arbitrations, trial and appellate levels, as a result of, or arising out of, or relating to: (i) any misrepresentation or breach of any representation or warranty made by the Company or Operating Sub in this Agreement, the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby; (ii) any breach of any covenant, agreement or Obligation of the Company or Operating Sub contained in this Agreement, the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby; or (iii) any Claims brought or made against the Buyer Indemnified Parties, or any one of them, by any Person and arising out of or resulting from the execution, delivery, performance or enforcement of this Agreement, the Transaction Documents or any other instrument, document or agreement executed pursuant hereto or thereto, any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Shares, or the status of the Buyers of any of the Shares, as a buyer and holder of such Shares in the Company. To the extent that the foregoing undertaking by the Company and Operating Sub may be unenforceable for any reason, the Company and Operating Sub shall make the maximum contribution to the payment and satisfaction of each of the Claims covered hereby, which is permissible under applicable Law. The Company will not be liable to any Buyer under this indemnity: (i) for any settlement by a Buyer in connection with any Claim effected without the Company's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; or (ii) to the extent, but only to the extent, that a Claim is attributable to any Buyer's breach of any of the representations, warranties, covenants or agreements made by such Buyer in this Agreement or in the other Transaction Documents.

ARTICLE XI

MATTERS RELATING TO THE BUYERS

11.1 Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under this Agreement and the Transaction Documents are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any one or more of the Transaction Documents. The decision of each Buyer to purchase the Shares pursuant to the Transaction Documents has been made by each such Buyer independently of any other Buyer and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company or of its subsidiaries, if any, which may have been made or given by any other Buyer or any of their respective officers, directors, principals, employees, agents, counsel or representatives (collectively, including the Buyer in question, the "**Buyer Representatives**"). No Buyer Representative shall have any liability to any other Buyer or the Company relating to or arising from any such information, materials, statements or opinions, if any. Each Buyer acknowledges that no other Buyer has acted as agent for such Buyer in connection with making its investment hereunder and that no Buyer will be acting as agent of such other Buyer in connection with monitoring its investment in the Shares or enforcing its rights under the Transaction Documents. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any Proceeding for such purpose. The Company and each of the Buyers acknowledge that, for reasons of administrative convenience the Company has elected to provide each of the Buyers with the same Transaction Documents for the purpose of closing a transaction with multiple Buyers and not because it was required or requested to do so by any Buyer. In furtherance of the foregoing, and not in limitation thereof, the Company and the Buyers acknowledge that nothing contained in this Agreement or in any Transaction Document, and no action taken by any Buyer pursuant thereto, shall be deemed to constitute any two or more Buyers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Buyers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents.

11.2 Equal Treatment of Buyers. No consideration shall be offered or paid to any Buyer to amend or consent to a waiver or modification of any provision of any of the Transaction Documents, unless the same consideration is also offered to all of the other Buyers parties to the Transaction Documents.

ARTICLE XII
MISCELLANEOUS

12.1 Notices. All notices of request, demand and other communications hereunder shall be addressed to the parties as follows:

If to the Company:

Mobivity Holdings Corp.
55 N. Arizona Place, Suite 310
Chandler AZ 85225
Facsimile: (858) 712-4597

With a copy to:

Greenberg Traurig, LLP
3161 Michelson Drive, Suite 1000
Irvine, CA 92612
Attention: Daniel K. Donahue
Facsimile: (949) 732-6501

If to the Buyers:

To each Buyer based on the information set forth in the Schedule of Buyers attached hereto

unless the address is changed by the party by like notice given to the other parties. Notice shall be in writing and shall be deemed delivered: (i) if mailed by certified mail, return receipt requested, postage prepaid and properly addressed to the address below, then three (3) business days after deposit of same in a regularly maintained U.S. Mail receptacle; or (ii) if mailed by Federal Express, UPS or other nationally recognized overnight courier service, next business morning delivery, then one (1) business day after deposit of same in a regularly maintained receptacle of such overnight courier; or (iii) if hand delivered, then upon hand delivery thereof to the address indicated on or prior to 5:00 p.m., New York time, on a business day. Any notice hand delivered after 5:00 p.m., New York time, shall be deemed delivered on the following business day. Notwithstanding the foregoing, notice, consents, waivers or other communications referred to in this Agreement may be sent by facsimile, e-mail, or other method of delivery, but shall be deemed to have been delivered only when the sending party has confirmed (by reply e-mail or some other form of written confirmation from the receiving party) that the notice has been received by the other party.

12.2 Entire Agreement. This Agreement, including the Exhibits and Schedules attached hereto and the documents delivered pursuant hereto, including the Transaction Documents, set forth all the promises, covenants, agreements, conditions and understandings between the parties hereto with respect to the subject matter hereof and thereof, and supersede all prior and contemporaneous agreements, understandings, inducements or conditions, expressed or implied, oral or written, except as contained herein and in the Transaction Documents.

12.3 Successors and Assigns. This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by the Company without the prior written consent of each Buyer. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

12.4 Binding Effect. This Agreement shall be binding upon the parties hereto, their respective successors and permitted assigns.

12.5 Amendment. The parties hereby irrevocably agree that no attempted amendment, modification, or change of this Agreement shall be valid and effective, unless the parties shall unanimously agree in writing to such amendment, modification or change.

12.6 No Waiver. No waiver of any provision of this Agreement shall be effective, unless it is in writing and signed by the party against whom it is asserted, and any such written waiver

shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

12.7 Gender and Use of Singular and Plural. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the party or parties or their personal representatives, successors and assigns may require.

12.8 Execution. This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed and considered one and the same Agreement, and same shall become effective when counterparts have been signed by each party and each party has delivered its signed counterpart to the other party. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format file or other similar format file, such signature shall be deemed an original for all purposes and shall create a valid and binding obligation of the party executing same with the same force and effect as if such facsimile or “.pdf” signature page was an original thereof.

12.9 Headings. The article and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement.

12.10 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereby irrevocably waives any right it may have, and agrees not to request, a jury trial for the adjudication of any dispute hereunder or in connection with or arising out of this Agreement or any transaction contemplated hereby. If either party shall commence an action or proceeding to enforce any provisions of the Transaction Documents, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys’ fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

12.11 Further Assurances. The parties hereto will execute and deliver such further instruments and do such further acts and things as may be reasonably required to carry out the intent and purposes of this Agreement.

12.12 Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Shares. Each Buyer shall be responsible only for its own representations, warranties and covenants hereunder.

12.13 Time is of the Essence. The parties hereby agree that time is of the essence with respect to performance of each of the parties' Obligations under this Agreement. The parties agree that in the event that any date on which performance is to occur falls on a Saturday, Sunday or state or national holiday, then the time for such performance shall be extended until the next business day thereafter occurring.

12.14 Joint Preparation. The preparation of this Agreement has been a joint effort of the parties and the resulting documents shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

12.15 Severability. If any one of the provisions contained in this Agreement, for any reason, shall be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall remain in full force and effect and be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

12.16 No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

12.17 WAIVER OF JURY TRIAL. THE BUYERS AND THE COMPANY, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, IRREVOCABLY, THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH THE BUYERS AND THE COMPANY ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BUYERS TO PURCHASE THE NEW NOTES.

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Compliance with Federal Law. The Company shall: (i) ensure that no Person who owns a controlling interest in or otherwise controls the Company is or shall at any time be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“**OFAC**”), the Department of the Treasury, included in any Executive Orders or in any other similar lists of any Governmental Authority; (ii) not use or permit the use of the proceeds of the purchase of the Shares to violate any of the foreign asset control regulations of OFAC or any enabling statute, Executive Order relating thereto or any other requirements or restrictions imposed by any Governmental Authority; and (iii) comply with all applicable Lender Secrecy Act (“**BSA**”) laws and regulations, as amended.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year set forth above.

COMPANY:

MOBIVITY HOLDINGS CORP., a Nevada corporation

By: /s/ Dennis Becker

Name: Dennis Becker

Title: Chief Executive Officer

OPERATING SUB:

MOBIVITY, INC., a Nevada corporation

By: /s/ Dennis Becker

Name: Dennis Becker

Title: Chief Executive Officer

BUYERS:

See Signature pages for each Buyer attached

SIGNATURE PAGE FOR SECURITIES PURCHASE AGREEMENT

WITH MOBIVITY HOLDINGS CORP.

By its execution below, the undersigned Buyer hereby acknowledges and agrees to the terms set forth in the Securities Purchase Agreement to which this signature page is attached.

FOR ENTITY INVESTORS:

FOR INDIVIDUAL INVESTORS:

[Name of Entity] _____

Signature: _____

Name: _____

By: _____

Signature: _____

Name: _____

Name: _____

Title: _____

WORK ADDRESS:

HOME ADDRESS:

Attention: _____

Phone: _____

Phone: _____

Fax: _____

SSN: _____

E-mail: _____

Taxpayer ID#: _____

Number of Shares to be Purchased: _____

FORM OF REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the “Agreement”) is made and entered into as of this 7th day of March 2016 by and among Mobivity Holdings Corp., a Nevada corporation (the “Company”), and the investors identified on the signature pages hereto (each, including its successors and assigns, an “Investor,” and collectively, the “Investors”).

R E C I T A L S

WHEREAS, the Company will sell up to \$2,000,001 of the Company’s Common Stock to certain of the Investors pursuant to that certain Securities Purchase Agreement (the “Purchase Agreement”) dated as of even date herewith by and among the Company and the Investors.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Investors agree as follows:

The parties hereby agree as follows:

1. Certain Definitions

. As used in this Agreement, the following terms shall have the following meanings:

“Business Day” means any day other than a Saturday, Sunday or a day which is a Federal legal holiday in the U.S.

“Common Stock” means the Company’s common stock, par value \$0.001 per share, and any securities into which such shares may hereinafter be reclassified.

“Prospectus” means (i) the prospectus included in any Registration Statement, as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus, and (ii) any “free writing prospectus” as defined in Rule 405 under the 1933 Act.

“Register,” “registered” and “registration” refer to a registration made by preparing and filing a Registration Statement or similar document in compliance with the 1933 Act (as defined below), and the declaration or ordering of effectiveness of such Registration Statement or document.

“Registrable Securities” means (i) the Shares and (ii) any other securities issued or issuable with respect to or in exchange for Registrable Securities, whether by merger, charter amendment or otherwise; provided, that, a security shall cease to be a Registrable Security upon sale pursuant to a Registration Statement or Rule 144 under the 1933 Act.

“Registration Statement” means any registration statement of the Company filed under the 1933 Act (including a post-effective amendment to a previously filed registration statement) that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

“Required Investors” means the Investors holding a majority of the Registrable Securities.

“SEC” means the U.S. Securities and Exchange Commission.

“Shares” means the shares of Common Stock issued pursuant to the Purchase Agreement.

“1933 Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“1934 Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

2. Registration.

(a) Registration Statements.

(i) Promptly following the final closing date of the transactions contemplated by the Purchase Agreement (the “Closing Date”) but no later than May 31, 2016, the Company shall prepare and file with the SEC one Registration Statement on Form S-1 (or, if Form S-1 is not then available to the Company, on such form of registration statement as is then available to effect a registration for resale of the Registrable Securities), or a post-effective amendment to a previously filed registration statement on Form S-1, covering the resale of the Registrable Securities. Subject to any SEC comments, such Registration Statement shall include the plan of distribution attached hereto as Exhibit A; provided, however, that no Investor shall be named as an “underwriter” in the Registration Statement without the Investor’s prior written consent. Such Registration Statement also shall cover, to the extent allowable under the 1933 Act and the rules promulgated thereunder (including Rule 416), such indeterminate number of additional shares of Common Stock resulting from stock splits, stock dividends or similar transactions with respect to the Registrable Securities. The Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided in accordance with Section 3(c) to the Investors and their counsel prior to its filing or other submission.

(ii) S-3 Qualification. As soon as reasonably practicable following the date upon which the Company becomes eligible to use a registration statement on Form S-3 to register the Registrable Securities for resale (the “Qualification Date”), the Company shall file a registration statement on Form S-3 covering the Registrable Securities (or a post-effective amendment on Form S-3 to the registration statement on Form S-1) (a “Shelf Registration

Statement”) and shall use commercially reasonable efforts to cause such Shelf Registration Statement to be declared effective as promptly as practicable thereafter.

(b) Expenses. The Company will pay all expenses associated with each registration, including filing and printing fees, the Company’s counsel and accounting fees and expenses, costs associated with clearing the Registrable Securities for sale under applicable state securities laws, listing fees, reasonable fees and expenses of one counsel to the Investors and the Investors’ reasonable expenses in connection with the registration, but excluding discounts, commissions, fees of underwriters, selling brokers, dealer managers or similar securities industry professionals with respect to the Registrable Securities being sold.

(c) Effectiveness.

(i) The Company shall use commercially reasonable efforts to have the Registration Statement declared effective as soon as practicable. The Company shall notify the Investors by facsimile or e-mail as promptly as practicable, and in any event, within twenty-four (24) hours, after any Registration Statement is declared effective and shall simultaneously provide the Investors with copies of any related Prospectus to be used in connection with the sale or other disposition of the securities covered thereby.

(ii) Notwithstanding anything herein to the contrary, the Company may suspend the use of any Prospectus included in any Registration Statement contemplated by this Section in the event that the Company determines in good faith that such suspension is necessary to (A) delay the disclosure of material non-public information concerning the Company, the disclosure of which at the time is not, in the good faith opinion of the Company, in the best interests of the Company or (B) amend or supplement the affected Registration Statement or the related Prospectus so that such Registration Statement or Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus in light of the circumstances under which they were made, not misleading (an “Allowed Delay”); provided, that the Company shall promptly (a) notify each Investor in writing of the commencement of and the reasons for an Allowed Delay, but shall not (without the prior written consent of an Investor) disclose to such Investor any material non-public information giving rise to an Allowed Delay, (b) advise the Investors in writing to cease all sales under the Registration Statement until the end of the Allowed Delay and (c) use commercially reasonable efforts to terminate an Allowed Delay as promptly as practicable.

(d) Rule 415; Cutback If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement (alone or together with previously or subsequently registered shares of Common Stock) is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the 1933 Act or requires any Investor to be named as an “underwriter”, the Company shall use its best efforts to persuade the SEC that the offering contemplated by the Registration Statement is a valid secondary offering and not an offering “by or on behalf of the issuer” as defined in Rule 415 and that none of the Investors is an “underwriter”. The Investors shall have the right to participate or have their counsel participate in any meetings or discussions with the SEC regarding the SEC’s position (unless in the reasonable opinion of the Company or its counsel, such participation will be to the detriment to the Company in that it may cause undue delays in the registration process or for other reasons)

and to comment or have their counsel comment on any written submission made to the SEC with respect thereto. No such written submission shall be made to the SEC to which the Investors' counsel reasonably objects. In the event that, despite the Company's best efforts and compliance with the terms of this Section 2(d), the SEC refuses to alter its position, the Company shall (i) remove from the Registration Statement such portion of the Registrable Securities (the "Cut Back Shares") and/or (ii) agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure the Company's compliance with the requirements of Rule 415 (collectively, the "SEC Restrictions"); provided, however, that the Company shall not agree to name any Investor as an "underwriter" in such Registration Statement without the prior written consent of such Investor. Any cut-back imposed on the Investors pursuant to this Section 2(d) shall be allocated among the Investors (and the holders of any previously or subsequently registered shares of Common Stock whose shares are subject to the Rule 415 position taken by the SEC) on a pro rata basis, unless the SEC Restrictions otherwise require or provide or the Investors otherwise agree.

3. Company Obligations

. The Company will use commercially reasonable efforts to effect the registration of the Registrable Securities in accordance with the terms hereof, and pursuant thereto the Company will, as expeditiously as possible:

(a) use commercially reasonable efforts to cause such Registration Statement to become effective and to remain continuously effective for a period that will terminate upon the earlier of (i) the date on which all Registrable Securities covered by such Registration Statement as amended from time to time, have been sold, and (ii) the date on which all Registrable Securities covered by such Registration Statement may be sold without restriction pursuant to Rule 144 (the "Effectiveness Period") and advise the Investors in writing when the Effectiveness Period has expired;

(b) prepare and file with the SEC such amendments and post-effective amendments to the Registration Statement and the Prospectus as may be necessary to keep the Registration Statement effective for the Effectiveness Period and to comply with the provisions of the 1933 Act and the 1934 Act with respect to the distribution of all of the Registrable Securities covered thereby;

(c) provide copies to and permit counsel designated by the Investors to review each Registration Statement and all amendments and supplements thereto no fewer than seven (7) days prior to their filing with the SEC and not file any document to which such counsel reasonably objects;

(d) furnish to the Investors and their legal counsel (i) promptly after the same is prepared and publicly distributed, filed with the SEC, or received by the Company (but not later than two (2) Business Days after the filing date, receipt date or sending date, as the case may be) one (1) copy of any Registration Statement and any amendment thereto, each preliminary prospectus and Prospectus and each amendment or supplement thereto, and each letter written by or on behalf of the Company to the SEC or the staff of the SEC, and each item of correspondence from the SEC or the staff of the SEC, in each case relating to such Registration Statement (other than any portion of any thereof which contains information for which the Company has sought confidential treatment), and (ii) such number of copies of a Prospectus, including a preliminary

prospectus, and all amendments and supplements thereto and such other documents as each Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Investor that are covered by the related Registration Statement;

(e) use commercially reasonable efforts to (i) prevent the issuance of any stop order or other suspension of effectiveness and, (ii) if such order is issued, obtain the withdrawal of any such order at the earliest possible moment;

(f) prior to any public offering of Registrable Securities, use commercially reasonable efforts to register or qualify or cooperate with the Investors and their counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or blue sky laws of such jurisdictions requested by the Investors and do any and all other commercially reasonable acts or things necessary or advisable to enable the distribution in such jurisdictions of the Registrable Securities covered by the Registration Statement; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(f), (ii) subject itself to general taxation in any jurisdiction where it would not otherwise be so subject but for this Section 3(f), or (iii) file a general consent to service of process in any such jurisdiction;

(g) use commercially reasonable efforts to cause all Registrable Securities covered by a Registration Statement to be listed on each securities exchange, interdealer quotation system or other market on which similar securities issued by the Company are then listed;

(h) immediately notify the Investors, at any time prior to the end of the Effectiveness Period, upon discovery that, or upon the happening of any event as a result of which, the Prospectus includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly prepare, file with the SEC and furnish to such holder a supplement to or an amendment of such Prospectus as may be necessary so that such Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing; and

(i) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC under the 1933 Act and the 1934 Act, including, without limitation, Rule 172 under the 1933 Act, file any final Prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424 under the 1933 Act, promptly inform the Investors in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Investors are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder; and make available to its security holders, as soon as reasonably practicable, but not later than the Availability Date (as defined below), an earnings statement covering a period of at least twelve (12) months, beginning after the effective date of each Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the 1933 Act, including Rule 158 promulgated thereunder (for the purpose of this subsection 3(i), "Availability Date" means the

45th day following the end of the fourth fiscal quarter that includes the effective date of such Registration Statement, except that, if such fourth fiscal quarter is the last quarter of the Company's fiscal year, "Availability Date" means the 90th day after the end of such fourth fiscal quarter).

(j) With a view to making available to the Investors the benefits of Rule 144 (or its successor rule) and any other rule or regulation of the SEC that may at any time permit the Investors to sell shares of Common Stock to the public without registration, the Company covenants and agrees to: (i) make and keep public information available, as those terms are understood and defined in Rule 144, until the earlier of (A) six months after such date as all of the Registrable Securities may be sold without restriction by the holders thereof pursuant to Rule 144 or any other rule of similar effect or (B) such date as all of the Registrable Securities shall have been resold; (ii) file with the SEC in a timely manner all reports and other documents required of the Company under the 1934 Act; (iii) furnish to each Investor upon request, as long as such Investor owns any Registrable Securities, (A) a written statement by the Company that it has complied with the reporting requirements of the 1934 Act, (B) a copy of the Company's most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, and (C) such other information as may be reasonably requested in order to avail such Investor of any rule or regulation of the SEC that permits the selling of any such Registrable Securities without registration; and (iv) use commercially reasonable efforts to assist each Investor with the removal of any legends required under Rule 144 under the 1933 Act, including with respect to any opinions required thereby, provided that the Company's obligations hereunder are subject to the reasonable determination of the Company and the Company's counsel that any such legend removal complies with the 1933 Act.

4. Due Diligence Review: Information

. Upon written request, the Company shall make available, during normal business hours, for inspection and review by the Investors, advisors to and representatives of the Investors (who may or may not be affiliated with the Investors and who are reasonably acceptable to the Company), all financial and other records, all SEC Filings and other filings with the SEC, and all other corporate documents and properties of the Company as may be reasonably necessary for the purpose of such review, and cause the Company's officers, directors and employees, within a reasonable time period, to supply all such information reasonably requested by the Investors or any such representative, advisor or underwriter in connection with such Registration Statement (including, without limitation, in response to all questions and other inquiries reasonably made or submitted by any of them), prior to and from time to time after the filing and effectiveness of the Registration Statement for the sole purpose of enabling the Investors and such representatives, advisors and underwriters and their respective accountants and attorneys to conduct initial and ongoing due diligence with respect to the Company and the accuracy of such Registration Statement. As a condition to such inspection and review, the Company may require the Investors to enter into confidentiality agreements.

The Company shall not disclose material nonpublic information to the Investors, or to advisors to or representatives of the Investors, unless prior to disclosure of such information the Company identifies such information as being material nonpublic information and provides the Investors, such advisors and representatives with the opportunity to accept or refuse to accept such material nonpublic information for review and any Investor wishing to obtain such information enters into an appropriate confidentiality agreement with the Company with respect thereto.

5. Obligations of the Investors.

(a) Each Investor shall furnish in writing to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least five (5) Business Days prior to the first anticipated filing date of any Registration Statement, the Company shall notify each Investor of the information the Company requires from such Investor if such Investor elects to have any of the Registrable Securities included in the Registration Statement. An Investor shall provide such information to the Company at least two (2) Business Days prior to the first anticipated filing date of such Registration Statement if such Investor elects to have any of the Registrable Securities included in the Registration Statement.

(b) Each Investor, by its acceptance of the Registrable Securities agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of a Registration Statement hereunder, unless such Investor has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of either (i) the commencement of an Allowed Delay pursuant to Section 2(c) (ii) or (ii) the happening of an event pursuant to Section 3(h) hereof, such Investor will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities, until the Investor is advised by the Company that such dispositions may again be made.

6. Indemnification.

(a) Indemnification by the Company. The Company will indemnify and hold harmless each Investor and its officers, directors, members, managers, employees and agents, successors and assigns, and each other person, if any, who controls such Investor within the meaning of the 1933 Act, against any losses, claims, damages or liabilities, joint or several, to which they may become subject under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement or omission or alleged omission of any material fact contained in any Registration Statement, any preliminary Prospectus or final Prospectus, or any amendment or supplement thereof; (ii) any blue sky application or other document executed by the Company specifically for that purpose or based upon written information furnished by the Company filed in any state or other jurisdiction in order to qualify any or all of the Registrable Securities under the securities laws thereof (any such application, document or information herein called a "Blue Sky Application"); (iii) the omission or alleged omission to state in a Blue Sky Application a material fact required to be stated therein or necessary to make the statements therein not misleading; (iv) any violation by the Company or its agents of any rule or regulation promulgated under the 1933 Act applicable to the Company or its agents and relating to action or inaction required of the Company in connection with such registration; or (v) any failure to register or qualify the Registrable Securities included in any such Registration Statement in any state where the Company or its agents has affirmatively undertaken or agreed in writing that the Company will

undertake such registration or qualification on an Investor's behalf and will reimburse such Investor, and each such officer, director or member and each such controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case if and to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by such Investor or any such controlling person in writing specifically for use in such Registration Statement or Prospectus.

(b) Indemnification by the Investors. Each Investor agrees, severally but not jointly, to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors, officers, employees, stockholders and each person who controls the Company (within the meaning of the 1933 Act) against any losses, claims, damages, liabilities and expense (including reasonable attorney fees) resulting from any untrue statement of a material fact or any omission of a material fact required to be stated in the Registration Statement or Prospectus or preliminary Prospectus or amendment or supplement thereto or necessary to make the statements therein not misleading, to the extent, but only to the extent that such untrue statement or omission is contained in any information furnished in writing by such Investor to the Company specifically for inclusion in such Registration Statement or Prospectus or amendment or supplement thereto. In no event shall the liability of an Investor be greater in amount than the dollar amount of the proceeds (net of all expense paid by such Investor in connection with any claim relating to this Section 6 and the amount of any damages such Investor has otherwise been required to pay by reason of such untrue statement or omission) received by such Investor upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. Any person entitled to indemnification hereunder shall (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such person unless (a) the indemnifying party has agreed to pay such fees or expenses, or (b) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person or (c) in the reasonable judgment of any such person, based upon written advice of its counsel, a conflict of interest exists between such person and the indemnifying party with respect to such claims (in which case, if the person notifies the indemnifying party in writing that such person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such person); and provided, further, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term

thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation.

(d) Contribution. If for any reason the indemnification provided for in the preceding paragraphs (a) and (b) is unavailable to an indemnified party or insufficient to hold it harmless, other than as expressly specified therein, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnified party and the indemnifying party, as well as any other relevant equitable considerations. No person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the 1933 Act shall be entitled to contribution from any person not guilty of such fraudulent misrepresentation. In no event shall the contribution obligation of a holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such holder in connection with any claim relating to this Section 6 and the amount of any damages such holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

7. Miscellaneous.

(a) Amendments and Waivers. This Agreement may be amended only by a writing signed by the Company and the Required Investors. The Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company shall have obtained the written consent to such amendment, action or omission to act, of the Required Investors.

(b) Notices. All notices and other communications provided for or permitted hereunder shall be made as set forth in the Purchase Agreement.

(c) Assignments and Transfers by Investors. The provisions of this Agreement shall be binding upon and inure to the benefit of the Investors and their respective successors and assigns. An Investor may transfer or assign, in whole or from time to time in part, to one or more persons its rights hereunder in connection with the transfer of Registrable Securities by such Investor to such person, provided that such Investor complies with all laws applicable thereto and provides written notice of assignment to the Company promptly after such assignment is effected and agrees in writing to be bound by the terms hereof.

(d) Assignments and Transfers by the Company. This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Required Investors, provided, however, that in the event that the Company is a party to a merger, consolidation, share exchange or similar business combination transaction in which the Common Stock is converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "Company" shall be deemed to refer to such Person and the term "Registrable Securities" shall be deemed to include the securities received by the Investors in connection with such transaction unless such securities are otherwise freely tradable by the Investors after giving effect to such transaction.

(e) Benefits of the Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(f) Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile, which shall be deemed an original.

(g) Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(h) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provisions hereof prohibited or unenforceable in any respect.

(i) Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

(j) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

(k) Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any

claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

MOBIVITY HOLDINGS CORP.

By: /s/ Dennis Becker
Dennis Becker,
Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

INVESTOR

Name of Investor

Signature of Investor or by Authorized
Person executing for Investor

Printed
Name: _____

Title: _____

Its: _____
(Printed Name of Authorized Person and
Title
for Person executing for Investor)

[EXECUTED SIGNATURE PAGES OF THE INVESTORS OMITTED]

Plan of Distribution

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales effected after the date the registration statement of which this Prospectus is a part is declared effective by the SEC;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share; and
- a combination of any such methods of sale.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares of

common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be “underwriters” within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are “underwriters” within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In addition, to the extent applicable we will make copies

of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We have agreed to indemnify the selling stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus.

We have agreed with the selling stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of (1) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement or (2) the date on which the shares may be sold without restriction pursuant to Rule 144 of the Securities Act.

LOAN AND SECURITY AGREEMENT

This **LOAN AND SECURITY AGREEMENT** (this “**Agreement**”) dated as of March 30, 2016 (the “**Effective Date**”) is among **SILICON VALLEY BANK**, a California corporation (“**Bank**”), **MOBIVITY, INC.**, a Nevada corporation (“**OpCo**”), and **MOBIVITY HOLDINGS CORP.**, a Nevada corporation (“**Holdings**”, and together with OpCo, individually and collectively, “**Borrower**”), and provides the terms on which Bank shall lend to Borrower, and Borrower shall repay Bank. The parties agree as follows:

1. ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP; provided that if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or Bank shall so request, Borrower and Bank shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided, further, that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrower shall provide Bank financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13 of this Agreement. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

2. LOAN AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon together with any fees and Finance Charges as and when due in accordance with this Agreement.

2.1.1 Financing of Accounts; Cash Secured Advances

(a) Account Advance Availability. Subject to the terms of this Agreement, Borrower may request that Bank finance specific Eligible Accounts. Bank may, in its good faith business discretion, finance such Eligible Accounts by extending credit to Borrower in an amount equal to the result of the Advance Rate multiplied by the face amount of the Eligible Account. At all times that Borrower is Borrowing Base Eligible, Borrower may request that Bank finance Eligible Accounts on an aggregate basis. Bank may, in its good faith business discretion, finance Eligible Accounts on an aggregate basis by extending credit to Borrower in an amount equal to the result of the Advance Rate multiplied by the aggregate face amount of the Eligible Accounts. Bank may, in its sole discretion, change the percentage of the Advance Rate for a particular Eligible Account on a case by case basis. When Bank finances an Eligible Account (an “**Account Advance**”) such Eligible Account becomes a “Financed Receivable.”

(b) Cash Secured Advance Availability. Subject to the terms and conditions of this Agreement, Bank may, in its good faith business discretion, make cash secured advances (each, a “**Cash Secured Advance**”) to Borrower in an aggregate amount not to exceed the Cash

Secured Sublimit. Cash Secured Advances may be repaid at any time and from time to time and, prior to the Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein. The dollar amount of each Cash Secured Advance shall at all times reduce the amount otherwise available for Account Advances.

(c) Maximum Advances. The aggregate face amount of all Financed Receivables outstanding at any time may not exceed the Gross Facility Amount. In addition and notwithstanding the foregoing, the aggregate amount of Advances outstanding at any time may not exceed the Net Facility Amount.

(d) Borrowing Procedure; Funding of Cash Secured Advances to Restricted Account. Borrower will deliver an Invoice Transmittal for each Eligible Account it offers, and, if at such time Borrower is Borrowing Base Eligible and Borrower is requesting an Account Advance, Borrower shall also deliver a Borrowing Base Certificate. Bank may rely on information set forth in or provided with the Invoice Transmittal and Borrowing Base Certificate. In addition, upon Bank's request, Borrower shall deliver to Bank any contracts, purchase orders, or other underlying supporting documentation with respect to such Eligible Account. For each Cash Secured Advance, Bank shall credit the proceeds of such Cash Secured Advance to a restricted account at Bank that Bank controls.

(e) Credit Quality; Confirmations. Bank may, at its option, conduct a credit check of the Account Debtor for each Account requested by Borrower for financing hereunder to approve any such Account Debtor's credit before agreeing to finance such Account. Bank may also verify directly with the respective Account Debtors the validity, amount and other matters relating to the Accounts (including confirmations of Borrower's representations in Section 5.3 of this Agreement) by means of mail, telephone or otherwise, either in the name of Borrower or Bank from time to time in its sole discretion.

(f) Accounts Notification/Collection. Bank may notify any Account Debtor of Bank's security interest in the Borrower's Accounts and verify and/or collect them.

(g) Early Termination. This Agreement may be terminated prior to the Maturity Date as follows: (i) by Borrower, effective three Business Days after written notice of termination is given to Bank; or (ii) by Bank at any time after the occurrence of an Event of Default, without notice, effective immediately. If this Agreement is terminated (A) by Bank in accordance with clause (ii) in the foregoing sentence, or (B) by Borrower for any reason, Borrower shall pay to Bank a non refundable termination fee in an amount equal to Thirty Thousand Dollars (\$30,000) (the "**Early Termination Fee**"). The Early Termination Fee shall be due and payable on the effective date of such termination and thereafter shall bear interest at a rate equal to the highest rate applicable to any of the Obligations. Notwithstanding the foregoing, Bank agrees to waive the Early Termination Fee if Bank closes on the refinance and re-documentation of this Agreement under another division of Bank (in its sole and exclusive discretion) prior to the Maturity Date.

(h) Maturity. This Agreement shall terminate and all Obligations outstanding hereunder shall be immediately due and payable in full on the Maturity Date.

(i) Suspension of Advances. Borrower's ability to request that Bank finance Eligible Accounts or otherwise make Advances hereunder will terminate if, in Bank's sole discretion, there has been a material adverse change in the general affairs, management, results of operation, condition (financial or otherwise) or the prospect of repayment of the Obligations, or there has been any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Bank prior to the Effective Date.

(j) End of Borrowing Base Eligible Status. Upon Borrower ceasing to be Borrowing Base Eligible as measured on the last day of each Reconciliation Period, Borrower shall deliver to Bank, as soon as possible, but in no event more than one (1) Business Day after such Reconciliation Period, an Invoice Transmittal containing detailed invoice reporting, signed by a Responsible Officer together with a current accounts receivable aging and a copy of each invoice, all in accordance with Section 6.2 hereof. If the outstanding principal amount of the Account Advances exceeds the amount of Account Advances available against Eligible Accounts (as determined by Bank), Borrower shall immediately pay to Bank the excess and, in connection with same, hereby irrevocably authorizes Bank to debit any account of Borrower maintained by Borrower with Bank or any of Bank's Affiliates for the amount of such excess.

2.2 Collections, Finance Charges, Remittances and Fees. The Obligations shall be subject to the following fees and Finance Charges. Unpaid fees and Finance Charges may, in Bank's discretion, accrue interest at the then highest rate applicable to the Obligations.

2.3 Collections. Collections will be credited to the Financed Receivable Balance for such Financed Receivable, but if there is an Event of Default, Bank may apply Collections to the Obligations in any order it chooses; provided, however, when Borrower is Borrowing Base Eligible, Collections will be credited to Borrower's primary operating account at Bank (for the avoidance of doubt, all Collections shall be directed to the Lockbox in accordance with Section 2.9 below, even when Borrower is Borrowing Base Eligible). If Bank receives a payment for both a Financed Receivable and a non-Financed Receivable, the funds will first be applied to the Financed Receivable and, if there is no Event of Default then existing, the excess will be remitted to Borrower, subject to Section 2.9 of this Agreement.

2.4 Facility Fee. Borrower shall pay to Bank a fully earned, non-refundable facility fee of Thirty Thousand Dollars (\$30,000) (the "**Facility Fee**") payable as follows: (a) the initial installment of Fifteen Thousand Dollars (\$15,000) is due on the Effective Date, and (b) the second installment of Fifteen Thousand Dollars (\$15,000) is due on the first (1st) anniversary of the Effective Date.

2.5 Finance Charges. In computing Finance Charges on the Account Advances under this Agreement, all Collections received by Bank shall be deemed applied by Bank on account of the Account Advances three (3) Business Days after receipt of the Collections. Borrower will pay a finance charge (the "**Finance Charge**") on the Advances as follows: (a) with respect to the Account Advances while Borrower is Borrowing Base Eligible and with respect to the Cash Secured Advances at all times, on the outstanding principal balance of such Account Advances and/or Cash Secured Advances which is equal to the Applicable Rate divided by 360 multiplied by the number of days each such Account Advance and/or Cash Secured Advance is outstanding multiplied by the outstanding principal balance of such Account Advances and/or Cash Secured

Advances, and (b) with respect to the Account Advances at all other times, on the Financed Receivable Balance which is equal to the Applicable Rate divided by 360 multiplied by the number of days each such Financed Receivable is outstanding multiplied by the outstanding Financed Receivable Balance. The Finance Charge for Account Advances is payable when the Account Advance made based on such Financed Receivable is repaid in accordance with Section 2.12 of this Agreement; provided, however, when Borrower is Borrowing Base Eligible, all Finance Charges for Account Advances shall be payable monthly on the first (1st) calendar day of each Reconciliation Period for the prior Reconciliation Period. All Finance Charges for Cash Secured Advances shall be payable monthly on the first (1st) calendar day of each Reconciliation Period for the prior Reconciliation Period. Immediately upon the occurrence of an Event of Default, the Applicable Rate will increase an additional five percent (5.0%) per annum.

2.6 Unused Net Facility Fee. Borrower shall pay to Bank, payable quarterly in arrears on the first day of each calendar quarter occurring after the Effective Date and prior to the Maturity Date, and on the Maturity Date, a fee (the “**Unused Net Facility Fee**”) in an amount equal to one half of one percent (0.5%) per annum of the average unused portion of the Net Facility Amount, as determined by Bank. The unused portion of the Net Facility Amount, for purposes of this calculation, shall be calculated on a calendar year basis and shall equal the difference between (i) the Net Facility Amount, and (ii) the average for the period of the daily closing balance of the Advances outstanding.

2.7 Accounting. After each Reconciliation Period, Bank will provide Borrower with an accounting of the transactions for that Reconciliation Period, including the amount of all Financed Receivables, all Collections, Adjustments, Finance Charges, Unused Net Facility Fee, and the Facility Fee. If Borrower does not object to the accounting in writing within thirty (30) days it shall be considered accurate. All Finance Charges and other interest and fees are calculated on the basis of a three hundred sixty (360) day year and actual days elapsed.

2.8 Deductions. Bank may deduct fees, Bank Expenses, Finance Charges, Advances which become due pursuant to Section 2.12 of this Agreement, and other amounts due pursuant to this Agreement from any Advances made or Collections received by Bank.

2.9 Lockbox; Account Collection Services .

(a) Borrower shall direct each Account Debtor (and each depository institution where proceeds of Accounts are on deposit) to remit payments with respect to the Accounts to a lockbox account established with Bank or to wire transfer payments to a cash collateral account that Bank controls (collectively, the “**Lockbox**”). It will be considered an immediate Event of Default if the Lockbox is not established and operational on the Effective Date and at all times thereafter until such Lockbox is established and operational.

(b) Upon receipt by Borrower of any proceeds of Accounts, Borrower shall immediately transfer and deliver same to Bank, along with a detailed cash receipts journal.

(c) Provided no Event of Default exists or an event that with notice or lapse of time will be an Event of Default, within three (3) days of receipt of any proceeds of the Accounts by Bank (whether received by Bank in the Lockbox, directly from Borrower, or otherwise), Bank

will turn over to Borrower such proceeds, other than (i) Collections applied by Bank pursuant to Section 2.3 of this Agreement and (ii) such proceeds which shall be used by Bank to repay any other amounts due to Bank, such as the Finance Charge, the Facility Fee, Unused Net Facility Fee, and Bank Expenses; provided, however, Bank may hold any proceeds of the Accounts (whether received by Bank in the Lockbox, directly from Borrower, or otherwise and whether or not in respect of Financed Receivables) as a reserve until the end of the applicable Reconciliation Period if Bank, in its reasonable discretion, determines that other Financed Receivable(s) may no longer qualify as an Eligible Account at any time prior to the end of the subject Reconciliation Period.

(d) This Section 2.9 does not impose any affirmative duty on Bank to perform any act other than as specifically set forth herein. All Accounts and the proceeds thereof are Collateral, and if an Event of Default occurs, Bank may, without notice, apply the proceeds of such Accounts to the Obligations.

2.10 Bank Expenses. Borrower shall pay all Bank Expenses (including reasonable attorneys' fees and expenses, plus expenses, for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

2.11 Good Faith Deposit. Borrower has paid to Bank a deposit of Fifteen Thousand Dollars (\$15,000) (the "**Good Faith Deposit**") to initiate Bank's due diligence review process. Any portion of the Good Faith Deposit not utilized to pay Bank Expenses will be applied to the Facility Fee .

2.12 Repayment of Obligations; Adjustments .

2.12.1 Repayment. Borrower will repay each Advance on the earliest of: (a) the date on which payment is received of the Financed Receivable with respect to which the Advance was made, (b) the date on which the Financed Receivable is no longer an Eligible Account, (c) the date on which any Adjustment is asserted to the Financed Receivable (but only to the extent of the Adjustment if the Financed Receivable otherwise remains an Eligible Account), (d) the date on which there is a breach of any representation or warranty in Section 5.3 of this Agreement or of any covenant in the Loan Documents, or (e) the Maturity Date (including any early termination). Each payment will also include all accrued Finance Charges and Unused Net Facility Fees with respect to such Advance and all other amounts then due and payable hereunder. Notwithstanding the foregoing, at any time that Borrower is Borrowing Base Eligible, (x) Borrower will repay each Advance on the earliest to occur of (i) the Maturity Date (including any early termination), or (ii) when required to be repaid under Section 2.1.1(j); and (y) at any time that the aggregate outstanding principal amount of the Advances exceeds the amount of Advances available against Eligible Accounts (as determined by Bank), Borrower shall immediately pay to Bank the excess.

2.12.2 Repayment on Event of Default . When there is an Event of Default, Borrower will, if Bank demands (or, upon the occurrence of an Event of Default under Section 8.5 of this Agreement, immediately without notice or demand from Bank) repay all of the Obligations. The demand may, at Bank's option, include the Advance for each Financed Receivable then outstanding and all accrued Finance Charges, the Early Termination Fee, Unused Net Facility Fee, attorneys' and professional fees, court costs and expenses, Bank Expenses and any other Obligations.

2.12.3 Debit of Accounts. Bank may debit any of Borrower's deposit accounts for payments or any amounts Borrower owes Bank hereunder. Bank shall promptly notify Borrower when it debits Borrower's accounts. These debits shall not constitute a set-off.

2.13 Power of Attorney. Borrower irrevocably appoints Bank and its successors and assigns as attorney-in-fact and authorizes Bank and its successor and assigns, to: (a) following the occurrence of an Event of Default, (i) sell, assign, transfer, pledge, compromise, or discharge all or any part of the Financed Receivables; (ii) demand, collect, sue, and give releases to any Account Debtor for monies due and compromise, prosecute, or defend any action, claim, case or proceeding about the Financed Receivables, including filing a claim or voting a claim in any bankruptcy case in Bank's or Borrower's name, as Bank chooses; and (iii) prepare, file and sign Borrower's name on any notice, claim, assignment, demand, draft, or notice of or satisfaction of lien or mechanics' lien or similar document; and (b) regardless of whether an Event of Default has occurred and is continuing, (i) notify all Account Debtors to pay Bank directly; (ii) receive, open, and dispose of mail addressed to Borrower; (iii) endorse Borrower's name on checks or other instruments (to the extent necessary to pay amounts owed pursuant to any of the Loan Documents); and (iv) execute on Borrower's behalf any instruments, documents, financing statements to perfect Bank's interests in the Financed Receivables and Collateral and do all acts and things necessary or prudent, as determined solely and exclusively by Bank, to protect or preserve, Bank's rights and remedies under the Loan Documents, as directed by Bank.

3. CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

- (a) the Loan Documents;
- (b) any Control Agreements required by Bank;
- (c) each Borrower's Operating Documents and good standing certificates of each Borrower certified by the Secretary of State of the State of Nevada as of a date no earlier than thirty (30) days prior to the Effective Date;
- (d) the completed and executed Borrowing Resolutions for each Borrower;
- (e) certified copies, dated as of a recent date, of financing statement searches, as Bank shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;
- (f) the Perfection Certificate of each Borrower, together with the duly executed original signatures thereto;

(g) the completion of an initial audit with results satisfactory to Bank in its sole and absolute discretion;

(h) true, accurate and complete copies of the BDC Capital Loan Documents and ACOA Capital Loan Documents as in effect on the Effective Date; and

(i) payment of the fees and Bank Expenses then due as specified in Section 2.10 of this Agreement.

3.2 Conditions Precedent to all Credit Extensions . Bank's agreement to make each Credit Extension, including the initial Credit Extension, is subject to the following:

(a) receipt of the Invoice Transmittal and at all times Borrower is Borrowing Base Eligible, a Borrowing Base Certificate;

(b) Bank shall have (at its option) conducted the confirmations and verifications as described in Section 2.1.1(e) of this Agreement;

(c) each of the representations and warranties in this Agreement shall be true, accurate, and complete on the date of the Invoice Transmittal, on the date of the Borrowing Base Certificate, and on the effective date of each Credit Extension and no Event of Default shall have occurred and be continuing, or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete; and

(d) in Bank's sole discretion, there has not been any material impairment in the general affairs, management, results of operation, financial condition or the prospect of repayment of the Obligations, or any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Bank.

3.3 Post-Closing Conditions. Within thirty (30) days after the Effective Date, Bank shall have received each of the following, in form and substance satisfactory to Bank:

(a) original signatures to all Loan Documents;

(b) a landlord's consent in favor of Bank for 55 North Arizona Place, Suite 310, Chandler, Arizona 85225 by the landlord thereof; and

(c) evidence satisfactory to Bank that the insurance policies required by Section 6.4 of this Agreement are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses or endorsements in favor of Bank.

3.4 Covenant to Deliver . Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest . Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein shall be and shall at all times continue to be a first priority perfected security interest in the Collateral subject only to Permitted Liens. If Borrower shall at any time acquire a commercial tort claim, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to Bank.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that may have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are satisfied in full, and at such time Bank shall, at Borrower's sole cost and expense, terminate its security interest in the Collateral and all rights therein shall revert to Borrower. In the event (a) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (b) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then at least one hundred five percent (105.0%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then at least one hundred ten percent (110.0%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to such Letters of Credit.

4.2 Authorization to File Financing Statements . Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder. Any such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Bank's discretion.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

5.1 Due Organization and Authorization . Borrower and each of its Subsidiaries are duly existing and in good standing as Registered Organizations in their respective jurisdictions of

formation and are qualified and licensed to do business and are in good standing in any other jurisdiction in which the conduct of their respective business or ownership of property requires that they be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, each Borrower has delivered to Bank a completed certificate signed by the respective Borrower, entitled Perfection Certificate (the "**Perfection Certificate**"). Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, corporate structure, organizational type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement).

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or (v) constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could have a material adverse effect on Borrower's business.

5.2 Collateral. Borrower has good title to, has rights in, and the power to transfer, each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no deposit accounts other than the deposit accounts with Bank, the deposit accounts, if any, described in the Perfection Certificate delivered to Bank in connection herewith, or of which Borrower has given Bank notice and taken such actions as are necessary to give Bank a perfected security interest therein. The Accounts are bona fide, existing obligations of the Account Debtors. All Inventory is in all material respects of good and marketable quality, free from material defects.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. None of the components of the Collateral are currently being maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2 of this Agreement.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate. Each Patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business. Except as noted on the Perfection Certificate, Borrower is not a party to, nor is it bound by, any Restricted License.

5.3 Financed Receivables. Borrower represents and warrants for each Financed Receivable:

- (a) Such Financed Receivable is an Eligible Account;
- (b) Borrower is the owner of and has the legal right to sell, transfer, assign and encumber such Financed Receivable;
- (c) The correct amount is on the Invoice Transmittal and is not disputed;
- (d) Payment is not contingent on any obligation or contract and Borrower has fulfilled all its obligations as of the Invoice Transmittal date;
- (e) Such Financed Receivable is based on an actual sale and delivery of goods and/or services rendered, is due to Borrower, is not past due or in default, has not been previously sold, assigned, transferred, or pledged and is free of any liens, security interests and encumbrances other than Permitted Liens;
- (f) There are no defenses, offsets, counterclaims or agreements for which the Account Debtor may claim any deduction or discount;
- (g) Borrower reasonably believes no Account Debtor is insolvent or subject to any Insolvency Proceedings;
- (h) Borrower has not filed or had filed against it Insolvency Proceedings and does not anticipate any filing;
- (i) Bank has the right to endorse and/ or require Borrower to endorse all payments received on Financed Receivables and all proceeds of Collateral; and
- (j) No representation, warranty or other statement of Borrower in any certificate or written statement given to Bank contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement contained in the certificates or statement not misleading.

5.4 Litigation. There are no actions or proceedings pending or, to the knowledge of Borrower's Responsible Officers, threatened in writing by or against Borrower or any Subsidiary in which an adverse decision could reasonably be expected to cause a Material Adverse Change.

5.5 No Material Deviation in Financial Statements and Deterioration in Financial Condition. All consolidated financial statements for Borrower and any Subsidiary delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Bank.

5.6 Solvency. The fair salable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.7 Regulatory Compliance. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to cause a Material Adverse Change. None of Borrower's or any Subsidiary's properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

5.8 Subsidiaries. Borrower does not own any stock, partnership interest or other equity securities except for Permitted Investments.

5.9 Tax Returns and Payments; Pension Contributions . Borrower and each Subsidiary have timely filed all required tax returns and reports, and Borrower and each Subsidiary have timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each Subsidiary. Borrower may defer payment of any contested taxes, provided that Borrower (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Bank in writing of the commencement of, and any material development in, the proceedings and (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien". Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower,

including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

5.10 BDC Capital Loan Documents and ACOA Capital Loan Documents .

Attached as Exhibit E are true, complete and correct copies of all of the BDC Capital Loan Documents, including all amendments, supplements and other modifications thereto, and attached as Exhibit F are true, complete and correct copies of all of the ACOA Capital Loan Documents, including all amendments, supplements and other modifications thereto.

5.11 Full Disclosure. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Bank that any projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

6. AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject, noncompliance with which could have a material adverse effect on Borrower's business.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in all of its property. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.

(c) Deliver to Bank, within five (5) days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

6.2 Financial Statements, Reports, Certificates .

(a) Deliver to Bank: (i) as soon as available, but no later than thirty (30) days after the last day of each Reconciliation Period, a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations during the period certified by

a Responsible Officer and in a form acceptable to Bank; (ii) as soon as available, but no later than one hundred fifty (150) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Bank; (iii) within five (5) days of filing, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and all reports on Form 10-K, 10-Q and 8-K filed with the SEC; (iv) a prompt report of any legal actions pending or threatened against Borrower or any Subsidiary that could result in damages or costs to Borrower or any Subsidiary of One Hundred Thousand Dollars (\$100,000.00) or more; (v) as soon as available, but no later than the earlier to occur of (A) fifteen (15) days after approval by Borrower's Board of Directors or (B) January 31st of each year, annual financial projections for the following fiscal year approved by Borrower's Board of Directors and commensurate in form and substance with those provided to Borrower's venture capital investors, together with any related business forecasts used in the preparation of such annual financial plans and projections; and (vi) budgets, sales projections, operating plans or other financial information reasonably requested by Bank.

(b) Within thirty (30) days after the last day of each Reconciliation Period, deliver to Bank with the monthly financial statements a Compliance Certificate signed by a Responsible Officer in the form of Exhibit B.

(c) Allow Bank to inspect the Collateral and audit and copy Borrower's Books, including, but not limited to, Borrower's Accounts, upon reasonable notice to Borrower. Unless an Event of Default has occurred and is continuing or conditions may otherwise warrant, such inspections or audits shall be conducted no more often than (i) once every twelve (12) months while Borrower is Borrowing Base Eligible and (ii) twice every twelve (12) months at all other times. The foregoing inspections and audits shall be at Borrower's expense, and the charge therefor shall be \$1,000 per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than ten (10) days in advance, and Borrower cancels or seeks to reschedule the audit with less than ten (10) days written notice to Bank, then (without limiting any of Bank's rights or remedies), Borrower shall pay Bank a fee of \$1,000 plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling. After the occurrence of an Event of Default, Bank may audit Borrower's Collateral at Borrower's expense, including, but not limited to, Borrower's Accounts as frequently as Bank deems necessary at Borrower's expense and at Bank's sole and exclusive discretion, without notification to and authorization from Borrower.

(d) Upon Bank's request, provide a written report on any Financed Receivable, where payment of such Financed Receivable does not occur by its due date and include the reasons for the delay.

(e) Provide Bank with, as soon as available, but no later than thirty (30) days following each Reconciliation Period, an aged listing of accounts receivable and accounts payable by invoice date, in form and detail acceptable to Bank.

(f) Provide Bank with, as soon as available, but no later than thirty (30) days following each Reconciliation Period, a Deferred Revenue report (if applicable), in form and detail acceptable to Bank.

(g) Provide Bank prompt written notice of (i) any material change in the composition of the Intellectual Property, (ii) the registration of any Copyright, including any subsequent ownership right of Borrower in or to any Copyright, Patent or Trademark not previously disclosed in writing to Bank, and (iii) Borrower's knowledge of an event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property.

(h) At all times that Borrower is Borrowing Base Eligible, provide Bank within thirty (30) days following each Reconciliation Period, a Borrowing Base Certificate signed by a Responsible Officer of Borrower.

(i) Provide Bank prompt written notice of any default under either of the BDC Capital Loan Documents or ACOA Capital Loan Documents.

6.3 Taxes. Make, and cause each Subsidiary to make, timely payment of all foreign, federal, state, and local taxes or assessments (other than taxes and assessments which Borrower is contesting in good faith, with adequate reserves maintained in accordance with GAAP) and will deliver to Bank, on demand, appropriate certificates attesting to such payments.

6.4 Insurance. Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location, and as Bank may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Bank. All property policies shall have a lender's loss payable endorsement showing Bank as the sole lender loss payee and waive subrogation against Bank, and all liability policies shall show, or have endorsements showing, Bank as an additional insured. All policies (or the lender loss payable and additional insured endorsements) shall provide that the insurer must give Bank at least twenty (20) days notice before canceling, amending, or declining to renew its policy. At Bank's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Bank's option, be payable to Bank on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 6.4 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 6.4, and take any action under the policies Bank deems prudent.

6.5 Accounts.

(a) To permit Bank to monitor Borrower's financial performance and condition, maintain with Bank and Bank's Affiliates, Borrower's banking relationship (including, without limitation, their depository and operating accounts and securities accounts) and all excess cash.

(b) Provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account

is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Bank by Borrower as such.

6.6 Inventory; Returns; Notices of Adjustments . Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary practices as they exist at the Effective Date. If, at any time during the term of this Agreement, any Account Debtor asserts an Adjustment in excess of One Hundred Thousand Dollars (\$100,000), Borrower issues a credit memorandum, or any representation, warranty or covenant set forth in this Agreement or the other Loan Documents is no longer true in all material respects, Borrower will promptly advise Bank.

6.7 Reserved.

6.8 Protection of Intellectual Property Rights .

(a) (i) Protect, defend and maintain the validity and enforceability of its Intellectual Property; (ii) promptly advise Bank in writing of material infringements of its Intellectual Property; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

(b) Provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such steps as Bank requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

6.9 Litigation Cooperation. From the Effective Date and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's Books, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

6.10 Further Assurances. Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's Lien in the Collateral or to effect the purposes of this Agreement.

7. NEGATIVE COVENANTS

Borrower shall not do any of the following without Bank's prior written consent.

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively a “**Transfer**”), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment; and (c) in connection with Permitted Liens and Permitted Investments.

7.2 Changes in Business, Management, Control, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; (c) permit a change in management; or (d) permit or suffer any Change in Control .

Borrower shall not, without at least thirty (30) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Five Thousand Dollars (\$5,000) in Borrower’s assets or property), (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, (5) change any organizational number (if any) assigned by its jurisdiction of organization, or (6) deliver any portion of the Collateral to a bailee, unless (i) such bailee location contains less than Five Thousand Dollars (\$5,000) in Borrower’s assets or property and (ii) Bank and such bailee are parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral.

Borrower hereby agrees upon Borrower adding any new office or business location, including any warehouse, Borrower will cause its landlord to enter into a landlord consent in favor of Bank prior to such new office or business location containing Five Thousand Dollars (\$5,000) of Collateral.

Borrower hereby agrees that prior to Borrower delivering any Collateral to a bailee, Borrower shall cause such bailee to execute and deliver a bailee agreement in form and substance satisfactory to Bank.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower’s or any

Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 of this Agreement and the definition of "Permitted Liens" herein.

7.6 Maintenance of Collateral Accounts . Maintain any Collateral Account except pursuant to the terms of Section 6.5 of this Agreement.

7.7 Distributions; Investments. (a) Directly or indirectly acquire or own any Person, or make any Investment in any Person, other than Permitted Investments, or permit any of its Subsidiaries to do so; or (b) pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock.

7.8 Transactions with Affiliates . Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount owed by Borrower thereof, shorten the maturity thereof, increase the rate of interest applicable thereto or adversely affect the subordination thereof to Obligations owed to Bank.

7.10 BDC Capital Loan Documents and ACOA Capital Loan Documents. (a) Make or permit any payment on the BDC Capital Indebtedness or ACOA Capital Indebtedness, except for regularly scheduled payments of principal and non-default interest and fees or such other payments to which Bank otherwise consents, or (b) amend any provision in any of the BDC Capital Loan Documents and ACOA Capital Loan Documents which would increase the amount owed, shorten the maturity thereof, increase the rate of interest applicable thereto or secure the Indebtedness thereunder against any assets of either Borrower.

7.11 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, each as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an “**Event of Default**”) under this Agreement:

8.1 Payment Default. Borrower fails to pay any of the Obligations when due;

8.2 Covenant Default. Borrower fails or neglects to perform any obligation in Section 2.9 or Section 6 of this Agreement or violates any covenant in Section 7 of this Agreement or fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement, any Loan Documents and as to any default under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, grace and cure periods provided under this Section 8.2 shall not apply to financial covenants or any other covenants that are required to be satisfied, completed or tested by a date certain;

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary) on deposit or otherwise maintained with Bank or any Bank Affiliate, or (ii) a notice of lien or levy is filed against any of Borrower’s assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower’s assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting any material part of its business;

8.5 Insolvency. (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within thirty (30) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is, under any agreement to which Borrower or any Guarantor is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Fifty Thousand Dollars (\$50,000); or (b) any default by Borrower or Guarantor, the result of which could result in a Material Adverse Change to Borrower’s or any Guarantor’s business;

8.7 Judgments. One or more final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Fifty Thousand Dollars (\$50,000) (not covered by independent third-party insurance as to which liability has been accepted by such

insurance carrier) shall be rendered against Borrower and the same are not, within ten (10) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the discharge, stay, or bonding of such judgment, order, or decree);

8.8 Misrepresentations. Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

8.9 Subordinated Debt. Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement;

8.10 Guaranty. (a) Any guaranty of any Obligations terminates or ceases for any reason to be in full force and effect; (b) any Guarantor does not perform any obligation or covenant under any guaranty of the Obligations; (c) any circumstance described in Sections 8.3, 8.4, 8.5, 8.6, 8.7, or 8.8 of this Agreement occurs with respect to any Guarantor, or (d) the liquidation, winding up, or termination of existence of any Guarantor;

8.11 Cross-Default with BDC Capital Loan Documents and ACOA Capital Loan Documents. A default shall occur under either of the BDC Capital Loan Documents or ACOA Capital Loan Documents and such default is not cured within any applicable grace period provided therein; or

8.12 Governmental Approvals. Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) has, or could reasonably be expected to have, a Material Adverse Change, or (ii) adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction.

9. BANK'S RIGHTS AND REMEDIES

9.1 Rights and Remedies. When an Event of Default occurs and continues beyond any applicable grace period Bank may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 of this Agreement occurs, all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) for any Letters of Credit, demand that Borrower (i) deposit cash with Bank in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then at least one hundred five percent (105.0%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then at least one hundred ten percent (110.0%), of the Dollar Equivalent of the aggregate face amount of all Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

(d) terminate any FX Contracts;

(e) settle or adjust disputes and claims directly with Account Debtors for amounts, on terms and in any order that Bank considers advisable and notify any Person owing Borrower money of Bank's security interest in such funds and verify the amount of such account. Borrower shall collect all payments in trust for Bank and, if requested by Bank, immediately deliver the payments to Bank in the form received from the Account Debtor, with proper endorsements for deposit;

(f) make any payments and do any acts it considers necessary or reasonable to protect its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(i) place a “hold” on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower’s Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

9.2 Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.4 of this Agreement or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank’s waiver of any Event of Default.

9.3 Bank’s Liability for Collateral. So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.4 No Waiver; Remedies Cumulative. Bank’s failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank’s rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank’s exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank’s waiver of any Event of Default is not a continuing waiver. Bank’s delay in exercising any remedy is not a waiver, election, or acquiescence.

9.5 Demand Waiver. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

9.6 Borrower Liability. Either Borrower may, acting singly, request Credit Extensions hereunder. Each Borrower hereby appoints the other as agent for itself for all purposes hereunder, including with respect to requesting Credit Extensions hereunder. Each Borrower

hereunder shall be jointly and severally obligated to repay all Credit Extensions made hereunder, regardless of which Borrower actually receives said Credit Extensions, as if each Borrower hereunder directly received all Credit Extensions. Each Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law, including, without limitation, the benefit of California Civil Code Section 2815 permitting revocation as to future transactions and the benefit of California Civil Code Sections 1432, 2809, 2810, 2819, 2839, 2845, 2847, 2848, 2849, 2850, and 2899 and 3433, and (b) any right to require Bank to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Bank may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower's liability.

Notwithstanding any other provision of this Agreement or other related document, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Bank under this Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section 9.6 shall be null and void. If any payment is made to a Borrower in contravention of this Section 9.6, such Borrower shall hold such payment in trust for Bank and such payment shall be promptly delivered to Bank for application to the Obligations, whether matured or unmatured.

10. NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:	c/o Mobivity, Inc. 55 North Arizona Place, Suite 310 Chandler, Arizona 85225 Attn: Christopher J. Meinerz, CFO Fax: (602) 281-4673 Email: chris.meinerz@mobivity.com
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If to Bank: Silicon Valley Bank
380 Interlocken Crescent
Suite 600
Broomfield, Colorado 80021
Attn: Derek Hofmeister, Vice President
Fax: (303) 469-1107
Email: dhofmeister@svb.com

11. CHOICE OF LAW, VENUE, JURY TRIAL WAIVER AND JUDICIAL REFERENCE

Except as otherwise expressly provided in any of the Loan Documents, California law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided to Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California

Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

12. GENERAL PROVISIONS

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents.

12.2 Indemnification. Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct.

12.3 Right of Set-Off. Borrower hereby grants to Bank, a lien, security interest and right of setoff as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a Bank subsidiary) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL

RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.4 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.5 Correction of Loan Documents. Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.

12.6 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.7 Amendments in Writing; Waiver; Integration. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

12.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.9 Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid in full and satisfied. Without limiting the foregoing, except as otherwise provided in Section 4.1, the grant of security interest by Borrower in Section 4.1 shall survive until the termination of all Bank Services Agreements. The obligation of Borrower in Section 12.2 of this Agreement to indemnify Bank shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.10 Confidentiality. In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Bank, collectively, "**Bank Entities**"); (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank shall use its best

efforts to obtain any prospective transferee's or purchaser's agreement to the terms of this Section 12.10); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

Bank Entities may use anonymous forms of confidential information for aggregate datasets, for analyses or reporting, and for any other uses not expressly prohibited in writing by Borrower. The provisions of the immediately preceding sentence shall survive termination of this Agreement.

12.11 Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

12.12 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.13 Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

12.14 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

12.15 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

13. DEFINITIONS

13.1 Definitions. As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in

brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

“**Account**” is any “account” as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

“**Account Advance**” is defined in Section 2.1.1(a) of this Agreement.

“**Account Debtor**” is as defined in the Code and shall include, without limitation, any person liable on any Financed Receivable, such as, a guarantor of the Financed Receivable and any issuer of a letter of credit or banker’s acceptance.

“**ACOA Capital Indebtedness**” means, collectively, (a) the Indebtedness of LiveLenz to Atlantic Canada Opportunities Agency (“**ACOA Capital**”) pursuant to the ACOA Capital Loan Documents in the aggregate principal amount not to exceed Ninety-One Thousand Four Hundred Eighty-Six Canadian Dollars (CAD\$91,486) outstanding at any time, and (b) the unsecured guaranty by Holdings of the Indebtedness described in clause (a) of this definition.

“**ACOA Capital Loan Documents**” means that certain Articles of Agreement by ACOA Capital to LiveLenz dated November 20, 2014, as amended, restated, or otherwise modified as permitted under the terms of this Agreement.

“**Adjustments**” are all discounts, allowances, returns, recoveries, disputes, claims of any kind (including, without limitation, counterclaims or warranty claims), offsets, defenses, rights of recoupment, rights of return, or short payments, asserted by or on behalf of any Account Debtor for any Financed Receivable.

“**Advance**” is an Account Advance or Cash Secured Advance, as the case may be, and “**Advances**” are Account Advances and Cash Secured Advances.

“**Advance Rate**” is eighty percent (80.0%), net of any offsets related to each specific Account Debtor or such other percentage as Bank establishes under Section 2.1.1 of this Agreement.

“**Affiliate**” of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners, and, for any Person that is a limited liability company, that Person’s managers and members.

“**Agreement**” is defined in the preamble of this Agreement.

“**Applicable Rate**” is a floating per annum rate equal to the following: (a) with respect to Account Advances, the Prime Rate plus (i) two and one quarter of one percent (2.25%) while Borrower is Borrowing Base Eligible, and (ii) three and three quarters of one percent (3.75%) at all other times, and (b) with respect to Cash Secured Advances, the Prime Rate plus one and three quarters of one percent (1.75%).

“**Bank**” is defined in the preamble of this Agreement.

“**Bank Entities**” is defined in Section 12.10.

“**Bank Expenses**” are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower or any Guarantor.

“**Bank Services**” are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank’s various agreements related thereto (each, a “**Bank Services Agreement**”).

“**BDC Capital Indebtedness**” means, collectively, (a) the Indebtedness of LiveLenz to BDC Capital Inc. pursuant to the BDC Capital Loan Documents in the aggregate principal amount not to exceed Four Hundred Fifty Thousand Canadian Dollars (CAD\$450,000) outstanding at any time, and (b) the unsecured guaranty by Holdings of the Indebtedness described in clause (a) of this definition.

“**BDC Capital Loan Documents**” means that certain Final Letter of Offer by BDC Capital Inc. to LiveLenz dated August 26, 2011, as amended, restated, or otherwise modified as permitted under the terms of this Agreement.

“**Borrower**” is defined in the preamble of this Agreement.

“**Borrower’s Books**” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Borrowing Base Certificate**” is that certain certificate in the form attached hereto as Exhibit D.

“**Borrowing Base Eligible**” means at such times that Borrower’s Liquidity Ratio is equal to or greater than 1.75:1.00 (the “**Liquidity Threshold**”); provided, however, that Borrower shall not be Borrowing Base Eligible during the continuance of an Event of Default. At any time that Borrower’s Liquidity Ratio is less than the Liquidity Threshold, Borrower will not be Borrowing Base Eligible until such time as Bank confirms that (a) Borrower’s Liquidity Ratio is equal to or greater than the Liquidity Threshold as of such date and (b) Borrower’s Liquidity Ratio was equal to or greater than the Liquidity Threshold at all times during the immediately preceding two (2) Reconciliation Periods.

“**Borrowing Resolutions**” are, with respect to any Person, those resolutions substantially in the form attached hereto as Exhibit C.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Bank is closed.

“**Cash Equivalents**” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc.; and (c) Bank’s certificates of deposit issued maturing no more than one (1) year after issue.

“**Cash Secured Advance**” is defined in Section 2.1.1(b) of this Agreement.

“**Cash Secured Sublimit**” is One Million Dollars (\$1,000,000).

“**Change in Control**” means (a) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), shall become, or obtain rights (whether by means or warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of 25% or more of the ordinary voting power for the election of directors of Holdings (determined on a fully diluted basis) other than by the sale of Holdings’ equity securities in a public offering or to venture capital or private equity investors so long as Holdings identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction; (b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of Holdings cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (c) at any time, Holdings shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding capital stock of each subsidiary of Holdings (including OpCo) free and clear of all Liens (except Liens created by this Agreement).

“**Claims**” is defined in Section 12.2 of this Agreement.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the

State of California, the term “**Code**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account.

“**Collections**” are all funds received by Bank from or on behalf of an Account Debtor for Financed Receivables.

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Compliance Certificate**” is attached as Exhibit B.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Collateral Account.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Credit Extension**” is any Advance or any other extension of credit by Bank for Borrower’s benefit under this Agreement.

“**Deferred Revenue**” is all amounts received or invoiced, as appropriate, in advance of performance under contracts and not yet recognized as revenue.

“**Deposit Account**” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Dollars,**” “**dollars**” or use of the sign “**\$**” means only lawful money of the United States and not any other currency, regardless of whether that currency uses the “**\$**” sign to denote its currency or may be readily converted into lawful money of the United States.

“**Early Termination Fee**” is defined in Section 2.1.1(g) of this Agreement.

“**Effective Date**” is defined in the preamble hereof.

“**Eligible Accounts**” are billed Accounts in the ordinary course of Borrower’s business that meet all Borrower’s representations and warranties in Section 5.3 of this Agreement, have been, at the option of Bank, confirmed in accordance with Section 2.1.1(e) of this Agreement, and are due and owing from Account Debtors deemed creditworthy by Bank in its sole discretion. Without limiting the fact that the determination of which Accounts are eligible hereunder is a matter of Bank discretion in each instance, Eligible Accounts shall not include the following Accounts (which listing may be amended or changed in Bank’s discretion with notice to Borrower):

- (a) Accounts for which the Account Debtor is Borrower’s Affiliate, officer, employee, or agent;
- (b) Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;
- (c) Accounts with credit balances over ninety (90) days from invoice date;
- (d) Accounts owing from an Account Debtor which does not have its principal place of business in the United States unless otherwise approved by Bank in writing on a case-by-case basis in its sole discretion;
- (e) Accounts billed and/or payable outside of the United States;
- (f) Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise - sometimes called “contra” accounts, accounts payable, customer deposits or credit accounts), with the exception of customary credits, adjustments and/or discounts given to an Account Debtor by Borrower in the ordinary course of its business;
- (g) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Bank and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;
- (h) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a “sale guaranteed”, “sale or return”, “sale on approval”, or other terms if Account Debtor’s payment may be conditional;

- (i) At all times that Borrower is not Borrowing Base Eligible, Accounts owing from an Account Debtor where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);
- (j) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements where the Account Debtor has a right of offset for damages suffered as a result of Borrower's failure to perform in accordance with the contract (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);
- (k) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor's satisfaction of Borrower's complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);
- (l) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;
- (m) Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Bank, Borrower, and the Account Debtor have entered into an agreement acceptable to Bank in its sole discretion wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower (sometimes called "bill and hold" accounts);
- (n) Accounts for which the Account Debtor has not been invoiced;
- (o) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower's business;
- (p) Accounts for which Borrower has permitted Account Debtor's payment to extend beyond ninety (90) days;
- (q) Accounts subject to chargebacks or other payment deductions taken by an Account Debtor;
- (r) Accounts arising from product returns and/or exchanges (sometimes called "warranty" or "RMA" accounts);
- (s) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding, or becomes insolvent, or goes out of business;
- (t) Accounts owing from an Account Debtor with respect to which Borrower has received Deferred Revenue (but only to the extent of such Deferred Revenue) unless otherwise approved by Bank in writing on a case-by-case basis in its sole discretion;
- (u) Accounts owing from an Account Debtor, in which fifty percent (50%) or more of the Accounts have not been paid within ninety (90) days of invoice date;

(v) At all times that Borrower is Borrowing Base Eligible, Accounts owing from an Account Debtor, whose total obligations to Borrower exceed thirty-five percent (35%) of all Accounts, for the amounts that exceed that percentage, unless Bank approves in writing; and

(w) Accounts for which Bank in its good faith business judgment determines collection to be doubtful, including, without limitation, accounts represented by “refreshed” or “recycled” invoices.

“**Equipment**” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, and its regulations.

“**Events of Default**” are set forth in Section 8 of this Agreement.

“**Exchange Act**” is the Securities Exchange Act of 1934, as amended.

“**Facility Fee**” is defined in Section 2.4 of this Agreement.

“**Finance Charges**” is defined in Section 2.5 of this Agreement.

“**Financed Receivables**” are all those Eligible Accounts, including their proceeds which Bank finances and makes an Account Advance, as set forth in Section 2.1.1 of this Agreement. A Financed Receivable stops being a Financed Receivable (but remains Collateral) when the Account Advance made for the Financed Receivable has been fully paid.

“**Financed Receivable Balance**” is the total outstanding gross face amount, at any time, of any Financed Receivable.

“**Foreign Currency**” means lawful money of a country other than the United States.

“**FX Contract**” is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

“**GAAP**” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“**Good Faith Deposit**” is defined in Section 2.11 of this Agreement.

“**Governmental Approval**” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“**Gross Facility Amount**” is Two Million Five Hundred Thousand Dollars (\$2,500,000).

“**Guarantor**” is any present or future guarantor of the Obligations.

“**Holdings**” is defined in the preamble of this Agreement.

“**Indebtedness**” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations and (d) Contingent Obligations.

“**Indemnified Person**” is defined in Section 12.2 of this Agreement.

“**Insolvency Proceeding**” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“**Intellectual Property**” means all of Borrower’s right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to a Borrower;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“**Inventory**” is all “inventory” as defined in the Code in effect on the Effective Date with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s

custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“**Investment**” is any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

“**Invoice Transmittal**” is a form provided by Bank which (a) for Account Advances when Borrower is not Borrowing Base Eligible, shows Eligible Accounts which Bank may finance and, for each such Account, includes the Account Debtor’s, name, address, invoice amount, invoice date and invoice number, and (b) for Account Advances when Borrower is Borrowing Eligible and for Cash Secured Advances at all times, shows the amount of the applicable Advance requested.

“**Letter of Credit**” is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Liquidity Ratio**” is the ratio of (a) Quick Assets to (b) outstanding Obligations.

“**LiveLenz**” means LiveLenz, Inc., a wholly-owned Subsidiary of Holdings formed under the laws of the Province of Nova Scotia, Canada.

“**Loan Documents**” are, collectively, this Agreement, the Perfection Certificate, any Bank Services Agreement, the Borrowing Resolutions, any subordination agreement, any note, or notes or guaranties executed by Borrower and/or any Guarantor, and any other present or future agreement between Borrower any Guarantor and/or for the benefit of Bank in connection with this Agreement, all as amended, restated, or otherwise modified.

“**Lockbox**” is defined in Section 2.9 of this Agreement.

“**Material Adverse Change**” is: (a) a material impairment in the perfection or priority of Bank’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“**Maturity Date**” is March __, 2018.

“**Net Facility Amount**” is Two Million Dollars (\$2,000,000).

“**Obligations**” are Borrower’s obligations to pay when due any debts, principal, interest, Bank Expenses and other amounts Borrower owes Bank now or later, whether under this Agreement, the Loan Documents, or otherwise, including, without limitation, any interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower’s duties under the Loan Documents.

“**OpCo**” is defined in the preamble of this Agreement.

“Operating Documents” are, for any Person, such Person’s formation documents, as certified with the Secretary of State of such Person’s state of formation on a date that is no earlier than 30 days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“Patents” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“Perfection Certificate” is defined in Section 5.1 of this Agreement.

“Permitted Indebtedness” is:

(a) Borrower’s Indebtedness to Bank under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date which is shown on the Perfection Certificate including the BDC Capital Indebtedness and ACOA Capital Indebtedness;

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of “Permitted Liens” hereunder; and

(g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (f) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

“Permitted Investments” are:

(a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date which are shown on the Perfection Certificate (but specifically excluding any future Investments in any Subsidiaries unless otherwise permitted hereunder);

(b) Investments consisting of Cash Equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of deposit accounts in which Bank has a first priority perfected security interest;

(e) Investments accepted in connection with Transfers permitted by Section 7.1 of this Agreement;

(f) Investments (i) by Borrower in Subsidiaries not to exceed Fifty Thousand Dollars (\$50,000) in the aggregate in any fiscal year and (ii) by Subsidiaries in other Subsidiaries not to exceed Fifty Thousand Dollars (\$50,000) in the aggregate in any fiscal year or in Borrower;

(g) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors;

(h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business; and

(i) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary.

“Permitted Liens” are:

(a) Liens existing on the Effective Date which are shown on the Perfection Certificate (including the Liens on the assets of LiveLenz securing the BDC Capital Indebtedness and ACOA Capital Indebtedness) or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on Borrower's Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Fifty Thousand Dollars (\$50,000) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Fifty Thousand Dollars (\$50,000) and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;

(h) non-exclusive license of Intellectual Property granted to third parties in the ordinary course of business;

(i) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7 of this Agreement; and

(j) Liens in favor of other financial institutions arising in connection with Borrower's deposit and/or securities accounts held at such institutions, provided that Bank has a first priority perfected security interest in the amounts held in such deposit and/or securities accounts.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Prime Rate" is the rate of interest per annum from time to time published in the money rates section of *The Wall Street Journal* or any successor publication thereto as the "prime rate" then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of *The Wall Street Journal*, becomes unavailable for any reason as determined by Bank, the "Prime Rate" shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors).

"Quick Assets" is, on any date, Borrower's unrestricted cash at Bank and net billed accounts receivable.

"Reconciliation Period" is each calendar month.

"Registered Organization" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

“Requirement of Law” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer” is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

“Restricted License” is any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower’s interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with Bank’s right to sell any Collateral.

“SEC” shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

“Securities Account” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“Subordinated Debt” is indebtedness incurred by Borrower subordinated to all of Borrower’s now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

“Subsidiary” is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of either Borrower.

“Trademarks” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“Transfer” is defined in Section 7.1 of this Agreement.

“Unused Net Facility Fee” is defined in Section 2.6 of this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER

MOBIVITY, INC.

By: /s/ Christopher Meinerz

Name: Christopher Meinerz

Title: Chief Financial Officer

MOBIVITY HOLDINGS CORP.

By: /s/ Christopher Meinerz

Name: Christopher Meinerz

Title: Chief Financial Officer

BANK

SILICON VALLEY BANK

By: /s/ Derek Hofmeister

Name: Derek Hofmeister

Title: Vice President

[Signature Page to Loan and Security Agreement]

EXHIBIT A

The Collateral consists of all of Borrower's right, title and interest in and to the following:

All goods, equipment, inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, general intangibles (including payment intangibles), accounts (including health-care receivables), 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), commercial tort claims, securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and any copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, now owned or later acquired; any patents, trademarks, service marks and applications therefor; trade styles, trade names, any trade secret rights, including any rights to unpatented inventions, know-how, operating manuals, license rights and agreements and confidential information, now owned or hereafter acquired; or any claims for damages by way of any past, present and future infringement of any of the foregoing; and

All Borrower's 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.

Notwithstanding the foregoing, the Collateral shall not be deemed to include any copyrights (including computer programs, blueprints and drawings), copyright applications, copyright registration and like protection in each work of authorship and derivative work thereof, whether published or unpublished, now owned or hereafter acquired; any design rights; any patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, trademarks, servicemarks and applications therefor, whether registered or not, except that the Collateral shall include all accounts, license and royalty fees and other revenues, proceeds, or income arising out of or relating to any of the foregoing.

EXHIBIT B

SVB Silicon Valley Bank

A Member of SVB Financial Group

SPECIALTY FINANCE DIVISION

Compliance Certificate

I, an/the authorized officer(s) of **MOBIVITY, INC.** and **MOBIVITY HOLDINGS CORP.** (collectively, "**Borrower**") certify(ies) under the Loan and Security Agreement (as amended, the "**Agreement**") between Borrower and Silicon Valley Bank ("**Bank**") as follows for the period ending _____ (all capitalized terms used herein shall have the meaning set forth in this Agreement):

Borrower represents and warrants for each Financed Receivable:

Each Financed Receivable is an Eligible Account;

Borrower is the owner with legal right to sell, transfer, assign and encumber such Financed Receivable;

The correct amount is on the Invoice Transmittal and is not disputed;

Payment is not contingent on any obligation or contract and Borrower has fulfilled all its obligations as of the Invoice Transmittal date;

Each Financed Receivable is based on an actual sale and delivery of goods and/or services rendered, is due to Borrower, is not past due or in default, has not been previously sold, assigned, transferred, or pledged and is free of any liens, security interests and encumbrances other than Permitted Liens;

There are no defenses, offsets, counterclaims or agreements for which the Account Debtor may claim any deduction or discount;

Borrower reasonably believes no Account Debtor is insolvent or subject to any Insolvency Proceedings;

Borrower has not filed or had filed against it Insolvency Proceedings and does not anticipate any filing;

Bank has the right to endorse and/ or require Borrower to endorse all payments received on Financed Receivables and all proceeds of Collateral.

No representation, warranty or other statement of Borrower in any certificate or written statement given to Bank contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement contained in the certificates or statement not misleading.

Additionally, Borrower represents and warrants as follows:

Borrower and each Subsidiary is duly existing and in good standing in its state of formation and qualified and licensed to do business in, and in good standing in, any state in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to cause a Material Adverse Change. The execution, delivery and performance of the Loan Documents have been duly authorized, and do not conflict with Borrower's organizational documents, nor constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which or by which it is bound in which the default could reasonably be expected to cause a Material Adverse Change.

Borrower has good title to the Collateral, free of Liens except Permitted Liens. All inventory is in all material respects of good and marketable quality, free from material defects.

Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to cause a Material Adverse Change. None of Borrower's or any Subsidiary's properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each Subsidiary has timely filed all required tax returns and paid, or made adequate provision to pay, all material taxes, except those being contested in good faith with adequate reserves under GAAP. Borrower and each Subsidiary has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all government authorities that are necessary to continue its business as currently conducted except where the failure to obtain or make such consents, declarations, notices or filings would not reasonably be expected to cause a Material Adverse Change.

The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered.

Please indicate compliance status by circling Yes/No under "Complies" column.

<u>Reporting Covenant</u>	<u>Required</u>	<u>Complies</u>
Monthly financial statements with Compliance Certificate	Monthly within 30 days	Yes No
Annual financial statement (CPA Audited) + CC	FYE within 150 days	Yes No
10-Q, 10-K and 8-K	Within 5 days after filing with SEC	Yes No
A/R & A/P Agings	Monthly within 30 days	Yes No
Deferred Revenue (if applicable)	Monthly within 30 days	Yes No
Borrowing Base Certificate (if applicable for the period)	Monthly within 30 days	Yes No

Board Projections	Within earlier of (i) 15 days after Board Approval or (ii) January 31 st of each year	Yes No
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Performance Pricing			
Liquidity Ratio	Status	Interest Rate for Account Advances*	Applies
LR \geq 1.75:1.00	Borrowing Base Eligible	Prime + 2.75% (net)	Yes No
LR < 1.75:1.00	Invoice by Invoice	Prime + 3.75% (gross)	Yes No
* note: Interest Rate for Cash Secured Advances is Prime + 1.75% (net) at all times			

All other representations and warranties in this Agreement are true and correct in all material respects on this date, and Borrower represents that there is no existing Event of Default.

Sincerely,

MOBIVITY, INC.

Signature

Title

Date

MOBIVITY HOLDINGS CORP.

Signature

Title

Date

EXHIBIT C - BORROWING RESOLUTIONS

28059520v3

EXHIBIT D - BORROWING BASE CERTIFICATE

Borrower: Mobivity, Inc. and Mobivity Holdings Corp.

Lender: Silicon Valley Bank

Commitment Amount: \$2,000,000

ACCOUNTS RECEIVABLE

1. Accounts Receivable (invoiced) Book Value as of	\$ _____
2. Additions (Please explain on next page)	\$ _____
3. Less: Intercompany / Employee / Non-Trade Accounts	\$ _____
4. NET TRADE ACCOUNTS RECEIVABLE	\$ _____

ACCOUNTS RECEIVABLE DEDUCTIONS (without duplication)

5. 90 Days Past Invoice Date	\$ _____
6. Credit Balances over 90 Days	\$ _____
7. Balance of 50% over 90 Day Accounts (Cross-Age or Current Affected)	\$ _____
8. Foreign Account Debtor Accounts	\$ _____
9. Foreign Invoiced and/or Collected Accounts	\$ _____
10. Contra / Customer Deposit Accounts	\$ _____
11. U.S. Government Accounts	\$ _____
12. Promotion or Demo Accounts; Guaranteed Sale or Consignment Sale Accounts	\$ _____
13. Contract Accounts; Accounts with Progress / Milestone Billings	\$ _____
14. Accounts for Retainage Billings	\$ _____
15. Trust / Bonded Accounts	\$ _____
16. Bill and Hold Accounts	\$ _____
17. Unbilled Accounts	\$ _____
18. Non-Trade Accounts (If not already deducted above)	\$ _____
19. Accounts with Extended Term Invoices (Net 90+)	\$ _____
20. Chargebacks Accounts / Debit Memos	\$ _____
21. Product Returns / Exchanges	\$ _____
22. Disputed Accounts; Insolvent Account Debtor Accounts	\$ _____
23. Deferred Revenue, if applicable / Other (Please explain on next page)	\$ _____
24. Concentration Limits (35%)	\$ _____
25. TOTAL ACCOUNTS RECEIVABLE DEDUCTIONS	\$ _____
26. Eligible Accounts (#4 minus #25)	\$ _____
27. ELIGIBLE AMOUNT OF ACCOUNTS (80% of #26)	\$ _____

BALANCES

28. Maximum Loan Amount	\$2,000,000
29. Present outstanding principal balance of all Cash Secured Advances (not to exceed \$1,000,000)	\$ _____
30. Maximum Loan Amount available after reduction of outstanding Cash Secured Advances [#28 minus #29]	\$ _____
31. Total Funds Available [Lesser of #30 or #27]	\$ _____
32. Present outstanding principal balance of all Account Advances	\$ _____
33. RESERVE POSITION FOR ACCOUNT ADVANCES [#31 minus #32]	\$ _____

[Continued on following page.]

Explanatory comments from previous page:

The undersigned represents and warrants that this is true, complete and correct, and that the information in this Borrowing Base Certificate complies with the representations and warranties in the Loan and Security Agreement between the undersigned and Silicon Valley Bank.

COMMENTS:

MOBIVITY, INC.

By: _____
Authorized Signer

Date:

MOBIVITY HOLDINGS CORP.

By: _____
Authorized Signer

Date:

BANK USE ONLY		
Received by: _____	authorized signer	
Date: _____		
Verified: _____	authorized signer	
Date: _____		
Compliance Status:	Yes	No

28059520v3

EXHIBIT E
BDC Capital Loan Documents

-

28059520v3

EXHIBIT F
ACOA Capital Loan Documents

28059520v3

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
Pursuant to Rule 13a-14(a) adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Dennis Becker, certify that:

1. I have reviewed this report on Form 10-K of Mobivity Holdings Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Dennis Becker

Dennis Becker
Chief Executive Officer
(Principal Executive Officer)

March 30, 2016

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
Pursuant to Rule 13a-14(a) adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Christopher Meinerz, certify that:

1. I have reviewed this report on Form 10-K of Mobivity Holdings Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Christopher Meinerz

Chief Financial Officer
(Principal Financial Officer)

March 30, 2016

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Mobivity Holdings Corp., a Nevada corporation (the “Company”), for the period ended December 31, 2015, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), we, Dennis Becker, Chief Executive Officer of the Company, and Christopher Meinerz, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Dated: March 30, 2016

/s/ Dennis Becker

Dennis Becker
Chief Executive Officer
(Principal Executive Officer)

/s/ Christopher Meinerz

Christopher Meinerz
Chief Financial Officer
(Principal Financial and Accounting Officer)
