

**UNITED STATES
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, 2023

Or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

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.)

3133 West Frye Road, # 215
Chandler, Arizona 85226
(Address of principal executive offices)

(877) 282-7660
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
None	Not applicable	Not applicable

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 every Interactive Data File required to be submitted 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 such files). Yes No

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," "smaller reporting company" or an "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by checkmark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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, 2023 was \$53,322,348, calculated at the price at which the common equity was last sold.

As of March 30, 2024, the registrant had 67,949,709 shares of common stock issued and outstanding.

Documents Incorporated by Reference

Portions of the Registrant's 2024 definitive information statement, if filed with the Securities and Exchange Commission within 120 days after December 31, 2023, are incorporated by reference into Part III of this Form 10-K, or such Part III information will be provided in an amendment filed on Form 10-K/A within 120 days after December 31, 2023.

[FD1]Based on historical practice, it is unlikely that an information statement will be filed within 120 days year-end, but this reserves that option. The second part is what will likely be applicable to Mobivity.

MOBIVITY HOLDINGS CORP.
ANNUAL REPORT ON FORM 10-K
FISCAL YEAR ENDED DECEMBER 31, 2023
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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 1A—“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 1A – “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 “us”, “our”, or “we”) is a Nevada corporation organized in 2008, which develops and operates proprietary platforms over which brick and mortar brands and digital first enterprises can conduct national and localized, data-driven marketing campaigns with unique targeting, incentivization and promotion to drive customer acquisition and loyalty. The company’s core technology platform, RecurrencyTM, enables:

- Transformation of messy point-of-sale (POS) data collected from thousands of points of sale into usable intelligence.
- Measurement, prediction, and ability to boost guest frequency and spend by channel.
- Deployment and management of one-time use offer codes and attribution of sales accurately across every channel, promotion and media program.
- Delivery of uniquely attributable 1:1 offers that power incentivized actions in digital environments like user acquisition, continued monetization, and activities taken in a digital environment.

Our recurrency platform generates revenue in two ways. First, delivered as a Software-as-a-Service (“SaaS”) platform used by leading convenience and quick service restaurant brands to build and engage with their loyal customers. Second, through our Connected Rewards™ business, our platform enables and powers unique incentivized programs in digital environments. Through our Connected Rewards platform, we enable businesses to reward their users and customers with products in the real world for actions taken in a digital environment. Our customers include some of the largest mobile casual game publishers in the world and some of the largest convenience and quick service restaurant brands in the world. The programs we run for our customers include incentivized user acquisition where users are rewarded with a real-world product, like a free or discounted burger, for downloading a mobile game, and rewarded play where users receive real world products for accomplishing activities in game, like achieving a certain level or winning enough points. We charge our customers for each unique action where our rewards are delivered, these include a per install or per individual engagement fee.

The Recurrency Platform

The Recurrency™ platform unlocks valuable POS and mobile data to help transform customer transactions into actionable and attributable marketing insights and power Connected Rewards interactions. Our technology analyzes transaction data to provide insights, delivers mobile rewards and powers redemption at all potential points of sale (i.e., mobile, in-store, in-app), and provides 100% attribution of the transaction. In Connected Rewards applications, Recurrency is integrated into mobile gaming platforms and mobile attribution partners to deliver the necessary data to deliver rewards for in-game actions.

Company Strategy

Our objective is to build an industry-leading mobile marketing technology product that bridges between in-person and digital environments powering a unique and defensible alternative for digital-first businesses to engage and retain their customers by rewarding them with real-world products and offers. 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 ability to integrate our Recurrency platform into digital environments and deliver rewards based on activities taken in a digital environment. Because of our long history operating as a loyalty marketing solution we believe we have a defensible head start and ability to continue building products and features that will retain our competitive advantage.
- *Evolve our sales and customer support infrastructure to uniquely meet the needs of the quickly evolving digital marketing universe.* We have quickly evolved our organization and business to fill a gap in the digital marketing landscape. Through continued innovation and emphasis on automation and predictive analytics we believe we will expand our niche and create further value for our Connected Rewards Customers.
- *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 and defensible technology services that further build out and differentiate our platform; (3) opportunities for substantial expense reductions through integration into our platform; and (4) strong sales teams. 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 nine issued patents that we believe have significant potential application in the technology 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

Secured Notes 2023

During the year ended December 31, 2023, we issued to one of our directors, secured notes in the principal aggregate amount of \$700,000, that was rolled into the Credit Facility, which are due and payable in 24 equal payments beginning January 31, 2023 (the “2022 Secured Notes”). The 2022 Secured Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. As of December 31, 2023, we have \$5,873,125 as a remaining balance of the 2022 Secured Notes and accrued interest of \$812,928. A total of \$391,319 of accrued interest was settled into 362,335 shares of common stock and the Company recorded a loss on debt settlement of interest payable \$10,315. A total of \$425,502 in accrued interest was accrued for the third and fourth quarter of 2023 and recorded to equity payable.

On November 13, 2022, the Company entered into an amended and restated credit facility agreement with Thomas B. Akin, a director of the Company (the “A&R Credit Agreement”) and a corresponding convertible note in the amount of \$4,466,043 (the “Convertible Note”). The A&R Credit Agreement amends and restates the current Credit Agreement and allows for the Company to borrow up to \$6 million in advances. The Convertible Note accrues interest monthly at 15% per annum. Principal and accrued interest payments are due in 24 monthly installments under the Convertible Note beginning on January 31, 2023 and continuing on the last day of each of the next 23 months thereafter. The Convertible Note and all accrued interest thereon are convertible into shares of our common stock, from time to time, at the option of the holder thereof, at a conversion price per share equal to 85% of the volume-weighted average price of our common stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the thirty (30) trading days immediately preceding such date (the “Conversion Price”). The Convertible Note and all accrued interest thereon will be automatically converted into common stock at the Conversion Price on the date that is five business days prior to the date on which the Company becomes listed on a national securities exchange if all listing requirements have been satisfied by the Company (other than the Company satisfying any stockholders’ equity requirement to be listed on such national exchange).

The foregoing descriptions of the A&R Credit Agreement and Convertible Note does not purport to be complete and are qualified in its entirety by reference to the A&R Credit Agreement and Convertible Note, which were filed with the United States Securities and Exchange Commission (the “SEC”) as Exhibit 10.1 and 10.2 respectively, to the Company’s Current Report on Form 8-K dated November 11, 2022, and Amendment No. 1 to the A&R Credit Agreement and Convertible Note filed with the SEC as Exhibit 10.1 to the Company’s Current Report on Form 8-K dated January 31, 2023.

Unsecured Promissory Notes 2022

During the year ended December 31, 2023, we issued to Talkot Capital LLC, unsecured notes in the principal aggregate amount of \$ 271,875, which are due and payable two years after issuance (the “2022 Unsecured Notes”). The 2022 Unsecured Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. As of December 31, 2023, we have \$271,875 as a remaining balance of these 2023 Unsecured Notes issued to Talkot Capital and accrued interest of \$0. A total of \$10,352 of interest was converted into 9,585 shares of common stock and the Company recorded a loss on settlement of interest payable of \$542. A total of \$20,617 was accrued and recorded to equity payable.

2023 Warrant Exercises

During March 2023, 15 warrant holders exercised their common stock purchase warrant for 3,587,487 shares at the exercise price of \$1.00 per share, resulting in additional capital of \$3,557,487. As an inducement for the holder’s exercise of the warrants, we issued the holders’ 1,793,745 new warrants to purchase common stock at \$2.00 per share over a three-year period expiring in February 2025. The Company recorded \$577,000 of stock-based expense related to warrants issued during the warrant conversion offer on February 14, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on a volatility rate of 63% and an option fair value of \$0.3216.

During August and September of 2023, a total of 18 warrant holders exercised their common stock purchase warrant for 1,960,976 shares at the exercise price of \$.82 per share, resulting in additional capital of \$1,608,000. As an inducement for the holder’s exercise of the warrants, we issued the holders’ 3,921,952 new warrants to purchase common stock at \$.82 per share over a one and three-year period expiring between August and September 2026. The Company recorded \$1,146,562 of stock-based expense related to warrants issued during the warrant conversion offer on September 6, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on an average volatility rate of 63% and 73% and an option fair value of between \$0.21 and \$0.40.

2023 Convertible Notes

During the third quarter of 2023 the Company issued Convertible Notes to five related parties in the amount of \$2,000,000. In addition, the Company issued Convertible Notes to 10 shareholders in the amounts of \$250,000. Principal and accrued interest payments are due in full on three years from the date they are funded under the Convertible Note. The Convertible Note and all accrued interest thereon are convertible into shares of our common stock, from time to time, at the option of the holder thereof, at a conversion price per share equal to the larger of either \$0.50 or of the volume-weighted average price of our common stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the thirty (30) trading days immediately preceding such date (the “Conversion Price”). For value received the shareholders received 666,668 warrants to purchase common shares at an exercise price of \$0.60 per share over a three year period.

Industry Background

Traditionally, only sophisticated e-commerce brands, such as Amazon, were capable of personalizing and targeting their marketing to consumers as they navigated online shopping experiences that tracked their every move, all the way to check out. But despite the scale and success of e-commerce, it still accounts for just around 15% of all commerce conducted in the U.S. The other 85% of “offline” merchants struggle to leverage data to combine with digital marketing channels and replicate the same personalized marketing tactics employed by successful e-commerce operators. Particularly, merchants are challenged with connecting purchase data collected by traditional point-of-sale terminals and mapping those transactions back to consumers to ensure that follow on marketing messages are personalized to the consumers purchase history.

In a similar vein, digital first businesses like mobile casual games and streaming services have encountered a seismic shift in the way they acquire and retain customers because of new constraints on privacy and targeting. These businesses rely on campaigns driven by data captured from users, aggregated and compiled into datasets that allow deep targeting and segmentation of advertising campaigns. These businesses live and die by their ability to acquire and retain users; the inability to target potential users has thrown a wrench in these efforts.

Marketing spend in digital environments is in excess of \$100 billion per year, yet brick and mortar businesses and digital first businesses largely exist in different environments, their technology does not communicate and they have almost no ability to bridge between the real world and the digital world. This limits their ability to acquire and retain customers in an already volatile marketing environment. If consumers had the ability to earn and redeem real-world products in digital environments and vice versa, this would open the door to new marketing opportunities and allow for continued acquisition and retention. Mobivity aims to solve this problem with our Recurrency platform and Connected Rewards platform that bridge between digital and brick and mortar environments.

The Mobivity Solution

Our Recurrency platform is designed to leverage point-of-sale data, along with cognitive computing, to increase visits, spend, and loyalty from consumers. We do this by **capturing** transaction detail, **analyzing** the data, and **motivating** customers and employees to take actions.

- *Capture*: Recall that more than 90% of our economy still functions “offline”. Our Recurrency solution plays an integral part in bringing brick and mortar businesses into the digital future by creating an extensible point of access to their POS data. Recapture is a lightweight software client that can be installed in just about any POS system and immediately enables applications to operate off of real-time POS data. This technology allows us to run many of our connected rewards programs by allowing access to data from POS and enabling redemption of rewards delivered for actions taken in digital environments.
- *Analyze*: Often times marketers spend a large portion of their budget on marketing programs with little to no visibility into attributable sales. Our Recurrency solution allows for easy access to POS data enabling full attribution of our campaigns, along with potentially linking offline POS data to other forms of digital marketing such as connected rewards.
- *Motivating Consumers*: We motivate consumers and employees through our Connected Rewards solution by powering and delivering real-world rewards for actions taken in a digital environment.

In the future, we intend to develop additional platform features with the goal of driving additional value by helping digital first businesses and brick and mortar brands acquire and engage customers in increasingly unique and valuable ways.

Marketing and Sales

We market and sell the services offered over our proprietary 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 a team of representatives employed by us to promote and sell our services both domestically and internationally.
- *Resellers*: We sell our services via wholesale pricing of licensing and transactional fees to various resellers who market and sell the Mobivity services under their own brand.
- *Agents*: We also engage 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 traditional loyalty marketing 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/MMS 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 500 locations in various cities or locales. Our Connected Rewards services are marketed and sold on unique fee-for action contracts such as a fee for downloading an app, or a fee for achieving a certain action in a digital app, or acquiring a loyalty member.

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. 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 2023 and 2022 were \$3,515,705 and \$3,583,773, respectively.

Competition

Combining POS data, cognitive computing, and various marketing applications is relatively new. The majority of our competitors are start-ups or early stage growth companies helping to pioneer the technology necessary to power digital marketing in new, valuable, and attributable channels.

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

- *Intellectual Property.* We currently own nine patents that cover various approaches to facilitating SMS/MMS text messaging solutions and manipulating receipt content.

Customers

During the years ended December 31, 2023 and 2022 two customers accounted for 55% and 51% of our revenues, respectively.

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 nine 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. These patents will expire in May of 2031.

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U.S. Patent numbers *8,463,306* and *8,818,434* were issued on June 11, 2013 and August 26, 2014, respectively. U.S. Patent *9,307,430* was issued on April 5, 2016. These patents cover a method and system for testing a SMS/MMS text messaging network. The method and system allows for real-time testing of the initiation and completion of SMS/MMS text messages and any delivery delays across the major American mobile phone carriers, and accurately measures the progress on SMS/MMS broadcasts and records when a broadcast has been completed. These patents will expire in May 2032.

U.S. Patent number *9,495,671* was granted on November 15, 2016. U.S. Patent *9,727,853* was issued on August 8, 2017. These patents cover a system to generate value added messages on receipts printed by POS systems based on various rules determined by information conveyed on the purchase receipt such as location, time of day, or other purchase data. The patent application claims priority to a patent application filed in 2006. These patents will expire in March 2027.

U.S. Patent number *10,475,017 B2* was granted on November 12, 2019. This patent covers a POS terminal and a computer-readable storage medium that generates transaction information for a commercial transaction, the transaction information including customer information and purchase information. The POS terminal may generate nutritional information based on the purchase information. The POS terminal may send the customer information, the purchase information, and location information identifying a location of the POS terminal to an advertising server and may receive responsive advertising content from the advertising server. The POS terminal may print a receipt including the transaction information, the nutritional information, and the advertising content. These patents will expire in March 2027.

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.

As of the date of this report, we own trademarks for Boomtext, SmartReceipt, Livelenz, and several trademarks from the Belly acquisition.

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 (“IP”) 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/MMS 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/MMS 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.

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- *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.
- *Data Privacy Acts.* Individual states and countries have enacted or are moving forward with privacy compliance rules based on industry and types of data collected, such as the California Consumer Privacy Act (“CCPA”), Nevada’s Senate Bill 220 and the EU’s General Data Protection Regulation (“GDPR”). The acts provide residents the right to know what data is being collected about them and have access to it, whether that information is sold and the ability to refuse that data being sold, as well as the ability to opt out of its collection. Penalties for non-compliance vary by state and country, for instance the maximum penalty of the CCPA is \$7,500 for intentional violations. The largest financial impact of CCPA on a business is the provisioning of the right of consumers to bring forward lawsuits. These situations may arise from instances where their “non-encrypted or non-redacted personal information” is breached, regardless of the harm done to the data. Under the CCPA, consumers can collect between \$100 and \$750 for each event. If the damages are greater than \$750, then the consumer may receive even more.

Employees

As of April 12, 2024, we had 37 employees, consisting of 19 full-time in research and development, 15 full-time in sales and marketing, and 3 full-time in general and administrative.

Available Information

The Company maintains a website at www.mobivity.com, where our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act can be found.

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, 2023, we had working capital deficit of \$6,596,741. We raised \$2.6 million in cash from the exercise of warrants in February 2022 and we raised \$2.1 million in Private Placement funding in 2022. In addition, we raised \$3.6 million from the exercise of warrants in the first quarter of 2023. While we believe that our additional cash from our warrant conversion along with our expected cash flow from operations, may not 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 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 August of 2019 Attentive Mobile raised \$40M in private venture financing. Similarly, in November of 2019, Punchh raised \$40M in private venture funding. 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 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.

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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.

We currently operate in limited vertical markets. Our customers primarily operate in the quick serve restaurant ("QSR") industry and we expanded to the convenience store market. Should this industry be impacted by economical or other unforeseen events, 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 OTCQB® Venture Market. 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 some of which 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 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 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 salesperson 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 of internal control over financial reporting, and have certain other decreased disclosure obligations in SEC filings, including, among other things, we are only 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 1C. Cybersecurity.

Over the past year, our team has implemented, optimized, and matured our cybersecurity practices, aiming to meet all major industry benchmarks. Our goal is to safeguard our information systems and protect the confidentiality, integrity, and availability of both our and our customers’ data. This includes measures related to cybersecurity incidents, risk management, management roles, and governance.

1) **Cybersecurity incidents:** Our public-facing website complies with WCAG 2.2 level AA standards for accessibility. We manage various databases, including those on Amazon and Google Clouds, each with three sets of development, testing, and production environments. Our main data warehousing solutions is Amazon Redshift, complemented by Amazon S3 for object storage.

- a) To prevent unauthorized access, we have established a series of security gates across all production environments and instances
- b) Only two individuals have update access to production database instances, and a limited number of individuals have read-only access to personally identifiable information (PII) data
- c) In our cloud environments, 2-3 members of our Platform Engineering team have access to production and test instances, and logs are generated for any changes made

2) **Risk Management:** We maintain multiple AWS and Google Cloud environments, each with three sets of development, testing, and production environments. Our primary data warehousing solution is Amazon Redshift, while we use Amazon S3 Glacier for archival storage and Amazon S3 for object storage. We also employ Amazon Sagemaker for machine learning tasks and internally host Apache Superset on the AWS platform for data visualization.

- a) All environments are isolated using credentials and accounts
- b) We are following a plan to ensure scheduled patching, upgrades, and other maintenance occur every quarter. This includes updates for SQL databases and cloud instances
- c) We have the capability to search our logs for security incidents
- d) We are on schedule to monitor every public endpoint using a Web Application Firewall (WAF), ensuring that all traffic is logged with patterns to detect any suspicious behavior
- e) We aim to enable automatic processes to ensure no production data is changed without systematic audits
- f) The data visualization tool has login credentials with role-based access

3) **Management’s Role:** Our board of directors has ultimate oversight of cybersecurity risk. Our VP of Engineering and Platform Engineering Manager lead cybersecurity risk assessment and management efforts, collaborating closely with the interim CEO for guidance, strategic direction, alignment with business objectives, and environment.

- a) The Platform Engineering Manager has over 5 years of experience and holds a bachelor’s degree in computer science. The VP of Digital Engineering brings 19 years of expertise in digital transformations across various industries, holding leadership roles at Nordstrom, Walgreens, T-Mobile, and Sony PlayStation, with a Master’s degree in Business Administration from the University of Michigan
- b) We stay informed by utilizing online SOX and SOC II policy documents
- c) We have robust logging systems in place to monitor our systems, and our response plan includes promptly identifying the executives and parties affected

4) **Governance:** Our governance includes routing all production changes through approval processes and testing in the test environment before implementation in production.

- a) We adhere to SOX regulations to ensure proper documentation and signoffs for any production data alterations due to incorrect data entry
- b) In the event of changes, we document the reason for the update, the responsible individual, and the details of what was modified (both before and after). Additionally, all modifications undergo verification by at least one individual before and after the change
- c) The board holds oversight of the Company’s risks related to cybersecurity risks.

Our business strategy, results of operations, and financial condition have not been materially affected by risks from cybersecurity threats, but we cannot provide assurance that they will not be materially affected in the future by such risks or any future material incidents.

Item 2. Properties.

We have a current lease that was entered into starting in February of 2021 for 8,898 square feet of office space located at 3133 W. Frye Road, Suite 215, Chandler, Arizona. Monthly rental payments, excluding common area maintenance charges, will be \$25,953 to \$28,733. The first twelve months of the lease included a 50% abatement period. The office space in Chandler has been a perfect size for a growing company, with an open concept to encourage collaboration.

Item 3. Legal Proceedings.

As of the date of this report, the company has one pending legal proceeding related to the TCPA (Telephone Consumer Protection Act) Violation. This is a putative class action complaint alleging that Defendant initiated telephone solicitations through text messages in violation of the Florida Telephone Solicitation Act, Fla. Stat. §501.059 (“FTSA”). The defense of the matter was tendered to the Company by its client, Sonic Industries, Inc., and our firm is managing the defense of the matter. The Company intends to seek an individual settlement of the matter, and if one cannot be reached, the Company intends to vigorously defend the matter. The discovery process has not begun so it is not possible at this time to calculate an accurate assessment of the Company’s exposure.

Management believes that there is no other pending litigation of which the resolution or settlement will have a material adverse effect on the results of operations or liquidity of the Company.

Item 4. Mine Safety Disclosures

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 OTCQB® Venture Market 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.

Quotations reflect inter-dealer prices, without markup, markdown or commissions and may not represent actual transactions.

Holders of Record

As of April 13, 2023, there were 148 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 2023 or 2022.

Item 6. [Reserved]

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

Mobivity Holdings Corp. (the "Company" or "we") is in the business of developing and operating proprietary platforms through which brands and enterprises can conduct national and localized, data-driven marketing campaigns.

Mobivity's Recurrency platform fills this need with a self-service SaaS offering, enabling operators to intelligently optimize their promotions, media and marketing spend. Recurrency drives system-wide sales producing on average a 13% increase in guest spend and a 26% improvement in frequency, ultimately delivering an average Return on Marketing Spend of 10X. In other words, for every dollar invested in marketing, retailers using Recurrency to manage, optimize and deliver multi-channel consumer promotions generate an average of ten dollars in *incremental* revenue from their customers.

The Company's Recurrency platform enables multi-unit retailers to leverage the power of their own data to yield maximum customer spend, frequency and loyalty while achieving the highest ROMS possible. Recurrency powers Connected Rewards transactions and allows us to offer unique and attributable programs delivering real world rewards to consumers for actions taken in a digital environment.

To date, our Connected Rewards programs have been delivered primarily in 3 ways. First, through utilizing brands' owned loyalty channels like text and email. In these programs, brands will send offers to their loyalty customers incentivizing them to download an app or sign up for a digital service by rewarding them with a free or discounted product at their brand. Second, through placements in brand-owned apps. These placements incentivize download of digital apps or services with loyalty points or discounts on products at their brand. These programs are long term contracts and placements of an advertising unit in the brand owned app. Third, delivering free or discounted products for actions taken in a digital environment. An example of these programs is that a user could earn a free cheeseburger or discount on gas for achieving a certain level in a mobile casual game.

Recent Events

Secured Notes 2023

During the year ended December 31, 2023, we issued to one of our directors, secured notes in the principal aggregate amount of \$700,000, that was rolled into the Credit Facility, which are due and payable in 24 equal payments beginning January 31, 2023 (the “2022 Secured Notes”). The 2022 Secured Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. As of December 31, 2023, we have \$5,873,125 as a remaining balance of the 2022 Secured Notes and accrued interest of \$812,928. A total of \$391,319 of accrued interest was settled into 362,335 shares of common stock and the Company recorded a loss on debt settlement of interest payable \$10,315. A total of \$425,502 in accrued interest was accrued for the third and fourth quarter of 2023 and recorded to equity payable.

On November 13, 2022, the Company entered into an amended and restated credit facility agreement with Thomas B. Akin, a director of the Company (the “A&R Credit Agreement”) and a corresponding convertible note in the amount of \$4,466,043 (the “Convertible Note”). The A&R Credit Agreement amends and restates the current Credit Agreement and allows for the Company to borrow up to \$6 million in advances. The Convertible Note accrues interest monthly at 15% per annum. Principal and accrued interest payments are due in 24 monthly installments under the Convertible Note beginning on January 31, 2023 and continuing on the last day of each of the next 23 months thereafter. The Convertible Note and all accrued interest thereon are convertible into shares of our common stock, from time to time, at the option of the holder thereof, at a conversion price per share equal to 85% of the volume-weighted average price of our common stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the thirty (30) trading days immediately preceding such date (the “Conversion Price”). The Convertible Note and all accrued interest thereon will be automatically converted into common stock at the Conversion Price on the date that is five business days prior to the date on which the Company becomes listed on a national securities exchange if all listing requirements have been satisfied by the Company (other than the Company satisfying any stockholders’ equity requirement to be listed on such national exchange).

The foregoing descriptions of the A&R Credit Agreement and Convertible Note does not purport to be complete and are qualified in its entirety by reference to the A&R Credit Agreement and Convertible Note, which were filed with the United States Securities and Exchange Commission (the “SEC”) as Exhibits 10.1 and 10.2 respectively, to the Company’s Current Report on Form 8-K dated November 11, 2022, and Amendment No. 1 to the A&R Credit Agreement and Convertible Note filed with the SEC as Exhibit 10.1 to the Company’s Current Report on Form 8-K dated January 31, 2023.

Unsecured Promissory Notes 2022

During the year ended December 31, 2023, we issued to Talkot Capital LLC, unsecured notes in the principal aggregate amount of \$ 271,875, which are due and payable two years after issuance (the “2022 Unsecured Notes”). The 2022 Unsecured Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. As of December 31, 2023, we have \$271,875 as a remaining balance of these 2023 Unsecured Notes issued to Talkot Capital and accrued interest of \$0. A total of \$10,352 of interest was converted into 9,585 shares of common stock and the Company recorded a loss on settlement of interest payable of \$542. A total of \$20,617 was accrued and recorded to equity payable.

2023 Warrant Exercises

During March 2023, 15 warrant holders exercised their common stock purchase warrant for 3,587,487 shares at the exercise price of \$1.00 per share, resulting in additional capital of \$3,557,487. As an inducement for the holder’s exercise of the warrants, we issued the holders’ 1,793,745 new warrants to purchase common stock at \$2.00 per share over a three-year period expiring in February 2025. The Company recorded \$577,000 of stock-based expense related to warrants issued during the warrant conversion offer on February 14, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on a volatility rate of 63% and an option fair value of \$0.3216.

During August and September of 2023, a total of 18 warrant holders exercised their common stock purchase warrant for 1,960,976 shares at the exercise price of \$.82 per share, resulting in additional capital of \$1,608,000. As an inducement for the holder’s exercise of the warrants, we issued the holders’ 3,921,952 new warrants to purchase common stock at \$.82 per share over a one and three-year period expiring between August and September 2026. The Company recorded \$1,146,562 of stock-based expense related to warrants issued during the warrant conversion offer on September 6, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on an average volatility rate of 63% and 73% and an option fair value of between \$0.21 and \$0.40.

2023 Convertible Notes

During the third quarter of 2023, the Company issued Convertible Notes to five related parties in the amount of \$2,000,000. In addition, the Company issued Convertible Notes to 10 shareholders in the amounts of \$250,000. Principal and accrued interest payments are due in full on three years from the date they are funded under the Convertible Note. The Convertible Note and all accrued interest thereon are convertible into shares of our common stock, from time to time, at the option of the holder thereof, at a conversion price per share equal to the larger of either \$0.50 or of the volume-weighted average price of our common stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the thirty (30) trading days immediately preceding such date (the “Conversion Price”). For value received the shareholders received 666,668 warrants to purchase common shares at an exercise price of \$0.60 per share over a three year period ending November 10, 2026.

Results of Operations and Financial Conditions

Year Ended December 31, 2023 Compared to Year Ended December 31, 2022

Revenues

Revenues consist primarily of a suite of products under the Recurrency platform. The Recurrency platform is comprised of POS Data Capture, Analytics, Offers and Promotions, Predictive Offers, Personalized Receipt Promotions, Customized Mobile Messaging, Belly Loyalty, and other revenues.

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Revenues for the twelve months ended December 31, 2023 were \$6,977,696, a decrease of \$556,216, or 7.4%, compared to \$7,533,912 for the twelve months ended December 31, 2022. This decrease is primarily due to the decrease in special projects revenue.

Cost of Revenues

Cost of revenues consist primarily of cloud-based software licensing fees, short code maintenance expenses, personnel related expenses, and other expenses.

Cost of revenues for the twelve months ended December 31, 2023 was \$5,129,627, a decrease of \$198,856, or 3.7%, compared to \$5,328,483 for the twelve months ended December 31, 2022. This decrease is primarily due to temporary guaranteed audience costs associated with increasing our key customer's messaging database.

The gross profit margin was 26.5% and 29.2% for the twelve months ended December 31, 2023 and 2022, respectively. Lower gross profit margin in 2023 is primarily due to a decrease in special projects revenue.

Bad Debt

Bad Debt expense for the twelve months ended December 31, 2023 was \$18,060 a decrease of \$22,323, or 55.3%, compared to \$40,383 for the twelve months ended December 31, 2022. This decrease is due primarily to a decrease in our bad debt allowance.

General and Administrative

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

General and administrative expenses for the twelve months ended December 31, 2023 were \$6,406,512, an increase of \$2,099,583, or 48.7%, compared to \$4,306,929 for the twelve months ended December 31, 2022. The increase in general and administrative expense was primarily due an increase in share based expense from the two warrant issuances during the year.

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 for the twelve months ended December 31, 2023 were \$2,735,062, an increase of \$118,466, or 4.5%, compared to \$2,616,596 for the twelve months ended December 31, 2022. The increase in 2023 was primarily due to an increase in software and payroll expense.

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 for the twelve months ended December 31, 2023, were \$3,515,705, an increase of \$455,676 or 14.9%, compared to \$3,060,029 for the twelve months ended December 31, 2022. The increase in 2023 was primarily due to an increase in payroll expense.

Depreciation and Amortization Expense

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

Depreciation and amortization expenses for the twelve months ended December 31, 2023, were \$178,746 a decrease of \$261,580, or 59.4%, compared to \$440,326 for the twelve months ended December 31, 2022. This decrease is primarily attributable to the decrease in amortized assets.

Intangible Asset Impairment

Intangible Asset Impairment expenses for the twelve months ended December 31, 2023 were \$0, a decrease of \$552,476, compared to \$552,476 for the twelve months ended December 31, 2022.

Goodwill Impairment

Goodwill Impairment expenses for the twelve months ended December 31, 2023 were \$0, a decrease of \$411,183 compared to \$411,183 for the twelve months ended December 31, 2022.

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 for the twelve months ended December 31, 2023 was \$1,027,682, an increase of \$289,937, or 39.3%, compared to \$737,745 for the twelve months ended December 31, 2022. The increase is primarily attributable to the increased principal on short- and long-term borrowings during the year.

Settlement Losses

Settlement losses consist of legal settlement for TCPA settlements.

Settlement losses for the twelve months ended December 31, 2023 were \$19,250, a decrease of \$34,250 or 69.2%, compared to \$53,500 in the twelve months ended December 31, 2022. The decrease is due to a decrease in the number of TCPA claim settlement payments.

Loss on Settlement of Debt

Loss on Settlement of debt consists of the expense from the settlement of notes payable when they are settled into shares.

Loss on settlement of debt for the twelve months ended December 31, 2023 was \$10,857 and \$49,503, respectively.

Foreign Currency

The Company's financial results are impacted by volatility in the Canadian/U.S. Dollar exchange rate. The average U.S. Dollar exchange rate for the year ended December 31, 2023 and 2022 was \$1 Canadian equals \$0.74 and \$0.77 U.S. Dollars, respectively. The Company's functional or measurement currency is the U.S. Dollar. Based on a U.S. Dollar functional currency, the following are the key areas impacted by foreign currency volatility:

- The Company sells products primarily in U.S. Dollars; therefore, reported revenues are not highly impacted by foreign currency volatility.
- A portion of the Company's expenses are incurred in Canadian Dollars and therefore fluctuate in U.S. Dollars as the U.S. Dollar varies. A weaker U.S. Dollar results in an increase in translated expenses, and a stronger U.S. Dollar results in a decrease.
- Changes in foreign currency rates also impact the translated value of the Company's working capital that is held in Canadian Dollars. Foreign exchange rate fluctuations result in foreign exchange gains or losses based upon movement in the translated value of Canadian working capital into U.S. Dollars.

The change in foreign currency was a loss of \$394 and a gain of \$2,119 for the years ended December 31, 2023 and 2022, respectively.

Liquidity and Capital Resources

We have \$416,395 of cash as of December 31, 2023. We had a net loss of \$12.1 million for the year ended 2023, and we used \$8.2 million of cash in our operating activities during 2023. In addition, we raised \$5.2 million during two warrant conversion fundings during 2023. We raised \$3.0 million in cash Convertible Notes issued during the fourth quarter of 2023. Our additional cash from our warrant conversion along with our expected cash flow from operations, may not be sufficient to fund our 12-month plan of operations, and there can be no assurance that we will not require significant additional capital within 12 months.

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. In addition we currently have an additional \$126,875 available on our current line of credit. 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.

Cash Flows

	For the Year Ended December 31,	
	2023	2022
Net cash provided by (used in):		
Operating activities	\$ (8,067,469)	\$ (6,688,551)
Investing activities	(16,255)	(30,269)
Financing activities	8,090,492	6,456,410
Effect of foreign currency translation on cash flow	(15,707)	(46,274)
Net change in cash	<u>\$ (8,939)</u>	<u>\$ (308,684)</u>

Operating Activities

We incurred a net loss in operating activities totaling \$8,067,469 in 2023 and \$6,688,551 in 2022, respectively. The increase in net loss in operating activities in 2023 compared to 2022 was due primarily to the costs associated with the March 2022 warrant conversion, and an increase in interest.

Investing Activities

Investing activities during twelve months ended December 31, 2023, include \$16,255 of equipment purchases compared to \$13,087 in twelve months ended December 31, 2022. In addition, there was \$0 in capitalized software development costs in the twelve months ended December 31, 2023 compared to \$12,030 in the twelve months ended December 31, 2022.

Financing Activities

Financing activities for 2023 include net proceeds from conversion of common stock warrants of \$5,195,487, proceeds from related party notes payable of \$2,700,000 and \$250,000 in proceeds from convertible notes, offset by payments on notes payable of \$54,995.

Critical Accounting 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. 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.

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The following critical accounting policies affect the more significant judgments and estimates used in the preparation of the Company's consolidated financial statements. See Note 2 in Notes to Consolidated Financial Statements, "Summary of Significant Accounting Policies" in this Form 10-K for additional information about these critical accounting policies and estimates, as well as a description of our other accounting policies and estimates.

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.

Revenue Recognition and Concentrations

Our Recurrency platform is a hosted solution. 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. Under ASC 606 (as defined below), revenue is recognized when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. 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 or electronic funds transfer. 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.

Accounting Standards Update ("ASU") No. 2014-09, Revenue from Contracts with Customers (Accounting Standards Codification 606 ("ASC 606")), is a comprehensive revenue recognition standard that superseded nearly all existing revenue recognition guidance. The Company adopted this standard effective January 1, 2018, applying the modified retrospective method. Upon adoption, the Company discontinued revenue deferral under the sell-through model and commenced recording revenue upon delivery to distributors, net of estimated returns. Generally, the new standard results in earlier recognition of revenues.

We determine revenue recognition through the following steps:

- identification of the contract, or contracts, with a customer;
- identification of the performance obligations in the contract;
- determination of the transaction price;
- allocation of the transaction price to the performance obligations in the contract; and
- recognition of revenue when, or as, we satisfy a performance obligation.

During the years ended December 31, 2023 and 2022 two customers accounted for 55% and 51% 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 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 have elected to account for forfeitures as they occur to determine the amount of compensation cost to be recognized in each period.

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.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Smaller reporting companies are not required to provide the information required by this item.

Item 8. Financial Statements



REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and
Stockholders of Mobivity Holdings Corp.

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Mobivity Holdings Corp. (the Company) as of December 31, 2023 and 2022, and the related consolidated statements of operations and comprehensive loss, stockholders' equity (deficit), and cash flows for each of the years in the two-year period ended December 31, 2023, and the related notes (collectively referred to as the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 3 to the financial statements, the Company has suffered net losses from operations and has a net capital deficiency, which raises substantial doubt about its ability to continue as a going concern. Management's plans regarding those matters are discussed in Note 3. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, 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.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Revenue Recognition

As discussed in the notes to the financial statements, the Company recognizes revenue upon transfer of control of promised services to customers in an amount that reflects the consideration the Company expects to receive in exchange for those products or services.

Auditing management's evaluation of agreements with customers involves significant judgment, given the fact that some agreements require management's evaluation and allocation of the standalone transaction prices to the performance obligations.

To evaluate the appropriateness and accuracy of the assessment by management, we evaluated management's assessment in relationship to the relevant agreements.

/s/ M&K CPAS, PLLC

We have served as the Company's auditor since 2012.

The Woodlands, TX

April 16, 2024

Firm ID 2738

Mobivity Holdings Corp.
Consolidated Balance Sheets

	<u>December 31, 2023</u>	<u>December 31, 2022</u>
ASSETS		
Current assets		
Cash	\$ 416,395	\$ 426,740
Accounts receivable, net of allowance for doubtful accounts of \$16,107 and \$34,446, respectively	876,465	1,081,183
Other current assets	135,916	195,017
Total current assets	<u>1,428,776</u>	<u>1,702,940</u>
Right to use lease assets	770,623	981,896
Intangible assets, net	65,916	194,772
Other assets	69,036	137,917
TOTAL ASSETS	<u>\$ 2,334,351</u>	<u>\$ 3,017,525</u>
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities		
Accounts payable	\$ 3,372,141	\$ 3,412,612
Accrued interest	21,474	443,448
Accrued and deferred personnel compensation	272,247	569,347
Deferred revenue and customer deposits	155,472	902,727
Related party notes payable, net - current maturities	3,072,500	2,711,171
Notes payable, net - current maturities	7,154	32,617
Operating lease liability	276,072	251,665
Other current liabilities	248,434	49,541
Total current liabilities	<u>7,425,494</u>	<u>8,373,128</u>
Non-current liabilities		
Related party notes payable, net - long-term	4,413,987	2,481,290
Notes payable, net - long-term	265,959	31,092
Operating lease liability	660,852	936,924
Total non-current liabilities	<u>5,340,798</u>	<u>3,449,306</u>
Total liabilities	<u>12,766,292</u>	<u>11,822,434</u>
Commitments and Contingencies (See Note 13)		
Stockholders' equity (deficit)		
Common stock, \$0.001 par value; 100,000,000 shares authorized; 61,311,155 and 55,410,695, shares issued and outstanding	67,950	61,311
Equity payable	989,947	324,799
Additional paid-in capital	118,624,601	108,806,353
Accumulated other comprehensive income (loss)	(153,831)	(100,963)
Accumulated deficit	(129,960,608)	(117,896,409)
Total stockholders' equity (deficit)	<u>(10,431,941)</u>	<u>(8,804,909)</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)	<u>\$ 2,334,351</u>	<u>\$ 3,017,525</u>

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Consolidated Statements of Operations and Comprehensive Loss

	For the Year Ended December 31,	
	2023	2022
Revenues		
Revenues	\$ 6,977,696	\$ 7,533,912
Cost of revenues	5,129,627	5,328,483
Gross profit	1,848,069	2,205,429
Operating expenses		
Bad Debt	18,060	40,383
General and administrative	6,406,512	4,306,929
Sales and marketing	2,735,062	2,616,596
Engineering, research, and development	3,515,705	3,060,029
Goodwill Impairment	—	411,183
Intangible asset impairment	—	552,476
Depreciation and amortization	178,746	440,326
Total operating expenses	12,854,085	11,427,922
Loss from operations	(11,006,016)	(9,222,493)
Other income/(expense)		
Interest expense	(1,027,682)	(737,745)
Settlement Losses	(19,250)	(53,500)
Loss on settlement of debt	(10,857)	(49,503)
Foreign currency gain (loss)	(394)	2,119
Total other income (expense)	(1,058,183)	(838,629)
Loss before income taxes	(12,064,199)	(10,061,122)
Income tax expense	—	—
Net Loss	(12,064,199)	(10,061,122)
Other comprehensive income (loss), net of income tax		
Foreign currency translation adjustments	(52,868)	(48,875)
Comprehensive loss	\$ (12,117,067)	\$ (10,109,997)
Net loss per share:		
Basic and Diluted	\$ (0.18)	\$ (0.17)
Weighted average number of shares:		
Basic and Diluted	65,822,081	59,241,798

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 Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Dollars					
Balance, December 31, 2021	55,410,695	\$ 55,411	\$ 100,862	\$ 102,446,921	\$ (52,088)	\$ (107,835,287)	\$ (5,284,181)
Issuance of common stock for warrants exercised	3,188,190	3,188	—	2,547,364	—	—	2,550,552
Issuance of common stock for debt settlement	—	—	—	—	—	—	—
Issuance of stock for PIPE financing	2,562,500	2,562	—	2,047,438	—	—	2,050,000
Issuance of common stock for Settlement of Interest Payable on Related Party Debt	149,770	150	223,937	164,021	—	—	388,108
Fair value of options issued with related party debt	—	—	—	143,039	—	—	143,039
Stock based compensation	—	—	—	1,457,570	—	—	1,457,570
Foreign currency translation adjustment	—	—	—	—	(48,875)	—	(48,875)
Net loss	—	—	—	—	—	(10,061,122)	(10,061,122)
Balance, December 31, 2022	61,311,155	\$ 61,311	\$ 324,799	\$ 108,806,353	\$ (100,963)	\$ (117,896,409)	\$ (8,804,909)
Issuance of common stock for warrants exercised	5,548,463	5,548	—	5,189,939	—	—	5,195,487
Issuance of common stock for Settlement of Interest Payable on Related Party Debt	545,079	546	665,148	646,071	—	—	1,311,765
RSU's issued - termination of a director's service	545,012	545	—	(545)	—	—	—
Fair value of options issued with related party debt	—	—	—	528,531	—	—	528,531
Warrant Inducement for warrant conversion	—	—	—	2,502,575	—	—	2,502,575
Stock based compensation – Employees	—	—	—	691,674	—	—	691,674
Stock based compensation - Directors	—	—	—	260,007	—	—	260,007
Foreign currency translation adjustment	—	—	—	—	(52,868)	—	(52,868)
Net loss	—	—	—	—	—	(12,064,199)	(12,064,199)
Balance, December 31, 2023	67,949,709	\$ 67,950	\$ 989,947	\$ 118,624,601	\$ (153,831)	\$ (129,960,608)	\$ (10,431,941)

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Consolidated Statements of Cash Flows

	For the Year Ended December 31,	
	2023	2022
OPERATING ACTIVITIES		
Net loss	\$ (12,064,199)	\$ (10,061,122)
Adjustments to reconcile net loss to net cash used in operating activities:		
Bad debt expense	18,060	40,383
Loss on settlement of debt -Related Party	10,857	49,503
Stock-based compensation	3,454,252	1,457,570
Intangible Asset Impairment	—	552,476
Goodwill Impairment	—	411,183
Depreciation and amortization expense	178,746	440,326
Amortization of debt discount	136,448	122,258
Increase (decrease) in cash resulting from changes in:		
Accounts receivable	186,659	(543,263)
Other current assets	59,101	32,102
Operating lease assets/liabilities	(40,392)	(23,599)
Other assets	—	(31)
Accounts payable	(40,471)	(411,297)
Accrued interest	878,932	609,814
Accrued Professional Fees	—	148,402
Accrued and deferred personnel compensation	(297,100)	(79,283)
Other liabilities - current	198,893	40,470
Deferred revenue and customer deposits	(747,255)	525,557
Net cash used in operating activities	(8,067,469)	(6,688,551)
INVESTING ACTIVITIES		
Purchases of equipment	(16,255)	(17,182)
Cash paid for patents	—	—
Capitalized software development costs	—	(13,087)
Net cash used in investing activities	(16,255)	(30,269)
FINANCING ACTIVITIES		
Payments on Notes Payable	(54,995)	(39,142)
Proceeds from Notes Payable	250,000	—
Proceeds from related party notes payable	2,700,000	1,895,000
Proceeds from conversion of common stock warrants	5,195,487	2,550,552
Processed from PIPE Funding	—	2,050,000
Net cash provided by financing activities	8,090,492	6,456,410
Effect of foreign currency translation on cash flow	(17,113)	(46,274)
Net change in cash	(10,345)	(308,684)
Cash at beginning of period	426,740	735,424
Cash at end of period	\$ 416,395	\$ 426,740
Supplemental disclosures:		
Cash paid during period for:		
Interest	\$ —	\$ 68,389
Non-cash investing and financing activities:		
Non cash investing and financing activities:		
Debt Discount on Related Party Debt	\$ 493,024	\$ 262,658
Debt Discount on Notes Payable	\$ 35,507	\$ —
Fixed Assets contribution by lessor	\$ —	\$ 110,000
Refinancing of debt-related party	\$ —	\$ 43,750
Initial ROU and asset lease liability	\$ —	\$ 1,458,527
Shares Issued for settlement of debt - related party	\$ 442,660	\$ —
Interest Issued as Stocks Payable	\$ 889,085	\$ —
RSU's issued upon termination	\$ 545	\$ —

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Notes to Consolidated Financial Statements

1. Nature of Operations

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 marketing campaigns.

Mobivity’s Recurrency platform enables multi-unit retailers to leverage the power of their own data to yield maximum customer spend, frequency and loyalty while achieving the highest Return on Marketing Spend (ROMS) possible. Mobivity’s customers use Recurrency to:

- Transform messy point-of-sale (POS) data collected from thousands of points of sale into usable intelligence.
- Measure, predict, and boost guest frequency and spend by channel.
- Deploy and manage one-time use offer codes and attribute sales accurately across every channel, promotion and media program.
- Deliver 1:1 promotions and offers with customized Mobile Messaging, Personalized Receipt Promotions and Integrated Loyalty programs.

Mobivity’s Recurrency, delivered as a SaaS platform, is used by leading brands including Subway, Sonic Drive-In, Chick-fil-A, Checkers/Rally’s and Circle K’s across more than 40,000 retail locations globally.

We’re living in a data-driven economy. In fact, by 2003 — when the concept of “big data” became common vernacular in marketing as much data was being created every two days as had been created in all of time prior to 2003. Today, Big Data has grown at such a rate that 90% of the world’s data has been created in the past two years. Unfortunately, despite there being so much data accumulated, only one percent of data is being utilized today by most businesses.

The challenge for multi-unit retailers isn’t that they don’t have enough data; in fact, national retailers are collecting millions of detailed transactions daily from thousands of points of sale around the world. The challenge is being able to make sense of this transaction data, which is riddled with data entry errors, collected by multiple POS systems and complicated by a taxonomy compiled by thousands of different franchisee owners. To normalize such an overwhelming amount of data into usable intelligence and then leverage it to optimize media investment and promotion strategy requires numerous teams of data analysts and data scientists that many retailers and restaurant operators simply don’t have. Which is why so many technology and data companies, that can help solve these challenges, have been invested in and acquired by brands including, McDonald’s, Starbucks and Yum Brands.

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

2. Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiary, LiveLenz Inc. All significant intercompany balances and transactions have been eliminated.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Significant estimates used are those related to stock-based compensation, asset impairments, the valuation and useful lives of depreciable tangible and certain intangible assets, the fair value of common stock used in acquisitions of businesses, the fair value of assets and liabilities acquired in acquisitions of businesses, the fair value of options issued with related party debt, and the valuation allowance of deferred tax assets. Management believes that these estimates are reasonable; however, actual results may differ from these estimates.

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, 2023 and 2022, we recorded an allowance for doubtful accounts of \$16,107 and \$34,446, 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, 2023, we had three customers whose balance represented 73% of total accounts receivable. As of December 31, 2022, we had four customers whose balance represented 86% 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 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, 2023 and 2022. As a result of these tests, we had total impairment charges of \$0 and \$411,183 as of December 31, 2023 and 2022, 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 one 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 resulted in \$0 and \$552,476 of intangible impairment expense during the years ended December 31, 2023 and December 31, 2022.

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. 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 impairment 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. The Company’s evaluation of its capitalized software development asset resulted in impairment charges of \$0 for the year ended December 31, 2023 and \$0 for the year ended December 31, 2022.

Impairment of Long-Lived 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.

Foreign Currency Translation

The Company translates the financial statements of its foreign subsidiary from the local (functional) currency into US Dollars using the year or reporting period end or average exchange rates in accordance with the requirements of Accounting Standards Codification subtopic 830-10, Foreign Currency Matters (“ASC 830-10”). Assets and liabilities of these subsidiaries were translated at exchange rates as of the balance sheet date. Revenues and expenses are translated at average rates in effect for the periods presented. The cumulative translation adjustment is included in the accumulated other comprehensive gain (loss) within shareholders’ equity. Foreign currency transaction gains and losses arising from exchange rate fluctuations on transactions denominated in a currency other than the functional currency are included in the unaudited Condensed Consolidated Statements of Income and Comprehensive Income.

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.

Revenue Recognition and Concentrations

Our Recurrency platform is a hosted solution. 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. Under Topic 606, revenue is recognized when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. 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.

During the years ended December 31, 2023 and 2022, three customers accounted for 66% and 51% of our revenues, respectively.

Comprehensive Income (Loss)

Comprehensive loss is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. We are required to record all components of comprehensive loss in the consolidated financial statements in the period in which they are recognized. Net loss and other comprehensive loss, including foreign currency translation adjustments and unrealized gains and losses on investments, are reported, net of their related tax effect, to arrive at comprehensive loss. For the twelve months ended December 31, 2023 and 2022, the comprehensive loss was \$12,117,068 and \$10,109,997 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 recognize compensation expense using a straight-line amortization method over the respective vesting period.

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, sales enablement, content creation, and other direct costs. Advertising expense was \$304,296 and \$377,201 for the years ended December 31, 2023 and 2022, respectively. We also include the cost of attending trade shows under marketing expense. We recorded \$63,969 and \$101,044 of expense related to those activities for the years ended December 31, 2023 and 2022, 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, 2023 and 2022 which were excluded from the calculation because their effect was anti-dilutive.

	December 31,	
	2023	2022
Outstanding employee options	7,297,355	6,246,466
Outstanding restricted stock units	1,799,025	1,685,141
Outstanding warrants	10,163,222	3,246,690
	<u>19,259,602</u>	<u>11,178,297</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 August 2020, the FASB issued ASU 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity ("ASU 2020-06"). ASU No. 2020-06 requires that the if-converted method of computing diluted Earnings per Share. The company adopted ASU 2020-06 on January 1, 2022.

3. Going Concern

We have \$416,395 of cash as of December 31, 2023. We had a net loss of \$12.1 million for the year ended 2023, and we used \$8.1 million of cash in our operating activities during 2023. In addition, we raised \$5.2 million during two warrant conversion fundings during 2023. We raised \$3.0 million in cash Convertible Notes issued during 2023. We raised an additional \$2.5 million from the issuance of convertible notes in 2024. There is substantial doubt that our additional cash from our warrant conversion along with our expected cash flow from operations, 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.

As shown in the accompanying financial statements, the Company has incurred net losses from operations resulting in an accumulated deficit of \$129,960,608 as of December 31, 2023. Further losses are anticipated in the development of the Company's business raising substantial doubt about the Company's ability to continue as a going concern. The ability to continue as a going concern is dependent upon the Company generating profitable operations in the future and/or obtaining the necessary financing to meet its obligations and repay its liabilities arising from normal business operations when they come due. Management intends to finance operating costs over the next twelve months with the proceeds from the sale of securities, and/or revenues from operations. These financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts, or amounts and classification of liabilities that might result from this uncertainty.

4. Goodwill and Intangible Assets

Goodwill

The following table presents goodwill and impairment for the years ended December 31, 2023 and 2022:

	Goodwill
December 31, 2021	\$ 411,183
Acquired	—
Impairment	(411,183)
December 31, 2022	—
Acquired	—
Impairment	—
December 31, 2023	<u>\$ —</u>

We conducted our annual impairment test of goodwill as of December 31, 2023 and 2022, which resulted in impairment charges of \$0 and \$411,183 respectively.

Intangible assets

The following table presents components of identifiable intangible assets for the years ended December 31, 2023 and 2022:

	December 31, 2023				December 31, 2022			
	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	\$ 63,895	\$ (10,232)	\$ 53,663	14	\$ 105,543	\$ (47,948)	\$ 57,595	14
Customer and merchant relationships	545,533	(539,395)	6,138	10	2,321,112	(1,775,579)	545,533	10
Trade name	32,393	(30,784)	1,609	10	197,955	(165,562)	32,393	10
Acquired technology	112,191	(112,191)	—	10	621,030	(508,839)	112,191	10
Non-compete agreement	29,212	(29,212)	—	2	79,300	(50,088)	29,212	2
	<u>\$ 776,924</u>	<u>\$ (721,814)</u>	<u>\$ 61,409</u>		<u>\$ 3,324,940</u>	<u>\$ (2,548,016)</u>	<u>\$ 776,924</u>	

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During the years ended December 31, 2023 and 2022, we recorded amortization expense related to our intangible assets of \$36,327 and \$133,010, respectively, which is included in depreciation and amortization in the consolidated statement of operations.

During the years ended December 31, 2023 and 2022, we recorded impairment of \$0 and \$552,476 respectively related to our intangible assets.

Expected future intangible asset amortization as of December 31, 2023 is as follows:

Year ending December 31,	Amount
2023	\$ 12,639
2024	4,891
2025	4,891
2026	4,891
2027	4,891
Thereafter	29,206
Total	<u>\$ 61,409</u>

5. 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 balance is included in the net intangible assets on the balance sheet.

The following table presents details of our software development costs for the years ended December 31, 2023 and 2022:

December 31, 2023				December 31, 2022			
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)
\$ 2,578,611	\$ (2,574,105)	\$ 4,506	2	\$ 2,565,525	\$ (2,217,729)	\$ 347,796	2
<u>\$ 2,578,611</u>	<u>\$ (2,574,105)</u>	<u>\$ 4,506</u>		<u>\$ 2,565,525</u>	<u>\$ (2,217,729)</u>	<u>\$ 347,796</u>	

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

During the years ended December 31, 2023 and 2022, we capitalized \$0 and \$13,087 respectively of software development. We recorded amortization expense for software development costs of \$98,828 and \$257,548, respectively which is included in depreciation and amortization in the consolidated statement of operations.

During the years ended December 31, 2023 and 2022, we recorded impairment charges of \$0 and \$0, respectively related to our software development costs.

The estimated future amortization expense of software development costs as of December 31, 2023 is as follows:

Year ending December 31,	Amount
2024	4,506
2025	—
2026	—
2027	—
2028	—
Thereafter	—
Total	<u>\$ 4,506</u>

6. Operating Lease Assets

Adoption of Accounting Standards Codification (“ASC”) Topic 842, “Leases.” The Company adopted Topic 842 on January 1, 2019, using the modified retrospective method and the optional transition method to record the adoption impact through a cumulative adjustment to equity. Results for reporting periods beginning after January 1, 2019, are presented under Topic 842, while prior periods are not adjusted and continue to be reported under the accounting standards in effect for those periods.

The following are additional details related to leases recorded on our balance sheet as of December 31, 2022:

Leases	Classification	Balance at December 31, 2023
Assets		
Current		
Operating lease assets	Operating lease assets	\$ —
Noncurrent		
Operating lease assets	Noncurrent operating lease assets	770,623
Total lease assets		\$ 770,623
Liabilities		
Current		
Operating lease liabilities	Operating lease liabilities	\$ 276,072
Noncurrent		
Operating lease liabilities	Noncurrent operating lease liabilities	\$ 660,852
Total lease liabilities		\$ 936,924

During the year ended December 31, 2023, we recorded amortization expense of \$358,240 and during the year ended December 31, 2022, we recorded a credit to amortization expense of \$2,896 related to the accretion of the lease liability, which is included in depreciation and amortization in the consolidated statement of operations.

Rent expense was \$355,343 and \$371,213 for the years ended December 31, 2023 and 2022, respectively.

We entered into our current lease starting in February of 2021 for 8,898 square feet of office space located at 3133 W. Frye Road, Suite 215, Chandler, Arizona. Monthly rental payments, excluding common area maintenance charges, will be \$25,953 to \$28,733. The first twelve months of the lease includes a 50% abatement period. An operating lease asset and liability will be recorded when the lease commences in accordance with Topic 842.

The maturity analysis below summarizes the remaining future undiscounted cash flows for our operating leases, a reconciliation to operating lease liabilities reported on the Condensed Consolidated Balance Sheet, our weighted-average remaining lease term and weighted average discount rate:

Year ending December 31,	Amount
2024	\$ 330,894
2025	337,568
2026	344,241
2027	28,733
2028	—
Thereafter	—
Total future lease payments	1,041,436
Less: imputed interest	(104,512)
Total	\$ 936,924
Weighted Average Remaining Lease Term (years)	
Operating leases	3.08
Weighted Average Discount Rate	
Operating leases	6.75%

7. Notes Payable and Related Party Notes Payable

The following table presents details of our notes payable as of December 31, 2023 and 2022:

Facility	Maturity	Interest Rate	December 31, 2023	December 31, 2022
ACOA Note	February 1, 2024	—	7,154	34,231
TD Bank	December 31, 2022	—	—	29,478
Convertible Notes	various	8%	215,959	—
Related Party Notes	various	15%	7,536,487	5,192,461
Total Debt			7,759,600	5,256,170
Less current portion			(3,079,654)	(2,743,788)
Long-term debt, net of current portion			\$ 4,679,946	\$ 2,512,382

Principal payments on notes payables are due as follows:

Year ending December 31,	Amount
2024	\$ 3,079,654
2025	2,613,987
2026	2,065,959
2027	—
2028	—
Thereafter	—
Total future debt payments	7,759,600

ACOA Note

On November 6, 2017, Livelenz, entered into an amendment of the original agreement dated December 2, 2014 with the Atlantic Canada Opportunities Agency (“ACOA”). Under this agreement the note will mature without interest and repayments began on June 1, 2016, while the commitments terminated on February 1, 2024. The monthly principal payment amount of \$3,000 CAD increased to \$3,500 CAD beginning on November 1, 2019, and increased to \$4,000 CAD on August 1, 2021, \$4,500 CAD on August 1, 2022 and \$2,215 CAD for the remaining term of the agreement.

During the twelve months ended December 31, 2023 \$36,960.55 CAD in principle was paid toward the ACOA loan.

TD Bank Loan

On April 22, 2020, we entered into a commitment loan with TD Bank under the Canadian Emergency Business Account (“CEBA”), in the principal aggregate amount of \$40,000 CAD, which is due and payable on December 31, 2022. This note bears interest on the unpaid balance at the rate of zero percent (0%) per annum during the initial term. Under this note no interest or principal payments are due until December 31, 2023. On December 29, 2023 the loan amount of \$40,000 CAD was paid in full.

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Related Party Notes

Secured Promissory Notes

On June 30, 2021, we entered into a Credit Facility Agreement (the “Credit Agreement”) with Thomas Akin, one of the Company’s directors (the “Lender”). The Credit Agreement was amended on November 11, 2022. The Company can borrow up to \$6,000,000 under the Credit Agreement (“the “Credit Facility”). As of December 31, 2021, the Company had drawn a total of \$3,478,125 including cash drawn in the amount of \$3,206,250 and \$271,875 of principal and accrued interest under the 2020 UP Note that was rolled into the Credit Facility and had paid a total of \$200,000 toward the principal balance of the loan,

The Credit Facility is secured by all of our tangible and intangible assets including intellectual property. This loan bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay this loan without notice, penalty, or charge. In consideration of the Lender’s agreement to provide the Credit Facility, the Company issued warrants to purchase shares of its common stock at an exercise price of \$1.67 per share in connection with the issuance of funds under the Credit Agreement. The warrants are exercisable for a period commencing upon issuance of the corresponding notes and ending 36 months after issuance of the financing. In addition, the Company has agreed to issue to the Lender additional warrants entitling the Lender to purchase a number of shares of the Company’s common stock equal to twenty percent (20%) of the amount of the advances made divided by the volume-weighted average price over the 30 trading days preceding the advance (the “VWAP”). Each warrant will be exercisable over a three-year period at an exercise price equal to the VWAP.

Under the original terms of the Credit Agreement, the Company was to begin repaying the principal amount, plus accrued interest, in 24 equal monthly installments commencing on June 30, 2022, and ending on June 30, 2024. On November 11, 2022, an amendment to the Credit Agreement was signed. The amendment updated the payment terms to the following: “Without limiting the foregoing Section 2.3(a), Borrower shall repay the principal amount of all Advances, plus accrued interest thereon, in 24 equal monthly installments commencing on January 31, 2023 and continuing thereafter on the last day of each month (or, if such last day is not a Business Day, on the Business Day immediately preceding such last day. Interest on the unpaid Advances will accrue from the date of each Advance at a rate equal to fifteen percent (15%) per annum. Interest will be calculated on the basis of 365 days in a year.” The amendment raised the maximum amount of the Credit Facility to \$6,000,000. In addition, the interest which is accrued monthly between July 1, 2022, and December 31, 2022, will be settled into equity. Common Stock will be issued at the end of each month at a rate of \$1.08 per share of common stock in the amount of the interest accrued for each month.

On August 22, 2023, the Company took a draw of an additional \$150,000 under the Credit Agreement.

On September 20, 2023, the Company took a draw of an additional \$250,000 under the Credit Agreement.

On October 3, 2023, the Company took a draw of an additional \$300,000 under the Credit Agreement.

During the twelve months ended December 31, 2023, a total of \$812,928 of interest was accrued by the company. Interest payable of \$391,139 to Thomas Akin was then surrendered to be converted and exchanged for the issuance of 362,335 shares of restricted common stock. The company recorded a loss of settlement of interest payable of \$10,315 and amortized discount expense of \$112,114.

A total of \$425,502 in accrued interest was accrued for the third and fourth quarter of 2023 and recorded to equity payable.

During the twelve months ended December 31, 2023, the Company issued warrants to purchase an aggregate of 121,808 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under the Credit Agreement. The estimated aggregate fair value of the warrants issued is \$68,428 using the Black-Scholes option valuation model as of September 30, 2023.

As of December 31, 2023, the Company had drawn a total of \$5,873,125 and we have accrued interest of \$0, \$812,711 of interest payable was recorded to equity payable and a discount balance of \$182,212.

Unsecured Promissory Note

On July 1, 2021, we entered into UP Notes in the aggregate principal amount of \$271,875 with Talkot Fund LP and investor in the Company. Each UP Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum and the principal and accrued interest are due and payable no later than December 31, 2023. We may prepay any of the UP Notes without notice, subject to a two percent (2%) pre-payment penalty. The UP Note offer was conducted by our management and there were no commissions paid by us in connection with the solicitation. The Company issued to Talkot Fund LP warrants to purchase an aggregate of 33,017 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under this Credit Agreement.

On August 13, 2022, the Lender agreed to postpone the 24-month repayment period to a later period commencing on January 31, 2022, and further agreed that interest accrued on the loan between July 1, 2022 and December 31, 2022 is to be settled in shares of the Company’s common stock.

As of December 31, 2023, the Company had a principal balance of \$271,875, and accrued interest of \$76,147, that was recorded to Equity Payable. A total of \$20,504 of accrued interest was converted into 18,987 shares of common stock and the Company recorded a loss on settlement of interest payable of \$542.

Convertible Notes

During fourth quarter 2023 the Company issued 8 Convertible Notes payable to related parties for \$2,000,000. As an inducement we issued 3,333,332 warrants to purchase shares of our common stock at \$.60 per share. Simple interest on the unpaid principal balance of this Note will accrue at the rate of 8.0% per annum. Accrual of interest will commence on the date of this Note, will continue until this Note is fully paid, and will be payable in a single installment at maturity three years from the date the Convertible Note was issued.

During fourth quarter 2023 the Company issued 10 Convertible Notes payable to related parties for \$250,000. As an inducement we issued 416,667 warrants to purchase shares of our common stock at \$.60 per share. Simple interest on the unpaid principal balance of this Note will accrue at the rate of 8.0% per annum. Accrual of interest will commence on the date of this Note, will continue until this Note is fully paid, and will be payable in a single installment at maturity three years from the date the Convertible Note was issued.

The Convertible Note and all accrued interest thereon are convertible into shares of our common stock, from time to time, at the option of the holder thereof, at a conversion price per share equal to the larger of either \$0.50 or of the volume-weighted average price of our common stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the thirty (30) trading days immediately preceding such date (the “Conversion Price”)

As of December 31, 2023 the Convertible Notes issued to related parties had a principal balance of \$2,250,000 and accrued interest of \$21,956. A debt discount expense of \$493,024 was recorded in connection to the warrants issued to related parties. A debt discount expense of \$35,507 was recorded in connection with warrants issued to

Interest Expense

The following table summarizes interest expense for the years ended December 31, 2023 and 2022:

	December 31,	
	2023	2022
Interest expense	\$ 1,027,682	\$ 737,745
Total interest expense	\$ 1,027,682	\$ 737,745

8. Common Stock and Equity Payable**Common Stock**2023

As of December 31, 2023, we had an equity payable balance of \$989,947. These share consist of \$889,085 interest payable to be settled into 1,007,631 shares and \$100,862 in RSU's payable of 93,390 shares.

During the year ended December 31, 2023, the Company issued 5,548,463 shares for warrants converted, and 545,079 shares for settlement of interest payable, based. In addition 545,079 where issued at par value, due to expense recognition in previous years, for RSU issued on termination of a directors service.

2022

During December 31, 2022, the Company recorded stock-based compensation expense of \$260,010 related to restricted stock units for members of our board of directors.

As of December 31, 2022 we had an equity payable balance of \$324,799.

During the year ended December 31, 2022, the Company issued 5,900,460 shares and, recorded stock-based compensation expense of \$260,010 related to restricted stock units for members of our board of directors. The Company recorded stock-based compensation expense of \$0 related to restricted stock units for employee compensation.

9. Stock-based Plans and Stock-based Compensation**Stock-based Plans**

We have the 2010 Incentive Stock Option Plan, the 2013 Incentive Stock Option Plan, the 2016 Stock Incentive Plan and the 2022 Equity Incentive Plan under which we have granted stock options to our directors, officers and employees. As of December 31, 2023, 7,297,355 shares were authorized under the plans and 30,056,707 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 10-year contractual terms.

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The following table summarizes stock option activity under our stock-based plans as of and for the years ended December 31, 2023 and 2022:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2021	6,246,466	\$ 1.20	7.17	\$ 4,056,639
Granted	1,375,000	\$ 1.02	—	\$ —
Exercised	—	\$ —	—	\$ —
Forfeit/canceled	(330,623)	\$ 1.09	—	\$ —
Expired	(599,627)	\$ 0.98	—	\$ —
Outstanding at December 31, 2022	6,691,216	\$ 1.19	5.86	\$ 2,086,829
Granted	2,678,500	\$ 0.79	—	\$ —
Exercised	—	\$ —	—	\$ —
Forfeit/canceled	(329,893)	\$ 1.54	—	\$ —
Expired	(1,742,468)	\$ 1.72	—	\$ —
Outstanding at December 31, 2023	7,297,355	\$ 0.90	7.28	\$ 6,567,620
Expected to vest at December 31, 2023	3,486,670	\$ 0.91	5.13	\$ 3,172,870
Exercisable at December 31, 2023	3,486,670	\$ 0.91	5.13	\$ 3,172,870
Unrecognized expense at December 31, 2023	\$ 2,180,739			

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, 2023, options to purchase 4,057,500 shares of common stock were in-the-money.

The weighted average grant-date fair value of options granted during the years 2023 and 2022 was \$0.90 and \$1.19, respectively.

2022

On March 29, 2022, the Company granted one employee 150,000 options to purchase shares of the Company's common stock at the closing price as of March 29, 2022, of \$0.8289 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter, and are exercisable until March 29, 2032. The total estimated value using the Black-Scholes Model, based on a volatility rate of 72.33% and an option fair value of \$0.54 was \$81,035.

On May 16, 2022, the Company granted three employees 45,000 options to purchase shares of the Company's common stock at the closing price as of May 16, 2022, of \$0.97 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter, and are exercisable until May 16, 2032. The total estimated value using the Black-Scholes Model, based on a volatility rate of 73.45% and an option fair value of \$0.642608 was \$28,917.

On September 22, 2022, the Company granted one employee 1,000,000 options to purchase shares of the Company's common stock at the closing price as of September 22, 2022, of \$0.98 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter, and are exercisable until September 29, 2032. The total estimated value using the Black-Scholes Model, based on a volatility rate of 76.15% and an option fair value of \$0.697499 was \$697,499.

On December 14, 2022, the Company granted one employee 180,000 options to purchase shares of the Company's common stock at the closing price as of December 14, 2022, of \$1.44 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter, and are exercisable until September 29, 2032. The total estimated value using the Black-Scholes Model, based on a volatility rate of 75.76% and an option fair value of \$1.039857 was \$187,174.

In the twelve months ended December 31, 2022, the company recorded stock-based plans amortized expense of \$587,610.

In the twelve months ended December 31, 2022 we had a total stock-based compensation expense of \$1,457,570, this is comprised of \$260,010 in restricted stock unit compensation expense, \$587,610 of stock-based compensation expense and \$609,950 of stock-based compensation expense in connection with the exercise of investor-based warrants

2023

On May 11, 2023 the Company granted three employees 295,000 options to purchase shares of the Company's common stock at the closing price as of May 11, 2023 of \$0.98 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter, and are exercisable until May 16, 2033. The total estimated value using the Black-Scholes Model, based on a volatility rate of 75.76% and an option fair value of \$0.705183 was \$208,029.

On July 14, 2023 the Company granted one employees 1,000,000 options to purchase shares of the Company's common stock at the closing price as of July 14, 2023 of \$0.85 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter, and are exercisable until July 14, 2033. The total estimated value using the Black-Scholes Model, based on a volatility rate of 74.55% and an option fair value of \$0.5590 was \$605,383.

On July 17, 2023 the Company granted one employees 700,000 options to purchase shares of the Company's common stock at the closing price as of July 17, 2023 of \$0.79 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter, and are exercisable until July 17, 2033. The total estimated value using the Black-Scholes Model, based on a volatility rate of 74.57% and an option fair value of \$0.5713 was \$396,441.

On August 25, 2023 the Company granted four employees 650,000 options to purchase shares of the Company's common stock at the closing price as of August 25, 2023 of \$0.65 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter, and are exercisable until August 25, 2033. The total estimated value using the Black-Scholes Model, based on a volatility rate of 64.81% and an option fair value of \$0.4257 was \$285,773.

On November 30, 2023, the Company granted five employees 33,500 options to purchase shares of the Company's common stock at the closing price as of November 30, 2023 of \$0.3505 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter, and are exercisable until November 30, 2033. The total estimated value using the Black-Scholes Model, based on a volatility rate of 83.03% and an option fair value of \$0.295407 was \$9,896.

In the twelve months ended December 31, 2023 we had a total stock-based compensation expense of \$691,674, this is comprised of \$260,007 in restricted stock unit compensation expense, and \$2,502,571 of stock-based compensation expense in connection with the exercise of investor-based warrants

Stock-based Compensation Expense

The impact on our results of operations of recording stock-based compensation expense for the years ended December 31, 2023 and 2022 was as follows:

	Years Ended December 31,	
	2023	2022
General and administrative	\$ 161,593	\$ 262,060
Sales and marketing	359,253	113,838
Engineering, research, and development	170,828	211,712
	<u>\$ 691,674</u>	<u>\$ 587,610</u>

As of December 31, 2023, there was approximately \$2,180,739 of unearned stock-based compensation that will be expensed from 2024 through 2028. 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, 2023 and 2022:

	Years Ended December 31,	
	2023	2022
Risk-free interest rate	0.34% to 0.44%	0.25% to 0.38%
Expected life (years)	7.00	7.00
Expected dividend yield	—	—
Expected volatility	72.88% to 83.03%	72.33% to 76.15%

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

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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 2023 and 2022 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 years ended December 31, 2023 and 2022:

	Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2021	1,685,141	\$ 1.18	—	\$ 1,180,407
Awarded	244,792	\$ 1.06	—	\$ 260,579
Outstanding at December 31, 2022	1,929,933	\$ 1.04	—	\$ 2,018,811
Awarded	414,104	\$ 0.63	—	\$ 260,886
Released	(545,012)	\$ 1	—	\$ (588,613)
Outstanding at December 31, 2023	1,799,025	\$ 0.94	—	\$ 1,691,084
Vested at December 31, 2023	1,799,025	\$ —	—	\$ 1,691,084
Unvested at December 31, 2023	—	\$ —	—	\$ —
Unrecognized expense at December 31, 2023	\$ —	—		

2022

On March 29, 2022, the Company granted four independent directors a total of 78,420 restricted stock units. The units were valued at \$65,002 or \$0.829 per share, based on the closing stock price on the date of the grant. All units vested immediately. The shares of common stock associated with the restricted stock units will be issued to each director upon the earliest to occur of (A) March 29, 2025, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On May 16, 2022, the Company granted four independent directors a total of 54,168 restricted stock units. The units were valued at \$65,002 or \$1.20 per share, based on the closing stock price on the date of the grant. All units vested immediately. The shares of common stock associated with the restricted stock units will be issued to each director upon the earliest to occur of (A) May 16, 2025 (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On September 30, 2022, the Company granted four independent directors a total of 65,100 restricted stock units. The units were valued at \$65,002 or \$.9985 per share, based on the closing stock price on the date of the grant. All units vested immediately. The shares of common stock associated with the restricted stock units will be issued to each director upon the earliest to occur of (A) September 30, 2025 (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On December 31, 2022 the Company granted four independent directors a total of 47,104 restricted stock units. The units were valued at \$65,004 or \$1.38 per share, based on the closing stock price on the date of the grant. All units vested immediately. The shares of common stock associated with the restricted stock units will be issued to each director upon the earliest to occur of (A) December 31, 2025, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

In the twelve months ended December 31, 2022, the company recorded \$260,010 in restricted stock units as board compensation.

2023

On March 31, 2023, the Company granted four independent directors a total of 61,342 restricted stock units. The units were valued at \$65,002 or \$1.05 per share, based on the closing stock price on the date of the grant. All units vested immediately. The shares of common stock associated with the restricted stock units will be issued to each director upon the earliest to occur of (A) March 31, 2026, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On June 30, 2023, the Company granted four independent directors a total of 80,160 restricted stock units. The units were valued at \$65,003 or \$0.81 per share, based on the closing stock price on the date of the grant. All units vest immediately. The shares of common stock associated with the restricted stock units will be issued to each director upon the earliest to occur of (A) June 30, 2026, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On September 30, 2023, the Company granted four independent directors a total of 101,564 restricted stock units. The units were valued at \$65,001 or \$.64 per share, based on the closing stock price on the date of the grant. All units vest immediately. The shares of common stock associated with the restricted stock units will be issued to each director upon the earliest to occur of (A) September 30, 2026, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On December 31, 2023 the Company granted four independent directors a total of 171,056 restricted stock units. The units were valued at \$65,001 or \$.38 per share, based on the closing stock price on the date of the grant. All units vested immediately. The shares of common stock associated with the restricted stock units will be issued to each director upon the earliest to occur of (A) December 31, 2025, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

In the twelve months ended December 31, 2023, the company recorded \$260,007 in restricted stock units as board compensation.

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Restricted Stock Unit Compensation Expense

The impact on our results of operations of recording stock-based compensation expense for years ended December 31, 2023 and 2022 was as follows:

	Years Ended December 31,	
	2023	2022
General and administrative	\$ 260,007	\$ 260,010
Sales and Marketing	—	—
	<u>\$ 260,007</u>	<u>\$ 260,010</u>

10. Warrants to Purchase Common Stock

The following table summarizes investor warrant activity as of and for the years ended December 31, 2023 and 2022:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2021	3,246,690	\$ 2.26	3.59
Granted	6,089,398	\$ —	—
Exercised	(3,188,190)	\$ —	—
Outstanding at December 31, 2022	6,147,898	\$ 1.45	2.27
Granted	9,563,787	\$ —	—
Exercised	(5,548,463)	\$ —	—
Outstanding at December 31, 2023	<u>10,163,222</u>	<u>\$ 0.94</u>	<u>2.48</u>

We did record stock-based compensation expense of \$2,502,570 and \$609,950 for the years ended December 31, 2023 and 2022, respectively in connection with the exercise of investor-based warrants.

Warrants Exercised in 2022

On February 9, 2022, 17 warrant holders exercised their common stock purchase warrant for 3,188,190 shares at the exercise price of \$0.80 per share, resulting in additional capital of \$2,550,553. As an inducement for the holder's exercise of the warrants, we issued the holders' 3,188,190 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in February 2025. The Company recorded \$609,950 of stock-based expense related to warrants issued during the warrant conversion offer on February 9, 2022.

On June 29, 2022, six private investors purchased 1,062,500 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in June 2025, and 1,062,500 shares at the exercise price of \$0.80 per share, resulting in additional capital of \$850,000.

On August 24, 2022, five private investors purchased 1,500,000 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in August 2025, and 1,500,000 shares at the exercise price of \$0.80 per share, resulting in additional capital of \$1,200,000.

Warrants Exercised in 2023

During March 2023, 15 warrant holders exercised their common stock purchase warrant for 3,587,487 shares at the exercise price of \$1.00 per share, resulting in additional capital of \$3,557,487. As an inducement for the holder's exercise of the warrants, we issued the holders' 3,921,952 new warrants to purchase common stock at \$2.00 per share over a three-year period expiring in February 2025. The Company recorded \$577,000 of stock-based expense related to warrants issued during the warrant conversion offer on February 14, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on a volatility rate of 63% and an option fair value of \$0.3216.

During August and September of 2023, 18 warrant holders exercised their common stock purchase warrant for 1,906,976 shares at the exercise price of \$.82 per share, resulting in additional capital of \$3,557,487. As an inducement for the holder's exercise of the warrants, we issued the holders' 1,793,745 new warrants to purchase common stock at \$.82 per share over a three-year period expiring between August and September 2026. The Company recorded \$1,146,047 of stock-based expense related to warrants issued during the warrant conversion offer on September 6, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on an average volatility rate of 72% and an option fair value of \$0.2922.

During the fourth quarter, 15 warrant holders were issued 3,749,999 warrants as an inducement for Convertible Notes issued at the exercise price of \$.60 per share, resulting in additional capital of \$2,250,000. The Company recorded \$471,425 of stock-based expense related to warrants issued during the warrant conversion offer on September 6, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on an average volatility rate of 72% and an option fair value of \$0.2922.

11. Income Taxes

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was enacted and signed into law in response to the market volatility and instability resulting from the COVID-19 pandemic. It includes a significant number of tax provisions and lifts certain deduction limitations originally imposed by the Tax Cuts and Jobs Act of 2017 (the 2017 Act). The changes are mainly related to: (1) the business interest expense disallowance rules for 2019 and 2020; (2) net operating loss rules; (3) charitable contribution limitations; (4) employee retention credit; and (5) the realization of corporate alternative minimum tax credits. The Company does not anticipate the application of the CARES Act provisions to materially impact the overall Consolidated Financial Statements.

For the years ended December 31, 2023 and 2022 the provisions for income taxes were as follows:

	2023	2022
Federal – current	\$ —	\$ —
State – current	—	—
Foreign – current	—	—
Total	<u>\$ —</u>	<u>\$ —</u>

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.

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Significant components of our net deferred tax assets and liabilities as of December 31, 2023 and 2022 are as follows:

	2023	2022
Deferred tax assets (liabilities):		
Net operating loss carryforwards	\$ 14,597,000	\$ 19,791,000
Stock based compensation	5,747,000	4,781,000
Accrued compensation	235,000	231,300
Depreciation and amortization	2,674,070	3,305,000
Other	—	—
Total deferred tax assets	23,253,000	28,108,300
Valuation allowance for net deferred tax assets	(23,253,000)	(28,108,300)
Total	\$ —	\$ —

The Company has provided a valuation allowance against deferred tax assets recorded as of December 31, 2023 and 2022 due to uncertainties regarding the realization of such assets.

The net change in the total valuation allowance for the year ended December 31, 2023 was an increase of approximately \$4,855,300. The net change in the total valuation allowance for the year ended December 31, 2022 was an increase of approximately \$2,479,000. 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, 2023, the Company has available net operating loss carryforwards of approximately \$60,000,000 for federal income tax purposes, which will start to expire in 2026. The net operating loss carryforwards for state purposes are approximately \$57,000,000 and will start to expire in 2028.

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, 2023 and 2022 was as follows:

	2023	2022
Computed expected tax expense	\$ (2,533,000)	\$ (2,088,000)
State taxes, net of federal benefit	2,014,000	(1,030,000)
Expiration of NOL carryforwards	44,000	(684,000)
Other	2,253,000	101,000
Change in valuation allowance	(1,778,000)	3,701,000
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 \$6,000,000. Since 2010 the Company has not conducted a study to assess whether a change of control has occurred or whether there have been multiple changes of control since inception due to the significant complexity and cost associated with such a study. If the Company has experienced a change of control, as defined by Section 382, at any time since 2010, utilization of the net operating loss carryforwards tax credit carryforwards would be subject to further annual limitation under Section 382. Any limitation may result in expiration of a portion of the net operating loss carryforwards before utilization.

The Company files income tax returns in the U.S. federal jurisdiction, Arizona, 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, 2023, no accrued interest or penalties are recorded in the financial statements.

12. 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, 2023:

Description	Level 1	Level 2	Level 3	Gains (Losses)
Goodwill (non-recurring)	\$ —	\$ —	—	\$ —
Intangibles, net (non-recurring)	\$ —	\$ —	\$ 65,916	\$ —

The following table summarizes our financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2022:

Description	Level 1	Level 2	Level 3	Gains (Losses)
Goodwill (non-recurring)	\$ —	\$ —	—	\$ —
Intangibles, net (non-recurring)	\$ —	\$ —	\$ 194,772	\$ —

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'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.

13. Commitments and Contingencies***Litigation***

Marina Soliman v. Subway Franchisee Advertising Fund Trust, LTD, Second Circuit Court of Appeals, Case No. 22-1726 – this is putative class action alleging that Defendant initiated telephone solicitations through text messages in violation of the Telephone Consumer Protection Act, 47 U.S.C § 227 et al. (“TCPA”). The district court granted the defendant’s motion to dismiss, and our firm took over the defense of the matter after it was fully-briefed in the Court of Appeals. The matter has been under submission with the Court since October 24, 2023. In the event that the Court reverses and remands the matter, the Company intends to seek an individual settlement of the matter, and if one cannot be reached, the Company intends to vigorously defend the matter.

Operating Lease

We entered into a new lease starting in February of 2021 for 8,898 square feet of office space located at 3133 W. Frye Road, Suite 215, Chandler, Arizona. Monthly rental payments, excluding common area maintenance charges, will be \$25,953 to \$28,733. The first twelve months of the lease included a 50% abatement period. As of December 31, 2023, we have an operating lease asset balance for this lease of \$770,623 and an operating lease liability balance for this lease of \$936,924 recorded in accordance with ASC 842.

14. 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, 2023 and 2022, the Company made no contributions to the Plan.

15. Related Party Transactions

Related Party Notes

Secured Promissory Notes

On June 30, 2021, we entered into a Credit Facility Agreement (the “Credit Agreement”) with Thomas Akin, one of the Company’s directors (the “Lender”). The Credit Agreement was amended on November 11, 2022. The Company can borrow up to \$6,000,000 under the Credit Agreement (“the “Credit Facility”). As of December 31, 2021, the Company had drawn a total of \$3,478,125 including cash drawn in the amount of \$3,206,250 and \$271,875 of principal and accrued interest under the 2020 UP Note that was rolled into the Credit Facility and had paid a total of \$200,000 toward the principal balance of the loan,

The Credit Facility is secured by all of our tangible and intangible assets including intellectual property. This loan bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay this loan without notice, penalty, or charge. In consideration of the Lender’s agreement to provide the Credit Facility, the Company issued warrants to purchase shares of its common stock at an exercise price of \$1.67 per share in connection with the issuance of funds under the Credit Agreement. The warrants are exercisable for a period commencing upon issuance of the corresponding notes and ending 36 months after issuance of the financing. In addition, the Company has agreed to issue to the Lender additional warrants entitling the Lender to purchase a number of shares of the Company’s common stock equal to twenty percent (20%) of the amount of the advances made divided by the volume-weighted average price over the 30 trading days preceding the advance (the “VWAP”). Each warrant will be exercisable over a three-year period at an exercise price equal to the VWAP.

Under the original terms of the Credit Agreement, the Company was to begin repaying the principal amount, plus accrued interest, in 24 equal monthly installments commencing on June 30, 2022, and ending on June 30, 2024. On November 11, 2022, an amendment to the Credit Agreement was signed. The amendment updated the payment terms to the following: “Without limiting the foregoing Section 2.3(a), Borrower shall repay the principal amount of all Advances, plus accrued interest thereon, in 24 equal monthly installments commencing on January 31, 2023 and continuing thereafter on the last day of each month (or, if such last day is not a Business Day, on the Business Day immediately preceding such last day. Interest on the unpaid Advances will accrue from the date of each Advance at a rate equal to fifteen percent (15%) per annum. Interest will be calculated on the basis of 365 days in a year.” The amendment raised the maximum amount of the Credit Facility to \$6,000,000. In addition, the interest which is accrued monthly between July 1, 2022, and December 31, 2022, will be settled into equity. Common Stock will be issued at the end of each month at a rate of \$1.08 per share of common stock in the amount of the interest accrued for each month.

On August 22, 2023, the Company took a draw of an additional \$150,000 under the Credit Agreement.

On September 20, 2023, the Company took a draw of an additional \$250,000 under the Credit Agreement.

On October 3, 2023, the Company took a draw of an additional \$300,000 under the Credit Agreement.

During the twelve months ended December 31, 2023, a total of \$812,928 of interest was accrued by the Company. Interest payable of \$391,139 to Thomas Akin was then surrendered to be converted and exchanged for the issuance of 362,335 shares of restricted common stock. The company recorded a loss of settlement of interest payable of \$10,315 and amortized discount expense of \$112,114. A total of \$425,502 in accrued interest was accrued for the third and fourth quarter of 2023 and recorded to equity payable.

During the twelve months ended December 31, 2023, the Company issued warrants to purchase an aggregate of 121,808 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under the Credit Agreement. The estimated aggregate fair value of the warrants issued is \$68,428 using the Black-Scholes option valuation model as of September 30, 2023.

As of December 31, 2023, the Company had drawn a total of \$5,873,125 and we have accrued interest of \$0, \$812,711 of interest payable was recorded to equity payable and a discount balance of \$182,212.

Unsecured Promissory Note

On July 1, 2021, we entered into UP Notes in the aggregate principal amount of \$271,875 with Talkot Fund LP and investor in the Company. Each UP Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum and the principal and accrued interest are due and payable no later than December 31, 2023. We may prepay any of the UP Notes without notice, subject to a two percent (2%) pre-payment penalty. The UP Note offer was conducted by our management and there were no commissions paid by us in connection with the solicitation. The Company issued to Talkot Fund LP warrants to purchase an aggregate of 33,017 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under this Credit Agreement.

On August 13, 2022, the Lender agreed to postpone the 24-month repayment period to a later period commencing on January 31, 2022, and further agreed that interest accrued on the loan between July 1, 2022 and December 31, 2022 is to be settled in shares of the Company’s common stock.

As of December 31, 2023, the Company had a principal balance of \$271,875, and accrued interest of \$76,147, that was recorded to Equity Payable. A total of \$20,504 of accrued interest was converted into 18,987 shares of common stock and the Company recorded a loss on settlement of interest payable of \$542.

Related Party Convertible Notes

During the fourth quarter of 2023 the Company issued eight Convertible Notes payable to related parties for \$2,000,000. As an inducement we issued 3,333,332 warrants to purchase shares of our common stock at \$.60 per share. Simple interest on the unpaid principal balance of this Note will accrue at the rate of 8.0% per annum. Accrual of interest will commence on the date of this Note, will continue until this Note is fully paid, and will be payable in a single installment at maturity three years from the date the Convertible Note was issued.

As of December 31, 2023 the Related Party Convertible Notes had a principal balance of \$2,000,000 and accrued interest of \$20,644.

Related Party Warrant Exercise

On March 2, 2023, Thomas Akin exercised his common stock purchase warrant for 749,987 shares at the exercise price of \$1.00 per share, resulting in additional capital of \$749,987. As an inducement for the holder’s exercise of the warrants, we issued the holder 374,994 new warrants to purchase common stock at \$2.00 per share over a three-year period expiring in March 2026. The Company recorded \$120,598 of stock-based expense related to warrants issued during the warrant conversion offer on February 14, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on a volatility rate of 63% and an option fair value of \$0.3216.

On February 7, 2023, Talkot Fund LP exercised their common stock purchase warrant for 750,000 shares at the exercise price of \$1.00 per share, resulting in additional capital of \$750,000. As an inducement for the holder's exercise of the warrants, we issued the holder 375,000 new warrants to purchase common stock at \$2.00 per share over a three-year period expiring in March 2026. The Company recorded \$120,600 of stock-based expense related to warrants issued during the warrant conversion offer on February 14, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on a volatility rate of 63% and an option fair value of \$0.3216.

On August 7, 2023, Thomas Akin exercised his common stock purchase warrant for 426,830 shares at the exercise price of \$.82 per share, resulting in additional capital of \$350,000. As an inducement for the holder's exercise of the warrants, we issued the holder 853,660 new warrants to purchase common stock at \$.82 per share over a three-year period expiring in March 2026. The Company recorded \$178,136 of stock-based expense related to warrants issued during the warrant conversion offer on February 14, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on a volatility rate of 64% and an option fair value of \$0.2087.

On August 7, 2023, Talkot Fund LP exercised their common stock purchase warrant for 426,830 shares at the exercise price of \$.82 per share, resulting in additional capital of \$350,000. As an inducement for the holder's exercise of the warrants, we issued the holder 853,660 new warrants to purchase common stock at \$.82 per share over a three-year period expiring in March 2026. The Company recorded \$178,136 of stock-based expense related to warrants issued during the warrant conversion offer on February 14, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on a volatility rate of 64% and an option fair value of \$0.2087.

16. Subsequent Events

Convertible Notes

During January 2024, the Company issued three Convertible Notes to Thomas B. Akin for a total amount of \$875,000.

During February 2024, the Company issued three Convertible Notes to Thomas B. Akin for a total amount of \$650,000.

During March 2024, the Company issued two Convertible Notes to Thomas B. Akin for a total amount of \$425,000.

During April 2024, the Company issued two Convertible Notes to Thomas B. Akin for a total amount of \$ 550,000.

All Convertible Notes accrue 8% interest and are due three years from issuance.

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 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, 2023 (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 not 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.

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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, 2023 using the criteria established in Internal Control—2013 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 not effective as of December 31, 2023.

As a small company with limited resources that are mainly focused on the development and sales of software products and services, the Company does not employ a sufficient number of staff in its finance department to possess an optimal segregation of duties or to provide optimal levels of oversight. This has resulted in certain audit adjustments and management believes that there may be a possibility for a material misstatement to occur in future periods while it employs the current number of personnel in its finance department.

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 SEC 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 year ended December 31, 2023 and 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

During the three months ended December 31, 2023, none of our directors or officers (as defined in Rule 16a-1(f) of the Exchange Act) adopted, modified or terminated any contract, instruction or written plan for the purchase or sale of our securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) of the Exchange Act or any non-Rule 10b5-1 trading arrangement (as defined in Item 408(c) of Regulation S-K).

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this item is hereby incorporated by reference to the 2024 information statement for our (the “2024 Information Statement”), or in an amendment to this Annual Report on Form 10-K (the “Form 10-K/A”), which we plan to file with the SEC within 120 days after December 31, 2023.

Delinquent Section 16(a) Reports

Section 16(a) of 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.

Based upon a review of forms filed and information provided by the Company’s officers and directors, we believe that all Section 16(a) reporting requirements were met during fiscal year end 2023.

Item 11. Executive Compensation

The information required by this item is hereby incorporated by reference to the information to be included in the 2024 Information Statement or, alternatively, in the Form 10-K/A, which we plan to file with the SEC within 120 days after December 31, 2023.

Item 12. Security Ownership of Certain Beneficial Owners and Management

The information required by this item is hereby incorporated by reference to the information to be included in the 2024 Information Statement or in the Form 10-K/A, which we plan to file with the SEC within 120 days after December 31, 2023.

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

The information required by this item is hereby incorporated by reference to the information to be included in the 2024 Information Statement or in the Form 10-K/A, which we plan to file with the SEC within 120 days after December 31, 2023.

Item 14. Principal Accounting Fees and Services

The information required by this item is hereby incorporated by reference to the information to be included in the 2024 Information Statement or in the Form 10-K/A, which we plan to file with the SEC within 120 days after December 31, 2023.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(1) Financial Statements

The following Consolidated Financial Statements of Mobivity Holdings Corp. appear beginning on page 22 herein:

- Report of Independent Registered Public Accounting Firm
- Consolidated Balance Sheets as of December 31, 2023 and 2022
- Consolidated Statements of Operations and Comprehensive Loss for the years ended December 31, 2023 and 2022
- Consolidated Statements of Changes in Stockholders' Equity (Deficit) for the years ended December 31, 2023 and 2022
- Consolidated Statements of Cash Flows for the years ended December 31, 2023 and 2022
- Notes to Consolidated Financial Statements

(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 INDEX

Exhibit Number	Description
3.1	Restated Articles of Incorporation filed with the Nevada Secretary of State on August 12, 2022 (1)
3.2	Bylaws (2)
3.3	Amendment No. 1 to Bylaws (3)
3.4	Amendment No. 2 to the Bylaws, effective as of May 20, 2013 (8)
4.1	Description of Capital Stock (9)
10.1	Employment Agreement dated December 24, 2010 with Dennis Becker (4)**
10.2	2013 Stock Incentive Plan of the Company adopted July 18, 2013 (6) **
10.3	Loan and Security Agreement dated November 14, 2018 between the Company and Wintrust Bank (7)
10.4	Employment Agreement dated December 7, 2020 with Lisa Brennan* **
10.5	Mobivity Holdings Corp. 2016 Stock Incentive Plan* **[A1]
10.6	Mobivity Holdings Corp. 2022 Equity Incentive Plan (10) **
10.7	Form of Restricted Stock Unit Award Agreement under 2022 Equity Incentive Plan (Director Form)*
10.8	Form of Restricted Stock Unit Award Agreement under 2022 Equity Incentive Plan (Employee Form)* **
10.9	Form of Non-Qualified Stock Option Agreement under 2022 Equity Incentive Plan (Director Form)*
10.10	Form of Non-Qualified Stock Option Agreement under 2022 Equity Incentive Plan (Employee Form)* **
10.11	Amended and Restated Credit Facility Agreement, dated as of November 11, 2022, between Mobivity Holdings Corp. and Thomas B. Akin (11)
10.12	Convertible Note, dated as of November 15, 2022 (11)
10.13	Amendment No. 1 to Amended and Restated Credit Facility Agreement and Convertible Notes, dated as of January 31, 2023, between Mobivity Holdings Corp. and Thomas B. Akin (12)
10.14	Form of Exercise Notice for Offer to Amend and Exercise completed March 16, 2023 (13)
10.15	Form of New Warrant issued March 16, 2023 (13)
21.1	List of Subsidiaries (7)
31.1	Certification of Principal Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
31.2	Certification of Principal Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
	Certification of Principal Chief Executive Officer, and Interim Chief Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*
101.INS	The following financial statements from the Company's Annual Report on Form 10-K for the year ended December 31, 2023, formatted in Inline XBRL: (i) Balance Sheets, (ii) Statements of Operations and Comprehensive Loss, (iii) Statements of Stockholders' Equity, (iv) Statements of Cash Flows, and (v) Notes to the Financial Statements*
101.SCH	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101.1)
*	Filed herewith
**	Indicates management compensatory plan, contract or arrangement
(1)	Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed August 15, 2022
(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 August 10, 2012
(6)	Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed August 14, 2013
(7)	Incorporated by reference to the Company's Annual Report on Form 10-K filed April 15, 2019
(8)	Incorporated by reference to the Company's Current Report on Form 8-K filed May 24, 2013
(9)	Incorporated by reference to the Company's Quarterly Report on Form 10-K filed March 30, 2022
(10)	Incorporated by reference to the Company's Registration Statement on Form S-8 filed September 22, 2022
(11)	Incorporated by reference to the Company's Quarterly Report on Form 8-K filed November 17, 2022
(12)	Incorporated by reference to the Company's Registration Statement on Form 8-K filed February 6, 2023
(13)	Incorporated by reference to the Company's Registration Statement on Form 8-K filed March 16, 2023

Item 16. Form 10-K Summary

None.

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: April 16, 2024

MOBIVITY HOLDINGS CORP.

/s/ Skye Fossey-Tomaske

Skye Fossey-Tomaske
Interim Chief Financial 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><i>/s/ Thomas Akin</i></u>	Chairman of the Board (Principal Executive Officer)	April 16, 2024
<u><i>/s/ Skye Fossey-Tomaske</i></u>	Interim Chief Financial Officer (Principal Financial Officer and Principle Accounting Officer)	April 16, 2024
<u><i>/s/ Philip Guarascio</i></u>	Director	April 16, 2024
<u><i>/s/ Ben Weinberger</i></u>	Director	April 16, 2024
<u><i>/s/ Doug Schneider</i></u>	Director	April 16, 2024
<u><i>/s/ Dennis Becker</i></u>	Director	April 16, 2024

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is made, entered into and effective as of this 7th day of December, 2020 (the "Effective Date") by and between **MOBILITY HOLDINGS CORPORATION**, a Nevada corporation (the "Company"), and **LISA BRENNAN**, an individual resident of the State of Massachusetts ("Employee").

WHEREAS, the Company and Employee desire to set forth in a written agreement the terms and conditions pursuant to which Employee shall be employed as **Chief Financial Officer** by the Company; and

WHEREAS, the parties intend to supersede all prior oral and written communications, correspondence, letters and negotiations between them with the terms set forth herein with regard to the terms of Employee's employment.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, agreements and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, each party hereby agrees as follows:

1. **Definitions.** For purposes of this Agreement, the following capitalized terms shall have the definitions set forth below. Other capitalized terms used in this Agreement that are not defined in this **Section 1** shall have the definitions given to them in this Agreement.

(a) "Board" means the Board of Directors of the Company, including any authorized committee(s) thereof.

(b) "Cause" means:

(i) commission by Employee of a felony;

(ii) Employee's insobriety, use of illegal drugs, abuse of prescription drugs or abuse of alcohol which adversely and directly effects the company or its reputation;

(iii) Employee's engaging in fraud, misappropriation, embezzlement, deceit or other unlawful act or similar acts involving dishonesty or moral turpitude on the part of Employee which adversely and directly effects the company or its reputation;

(iv) Employee's insubordination, commission of an act of dishonesty, gross negligence, self dealing, willful misconduct, deceit or other unlawful act in connection with the performance of Employee's duties hereunder, including without limitation, misappropriation of funds or property of the Company, securing or attempting to secure personally any profit in connection with any transaction entered into on behalf of the Company;

(v) Employee's willful act or gross negligence having the effect of injuring the reputation, business or business relationships of the Company and its subsidiaries or affiliates;

(vi) Employee's disregard of (A) any provision of any policy, work rule, procedure or standard of the Company; or (B) any directive of the Company or the Board;

(vii) Employee's violation of any fiduciary obligation to the Company;

(viii) Employee's violation of any provision of the policies, work rules, procedures or standards of the Company;

(ix) Employee's failure to perform his duties under this Agreement; or

(x) Employee's violation of any covenant or obligation under this Agreement or any other agreement with the Company.

"Confidential Information" means any data or information concerning the Company, its parents, subsidiaries and affiliates, or the operations of the Company or its parents, subsidiaries and affiliates, other than Trade Secrets, without regard to form, that is valuable to the Company or its parents, subsidiaries or affiliates and is not generally known by the public or competitors of the Company or its parents, subsidiaries or affiliates. To the extent consistent with the foregoing, Confidential Information includes, but is not limited to, information about the business practices, customers of the Company, its parents, subsidiaries and affiliates (including, without limitation, mailing lists and customer lists and records), lists of the current or potential customers, vendors and suppliers, lists of and other information about the executives and employees, financial information, business strategies, business methods, product information, contracts and contractual arrangements, marketing plans, the type and volume of the business of the Company, its parents, subsidiaries and affiliates, personnel information, information about the Company's vendors, suppliers and strategic partners, price lists, pricing policies, pricing information, business methods, research and development techniques and activities of the Company, its parents, subsidiaries and affiliates, and all information located in the books and records of the Company, its parents, subsidiaries and affiliates. Confidential Information also includes any information or data described above which the Company or any parent, subsidiary or affiliate of the Company obtains from another party and which the Company or such parent, subsidiary or affiliate treats as proprietary or designates as confidential information whether or not owned or developed by the Company or such parent, subsidiary or affiliate.

(c) "Disability" means that Employee qualifies for benefits under the long-term disability plan or policy maintained by the Company, or, in the absence of such a plan or policy, a physical or mental impairment that renders Employee substantially incapable of performing the essential functions of his job as determined by the Company, with or without reasonable accommodations as contemplated by Americans with Disabilities Act.

(d) “Territory” means the United States of America. The parties acknowledge and agree that the foregoing description of the Territory is reasonable and embodies locations where the Company currently conducts its business and operations or reasonably expects to conduct the business in accordance with the Company’s business plan.

(e) “Trade Secret” means information of the Company or its parents, subsidiaries or affiliates, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a design, a process, financial data, financial plans, product plans, technology plans, marketing plans, acquisition strategies, strategic plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Trade Secrets also includes any information or data described above which the Company or any parent, subsidiary or affiliate of the Company obtains from another party and which the Company treats as proprietary or designates as trade secrets, whether or not owned or developed by the Company or such parent, subsidiary or affiliate of the Company.

(f) “Work Product” means all discoveries, designs, artwork, Trade Secrets, Confidential Information, trademarks, data, analyses, materials, formulas, strategic plans, acquisition strategies, research, documentation, computer programs, information technology systems, communication systems, audio systems, manufacturing systems, system designs, inventions (whether or not patentable), copyrightable subject matter, works of authorship, and other proprietary information or work product (including all worldwide rights therein under patent, copyright, trademark, trade secret, confidential information, moral rights and other property rights), which Employee has made or conceived, or may make or conceive, either solely or jointly with others, while providing services to the Company or its subsidiaries or with the use of the time, material or facilities of the Company or its subsidiaries or relating to any actual or anticipated business of the Company or its subsidiaries known to Employee while employed at the Company, or suggested by or resulting from any task assigned to Employee or work performed by Employee for or on behalf of the Company.

2. Employment, Duties and Term.

(a) Subject to the terms hereof, the Company hereby employs Employee as Chief Financial Officer, and Employee accepts such employment with the Company on the terms set forth in this Agreement. In such capacity, Employee shall perform the duties appropriate to such office or position, and such other duties and responsibilities commensurate with such position as are assigned to him from time to time by the Board or its designees. Employee shall report to the Company’s Executive Chairman and work out of the Company’s office in Phoenix, Arizona.

(b) Employee shall devote his full working time and best efforts to the performance of his duties under this Agreement for and on behalf of the Company and shall not work for anyone else or engage in any activity in competition with or detrimental to the Company. Notwithstanding the foregoing, Employee shall be permitted to serve on corporate, civic or charitable boards or committees, so long as the Board consents in advance in writing to such activities, and such activities do not materially interfere with the performance of his responsibilities as an employee of the Company in accordance with this Agreement. Employee represents that he is not subject to any non-competition, confidentiality, trade secrets or other agreement(s) that would preclude, or restrict in any way, Employee from fully performing his services hereunder during his employment with the Company.

(c) Unless earlier terminated as provided herein, Employee's employment under this Agreement shall be for a term commencing on the Effective Date and ending on the date this Agreement is terminated pursuant to Section 4 below (the "Term"). Employee acknowledges and agrees his employment with the Company is on an "at will" basis, meaning that either Employee or the Company may terminate his employment at any time for any reason or no reason, without further obligation or liability, except as expressly set forth in Section 4 below

3. Compensation.

(a) **Base Salary.** In consideration of the services rendered by Employee, and subject to the terms and conditions hereof, the Company shall pay Employee during the Term an annual base salary of at least \$225,000 (the "Base Salary"). The Base Salary shall be subject to increase, if at all, based on an annual salary review by the Board commencing on December 31, 2021, and each 12-month period thereafter. The Base Salary shall be payable in accordance with the Company's payroll practices as in effect from time to time.

(b) **Bonuses.** In addition to the Base Salary, the Company shall pay Employee:

(i) Employee will be eligible to receive a bonus of up to thirty percent (25%) of Base Salary per year (a "Bonus") for meeting key performance requirements, quotas, and assigned objectives determined by the Company's Board of Directors. The Bonus shall be paid on dates as determined by the Company's Board of Directors and each Bonus payment is conditioned upon Employee's continued employment with the Company on the date of payment.

(c) **Vacation.** Employee shall receive vacation in accordance with the policies of the Company; provided, however, that Employee shall be given at a minimum four (4) weeks of vacation per calendar year (and pro-rated for any partial calendar year). Any unused vacation may not be carried forward to a subsequent year.

(d) **Benefits.** During the Term, Employee shall be entitled to participate in any other employee benefit plans generally provided by the Company to its full-time employees from time to time, but only to the extent provided in such employee benefit plans and for so long as the Company provides or offers such benefit plans. The Company reserves the right to modify, amend or terminate such benefit plans at any time without prior notice.

(e) **Expense Reimbursement.** During the Term, Employee shall be entitled to be reimbursed in accordance with the policies of the Company, as adopted from time to time, for all reasonable and necessary expenses incurred by Employee in connection with the performance of Employee's duties of employment hereunder. Unless the expense policies provide otherwise, Employee shall submit written requests for payment accompanied with such evidence of fees and expenses incurred as the Company reasonably may require no later than thirty (30) days following the end of the calendar year in which such fees and expenses are incurred, and reimbursement payments shall be made within thirty (30) days after the Company's receipt of Employee's written request.

(f) **Stock Options.** On the Effective Date, Employee shall be granted a stock option to purchase 600,000 shares of the Company's Common Stock (the "Option Shares") at an exercise price equal to the fair market value per share on the Effective Date. The Option Shares will vest at the Company's regular vesting schedule of 1/48th per month for Forty Eight (48) Months. Vesting is conditioned upon Employee's continued employment with the Company. The option will be subject to the terms of the Company's current Stock Option Plan and a Stock Option Agreement between Employee and Company.

4. **Termination.**

(a) This Agreement may be terminated during the Term as follows:

- (i) by mutual agreement of the Company and Employee;
- (ii) by the Company, immediately, without any advance notice from the Company, for Cause;
- (iii) by the Company, upon the death or Disability of Employee;
- (iv) by the Company, upon thirty (30) days prior written notice, without Cause; or
- (v) by Employee, upon thirty (30) days prior written notice.

(b) Upon Employee's separation from service following the termination of this Agreement (the date of such termination referred to herein as the "Termination Date"), the Company shall pay to Employee the following: (i) all Base Salary earned or accrued through the Termination Date; (ii) all accrued and unused vacation time for the calendar year in which the Termination Date occurs; and (iii) reimbursement for any expenses under **Section 3(d)** that were incurred by Employee prior to the Termination Date.

(c) If this Agreement is terminated pursuant to **Section 4(a)(iv)** (by the Company without Cause), then, in addition to the payments set forth in **Section 4(b)** above, the Company shall pay Employee three months (3) months of Base Salary, at the rate in effect as of the Termination Date, which payments shall commence within thirty (30) days following Employee's separation from service, payable as described in **Section 4(d)**, and which shall be made in accordance with the regular payroll practices of the Company (the "**Separation Payments**"). Additionally, the Employee's stock options shall continue to vest for three (3) months following the date of termination and the Employee's option to exercise such options shall be extended per the period defined in the Company's Employee Stock Option Plan from the three (3) month anniversary of the Termination Date.

(d) To receive the Separation Payments described in **Section 4(c)**, Employee must execute, not later than ten (10) days following Employee's separation from service a release of claims against the Company, its affiliates and their respective managers, directors, officers and equity holders, in the form and substance of **Exhibit A**, and Employee must not have thereafter revoked such release. If Employee has not executed the release of claims in favor of the Company and returned it to the Company by the date the payment described in **Section 4(c)** becomes due or if Employee revokes an executed release, Employee shall forfeit all rights to such payment under this Agreement.

(e) "**Separation from service**" as used in this **Section 4** to determine the date of any payment, shall mean the date of Employee's "separation from service" as defined by Section 409A of the Internal Code Revenue Code of 1986, as amended, and the Treasury regulations and formal guidance issued thereunder.

5. **Confidential Relationship and Protection of Trade Secrets and Confidential Information.** In the course of Employee's employment by the Company, Employee has had access to and shall have access to the Company's most sensitive and most valuable Trade Secrets, proprietary information, and Confidential Information concerning the Company and its subsidiaries, their present and future business plans, development projects, artwork, designs, products, formulas, suppliers, customers, acquisition strategies and business affairs which constitute valuable business assets of the Company and its subsidiaries, the use, application or disclosure of any of which shall cause substantial and possible irreparable damage to the business and asset value of the Company. Accordingly, Employee accepts and agrees to be bound by the following provisions:

(a) At any time, upon the request of the Company and in any event upon any termination or expiration of this Agreement, Employee shall deliver to the Company all analyses, strategies, plans, acquisition strategies, artwork, technology plans, memoranda, notes, records, drawings, manuals, files or other documents, and all copies of each, concerning or constituting Confidential Information or Trade Secrets and any other property or files belonging to the Company or any of its subsidiaries that are in the possession of Employee, whether made or compiled by Employee or furnished to or acquired by Employee from the Company.

(b) To protect the Trade Secrets and Confidential Information, Employee agrees that:

(i) Employee shall hold in confidence the Trade Secrets. Except in the performance of services for the Company, Employee shall not at any time use, disclose, reproduce, distribute, transmit, reverse engineer, decompile, disassemble, or transfer the Trade Secrets or any portion thereof.

(ii) Employee shall hold in confidence the Confidential Information. Except in the performance of services for the Company, Employee shall not, at any time during the Term of this Agreement and for five (5) years thereafter, use, disclose, reproduce, distribute, transmit, reverse engineer, decompile, disassemble, or transfer the Confidential Information or any portion thereof.

6. **Restrictive Covenants.** For purposes of this **Section 6**, the “Company,” shall include the Company and its parents and subsidiaries.

(a) **Restricted Period.** For purposes hereof, the “Restricted Period” shall last until the two (2) year anniversary of the Termination Date. If this Agreement is terminated pursuant to **Section 4(a)(iv)** (by the Company without Cause), then the “Restricted Period” shall last until the date that is one week after the date of the last Separation Payment paid by the Company.

(b) **Non-Solicitation.** Employee agrees that for purposes hereof, during the Term of this Agreement and in the event of any termination or expiration of this Agreement, until the expiration of the Restricted Period, Employee shall not, anywhere within the Territory, without the prior written consent of the Company, either directly or indirectly, on his own behalf or in the service of or on behalf of others, (i) solicit, contact, call upon, communicate with or attempt to communicate with any supplier of goods or services to the Company, any customer of the Company or prospective customer of the Company, or any representative of any customer or prospective customer of the Company with a view to selling or providing any product, deliverable or service competitive or potentially competitive with any product, deliverable or service sold or provided or under development by the Company during the period of two (2) years immediately preceding the Termination Date (provided that the foregoing restrictions shall apply only to customers or prospective customers of the Company, or representatives of customers or prospective customers of the Company with which Employee had material contact during the two (2) year period immediately preceding the Termination Date); (ii) solicit, induce or encourage any supplier of the Company to terminate or modify any business relationship with the Company; or (iii) otherwise take any action which may reasonably be anticipated to interfere with or disrupt any past, present or prospective business relationship, contractual or otherwise, between the Company and any customer, supplier or agent of the Company. The actions prohibited by this **Section 6(b)** shall not be engaged in by Employee directly or indirectly, whether as employee, independent contractor, manager, salesperson, agent, technical support technician, sales or service representative, or otherwise.

(c) **Non-Recruitment.** During the Term of this Agreement, and in the event of any termination or expiration of this Agreement until the expiration of the Restricted Period, Employee shall not, without the prior written consent of the Company, either directly or indirectly, on his own behalf or in the service of or on behalf of others, solicit or attempt to solicit for employment any person employed by the Company in the Territory, whether or not such person is a full-time employee or a temporary employee of the Company, and whether or not such employment is pursuant to a written agreement or independent contractor agreement and whether or not such employment is for a determined period or is at will.

(d) **Non-Disparagement.** Employee covenants and agrees not to make any statements of any kind, oral or written, that are derogatory or disparaging toward the Company or the management, products, employees, customers or services of the Company; provided, however, that nothing contained herein shall limit Employee's obligation to give truthful testimony to a court or governmental agency, when required to do so by subpoena, court order, law or administrative regulation.

(e) **Reasonableness.** Employee acknowledges and agrees that the covenants contained in this **Section 6** ("Restrictive Covenants") are reasonable and valid in all respects. Further, if any Restrictive Covenants, or portion thereof, are declared to be invalid or unenforceable, Employee shall, as soon as possible, execute a supplemental agreement with the Company granting to the Company, to the extent legally permissible, the protection intended to be afforded to the Company by the Restrictive Covenants, or portion thereof, so declared invalid or unenforceable.

(f) **Tolling.** Employee agrees that in the event the enforceability of any of the terms of this **Section 6** shall be challenged in court and Employee is not enjoined from breaching the Restrictive Covenants set forth in this **Section 6**, then if a court of competent jurisdiction finds that the challenged covenants are enforceable, the time period restrictions specified in this **Section 6** shall be deemed tolled upon the filing of the lawsuit involving the enforceability of this **Section 6** until the dispute is finally resolved and all periods of appeal have expired.

7. **Work Product.** All Work Product shall be the exclusive property of the Company. If any of the Work Product may not, by operation of law or otherwise, be considered the exclusive property of the Company, or if ownership of all right, title, and interest to the legal rights therein shall not otherwise vest exclusively in the Company, Employee hereby assigns to the Company, and upon the future creation thereof automatically assigns to the Company, without further consideration, the ownership of all Work Product. The Company shall have the right to obtain and hold in its own name copyrights, patents, registrations, and any other protection available in the Work Product. Employee shall promptly disclose any and all such Work Product to the Company. Employee agrees to perform, during or after termination of Employee's employment by the Company, and without requiring the Company to provide any further consideration therefore, such further acts as may be necessary or desirable to transfer, perfect and defend the Company's ownership of the Work Product as requested by the Company.

8. **License.** To the extent that any pre-existing materials are contained in the materials Employee delivers to the Company or the Company's customers, and such preexisting materials are not Work Product, Employee grants to the Company an irrevocable, exclusive, worldwide, royalty-free license to: (i) use and distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing materials and derivative works thereof and (ii) authorize others to do any of the foregoing. Employee shall notify the Company in writing of any and all pre-existing materials delivered to the Company by Employee. Employee acknowledges that the Company does not wish to incorporate any unlicensed or unauthorized materials into its products or technology. Therefore, Employee agrees that Employee shall not knowingly disclose to the Company, use in the Company's business, or cause the Company to use, any information or material which is confidential to any third party unless the Company has a written agreement with such third party or the Company otherwise has the right to receive and use such information. Employee shall not incorporate into Employee's work any material which is subject to the copyrights, patent or other proprietary right of any third party unless the Company has a written agreement with such third party or otherwise has the right to receive and use such material.

9. **Defense or Prosecution of Claims.** Employee agrees that during his employment and following the termination of his employment for any reason, he shall cooperate at the request of the Company in the defense or prosecution of any lawsuits or claims in which the Company, its affiliates and their respective managers, directors, employees, officers or equity holders may be or become involved and which relate to matters occurring while he was employed by the Company, unless and to the extent that (a) Employee receives a written opinion of counsel, which is provided to the Company, that Employee shall suffer material harm or material prejudice as a result of such cooperation or (b) a material conflict of interest arises or exists with respect to such cooperation, and in each such case Employee shall cooperate to the maximum extent possible without incurring material harm or material prejudice or a material conflict of interest.

10. **Specific Enforcement.** The Company and Employee agree that any violation of **Sections 5, 6, 7, 8, or 9** of this Agreement shall cause irreparable injury to the Company and its affiliates and that, accordingly, the Company shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to seek an injunction enjoining and restraining Employee from doing or planning to do any such act and any other violation or threatened violation of **Sections 5, 6, 7, 8, or 9**. Employee agrees that the Company shall be entitled to recover from Employee all of the Company's costs and expenses, including reasonable attorneys' fees, incurred by the Company in the course of successfully defending or enforcing this Agreement.

11. **No Conflicting Obligations.** Each party represents and warrants to the other party that it or he is not now under any obligation of a contractual or other nature to any person or entity which is inconsistent or in conflict with this Agreement, or which would prevent, limit or impair in any way the performance by it or him of its or his obligations hereunder.

12. **Indemnity.** Employee shall indemnify the Company and its subsidiaries, affiliates, successors and assigns from and against any and all actions, suits, proceedings, liabilities, damages, losses, costs and expenses (including attorneys' and experts' fees) arising out of or in connection with any breach or threatened breach by Employee of any one or more provisions of this Agreement. The existence of any claim, demand, action or cause of action of Employee against the Company shall not constitute a defense to the enforcement by the Company of any of the covenants or agreements herein.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without giving effect to principles of conflicts of laws.

14. **Consent to Jurisdiction and Venue; Waiver of Jury Trial.**

(a) Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the United States of America located in the State of Arizona, for any actions, suits or proceedings arising out of or relating to this Agreement (and the parties agree not to commence any action, suit or proceeding relating thereto except in such courts), and further agrees that service of any process, summons, notice or document by U.S. registered or certified mail to such party's principal place of business shall be effective service of process for any action, suit or proceeding arising out of or relating to this Agreement in any such court. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement, in the above-named courts, and hereby further irrevocably and unconditionally waives his or its right and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH OF THE PARTIES HEREBY WAIVES AND COVENANTS NOT TO ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION OR SUIT (IN CONTRACT, TORT OR OTHERWISE), INQUIRY, PROCEEDING OR INVESTIGATION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

15. **Remedies Cumulative.** The provisions of this Agreement do not in any way limit or abridge any rights of the Company or any of its subsidiaries or other affiliates under the law of unfair competition, trade secret, copyright, patent, trademark or any other applicable law(s), all of which are in addition to and cumulative of the Company's rights under this Agreement.

16. **Severability.** Each of the provisions of this Agreement shall be deemed separate and severable each from the other. In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason by final judgment of a court of competent jurisdiction, the remaining provisions or portions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law. In the event that any provision or portion of this Agreement shall be determined by any court of competent jurisdiction to be unreasonable or unenforceable, in whole or in part, as written, Employee hereby consents to and affirmatively requests that such court reform such provision or portion of this Agreement so as to be reasonable and enforceable and that such court enforce such provision or portion of this Agreement as so reformed.

17. **No Defense.** The existence of any claim, demand, action or cause of action of Employee against the Company, whether or not based upon this Agreement, shall not constitute a defense to the enforcement by the Company of any covenant or agreement of Employee contained herein.

18. **No Attachment.** Except as required by law, no right to receive payments under this Agreement shall be subject to anticipation, commutation, alienation, sale, assignment, encumbrance, charge, pledge or hypothecation, or to execution, attachment, levy or similar process or assignment by operation of law, and any attempt, voluntary or involuntary, to effect any such action shall be null, void and of no effect; provided, however, that this provision shall not prevent Employee from designating one or more beneficiaries to receive any amount after his death and shall not preclude his executor or administrator from assigning any right hereunder to the person or persons entitled thereto, and in the event of Employee's death or a judicial determination of Employee's incompetence, Employee's rights under this Agreement shall survive and shall inure to the benefit of Employee's heirs, beneficiaries and legal representatives.

19. **Source of Payments.** All payments provided under this Agreement shall be paid in cash from the general funds of the Company, and no special or separate fund shall be established and no other segregation of assets shall be made to assure payment.

20. **Tax Withholding.** The Company may withhold from any compensation and benefits payable under this Agreement all federal, state, city or other taxes as shall be required pursuant to any law or governmental regulation or ruling.

21. **Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in person, by any overnight courier or other service providing evidence of delivery, by registered or certified mail (postage prepaid, return receipt requested), or by facsimile or e-mail with a copy delivered the next business day by any overnight courier or other service providing evidence of delivery, to the respective parties at the following address:

If to the Company:

Mobivity Corporation
55 N. Arizona Place Ste 310
Chandler, AZ 85225
Attention: Board of Directors
Facsimile: (619) 725-0958

If to Employee:

Facsimile: _____
E-mail: _____

22. **Amendment and Waiver.** No provision of this Agreement may be amended or modified, unless such amendment or modification is in writing and signed by the Company and by Employee. No waiver by either party hereto of any breach by the other party hereto of any condition or any provisions of this Agreement to be performed by such other party shall be deemed a waiver of a subsequent breach of such condition or provision or waiver of a similar or dissimilar condition or provision at the same time or any subsequent time.

23. **Assignment; Successors in Interest.** No assignment or transfer by either party of such party's rights and obligations hereunder shall be made except with the prior written consent of the other party hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns, and any reference to a party shall also be a reference to the successors and permitted assigns thereof, including, without limitation, successors through merger, consolidation, or sale of substantially all of the Company's equity interests or assets, and shall be binding upon Employee.

24. **Prior Agreements.** This Agreement supersedes all previous agreements between the Company and Employee concerning terms and conditions of the employment of Employee by the Company, and all such previous agreements are hereby canceled by mutual consent.

25. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to Employee's employment with the Company, and no statements, representations, promises or inducements made by any party hereto, or agreement of either party, which is not contained in this Agreement or in a writing signed by both parties and expressly providing that it is supplemental to this Agreement, shall be valid or binding.

26. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall for all purposes be deemed to be an original and all of which, when taken together, shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or other electronic transmission.

27. **Section 409A.** This Agreement shall be construed in a manner consistent with the applicable requirements of Section 409A of the Internal Revenue Code of 1986, as amended, and the formal guidance issued thereunder (“**Section 409A**”), and the Company, in its sole discretion and without the consent of Employee, may amend the provisions of this Agreement if and to the extent the Company determines that such amendment is necessary or appropriate to comply with the applicable requirements of Section 409A. If a payment date that complies with Section 409A is not otherwise provided herein for any payment (in cash or in-kind) or reimbursement that would otherwise constitute a “deferral of compensation” under Section 409A, then such payment or reimbursement, to the extent such payment or reimbursement becomes due hereunder, shall in all events be made not later than two and one-half (2½) months after the end of the later of the fiscal year or the calendar year in which the payment or reimbursement is no longer subject to a substantial risk of forfeiture. The Company shall only reimburse those amounts eligible to be reimbursed under this Agreement for which Employee submits, within thirty (30) days following the end of the calendar year in which the expense was incurred, written requests for payments accompanied with such evidence of fees and expenses incurred as the Company may reasonably require and as may be needed to comply with applicable IRS rules and Treasury regulations.

28. **Independent Review and Advice.** Employee represents and warrants that he executes this Agreement with full knowledge of the contents of this Agreement, the legal consequences thereof, and any and all rights which each party may have with respect to one another; that Employee has had the opportunity to receive independent legal advice with respect to the matters set forth in this Agreement and with respect to the rights and asserted rights arising out of such matters; and that Employee is entering into this Agreement of his own free will.

29. **Survival.** The obligations of the parties under **Sections 3(d), 4(b), 4(c), 4(d), 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27** and **28** shall survive the termination or expiration of this Agreement and shall not be extinguished thereby.

(Signatures begin on next page)

IN WITNESS WHEREOF, Employee has hereunder set his hand and seal, and the Company has caused this Employment Agreement to be executed by its duly authorized officer, to be effective as of the Effective Date.

“EMPLOYEE”:

By: /s/ Lisa Brennan, individually

“COMPANY”:

MOBIVITY HOLDINGS CORPORATION

By: /s/ Dennis Becker

Name: Dennis Becker

Title: CEO

2016 STOCK INCENTIVE PLAN OF THE REGISTRANT ADOPTED MARCH 7, 2016.

MOBIVITY HOLDINGS CORP.

2016 STOCK INCENTIVE PLAN

1. Purpose of Plan.

The purpose of the Mobivity Holdings Corp. 2016 Stock Incentive Plan (the "Plan") is to advance the interests of Mobivity Holdings Corp. (the "Company") and its stockholders by enabling the Company and its Subsidiaries to attract and retain qualified individuals through opportunities for equity participation in the Company, and to reward those individuals who contribute to the Company's achievement of its economic objectives.

2. Definitions.

The following terms will have the meanings set forth below, unless the context clearly otherwise requires:

2.1. "Board" means the Company's Board of Directors.

2.2. "Broker Exercise Notice" means a written notice pursuant to which a Participant, upon exercise of an Option, irrevocably instructs a broker or dealer to sell a sufficient number of shares or loan a sufficient amount of money to pay all or a portion of the exercise price of the Option and/or any related withholding tax obligations and remit such sums to the Company and directs the Company to deliver stock certificates to be issued upon such exercise directly to such broker or dealer or their nominee.

2.3. "Cause" means (i) dishonesty, fraud, misrepresentation, embezzlement or deliberate injury or attempted injury, in each case related to the Company or any Subsidiary, (ii) any unlawful or criminal activity of a serious nature, (iii) any intentional and deliberate breach of a duty or duties that, individually or in the aggregate, are material in relation to the Participant's overall duties, (iv) any material breach of any confidentiality or noncompete agreement entered into with the Company or any Subsidiary, or (v) with respect to a particular Participant, any other act or omission that constitutes "cause" as may be defined in any employment, consulting or similar agreement between such Participant and the Company or any Subsidiary.

2.4. "Change in Control" means an event described in Section 11.1 of the Plan.

2.5. "Code" means the Internal Revenue Code of 1986, as amended.

2.6. "Committee" means the group of individuals administering the Plan, as provided in Section 3 of the Plan.

2.7. "Common Stock" means the common stock of the Company, \$0.001 par value per share, or the number and kind of shares of stock or other securities into which such Common Stock may be changed in accordance with Section 4.3 of the Plan.

2.8. "Disability" means the disability of the Participant means the permanent and total disability of the Participant within the meaning of Section 22(e)(3) of the Code.

2.9. "Effective Date" means July 17, 2013, but no Incentive Stock Option shall be exercised unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

- 2.10. “Eligible Recipients” means all employees, officers and directors of the Company or any Subsidiary, and any person who has a relationship with the Company or any Subsidiary.
- 2.11. “Exchange Act” means the Securities Exchange Act of 1934, as amended.
- 2.12. “Fair Market Value” means, with respect to the Common Stock, as of any date: (i) the mean between the reported high and low sale prices of the Common Stock at the end of the regular trading session if the Common Stock is listed, admitted to unlisted trading privileges, or reported on any national securities exchange or on the NASDAQ Global Select or Global Market on such date (or, if no shares were traded on such day, as of the next preceding day on which there was such a trade); or (ii) if the Common Stock is not so listed, admitted to unlisted trading privileges, or reported on any national exchange or on the NASDAQ Global Select or Global Market, the closing bid price as of such date at the end of the regular trading session, as reported by the Nasdaq Capital Market, OTC Bulletin Board, The OTC Market, or other comparable service; or (iii) if the Common Stock is not so listed or reported, such price as the Committee determines in good faith in the exercise of its reasonable discretion.
- 2.13. “Incentive Award” means an Option, Restricted Stock Award or Performance Stock Award granted to an Eligible Recipient pursuant to the Plan.
- 2.14. “Incentive Stock Option” means a right to purchase Common Stock granted to an Eligible Recipient pursuant to Section 6 of the Plan that qualifies as an “incentive stock option” within the meaning of Section 422 of the Code.
- 2.15. “Non-Statutory Stock Option” means a right to purchase Common Stock granted to an Eligible Recipient pursuant to Section 6 of the Plan that does not qualify as an Incentive Stock Option.
- 2.16. “Option” means an Incentive Stock Option or a Non-Statutory Stock Option.
- 2.17. “Participant” means an Eligible Recipient who receives one or more Incentive Awards under the Plan.
- 2.18. “Performance Criteria” means the performance criteria that may be used by the Committee in granting Performance Stock Awards contingent upon achievement of such performance goals as the Committee may determine in its sole discretion. The Committee may select one criterion or multiple criteria for measuring performance, and the measurement may be based upon Company, Subsidiary or business unit performance, or the individual performance of the Eligible Recipient, either absolute or by relative comparison to other companies, other Eligible Recipients or any other external measure of the selected criteria.
- 2.19. “Performance Stock Awards” means an award of Common Stock granted to an Eligible Recipient pursuant to Section 8 of the Plan and which may be subject to the future achievement of Performance Criteria or be free of any performance or vesting conditions.
- 2.20. “Previously Acquired Shares” means shares of Common Stock that are already owned by the Participant or, with respect to any Incentive Award, that are to be issued upon the grant, exercise or vesting of such Incentive Award.
- 2.21. “Restricted Stock Award” means an award of Common Stock granted to an Eligible Recipient pursuant to Section 7 of the Plan that is subject to the restrictions on transferability and the risk of forfeiture imposed by the provisions of such Section 7.
- 2.22. “Retirement” means normal or approved early termination of employment or service.
- 2.23. “Securities Act” means the Securities Act of 1933, as amended.

2.24. “Subsidiary” means any entity that is directly or indirectly controlled by the Company or any entity in which the Company has a significant equity interest, as determined by the Committee.

3. Plan Administration.

3.1. The Committee. The Plan will be administered by the Board or by a committee of the Board. So long as the Company has a class of its equity securities registered under Section 12 of the Exchange Act, any committee administering the Plan will consist solely of two or more members of the Board who are “non-employee directors” within the meaning of Rule 16b-3 under the Exchange Act. Such a committee, if established, will act by majority approval of the members (unanimous approval with respect to action by written consent), and a majority of the members of such a committee will constitute a quorum. As used in the Plan, “Committee” will refer to the Board or to such a committee, if established. To the extent consistent with applicable corporate law of the Company’s jurisdiction of incorporation, the Committee may delegate to any officers of the Company the duties, power and authority of the Committee under the Plan pursuant to such conditions or limitations as the Committee may establish; provided, however, that only the Committee may exercise such duties, power and authority with respect to Eligible Recipients who are subject to Section 16 of the Exchange Act. The Committee may exercise its duties, power and authority under the Plan in its sole and absolute discretion without the consent of any Participant or other party, unless the Plan specifically provides otherwise. Each determination, interpretation or other action made or taken by the Committee pursuant to the provisions of the Plan will be conclusive and binding for all purposes and on all persons, and no member of the Committee will be liable for any action or determination made in good faith with respect to the Plan or any Incentive Award granted under the Plan.

3.2. Authority of the Committee.

(a) In accordance with and subject to the provisions of the Plan, the Committee will have the authority to determine all provisions of Incentive Awards as the Committee may deem necessary or desirable and as consistent with the terms of the Plan, including, without limitation, the following: (i) the Eligible Recipients to be selected as Participants; (ii) the nature and extent of the Incentive Awards to be made to each Participant (including the number of shares of Common Stock to be subject to each Incentive Award, any exercise price, the manner in which Incentive Awards will vest or become exercisable and whether Incentive Awards will be granted in tandem with other Incentive Awards) and the form of written agreement, if any, evidencing such Incentive Award; (iii) the time or times when Incentive Awards will be granted; (iv) the duration of each Incentive Award; and (v) the restrictions and other conditions to which the payment or vesting of Incentive Awards may be subject. In addition, the Committee will have the authority under the Plan in its sole discretion to pay the economic value of any Incentive Award in the form of cash, Common Stock or any combination of both.

(b) Subject to Section 3.2(d), below, the Committee will have the authority under the Plan to amend or modify the terms of any outstanding Incentive Award in any manner, including, without limitation, the authority to modify the number of shares or other terms and conditions of an Incentive Award, extend the term of an Incentive Award, accelerate the exercisability or vesting or otherwise terminate any restrictions relating to an Incentive Award, accept the surrender of any outstanding Incentive Award or, to the extent not previously exercised or vested, authorize the grant of new Incentive Awards in substitution for surrendered Incentive Awards; provided, however that the amended or modified terms are permitted by the Plan as then in effect and that any Participant adversely affected by such amended or modified terms has consented to such amendment or modification.

(c) In the event of (i) any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares, rights offering, extraordinary dividend or divestiture (including a spin-off) or any other change in corporate structure or shares; (ii) any purchase, acquisition, sale, disposition or write-down of a significant amount of assets or a significant business; (iii) any change in accounting principles or practices, tax laws or other such laws or provisions affecting reported results; or (iv) any other similar change, in each case with respect to the Company or any other entity whose performance is relevant to the grant or vesting of an Incentive Award, the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation) may, without the consent of any affected Participant, amend or modify the vesting criteria (including Performance Criteria) of any outstanding Incentive Award that is based in whole or in part on the financial performance of the Company (or any Subsidiary or division or other subunit thereof) or such other entity so as equitably to reflect such event, with the desired result that the criteria for evaluating such financial performance of the Company or such other entity will be substantially the same (in the sole discretion of the Committee or the board of directors of the surviving corporation) following such event as prior to such event; provided, however, that the amended or modified terms are permitted by the Plan as then in effect.

(d) Notwithstanding any other provision of this Plan other than Section 4.3, the Committee may not, without prior approval of the Company's stockholders, seek to effect any re-pricing of any previously granted, "underwater" Option by: (i) amending or modifying the terms of the Option to lower the exercise price; (ii) canceling the underwater Option and granting either (A) replacement Options having a lower exercise price; (B) Restricted Stock Awards; or (C) Performance Stock Awards in exchange; or (iii) repurchasing the underwater Options and granting new Incentive Awards under this Plan. For purposes of this Section 3.2(d) and Section 11.4, an Option will be deemed to be "underwater" at any time when the Fair Market Value of the Common Stock is less than the exercise price of the Option.

4. Shares Available for Issuance.

4.1. Maximum Number of Shares Available; Certain Restrictions on Awards. Subject to adjustment as provided in Section 4.3 of the Plan, the maximum number of shares of Common Stock that will be available for issuance under the Plan will be 4,500,000. The shares available for issuance under the Plan may, at the election of the Committee, be either treasury shares or shares authorized but unissued, and, if treasury shares are used, all references in the Plan to the issuance of shares will, for corporate law purposes, be deemed to mean the transfer of shares from treasury.

4.2. Accounting for Incentive Awards. Shares of Common Stock that are issued under the Plan or that are subject to outstanding Incentive Awards will be applied to reduce the maximum number of shares of Common Stock remaining available for issuance under the Plan; provided, however, that shares subject to an Incentive Award that lapses, expires, is forfeited (including issued shares forfeited under a Restricted Stock Award) or for any reason is terminated unexercised or unvested or is settled or paid in cash or any form other than shares of Common Stock will automatically again become available for issuance under the Plan. To the extent that the exercise price of any Option and/or associated tax withholding obligations are paid by tender or attestation as to ownership of Previously Acquired Shares, or to the extent that such tax withholding obligations are satisfied by withholding of shares otherwise issuable upon exercise of the Option, only the number of shares of Common Stock issued net of the number of shares tendered, attested to or withheld will be applied to reduce the maximum number of shares of Common Stock remaining available for issuance under the Plan.

4.3. Adjustments to Shares and Incentive Awards. In the event of any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares or any other change in the corporate structure or shares of the Company, the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation) will make appropriate adjustment (which determination will be conclusive) as to the number and kind of securities or other property (including cash) available for issuance or payment under the Plan and, in order to prevent dilution or enlargement of the rights of Participants, the number and kind of securities or other property (including cash) subject to outstanding Incentive Awards and the exercise price of outstanding Options.

5. Participation.

Participants in the Plan will be those Eligible Recipients who, in the judgment of the Committee, have contributed, are contributing or are expected to contribute to the achievement of economic objectives of the Company or its Subsidiaries. Eligible Recipients may be granted from time to time one or more Incentive Awards, singly or in combination or in tandem with other Incentive Awards, as may be determined by the Committee in its sole discretion. Incentive Awards will be deemed to be granted as of the date specified in the grant resolution of the Committee, which date will be the date of any related agreement with the Participant.

6. Options.

6.1. Grant. An Eligible Recipient may be granted one or more Options under the Plan, and such Options will be subject to such terms and conditions, consistent with the other provisions of the Plan, as may be determined by the Committee in its sole discretion. The Committee may designate whether an Option is to be considered an Incentive Stock Option or a Non-Statutory Stock Option. To the extent that any Incentive Stock Option granted under the Plan ceases for any reason to qualify as an "incentive stock option" for purposes of Section 422 of the Code, such Incentive Stock Option will continue to be outstanding for purposes of the Plan but will thereafter be deemed to be a Non- Statutory Stock Option.

6.2. Exercise Price. The per share price to be paid by a Participant upon exercise of an Option will be determined by the Committee in its discretion at the time of the Option grant; provided, however, that such price will not be less than 100% of the Fair Market Value of one share of Common Stock on the date of grant with respect to any Incentive Stock Option (110% of the Fair Market Value with respect to an Incentive Stock Option if, at the time such Incentive Stock Option is granted, the Participant owns, directly or indirectly, more than 10% of the total combined voting power of all classes of stock of the Company or any parent or subsidiary corporation of the Company).

6.3. Exercisability and Duration. An Option will become exercisable at such times and in such installments and upon such terms and conditions as may be determined by the Committee in its sole discretion at the time of grant (including without limitation (i) the achievement of one or more of the Performance Criteria and/or (ii) that the Participant remain in the continuous employ or service of the Company or a Subsidiary for a certain period); provided, however, that if the Committee does not specify the expiration date of the Option, the expiration date shall be 10 years from the date on which the Option was granted. In no case may an Option may be exercisable after 10 years from its date of grant (five years from its date of grant in the case of an Incentive Stock Option if, at the time the Incentive Stock Option is granted, the Participant owns, directly or indirectly, more than 10% of the total combined voting power of all classes of stock of the Company or any parent or subsidiary corporation of the Company).

6.4. Payment of Exercise Price. The total purchase price of the shares to be purchased upon exercise of an Option will be paid entirely in cash (including check, bank draft or money order); provided, however, that the Committee, in its sole discretion and upon terms and conditions established by the Committee, may allow such payments to be made, in whole or in part, by tender of a Broker Exercise Notice, by tender, or attestation as to ownership, of Previously Acquired Shares that have been held for the period of time necessary to avoid a charge to the Company's earnings for financial reporting purposes and that are otherwise acceptable to the Committee, or by a combination of such methods. For purposes of such payment, Previously Acquired Shares tendered or covered by an attestation will be valued at their Fair Market Value on the exercise date.

6.5. Manner of Exercise. An Option may be exercised by a Participant in whole or in part from time to time, subject to the conditions contained in the Plan and in the agreement evidencing such Option, by delivery in person, by facsimile or electronic transmission or through the mail of written notice of exercise to the Company at its legal department and by paying in full the total exercise price for the shares of Common Stock to be purchased in accordance with Section 6.4 of the Plan.

7. Restricted Stock Awards.

7.1. Grant. An Eligible Recipient may be granted one or more Restricted Stock Awards under the Plan, and such Restricted Stock Awards will be subject to such terms and conditions, consistent with the other provisions of the Plan, as may be determined by the Committee in its sole discretion. The Committee may impose such restrictions or conditions, not inconsistent with the provisions of the Plan, to the vesting of such Restricted Stock Awards as it deems appropriate, including, without limitation, (i) the achievement of one or more of the Performance Criteria and/or (ii) that the Participant remain in the continuous employ or service of the Company or a Subsidiary for a certain period.

7.2. Rights as a Stockholder; Transferability. Except as provided in Sections 7.1, 7.3, 7.4 and 12.3 of the Plan, a Participant will have all voting, dividend, liquidation and other rights with respect to shares of Common Stock issued to the Participant as a Restricted Stock Award under this Section 7 upon the Participant becoming the holder of record of such shares as if such Participant were a holder of record of shares of unrestricted Common Stock.

7.3. Dividends and Distributions. Unless the Committee determines otherwise in its sole discretion (either in the agreement evidencing the Restricted Stock Award at the time of grant or at any time after the grant of the Restricted Stock Award), any dividends or distributions (other than regular quarterly cash dividends) paid with respect to shares of Common Stock subject to the unvested portion of a Restricted Stock Award will be subject to the same restrictions as the shares to which such dividends or distributions relate. The Committee will determine in its sole discretion whether any interest will be paid on such dividends or distributions.

7.4. Enforcement of Restrictions. To enforce the restrictions referred to in this Section 7, the Committee may place a legend on the stock certificates referring to such restrictions and may require the Participant, until the restrictions have lapsed, to keep the stock certificates, together with duly endorsed stock powers, in the custody of the Company or its transfer agent, or to maintain evidence of stock ownership, together with duly endorsed stock powers, in a certificateless book-entry stock account with the Company's transfer agent.

8. Performance Stock Awards.

8.1. An Eligible Recipient may be granted one or more Performance Stock Awards under the Plan, and the issuance of shares of Common Stock pursuant to such Performance Stock Awards will be subject to such terms and conditions, if any, consistent with the other provisions of the Plan, as may be determined by the Committee in its sole discretion, including, but not limited to, the achievement of one or more of the Performance Criteria.

8.2. Restrictions on Transfers. The right to receive shares of Performance Stock Awards on a deferred basis may not be sold, assigned, transferred, pledged or otherwise encumbered, other than by will or the laws of descent and distribution.

9. Effect of Termination of Employment or Other Service.

9.1. Termination Due to Death or Disability. In the event a Participant's employment or other service with the Company and all Subsidiaries is terminated by reason of death or Disability:

(a) All outstanding Options then held by the Participant will, to the extent exercisable as of such termination, remain exercisable for a period of six (6) months after such termination (but in no event after the expiration date of any such Option); and

(b) All Restricted Stock Awards then held by the Participant that have not vested as of such termination will be terminated and forfeited; and

(c) All outstanding Performance Stock Awards then held by the Participant that have not vested as of such termination will be terminated and forfeited.

9.2. Termination Due to Retirement. Subject to Section 9.5 of the Plan, in the event a Participant's employment or other service with the Company and all Subsidiaries is terminated by reason of Retirement:

(a) All outstanding Options then held by the Participant will, to the extent exercisable as of such termination, remain exercisable in full for a period of three (3) months after such termination (but in no event after the expiration date of any such Option). Options not exercisable as of such Retirement will be forfeited and terminate; and

(b) All Restricted Stock Awards then held by the Participant that have not vested as of such termination will be terminated and forfeited; and

(c) All outstanding Performance Stock Awards then held by the Participant that have not vested as of such termination will be terminated and forfeited.

9.3. Termination for Reasons Other than Death, Disability or Retirement. Subject to Section 9.5 of the Plan, in the event a Participant's employment or other service is terminated with the Company and all Subsidiaries for any reason other than death, Disability or Retirement, or a Participant is in the employ of a Subsidiary and the Subsidiary ceases to be a Subsidiary of the Company (unless the Participant continues in the employ of the Company or another Subsidiary):

(a) All outstanding Options then held by the Participant will, to the extent exercisable as of such termination, remain exercisable in full for a period of three months after such termination (but in no event after the expiration date of any such Option). Options not exercisable as of such termination will be forfeited and terminate; and

(b) All Restricted Stock Awards then held by the Participant that have not vested as of such termination will be terminated and forfeited; and

(c) All outstanding Performance Stock Awards then held by the Participant that have not vested as of such termination will be terminated and forfeited.

9.4. Modification of Rights Upon Termination. Notwithstanding the other provisions of this Section 9, the Committee may, in its sole discretion (which may be exercised in connection with the grant or after the date of grant, including following such termination), determine that upon a Participant's termination of employment or other service with the Company and all Subsidiaries, any Options (or any part thereof) then held by such Participant may become or continue to become exercisable and/or remain exercisable following such termination of employment or service, and Restricted Stock Awards and Performance Stock Awards then held by such Participant may vest and/or continue to vest or become free of restrictions and conditions to issuance, as the case may be, following such termination of employment or service, in each case in the manner determined by the Committee.

9.5. Effects of Actions Constituting Cause. Notwithstanding anything in the Plan to the contrary, in the event that a Participant is determined by the Committee, acting in its sole discretion, to have committed any action which would constitute Cause as defined in Section 2.3, irrespective of whether such action or the Committee's determination occurs before or after termination of such Participant's employment or service with the Company or any Subsidiary, all rights of the Participant under the Plan and any agreements evidencing an Incentive Award then held by the Participant shall terminate and be forfeited without notice of any kind. The Company may defer the exercise of any Option or the vesting of any Restricted Stock Award for a period of up to ninety (90) days in order for the Committee to make any determination as to the existence of Cause.

9.6. Determination of Termination of Employment or Other Service. Unless the Committee otherwise determines in its sole discretion, a Participant's employment or other service will, for purposes of the Plan, be deemed to have terminated on the date recorded on the personnel or other records of the Company or the Subsidiary for which the Participant provides employment or service, as determined by the Committee in its sole discretion based upon such records.

10. Payment of Withholding Taxes.

10.1. General Rules. The Company is entitled to (a) withhold and deduct from future wages of the Participant (or from other amounts that may be due and owing to the Participant from the Company or a Subsidiary), or make other arrangements for the collection of, all legally required amounts necessary to satisfy any and all federal, foreign, state and local withholding and employment-related tax requirements attributable to an Incentive Award, including, without limitation, the grant, exercise or vesting of, or payment of dividends with respect to, an Incentive Award or a disqualifying disposition of stock received upon exercise of an Incentive Stock Option, or (b) require the Participant promptly to remit the amount of such withholding to the Company before taking any action, including issuing any shares of Common Stock, with respect to an Incentive Award.

10.2. Special Rules. The Committee may, in its sole discretion and upon terms and conditions established by the Committee, permit or require a Participant to satisfy, in whole or in part, any withholding or employment-related tax obligation described in Section 10.1 of the Plan by electing to tender, or by attestation as to ownership of, Previously Acquired Shares that have been held for the period of time necessary to avoid a charge to the Company's earnings for financial reporting purposes and that are otherwise acceptable to the Committee, by delivery of a Broker Exercise Notice or a combination of such methods. For purposes of satisfying a Participant's withholding or employment-related tax obligation, Previously Acquired Shares tendered or covered by an attestation will be valued at their Fair Market Value.

11. Change in Control.

11.1. A "Change in Control" shall be deemed to have occurred if the event set forth in any one of the following paragraphs has occurred:

(a) the sale, lease, exchange or other transfer, directly or indirectly, of substantially all of the assets of the Company (in one transaction or in a series of related transactions) to any Successor;

(b) the approval by the stockholders of the Company of any plan or proposal for the liquidation or dissolution of the Company;

(c) any Successor (as defined in Section 11.2 below), other than a Bona Fide Underwriter (as defined in Section 11.2 below), becomes after the effective date of the Plan the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of (i) 25% or more, but not 50% or more, of the combined voting power of the Company's outstanding securities ordinarily having the right to vote at elections of directors, unless the transaction resulting in such ownership has been approved in advance by the Continuity Directors (as defined in Section 11.2 below), or (ii) more than 50% of the combined voting power of the Company's outstanding securities ordinarily having the right to vote at elections of directors (regardless of any approval by the Continuity Directors);

(d) a merger or consolidation to which the Company is a party if the stockholders of the Company immediately prior to effective date of such merger or consolidation have “beneficial ownership” (as defined in Rule 13d-3 under the Exchange Act), immediately following the effective date of such merger or consolidation, of securities of the surviving corporation representing (i) 50% or more, but not more than 80%, of the combined voting power of the surviving corporation’s then outstanding securities ordinarily having the right to vote at elections of directors, unless such merger or consolidation has been approved in advance by the Continuity Directors, or (ii) less than 50% of the combined voting power of the surviving corporation’s then outstanding securities ordinarily having the right to vote at elections of directors (regardless of any approval by the Continuity Directors); or

(e) the Continuity Directors cease for any reason to constitute at least 50% or more of the Board.

11.2. Change in Control Definitions. For purposes of this Section 11:

(a) “Continuity Directors” of the Company will mean any individuals who are members of the Board on the effective date of the Plan and any individual who subsequently becomes a member of the Board whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the Continuity Directors (either by specific vote or by approval of the Company’s proxy statement in which such individual is named as a nominee for director without objection to such nomination).

(b) “Bona Fide Underwriter” means an entity engaged in business as an underwriter of securities that acquires securities of the Company through such entity’s participation in good faith in a firm commitment underwriting until the expiration of 40 days after the date of such acquisition.

(c) “Successor” means any individual, corporation, partnership, group, association or other “person,” as such term is used in Section 13(d) or Section 14(d) of the Exchange Act, other than the Company, any “affiliate” (as defined below) or any benefit plan(s) sponsored by the Company or any affiliate that succeeds to, or has the practical ability to control (either immediately or solely with the passage of time), the Company’s business directly, by merger, consolidation or other form of business combination, or indirectly, by purchase of the Company’s outstanding securities ordinarily having the right to vote at the election of directors or all or substantially all of its assets or otherwise. For this purpose, an “affiliate” is (i) any corporation at least a majority of whose outstanding securities ordinarily having the right to vote at elections of directors is owned directly or indirectly by the Company; (ii) any other form of business entity in which the Company, by virtue of a direct or indirect ownership interest, has the right to elect a majority of the members of such entity’s governing body or (iii) any entity that at the time of the approval of this Plan owns in excess of 10% of the Company’s common stock and its affiliates.

11.3. Acceleration of Vesting. Without limiting the authority of the Committee under Sections 3.2 and 4.3 of the Plan, if a Change in Control of the Company occurs, then, if approved by the Committee in its sole discretion either in an agreement evidencing an Incentive Award at the time of grant or at any time after the grant of an Incentive Award: (a) all Options that have been outstanding for at least six months will become immediately exercisable in full and will remain exercisable in accordance with their terms; (b) all Restricted Stock Awards that have been outstanding for at least six months will become immediately fully vested and non-forfeitable; and (c) any conditions to the issuance of shares of Common Stock pursuant to Performance Stock Awards that have been outstanding for at least six months will lapse.

11.4. Cash Payment. If a Change in Control of the Company occurs, then the Committee, if approved by the Committee in its sole discretion either in an agreement evidencing an Incentive Award at the time of grant or at any time after the grant of an Incentive Award, and without the consent of any Participant affected thereby, may determine that:

(a) Some or all Participants holding outstanding Options will receive, with respect to some or all of the shares of Common Stock subject to such Options (“Option Shares”), either (i) as of the effective date of any such Change in Control, cash in an amount equal to the excess of the Fair Market Value of such Option Shares on the last business day prior to the effective date of such Change in Control over the exercise price per share of such Option Shares, (ii) immediately prior to such Change of Control, a number of shares of Common Stock having an aggregate Fair Market Value equal to the excess of the Fair Market Value of the Option Shares as of the last business day prior to the effective date of such Change in Control over the exercise price per share of such Option Shares; or (iii) any combination of cash or shares of Common Stock with the amount of each component to be determined by the Committee not inconsistent with the foregoing clauses (i) and (ii), as proportionally adjusted; and

(b) any Options which, as of the effective date of any such Change in Control, are “underwater” (as defined in Section 3.2(d)) shall terminate as of the effective date of any such Change in Control; and

(c) some or all Participants holding Performance Stock Awards will receive, with respect to some or all of the shares of Common Stock subject to such Performance Stock Awards that remain subject to issuance based upon the future achievement of Performance Criteria as of the effective date of any such Change in Control of the Company, cash in an amount equal the Fair Market Value of such shares immediately prior to the effective date of such Change in Control.

11.5. Limitation on Change in Control Payments. Notwithstanding anything in Section 11.3 or 11.4 of the Plan to the contrary, if, with respect to a Participant, the acceleration of the exercisability of an Option as provided in Section 11.3 or the payment of cash or shares of Common Stock in exchange for all or part of an Option as provided in Section 11.4 (which acceleration or payment could be deemed a “payment” within the meaning of Section 280G(b)(2) of the Code), together with any other “payments” that such Participant has the right to receive from the Company or any corporation that is a member of an “affiliated group” (as defined in Section 1504(a) of the Code without regard to Section 1504(b) of the Code) of which the Company is a member, would constitute a “parachute payment” (as defined in Section 280G(b)(2) of the Code), then the “payments” to such Participant pursuant to Section 11.3 or 11.4 of the Plan will be reduced to the largest amount as will result in no portion of such “payments” being subject to the excise tax imposed by Section 4999 of the Code; provided, however, that if a Participant is subject to a separate agreement with the Company or a Subsidiary which specifically provides that payments attributable to one or more forms of employee stock incentives or to payments made in lieu of employee stock incentives will not reduce any other payments under such agreement, even if it would constitute an excess parachute payment, or provides that the Participant will have the discretion to determine which payments will be reduced in order to avoid an excess parachute payment, then the limitations of this Section 11.4 will, to that extent, not apply.

12. Rights of Eligible Recipients and Participants: Transferability.

12.1. Employment or Service. Nothing in the Plan will interfere with or limit in any way the right of the Company or any Subsidiary to terminate the employment or service of any Eligible Recipient or Participant at any time, nor confer upon any Eligible Recipient or Participant any right to continue in the employ or service of the Company or any Subsidiary.

12.2. Rights as a Stockholder. As a holder of Incentive Awards (other than Restricted Stock Awards), a Participant will have no rights as a stockholder unless and until such Incentive Awards are exercised for, or paid in the form of, shares of Common Stock and the Participant becomes the holder of record of such shares. Except as otherwise provided in the Plan, no adjustment will be made for dividends or distributions with respect to such Incentive Awards as to which there is a record date preceding the date the Participant becomes the holder of record of such shares, except as the Committee may determine in its discretion.

12.3. Restrictions on Transfer.

(a) Except pursuant to testamentary will or the laws of descent and distribution or as otherwise expressly permitted by subsections (b) and (c) below, no right or interest of any Participant in an Incentive Award prior to the exercise (in the case of Options) or vesting (in the case of Restricted Stock Awards) of such Incentive Award will be assignable or transferable, or subjected to any lien, during the lifetime of the Participant, either voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise.

(b) A Participant will be entitled to designate a beneficiary to receive an Incentive Award upon such Participant's death, and in the event of such Participant's death, payment of any amounts due under the Plan will be made to, and exercise of any Options (to the extent permitted pursuant to Section 9 of the Plan) may be made by, such beneficiary. If a deceased Participant has failed to designate a beneficiary, or if a beneficiary designated by the Participant fails to survive the Participant, payment of any amounts due under the Plan will be made to, and exercise of any Options (to the extent permitted pursuant to Section 9 of the Plan) may be made by, the Participant's legal representatives, heirs and legatees. If a deceased Participant has designated a beneficiary and such beneficiary survives the Participant but dies before complete payment of all amounts due under the Plan or exercise of all exercisable Options, then such payments will be made to, and the exercise of such Options may be made by, the legal representatives, heirs and legatees of the beneficiary.

(c) Upon a Participant's request, the Committee may, in its sole discretion, permit a transfer of all or a portion of a Non-Statutory Stock Option, other than for value, to such Participant's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, any person sharing such Participant's household (other than a tenant or employee), a trust in which any of the foregoing have more than fifty percent of the beneficial interests, a foundation in which any of the foregoing (or the Participant) control the management of assets, and any other entity in which these persons (or the Participant) own more than fifty percent of the voting interests. Any permitted transferee will remain subject to all the terms and conditions applicable to the Participant prior to the transfer. A permitted transfer may be conditioned upon such requirements as the Committee may, in its sole discretion, determine, including, but not limited to execution and/or delivery of appropriate acknowledgements, opinion of counsel, or other documents by the transferee.

12.4. Non-Exclusivity of the Plan. Nothing contained in the Plan is intended to modify or rescind any previously approved compensation plans or programs of the Company or create any limitations on the power or authority of the Board to adopt such additional or other compensation arrangements as the Board may deem necessary or desirable.

13. Securities Law and Other Restrictions.

Notwithstanding any other provision of the Plan or any agreements entered into pursuant to the Plan, the Company will not be required to issue any shares of Common Stock under this Plan, and a Participant may not sell, assign, transfer or otherwise dispose of shares of Common Stock issued pursuant to Incentive Awards granted under the Plan, unless (a) there is in effect with respect to such shares a registration statement under the Securities Act and any applicable securities laws of a state or foreign jurisdiction or an exemption from such registration under the Securities Act and applicable state or foreign securities laws, and (b) there has been obtained any other consent, approval or permit from any other U.S. or foreign regulatory body which the Committee, in its sole discretion, deems necessary or advisable. The Company may condition such issuance, sale or transfer upon the receipt of any representations or agreements from the parties involved, and the placement of any legends on certificates representing shares of Common Stock, as may be deemed necessary or advisable by the Company in order to comply with such securities law or other restrictions.

14. Plan Amendment, Modification and Termination.

The Board may suspend or terminate the Plan or any portion thereof at any time, and may amend the Plan from time to time in such respects as the Board may deem advisable in order that Incentive Awards under the Plan will conform to any change in applicable laws or regulations or in any other respect the Board may deem to be in the best interests of the Company; provided, however, that no such amendments to the Plan will be effective without approval of the Company's stockholders if: (i) stockholder approval of the amendment is then required pursuant to Section 422 of the Code or the rules of any stock exchange or the NASDAQ Global Select, Global or Capital Market or similar regulatory body; or (ii) such amendment seeks to modify Section 3.2(d) hereof. No termination, suspension or amendment of the Plan may adversely affect any outstanding Incentive Award without the consent of the affected Participant; provided, however, that this sentence will not impair the right of the Committee to take whatever action it deems appropriate under Sections 3.2(c), 4.3 and 11 of the Plan.

15. Effective Date and Duration of the Plan.

The Plan is effective as of the Effective Date. The Plan will terminate at midnight on March 07, 2026 and may be terminated prior to such time by Board action. No Incentive Award will be granted after termination of the Plan. Incentive Awards outstanding upon termination of the Plan may continue to be exercised, or become free of restrictions, according to their terms.

16. Miscellaneous.

16.1. Governing Law. Except to the extent expressly provided herein or in connection with other matters of corporate governance and authority (all of which shall be governed by the laws of the Company's jurisdiction of incorporation), the validity, construction, interpretation, administration and effect of the Plan and any rules, regulations and actions relating to the Plan will be governed by and construed exclusively in accordance with the laws of the State of Nevada notwithstanding the conflicts of laws principles of any jurisdictions.

16.2. Successors and Assigns. The Plan will be binding upon and inure to the benefit of the successors and permitted assigns of the Company and the Participants.

Mobivity Holdings Corp.
2022 EQUITY INCENTIVE PLAN

Restricted Stock Unit Award Agreement

Mobivity Holdings Corp. (the "Company"), pursuant to its 2022 Equity Incentive Plan (the "Plan"), hereby grants an award of Restricted Stock Units to you, the Participant named below. The terms and conditions of this Award are set forth in this Restricted Stock Unit Award Agreement (the "Agreement"), consisting of this cover page and the Terms and Conditions on the following pages, and in the Plan document, a copy of which has been provided to you. Any capitalized term that is used but not defined in this Agreement shall have the meaning assigned to it in the Plan as it currently exists or as it is amended in the future.

Name of Participant: [_____]

Number of Restricted Stock Units: [_____]

Grant Date: [_____]

Vesting Schedule:

Scheduled Vesting Dates

Number of Restricted Stock Units that Vest

By signing below or otherwise evidencing your acceptance of this Agreement in a manner approved by the Company, you agree to all of the terms and conditions contained in this Agreement and in the Plan document. You acknowledge that you have received and reviewed these documents and that they set forth the entire agreement between you and the Company regarding this Award of Restricted Stock Units.

PARTICIPANT:

Mobivity Holdings Corp.

By: _____
Title: _____

Mobivity Holdings Corp.
2022 Equity Incentive Plan
Restricted Stock Unit Award Agreement

Terms and Conditions

1. **Grant of Restricted Stock Units.** The Company hereby confirms the grant to you, as of the Grant Date and subject to the terms and conditions in this Agreement and the Plan, of the number of Restricted Stock Units specified on the cover page of this Agreement (the “Units”). Each Unit represents the right to receive one Share of the Company’s common stock. Prior to their settlement or forfeiture in accordance with the terms of this Agreement, the Units granted to you will be recorded for book-keeping purposes only, with the Units simply representing an unfunded and unsecured contingent obligation of the Company.

2. **Restrictions Applicable to Units.** Neither this Award nor the Units subject to this Award may be sold, assigned, transferred, exchanged or encumbered, voluntarily or involuntarily, other than (i) a transfer upon your death in accordance with your will, by the laws of descent and distribution or pursuant to a beneficiary designation submitted in accordance with Section 6(d) of the Plan, or (ii) pursuant to a domestic relations order. Following any such transfer, this Award shall continue to be subject to the same terms and conditions that were applicable to this Award immediately prior to its transfer. Any attempted transfer in violation of this Section 2 shall be void and without effect. The Units and your right to receive Shares in settlement of the Units under this Agreement shall be subject to forfeiture as provided in Section 5 until satisfaction of the vesting conditions set forth in Section 4.

3. **No Shareholder Rights.** The Units subject to this Award do not entitle you to any rights of a holder of the Company’s common stock. You will not have any of the rights of a shareholder of the Company in connection with the grant of Units subject to this Agreement unless and until Shares are issued to you upon settlement of the Units as provided in Section 6.

4. **Vesting of Units.** For purposes of this Agreement, “Vesting Date” means any date, including the Scheduled Vesting Dates specified in the Vesting Schedule on the cover page of this Agreement, on which Units subject to this Agreement vest as provided in this Section 4.

(a) **Scheduled Vesting.** If you remain a Service Provider continuously from the Grant Date specified on the cover page of this Agreement, then the Units will vest in the amounts and on the Scheduled Vesting Dates specified in the Vesting Schedule.

(b) **Accelerated or Continued Vesting.** The vesting of outstanding Units will be accelerated or continued under the circumstances provided below:

(1) **Change in Control.** [In the event of a Change in Control which occurs within six (6) months following the Grant Date of this Award, 50% of unvested Units shall vest upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider. All unvested Units shall in full vest upon the occurrence of a Change in Control that occurs following six months from your Grant Date while you continue to be a Service Provider.] [All unvested Units shall vest in full upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider.]

(2) **Death or Disability.** If your Service terminates prior to the final Scheduled Vesting Date due to your death or Disability, then the Units scheduled to vest as of the next Scheduled Vesting Date shall vest as of such termination date.

5. **Effect of Termination of Service.** Except as otherwise provided in accordance with Section 4(b) above, if you cease to be a Service Provider, you will forfeit all unvested Units.

6. **Settlement of Units.** After any Units vest pursuant to Section 4, the Company shall, as soon as practicable (but no later than the 15th day of the third calendar month following the Vesting Date), cause to be issued and delivered to you (or to your personal representative or your designated beneficiary or estate in the event of your death, as applicable) one Share in payment and settlement of each vested Unit. Delivery of the Shares shall be effected by the issuance of a stock certificate to you, by an appropriate entry in the stock register maintained by the Company's transfer agent with a notice of issuance provided to you, or by the electronic delivery of the Shares to a brokerage account you designate, and shall be in complete satisfaction and settlement of such vested Units. The Company will pay any original issue or transfer taxes with respect to the issue and transfer of Shares to you pursuant to this Agreement, and all fees and expenses incurred by it in connection therewith. If the Units that vest include a fractional Unit, the Company shall round the number of vested Units to the nearest whole Unit prior to issuance of Shares as provided herein. Notwithstanding the foregoing, if the ownership or issuance of Shares to you as provided herein is not feasible due to applicable exchange controls, securities or tax laws or other provisions of applicable law, as determined by the Committee in its sole discretion, you (or your permitted transferee) shall receive in lieu of Shares cash in an amount equal to the Fair Market Value (as of the date vesting of the Units occurs) of the Shares otherwise issuable in settlement of the vested Units.

7. **Dividend Equivalents.** If the Company pays cash dividends on its Shares while any Units subject to this Agreement are outstanding, then on each dividend payment date a dividend equivalent dollar amount equal to the number of Units credited to your account pursuant to this Agreement as of the dividend record date times the dollar amount of the cash dividend per Share shall be deemed reinvested in additional Units as of the dividend payment date and such additional Units shall be credited to your account. The number of additional Units so credited shall be determined based on the Fair Market Value of a Share on the dividend payment date. Any additional Units so credited will be subject to the same terms and conditions, including the timing of vesting and settlement, applicable to the underlying Units to which the dividend equivalents relate.

9. **Nature of the Award.** You understand that the value that may be realized, if any, from the Award is contingent, and depends on the future market price of the Company's common stock, among other factors. You further confirm your understanding that the Award is intended to promote employee retention and stock ownership and to align employees' interests with those of shareholders, is subject to vesting conditions and will be cancelled if vesting conditions are not satisfied.

You also understand that (i) the Plan is discretionary in nature and may be suspended or terminated by the Company at any time; (ii) the grant of an Award is voluntary and occasional and does not create any contractual or other right to receive future Awards, or benefits in lieu of Awards even if Awards have been granted repeatedly in the past; (iii) all decisions with respect to any future award will be at the sole discretion of the Company; (iv) your participation in the Plan is voluntary; (v) the value of this Award is an extraordinary item of compensation which is outside the scope of your employment contract with your actual employer, if any; (vi) this Award and past or future Awards are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments; and (vii) no claim or entitlement to compensation or damages arises from termination of this Award or diminution in value of this Award, and you irrevocably release the Company and its Affiliates from any such claim that may arise.

10. **Administration.** You understand that the Company and its Affiliates hold certain personal information about you, including, but not limited to, information such as your name, home address, telephone number, date of birth, salary, nationality, job title, social security number, social insurance number or other such tax identity number and details of all Awards or other entitlement to shares of common stock awarded, cancelled, exercised, vested, unvested or outstanding in your favor (“Personal Data”).

You understand that in order for the Company to process your Award and maintain a record of Shares under the Plan, the Company shall collect, use, transfer and disclose Personal Data within the Company and among its Affiliates electronically or otherwise, as necessary for the implementation and administration of the Plan including, in the case of a social insurance number, for income reporting purposes as required by law. You further understand that the Company may transfer Personal Data, electronically or otherwise, to third parties, including but not limited to such third parties as outside tax, accounting, technical and legal consultants when such third parties are assisting the Company or its Affiliates in the implementation and administration of the Plan. You understand that such recipients may be located within the jurisdiction of your residence, or within the United States or elsewhere and are subject to the legal requirements in those jurisdictions. You understand that the employees of the Company, its Affiliates and third parties performing work related to the implementation and administration of the Plan shall have access to the Personal Data as is necessary to fulfill their duties related to the implementation and administration of the Plan. By accepting this Award, you consent, to the fullest extent permitted by law, to the collection, use, transfer and disclosure, electronically or otherwise, of your Personal Data by or to such entities for such purposes and you accept that this may involve the transfer of Personal Data to a country which may not have the same level of data protection law as the country in which this Agreement is executed. You confirm that if you have provided or, in the future, will provide Personal Data concerning third parties including beneficiaries, you have the consent of such third party to provide their Personal Data to the Company for the same purposes.

You understand that you may, at any time, request to review the Personal Data and require any necessary amendments to it by contacting the Company in writing. As well, you may always elect to forgo participation in the Plan or any other award program.

11. **Additional Provisions.**

(a) **No Right to Continued Service.** This Agreement does not give you a right to continued Service with the Company or any Affiliate, and the Company or any such Affiliate may terminate your Service at any time and otherwise deal with you without regard to the effect it may have upon you under this Agreement.

(b) **Governing Plan Document.** This Agreement and the Award are subject to all the provisions of the Plan, and to all interpretations, rules and regulations which may, from time to time, be adopted and promulgated by the Committee pursuant to the Plan. If there is any conflict between the provisions of this Agreement and the Plan, the provisions of the Plan will govern.

(c) **Governing Law.** To the extent that federal laws do not otherwise control, this Agreement and all determinations made and actions taken pursuant to the Plan shall be governed by the laws of the State of Nevada. You further consent to personal jurisdiction and venue in both such courts and to service of process by United States Mail or express courier service in any such action.

(d) **Severability.** The provisions of this Agreement shall be severable and if any provision of this Agreement is found by any court to be unenforceable, in whole or in part, the remainder of this Agreement shall nevertheless be enforceable and binding on the parties. You also agree that any trier of fact may modify any invalid, overbroad or unenforceable provision of this Agreement so that such provision, as modified, is valid and enforceable under applicable law.

(e) **Binding Effect.** This Agreement will be binding in all respects on your heirs, representatives, successors and assigns, and on the successors and assigns of the Company.

(f) **Section 409A of the Code.** The award of Units as provided in this Agreement and any issuance of Shares or payment pursuant to this Agreement are intended to be exempt from Section 409A of the Code under the short-term deferral exception specified in Treas. Reg. § 1.409A-1(b)(4).

(g) **Electronic Delivery and Acceptance.** The Company may deliver any documents related to this Restricted Stock Unit Award by electronic means and request your acceptance of this Agreement by electronic means. You hereby consent to receive all applicable documentation by electronic delivery and to participate in the Plan through an on-line (and/or voice activated) system established and maintained by the Company or the Company's third-party stock plan administrator.

By signing the cover page of this Agreement or otherwise accepting this Agreement in a manner approved by the Company, you agree to all the terms and conditions described above and in the Plan document.

Mobivity Holdings Corp.
2022 EQUITY INCENTIVE PLAN

Restricted Stock Unit Award Agreement

Mobivity Holdings Corp. (the "Company"), pursuant to its 2022 Equity Incentive Plan (the "Plan"), hereby grants an award of Restricted Stock Units to you, the Participant named below. The terms and conditions of this Award are set forth in this Restricted Stock Unit Award Agreement (the "Agreement"), consisting of this cover page and the Terms and Conditions on the following pages, and in the Plan document, a copy of which has been provided to you. Any capitalized term that is used but not defined in this Agreement shall have the meaning assigned to it in the Plan as it currently exists or as it is amended in the future.

Name of Participant: [_____]

Number of Restricted Stock Units: [_____]

Grant Date: [_____]

Vesting Schedule:

Scheduled Vesting Dates

Number of Restricted Stock Units that Vest

By signing below or otherwise evidencing your acceptance of this Agreement in a manner approved by the Company, you agree to all of the terms and conditions contained in this Agreement and in the Plan document. You acknowledge that you have received and reviewed these documents and that they set forth the entire agreement between you and the Company regarding this Award of Restricted Stock Units.

PARTICIPANT:

Mobivity Holdings Corp.

By: _____

Title: _____

Mobivity Holdings Corp.
2022 Equity Incentive Plan
Restricted Stock Unit Award Agreement

Terms and Conditions

1. **Grant of Restricted Stock Units.** The Company hereby confirms the grant to you, as of the Grant Date and subject to the terms and conditions in this Agreement and the Plan, of the number of Restricted Stock Units specified on the cover page of this Agreement (the “Units”). Each Unit represents the right to receive one Share of the Company’s common stock. Prior to their settlement or forfeiture in accordance with the terms of this Agreement, the Units granted to you will be recorded for book-keeping purposes only, with the Units simply representing an unfunded and unsecured contingent obligation of the Company.

2. **Restrictions Applicable to Units.** Neither this Award nor the Units subject to this Award may be sold, assigned, transferred, exchanged or encumbered, voluntarily or involuntarily, other than (i) a transfer upon your death in accordance with your will, by the laws of descent and distribution or pursuant to a beneficiary designation submitted in accordance with Section 6(d) of the Plan, or (ii) pursuant to a domestic relations order. Following any such transfer, this Award shall continue to be subject to the same terms and conditions that were applicable to this Award immediately prior to its transfer. Any attempted transfer in violation of this Section 2 shall be void and without effect. The Units and your right to receive Shares in settlement of the Units under this Agreement shall be subject to forfeiture as provided in Section 5 until satisfaction of the vesting conditions set forth in Section 4.

3. **No Shareholder Rights.** The Units subject to this Award do not entitle you to any rights of a holder of the Company’s common stock. You will not have any of the rights of a shareholder of the Company in connection with the grant of Units subject to this Agreement unless and until Shares are issued to you upon settlement of the Units as provided in Section 6.

4. **Vesting of Units.** For purposes of this Agreement, “Vesting Date” means any date, including the Scheduled Vesting Dates specified in the Vesting Schedule on the cover page of this Agreement, on which Units subject to this Agreement vest as provided in this Section 4.

(a) **Scheduled Vesting.** If you remain a Service Provider continuously from the Grant Date specified on the cover page of this Agreement, then the Units will vest in the amounts and on the Scheduled Vesting Dates specified in the Vesting Schedule.

(b) **Accelerated or Continued Vesting.** The vesting of outstanding Units will be accelerated or continued under the circumstances provided below:

(1) **Change in Control.** [In the event of a Change in Control which occurs within six (6) months following the Grant Date of this Award, 50% of unvested Units shall vest upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider. All unvested Units shall in full vest upon the occurrence of a Change in Control that occurs following six months from your Grant Date while you continue to be a Service Provider.] [All unvested Units shall vest in full upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider.]

(2) **Death or Disability.** If your Service terminates prior to the final Scheduled Vesting Date due to your death or Disability, then the Units scheduled to vest as of the next Scheduled Vesting Date shall vest as of such termination date.

5. **Effect of Termination of Service.** Except as otherwise provided in accordance with Section 4(b) above, if you cease to be a Service Provider, you will forfeit all unvested Units.

6. **Settlement of Units.** After any Units vest pursuant to Section 4, the Company shall, as soon as practicable (but no later than the 15th day of the third calendar month following the Vesting Date), cause to be issued and delivered to you (or to your personal representative or your designated beneficiary or estate in the event of your death, as applicable) one Share in payment and settlement of each vested Unit. Delivery of the Shares shall be effected by the issuance of a stock certificate to you, by an appropriate entry in the stock register maintained by the Company's transfer agent with a notice of issuance provided to you, or by the electronic delivery of the Shares to a brokerage account you designate, and shall be subject to the tax withholding provisions of Section 8 and compliance with all applicable legal requirements as provided in Section 17(c) of the Plan, and shall be in complete satisfaction and settlement of such vested Units. The Company will pay any original issue or transfer taxes with respect to the issue and transfer of Shares to you pursuant to this Agreement, and all fees and expenses incurred by it in connection therewith. If the Units that vest include a fractional Unit, the Company shall round the number of vested Units to the nearest whole Unit prior to issuance of Shares as provided herein. Notwithstanding the foregoing, if the ownership or issuance of Shares to you as provided herein is not feasible due to applicable exchange controls, securities or tax laws or other provisions of applicable law, as determined by the Committee in its sole discretion, you (or your permitted transferee) shall receive in lieu of Shares cash in an amount equal to the Fair Market Value (as of the date vesting of the Units occurs) of the Shares otherwise issuable in settlement of the vested Units, net of any amount required to satisfy withholding tax obligations as provided in Section 8 of this Agreement.

7. **Dividend Equivalents.** If the Company pays cash dividends on its Shares while any Units subject to this Agreement are outstanding, then on each dividend payment date a dividend equivalent dollar amount equal to the number of Units credited to your account pursuant to this Agreement as of the dividend record date times the dollar amount of the cash dividend per Share shall be deemed reinvested in additional Units as of the dividend payment date and such additional Units shall be credited to your account. The number of additional Units so credited shall be determined based on the Fair Market Value of a Share on the dividend payment date. Any additional Units so credited will be subject to the same terms and conditions, including the timing of vesting and settlement, applicable to the underlying Units to which the dividend equivalents relate.

8. **Tax Consequences and Withholding.** No Shares will be delivered to you in settlement of vested Units unless you have made arrangements acceptable to the Company for payment of any federal, state, local or foreign withholding taxes that may be due as a result of the delivery of the Shares. You hereby authorize the Company (or any Affiliate) to withhold from payroll or other amounts payable to you any sums required to satisfy such withholding tax obligations, and otherwise agree to satisfy such obligations in accordance with the provisions of Section 14 of the Plan. You may elect to satisfy such withholding tax obligations by having the Company withhold a number of Shares that would otherwise be issued to you in settlement of the Units and that have a fair market value equal to the amount of such withholding tax obligations by notifying the Company of such election prior to the Vesting Date.

9. **Nature of the Award.** You understand that the value that may be realized, if any, from the Award is contingent, and depends on the future market price of the Company's common stock, among other factors. You further confirm your understanding that the Award is intended to promote employee retention and stock ownership and to align employees' interests with those of shareholders, is subject to vesting conditions and will be cancelled if vesting conditions are not satisfied.

You also understand that (i) the Plan is discretionary in nature and may be suspended or terminated by the Company at any time; (ii) the grant of an Award is voluntary and occasional and does not create any contractual or other right to receive future Awards, or benefits in lieu of Awards even if Awards have been granted repeatedly in the past; (iii) all decisions with respect to any future award will be at the sole discretion of the Company; (iv) your participation in the Plan is voluntary; (v) the value of this Award is an extraordinary item of compensation which is outside the scope of your employment contract with your actual employer, if any; (vi) this Award and past or future Awards are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments; and (vii) no claim or entitlement to compensation or damages arises from termination of this Award or diminution in value of this Award, and you irrevocably release the Company and its Affiliates from any such claim that may arise.

10. **Administration**. You understand that the Company and its Affiliates hold certain personal information about you, including, but not limited to, information such as your name, home address, telephone number, date of birth, salary, nationality, job title, social security number, social insurance number or other such tax identity number and details of all Awards or other entitlement to shares of common stock awarded, cancelled, exercised, vested, unvested or outstanding in your favor (“Personal Data”).

You understand that in order for the Company to process your Award and maintain a record of Shares under the Plan, the Company shall collect, use, transfer and disclose Personal Data within the Company and among its Affiliates electronically or otherwise, as necessary for the implementation and administration of the Plan including, in the case of a social insurance number, for income reporting purposes as required by law. You further understand that the Company may transfer Personal Data, electronically or otherwise, to third parties, including but not limited to such third parties as outside tax, accounting, technical and legal consultants when such third parties are assisting the Company or its Affiliates in the implementation and administration of the Plan. You understand that such recipients may be located within the jurisdiction of your residence, or within the United States or elsewhere and are subject to the legal requirements in those jurisdictions. You understand that the employees of the Company, its Affiliates and third parties performing work related to the implementation and administration of the Plan shall have access to the Personal Data as is necessary to fulfill their duties related to the implementation and administration of the Plan. By accepting this Award, you consent, to the fullest extent permitted by law, to the collection, use, transfer and disclosure, electronically or otherwise, of your Personal Data by or to such entities for such purposes and you accept that this may involve the transfer of Personal Data to a country which may not have the same level of data protection law as the country in which this Agreement is executed. You confirm that if you have provided or, in the future, will provide Personal Data concerning third parties including beneficiaries, you have the consent of such third party to provide their Personal Data to the Company for the same purposes.

You understand that you may, at any time, request to review the Personal Data and require any necessary amendments to it by contacting the Company in writing. As well, you may always elect to forgo participation in the Plan or any other award program.

11. **Additional Provisions**.

(a) **No Right to Continued Service**. This Agreement does not give you a right to continued Service with the Company or any Affiliate, and the Company or any such Affiliate may terminate your Service at any time and otherwise deal with you without regard to the effect it may have upon you under this Agreement.

(b) **Governing Plan Document**. This Agreement and the Award are subject to all the provisions of the Plan, and to all interpretations, rules and regulations which may, from time to time, be adopted and promulgated by the Committee pursuant to the Plan. If there is any conflict between the provisions of this Agreement and the Plan, the provisions of the Plan will govern.

(c) **Governing Law**. To the extent that federal laws do not otherwise control, this Agreement and all determinations made and actions taken pursuant to the Plan shall be governed by the laws of the State of Nevada. You further consent to personal jurisdiction and venue in both such courts and to service of process by United States Mail or express courier service in any such action.

(d) Severability. The provisions of this Agreement shall be severable and if any provision of this Agreement is found by any court to be unenforceable, in whole or in part, the remainder of this Agreement shall nevertheless be enforceable and binding on the parties. You also agree that any trier of fact may modify any invalid, overbroad or unenforceable provision of this Agreement so that such provision, as modified, is valid and enforceable under applicable law.

(e) Binding Effect. This Agreement will be binding in all respects on your heirs, representatives, successors and assigns, and on the successors and assigns of the Company.

(f) Section 409A of the Code. The award of Units as provided in this Agreement and any issuance of Shares or payment pursuant to this Agreement are intended to be exempt from Section 409A of the Code under the short-term deferral exception specified in Treas. Reg. § 1.409A-1(b)(4).

(g) Electronic Delivery and Acceptance. The Company may deliver any documents related to this Restricted Stock Unit Award by electronic means and request your acceptance of this Agreement by electronic means. You hereby consent to receive all applicable documentation by electronic delivery and to participate in the Plan through an on-line (and/or voice activated) system established and maintained by the Company or the Company's third-party stock plan administrator.

By signing the cover page of this Agreement or otherwise accepting this Agreement in a manner approved by the Company, you agree to all the terms and conditions described above and in the Plan document.

Mobivity Holdings Corp

Non-Qualified Stock Option Agreement
Under the 2022 Equity Incentive Plan

Mobivity Holdings Corp. (the "Company"), pursuant to its 2022 Equity Incentive Plan (the "Plan"), hereby grants an Option to purchase shares of the Company's common stock to you, the Participant named below. The terms and conditions of the Option Award are set forth in this Agreement, consisting of this cover page and the Option Terms and Conditions on the following pages, and in the Plan document, a copy of which has been provided to you. Any capitalized term that is not defined in this Agreement shall have the meaning set forth in the Plan as it currently exists or as it is amended in the future.

Name of Participant: **[_____]

No. of Shares Covered: **[_____]

Exercise Price Per Share: \$**[_____]

Grant Date: _____, 2022

Expiration Date: _____, 20__

Vesting and Exercise Schedule:

Dates

Portion of Shares as to Which
Option Becomes Vested and Exercisable

By signing below or otherwise evidencing your acceptance of this Agreement in a manner approved by the Company, you agree to all of the terms and conditions contained in this Agreement and in the Plan document. You acknowledge that you have received and reviewed these documents and that they set forth the entire agreement between you and the Company regarding your right to purchase shares of the Company's common stock pursuant to this Option.

PARTICIPANT:

Mobivity Holdings Corp.

By: _____
Title: _____

Mobivity Holdings Corp.
2012 Equity Incentive Plan
Non-Qualified Stock Option Agreement

Option Terms and Conditions

1. **Non-Qualified Stock Option.** This Option is not intended to be an “incentive stock option” within the meaning of Section 422 of the Internal Revenue Code and will be interpreted accordingly.

2. **Vesting and Exercisability of Option.**
 - (a) **Scheduled Vesting.** This Option will vest and become exercisable as to the number of Shares and on the dates specified in the Vesting and Exercise Schedule on the cover page to this Agreement, so long as your Service to the Company does not end. The Vesting and Exercise Schedule is cumulative, meaning that to the extent the Option has not already been exercised and has not expired or been terminated or cancelled, you or the person otherwise entitled to exercise the Option as provided in this Agreement may at any time purchase all or any portion of the Shares subject to the vested portion of the Option.

 - (b) **Accelerated Vesting.** The vesting of outstanding Options will be accelerated or continued under the circumstances provided below:
 - (1) ***Change in Control.*** [In the event of a Change in Control which occurs within six (6) months following the Grant Date of this Award, 50% of unvested Options shall vest and become exercisable upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider. All unvested Options shall vest and become exercisable in full upon the occurrence of a Change in Control that occurs following six months from your Grant Date while you continue to be a Service Provider.] [All unvested Options shall vest and become exercisable in full upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider.]

 - (2) ***Death or Disability.*** If your Service terminates prior to the final Scheduled Vesting Date due to your death or Disability, then the Options scheduled to vest as of the next Scheduled Vesting Date shall vest as of such termination date.

3. **Expiration.** This Option will expire and will no longer be exercisable at 5:00 p.m. Central Time on the earliest of:
 - (a) The expiration date specified on the cover page of this Agreement;

 - (b) Upon your termination of Service for Cause;

 - (c) Upon the expiration of any applicable period specified in Section 6(e) of the Plan or Section 2 of this Agreement during which this Option may be exercised after your termination of Service; or

 - (d) The date (if any) fixed for termination or cancellation of this Option pursuant to Section 12 of the Plan.

4. **Service Requirement.** Except as otherwise provided in Section 6(e) of the Plan or Section 2 of this Agreement, this Option may be exercised only while you continue to provide Service to the Company or any Affiliate, and only if you have continuously provided such Service since the Grant Date of this Option.

5. **Exercise of Option.** Subject to Section 4, the vested and exercisable portion of this Option may be exercised in whole or in part at any time during the Option term by delivering a written or electronic notice of exercise to the Company's Chief Financial Officer or to such other party as may be designated by such officer, and by providing for payment of the exercise price of the Shares being acquired. The notice of exercise must be in a form approved by the Company and state the number of Shares to be purchased, the method of payment of the aggregate exercise price and the directions for the delivery of the Shares to be acquired, and must be signed or otherwise authenticated by the person exercising the Option. If you are not the person exercising the Option, the person submitting the notice also must submit appropriate proof of his/her right to exercise the Option.
6. **Payment of Exercise Price.** When you submit your notice of exercise, you must include payment of the exercise price of the Shares being purchased through one or a combination of the following methods:
- (a) Cash (including personal check, cashier's check or money order);
 - (b) By means of a broker-assisted cashless exercise in which you irrevocably instruct your broker to deliver proceeds of a sale of all or a portion of the Shares to be issued pursuant to the exercise to the Company in payment of the exercise price of such Shares; or
 - (c) By delivery to the Company of Shares (by actual delivery or attestation of ownership in a form approved by the Company) already owned by you that are not subject to any security interest and that have an aggregate Fair Market Value on the date of exercise equal to the exercise price of the Shares being purchased; or
 - (d) By authorizing the Company to retain, from the total number of Shares as to which the Option is being exercised, that number of Shares having a Fair Market Value on the date of exercise equal to the exercise price for the total number of Shares as to which the Option is being exercised.
- However, if the Committee determines, in any given circumstance, that payment of the exercise price with Shares or by authorizing the Company to retain Shares is undesirable for any reason, you will not be permitted to pay any portion of the exercise price in that manner.
8. **Delivery of Shares.** As soon as practicable after the Company receives the notice of exercise and payment of the exercise price as provided above, and has determined that all other conditions to exercise, have been satisfied, it shall deliver to the person exercising the Option, in the name of such person, the Shares being purchased, as evidenced by issuance of a stock certificate or certificates, electronic delivery of such Shares to a brokerage account designated by such person, or book-entry registration of such Shares with the Company's transfer agent. The Company shall pay any original issue or transfer taxes with respect to the issue or transfer of the Shares and all fees and expenses incurred by it in connection therewith. All Shares so issued shall be fully paid and nonassessable.
9. **Transfer of Option.** During your lifetime, only you (or your guardian or legal representative in the event of legal incapacity) may exercise this Option except in the case of a transfer described below. You may not assign or transfer this Option except (i) for a transfer upon your death in accordance with your will, by the laws of descent and distribution or pursuant to a beneficiary designation submitted in accordance with Section 6(d) of the Plan, (ii) pursuant to a domestic relations order, or (iii) with the prior written approval of the Company, by gift to a "family member" as the term is defined under General Instruction A(5) to Form S-8 under the Securities Act. The Option held by any such transferee will continue to be subject to the same terms and conditions that were applicable to the Option immediately prior to its transfer and may be exercised by such transferee as and to the extent that the Option has become exercisable and has not terminated in accordance with the provisions of the Plan and this Agreement.

10. **No Stockholder Rights Before Exercise.** Neither you nor any permitted transferee of this Option will have any of the rights of a stockholder of the Company with respect to any Shares subject to this Option until a certificate evidencing such Shares has been issued, electronic delivery of such Shares has been made to your designated brokerage account, or an appropriate book entry in the Company's stock register has been made. No adjustments shall be made for dividends or other rights if the applicable record date occurs before your stock certificate has been issued, electronic delivery of your Shares has been made to your designated brokerage account, or an appropriate book entry in the Company's stock register has been made, except as otherwise described in the Plan.
11. **Governing Plan Document.** This Agreement and Option are subject to all the provisions of the Plan, and to all interpretations, rules and regulations which may, from time to time, be adopted and promulgated by the Committee pursuant to the Plan. If there is any conflict between the provisions of this Agreement and the Plan, the provisions of the Plan will govern.
12. **Choice of Law.** This Agreement will be interpreted and enforced under the laws of the state of Nevada (without regard to its conflicts or choice of law principles).
13. **Binding Effect.** This Agreement will be binding in all respects on your heirs, representatives, successors and assigns, and on the successors and assigns of the Company.
14. **Other Agreements.** You agree that in connection with the exercise of this Option, you will execute such documents as may be necessary to become a party to any stockholder, voting or similar agreements as the Company may require.
15. **Restrictive Legends.** The Company may place a legend or legends on any certificate representing Shares issued upon the exercise of this Option summarizing transfer and other restrictions to which the Shares may be subject under applicable securities laws, other provisions of this Agreement, or other agreements contemplated by Section 14 of this Agreement. You agree that in order to ensure compliance with the restrictions referred to in this Agreement, the Company may issue appropriate "stop transfer" instructions to its transfer agent.
16. **Compensation Recovery Policy.** To the extent that any compensation paid or payable pursuant to this Agreement is considered "incentive-based compensation" within the meaning and subject to the requirements of Section 10D of the Exchange Act, such compensation shall be subject to potential forfeiture or recovery by the Company in accordance with any compensation recovery policy adopted by the Board of Directors of the Company or any committee thereof in response to the requirements of Section 10D of the Exchange Act and any implementing rules and regulations thereunder adopted by the Securities and Exchange Commission or any national securities exchange on which the Company's common stock is then listed. This Agreement may be unilaterally amended by the Company to comply with any such compensation recovery policy.
17. **Electronic Delivery and Acceptance.** The Company may deliver any documents related to this Option Award by electronic means and request your acceptance of this Agreement by electronic means. You hereby consent to receive all applicable documentation by electronic delivery and to participate in the Plan through an on-line (and/or voice activated) system established and maintained by the Company or the Company's third-party stock plan administrator.

By signing the cover page of this Agreement or otherwise accepting this Agreement in a manner approved by the Company, you agree to all the terms and conditions described above and in the Plan document.

Mobivity Holdings Corp

Non-Qualified Stock Option Agreement
Under the 2022 Equity Incentive Plan

Mobivity Holdings Corp. (the "Company"), pursuant to its 2022 Equity Incentive Plan (the "Plan"), hereby grants an Option to purchase shares of the Company's common stock to you, the Participant named below. The terms and conditions of the Option Award are set forth in this Agreement, consisting of this cover page and the Option Terms and Conditions on the following pages, and in the Plan document, a copy of which has been provided to you. Any capitalized term that is not defined in this Agreement shall have the meaning set forth in the Plan as it currently exists or as it is amended in the future.

Name of Participant: **[_____]

No. of Shares Covered: **[_____]
Exercise Price Per Share: \$**[_____]

Grant Date: _____, 2022
Expiration Date: _____, 20__

Vesting and Exercise Schedule:

Dates

Portion of Shares as to Which
Option Becomes Vested and Exercisable

By signing below or otherwise evidencing your acceptance of this Agreement in a manner approved by the Company, you agree to all of the terms and conditions contained in this Agreement and in the Plan document. You acknowledge that you have received and reviewed these documents and that they set forth the entire agreement between you and the Company regarding your right to purchase shares of the Company's common stock pursuant to this Option.

PARTICIPANT:

Mobivity Holdings Corp.

By: _____
Title: _____

Mobivity Holdings Corp.
2022 Equity Incentive Plan
Non-Qualified Stock Option Agreement

Option Terms and Conditions

1. **Non-Qualified Stock Option.** This Option is not intended to be an “incentive stock option” within the meaning of Section 422 of the Internal Revenue Code and will be interpreted accordingly.

2. **Vesting and Exercisability of Option.**
 - (a) **Scheduled Vesting.** This Option will vest and become exercisable as to the number of Shares and on the dates specified in the Vesting and Exercise Schedule on the cover page to this Agreement, so long as your Service to the Company does not end. The Vesting and Exercise Schedule is cumulative, meaning that to the extent the Option has not already been exercised and has not expired or been terminated or cancelled, you or the person otherwise entitled to exercise the Option as provided in this Agreement may at any time purchase all or any portion of the Shares subject to the vested portion of the Option.

 - (b) **Accelerated Vesting.** The vesting of outstanding Options will be accelerated or continued under the circumstances provided below:
 - (1) ***Change in Control.*** [In the event of a Change in Control which occurs within six (6) months following the Grant Date of this Award, 50% of unvested Options shall vest and become exercisable upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider. All unvested Options shall vest and become exercisable in full upon the occurrence of a Change in Control that occurs following six months from your Grant Date while you continue to be a Service Provider.] [All unvested Options shall vest and become exercisable in full upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider.]

 - (2) ***Death or Disability.*** If your Service terminates prior to the final Scheduled Vesting Date due to your death or Disability, then the Options scheduled to vest as of the next Scheduled Vesting Date shall vest as of such termination date.

3. **Expiration.** This Option will expire and will no longer be exercisable at 5:00 p.m. Central Time on the earliest of:
 - (a) The expiration date specified on the cover page of this Agreement;

 - (b) Upon your termination of Service for Cause;

 - (c) Upon the expiration of any applicable period specified in Section 6(e) of the Plan or Section 2 of this Agreement during which this Option may be exercised after your termination of Service; or

 - (d) The date (if any) fixed for termination or cancellation of this Option pursuant to Section 12 of the Plan.

4. **Service Requirement.** Except as otherwise provided in Section 6(e) of the Plan or Section 2 of this Agreement, this Option may be exercised only while you continue to provide Service to the Company or any Affiliate, and only if you have continuously provided such Service since the Grant Date of this Option.

5. **Exercise of Option.** Subject to Section 4, the vested and exercisable portion of this Option may be exercised in whole or in part at any time during the Option term by delivering a written or electronic notice of exercise to the Company's Chief Financial Officer or to such other party as may be designated by such officer, and by providing for payment of the exercise price of the Shares being acquired and any related withholding taxes. The notice of exercise must be in a form approved by the Company and state the number of Shares to be purchased, the method of payment of the aggregate exercise price and the directions for the delivery of the Shares to be acquired, and must be signed or otherwise authenticated by the person exercising the Option. If you are not the person exercising the Option, the person submitting the notice also must submit appropriate proof of his/her right to exercise the Option.
6. **Payment of Exercise Price.** When you submit your notice of exercise, you must include payment of the exercise price of the Shares being purchased through one or a combination of the following methods:
- (a) Cash (including personal check, cashier's check or money order);
 - (b) By means of a broker-assisted cashless exercise in which you irrevocably instruct your broker to deliver proceeds of a sale of all or a portion of the Shares to be issued pursuant to the exercise to the Company in payment of the exercise price of such Shares; or
 - (c) By delivery to the Company of Shares (by actual delivery or attestation of ownership in a form approved by the Company) already owned by you that are not subject to any security interest and that have an aggregate Fair Market Value on the date of exercise equal to the exercise price of the Shares being purchased; or
 - (d) By authorizing the Company to retain, from the total number of Shares as to which the Option is being exercised, that number of Shares having a Fair Market Value on the date of exercise equal to the exercise price for the total number of Shares as to which the Option is being exercised.
- However, if the Committee determines, in any given circumstance, that payment of the exercise price with Shares or by authorizing the Company to retain Shares is undesirable for any reason, you will not be permitted to pay any portion of the exercise price in that manner.
7. **Withholding Taxes.** You may not exercise this Option in whole or in part unless you make arrangements acceptable to the Company for payment of any federal, state, local or foreign withholding taxes that may be due as a result of the exercise of this Option. You hereby authorize the Company (or any Affiliate) to withhold from payroll or other amounts payable to you any sums required to satisfy such withholding tax obligations, and otherwise agree to satisfy such obligations in accordance with the provisions of Section 14 of the Plan. You may satisfy such withholding tax obligations by delivering Shares you already own or by having the Company retain a portion of the Shares being acquired upon exercise of the Option, provided you notify the Company in advance of any exercise of your desire to pay withholding taxes in this manner. Delivery of Shares upon exercise of this Option is subject to the satisfaction of applicable withholding tax obligations.
8. **Delivery of Shares.** As soon as practicable after the Company receives the notice of exercise and payment of the exercise price as provided above, and has determined that all other conditions to exercise, including satisfaction of withholding tax obligations and compliance with applicable laws as provided in Section 17(c) of the Plan, have been satisfied, it shall deliver to the person exercising the Option, in the name of such person, the Shares being purchased, as evidenced by issuance of a stock certificate or certificates, electronic delivery of such Shares to a brokerage account designated by such person, or book-entry registration of such Shares with the Company's transfer agent. The Company shall pay any original issue or transfer taxes with respect to the issue or transfer of the Shares and all fees and expenses incurred by it in connection therewith. All Shares so issued shall be fully paid and nonassessable.
9. **Transfer of Option.** During your lifetime, only you (or your guardian or legal representative in the event of legal incapacity) may exercise this Option except in the case of a transfer described below. You may not assign or transfer this Option except (i) for a transfer upon your death in accordance with your will, by the laws of descent and distribution or pursuant to a beneficiary designation submitted in accordance with Section 6(d) of the Plan, (ii) pursuant to a domestic relations order, or (iii) with the prior written approval of the Company, by gift to a "family member" as the term is defined under General Instruction A(5) to Form S-8 under the Securities Act. The Option held by any such transferee will continue to be subject to the same terms and conditions that were applicable to the Option immediately prior to its transfer and may be exercised by such transferee as and to the extent that the Option has become exercisable and has not terminated in accordance with the provisions of the Plan and this Agreement.

10. **No Stockholder Rights Before Exercise.** Neither you nor any permitted transferee of this Option will have any of the rights of a stockholder of the Company with respect to any Shares subject to this Option until a certificate evidencing such Shares has been issued, electronic delivery of such Shares has been made to your designated brokerage account, or an appropriate book entry in the Company's stock register has been made. No adjustments shall be made for dividends or other rights if the applicable record date occurs before your stock certificate has been issued, electronic delivery of your Shares has been made to your designated brokerage account, or an appropriate book entry in the Company's stock register has been made, except as otherwise described in the Plan.
11. **Governing Plan Document.** This Agreement and Option are subject to all the provisions of the Plan, and to all interpretations, rules and regulations which may, from time to time, be adopted and promulgated by the Committee pursuant to the Plan. If there is any conflict between the provisions of this Agreement and the Plan, the provisions of the Plan will govern.
12. **Choice of Law.** This Agreement will be interpreted and enforced under the laws of the state of Nevada (without regard to its conflicts or choice of law principles).
13. **Binding Effect.** This Agreement will be binding in all respects on your heirs, representatives, successors and assigns, and on the successors and assigns of the Company.
14. **Other Agreements.** You agree that in connection with the exercise of this Option, you will execute such documents as may be necessary to become a party to any stockholder, voting or similar agreements as the Company may require.
15. **Restrictive Legends.** The Company may place a legend or legends on any certificate representing Shares issued upon the exercise of this Option summarizing transfer and other restrictions to which the Shares may be subject under applicable securities laws, other provisions of this Agreement, or other agreements contemplated by Section 14 of this Agreement. You agree that in order to ensure compliance with the restrictions referred to in this Agreement, the Company may issue appropriate "stop transfer" instructions to its transfer agent.
16. **Compensation Recovery Policy.** To the extent that any compensation paid or payable pursuant to this Agreement is considered "incentive-based compensation" within the meaning and subject to the requirements of Section 10D of the Exchange Act, such compensation shall be subject to potential forfeiture or recovery by the Company in accordance with any compensation recovery policy adopted by the Board of Directors of the Company or any committee thereof in response to the requirements of Section 10D of the Exchange Act and any implementing rules and regulations thereunder adopted by the Securities and Exchange Commission or any national securities exchange on which the Company's common stock is then listed. This Agreement may be unilaterally amended by the Company to comply with any such compensation recovery policy.
17. **Electronic Delivery and Acceptance.** The Company may deliver any documents related to this Option Award by electronic means and request your acceptance of this Agreement by electronic means. You hereby consent to receive all applicable documentation by electronic delivery and to participate in the Plan through an on-line (and/or voice activated) system established and maintained by the Company or the Company's third-party stock plan administrator.

By signing the cover page of this Agreement or otherwise accepting this Agreement in a manner approved by the Company, you agree to all the terms and conditions described above and in the Plan document.

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 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 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 the 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.

Date: April 16, 2024

By: /s/ Thomas B. Akin
Thomas B. Akin
Chairman of the Board of Directors
(Principal Executive Officer)

CERTIFICATION OF CHIEF FINANCIAL OFFICER
Pursuant to Rule 13a-14(a) adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Lisa Brennan, 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 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 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 the 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.

Date: April 16, 2024

By: /s/ Skye Fossey-Tomaske
Skye Fossey-Tomaske
Interim Chief Financial Officer

**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, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), we, Dennis Becker, Chief Executive Officer of the Company, and Lisa Brennan, 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: April 16, 2024

/s/ Thomas B. Akin

Thomas B. Akin
Chairman of the Board of Directors
(Principal Executive Officer)

/s/ Skye Fossey-Tomaske

Skye Fossey-Tomaske
Interim Chief Financial Officer
(Principal Financial and Accounting Officer)
