

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2024

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:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
None	None	None

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, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "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 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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of November 25, 2024, the registrant had 70,466,103 shares of common stock, par value \$0.001 per share, issued and outstanding.

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PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

Mobivity Holdings Corp.
Condensed Consolidated Balance Sheets

	September 30, 2024	December 31, 2023
	(Unaudited)	(Audited)
ASSETS		
Current assets		
Cash	\$ 532,450	\$ 416,395
Accounts receivable, net of allowance for doubtful accounts \$35,909 and \$16,107, respectively	116,748	29,904
Current assets from discontinued operations	450,517	846,561
Other current assets	267,849	135,916
Total current assets	1,367,564	1,428,776
Right to use lease assets	600,624	770,623
Intangible assets and software development costs, net	57,589	65,916
Other assets	42,349	69,036
TOTAL ASSETS	\$ 2,068,126	\$ 2,334,351
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities		
Accounts payable	\$ 586,155	\$ 115,053
Liabilities from discontinued operations	2,261,892	3,257,088
Accrued interest	329,742	21,474
Accrued and deferred personnel compensation	288,064	272,247
Deferred revenue and customer deposits	20,684	155,472
Related party notes payable, net - current maturities	3,840,625	3,072,500
Notes payable, net - current maturities	—	7,154
Operating lease liability, current	295,486	276,072
Other current liabilities	468,125	248,434
Total current liabilities	8,090,773	7,425,494
Non-current liabilities		
Related party notes payable, net - long term	8,000,858	4,413,987
Notes payable, net - long term	224,836	265,959
Operating lease liability	436,278	660,852
Total non-current liabilities	8,661,972	5,340,798
Total liabilities	16,752,745	12,766,292
Stockholders' deficit		
Common stock, \$0.001 par value; 100,000,000 shares authorized; 70,466,103 and 67,949,709, shares issued and outstanding	70,464	67,950
Equity payable	336,420	989,947
Additional paid-in capital	122,035,163	118,624,601
Accumulated other comprehensive loss	62,856	(153,831)
Accumulated deficit	(137,189,522)	(129,960,608)
Total stockholders' deficit	(14,684,619)	(10,431,941)
TOTAL LIABILITIES AND STOCKHOLDERS' DEFICIT	\$ 2,068,126	\$ 2,334,351

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Condensed Consolidated Statements of Operations and Comprehensive Loss
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenues				
Revenues	\$ 226,208	\$ 50,180	\$ 900,008	\$ 183,413
Cost of revenues	120,125	35,671	541,161	122,782
Gross profit	106,083	14,509	358,847	60,631
Operating expenses				
Bad Debt Expense	(7,575)	—	14,849	—
General and administrative	229,968	1,352,383	542,990	2,250,757
Sales and marketing	197,713	132,518	541,762	310,323
Engineering, research, and development	323,752	79,875	840,207	196,376
Depreciation and amortization	612	1,038	2,812	4,022
Total operating expenses	744,470	1,565,814	1,942,620	2,761,478
Loss from operations	(638,387)	(1,551,305)	(1,583,773)	(2,700,847)
Other income/(expense)				
Loss of settlement of debt	(6,514)	—	(7,699)	(370)
Interest expense	(529,841)	(237,376)	(1,429,977)	(720,265)
Settlement Losses	—	(399)	—	(870)
Foreign currency gain	—	(3)	(7)	(13)
Total other income/(expense)	(536,355)	(237,778)	(1,437,683)	(721,518)
Loss before income taxes	(1,174,742)	(1,789,083)	(3,021,456)	(3,422,365)
Income tax expense	—	—	—	—
Net loss from continuing operations	(1,174,742)	(1,789,083)	(3,021,456)	(3,422,365)
Loss from discontinued operations	(1,283,810)	(1,989,189)	(4,207,458)	(5,106,164)
Net Loss	(2,458,552)	(3,778,272)	(7,228,914)	(8,528,529)
Other comprehensive loss, net of income tax				
Foreign currency translation adjustments	1,358	91,825	216,687	123,190
Comprehensive loss	\$ (1,173,384)	\$ (1,697,258)	\$ (2,804,769)	\$ (3,299,175)
Basic and Diluted	\$ (0.03)	\$ (0.06)	\$ (0.10)	\$ (0.13)
Weighted average number of shares:				
Basic and Diluted	70,482,976	66,785,952	69,719,515	64,878,021

See accompanying notes to consolidated financial statements (unaudited).

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

	Common Stock		Equity Payable	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Dollars					
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 warrant exercise	3,587,487	3,587	—	3,583,900	—	—	3,587,487
Issuance of common stock for settlement of interest payable on related party debt	163,757	164	(7,713)	223,773	—	—	216,224
RSU's issued - termination of director's service	545,012	545	—	(545)	—	—	—
Stock based compensation	—	—	—	810,157	—	—	810,157
Foreign currency translation adjustment	—	—	—	—	31,502	—	31,502
Net loss	—	—	—	—	—	(2,478,175)	(2,478,175)
Balance, March 31, 2023	65,607,411	\$ 65,607	\$ 317,086	\$ 113,423,638	\$ (69,461)	\$ (120,374,584)	\$ (6,637,714)
Issuance of common stock for PIPE financing	—	—	—	—	—	—	—
Fair market value of options issued with related party debt	190,156	191	(9,768)	216,033	—	—	206,456
Stock based compensation	—	—	—	228,577	—	—	\$ 228,577
Foreign currency translation adjustment	—	—	—	—	(137)	—	(137)
Net loss	—	—	—	—	—	(2,272,082)	(2,272,082)
Balance, June 30, 2023	65,797,567	65,798	307,318	113,868,248	(69,598)	(122,646,666)	(8,474,900)
Issuance of common stock for warrant exercise	1,960,976	1,961	—	1,606,039	—	—	1,608,000
Fair market value of options issued with related party debt	—	—	—	28,463	—	—	28,463
Issuance of common stock for settlement of interest payable on related party debt	191,166	191	(206,456)	206,265	—	—	—
Stock based compensation	—	—	—	1,429,341	—	—	\$ 1,429,341
Foreign currency translation adjustment	—	—	—	—	91,825	—	91,825
Net loss	—	—	—	—	—	(3,778,272)	(3,778,272)
Balance, September 30, 2023	67,949,709	\$ 67,950	\$ 100,862	\$ 117,138,356	\$ 22,227	\$ (126,424,938)	\$ (9,095,543)

	Common Stock		Equity Payable	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Dollars					
Balance, December 31, 2023	67,949,709	\$ 67,950	\$ 989,947	\$ 118,624,601	\$ (153,831)	\$ (129,960,608)	\$ (10,431,941)
Fair value of options issued with related party debt	—	—	—	466,594	—	—	466,594
Stock based compensation - Employees	—	—	—	112,660	—	—	112,660
Stock Based Compensation - Directors	—	—	—	81,250	—	—	81,250
Foreign currency translation adjustment	—	—	—	—	217,929	—	217,929
Net loss	—	—	—	—	—	(2,254,242)	(2,254,242)
Balance, March 31, 2024	67,949,709	\$ 67,950	\$ 989,947	\$ 119,285,105	\$ 64,098	\$ (132,214,850)	\$ (11,807,750)
Fair value of options issued with related party debt	—	—	—	619,191	—	—	619,191
Issuance of common stock for settlement of interest payable on related party debt	—	—	465,996	—	—	—	465,996
Stock based compensation - Employees	—	—	—	131,414	—	—	131,414
Stock based compensation -Directors	—	—	—	81,249	—	—	81,249
Foreign currency translation adjustment	—	—	—	—	(2,600)	—	(2,600)
Net loss	—	—	—	—	—	(2,516,120)	(2,516,120)
Balance, June 30, 2024	67,949,709	\$ 67,950	\$ 1,455,943	\$ 120,116,959	\$ 61,498	\$ (134,730,970)	\$ (13,028,620)
Issuance of common stock for settlement of interest payable on related party debt	2,516,394	2,514	(1,355,081)	1,389,977	—	—	37,410
Interest Payable on related party debt recorded to equity payable	—	—	235,558	—	—	—	235,558
Fair market value of options issued with related party debt	—	—	—	298,188	—	—	298,188
Stock based compensation - Employees	—	—	—	148,789	—	—	148,789
Stock Based Compensation - Directors	—	—	—	81,250	—	—	81,250
Foreign currency translation adjustment	—	—	—	—	1,358	—	1,358
Net loss	—	—	—	—	—	(2,458,552)	(2,458,552)
Balance, September 30, 2024	70,466,103	70,464	336,420	122,035,163	62,856	(137,189,522)	(14,684,619)

See accompanying notes to consolidated financial statements (unaudited).

Mobivity Holdings Corp.
Condensed Consolidated Statements of Cash Flows
(Unaudited)

	Nine Months Ended September 30,	
	2024	2023
OPERATING ACTIVITIES		
Net Loss	\$ (7,228,914)	\$ (8,528,529)
Net loss from discontinued operations	4,207,458	5,106,164
Adjustments to reconcile net loss to net cash used in operating activities:		
Loss on Settlement of Debt - related party	37,410	10,857
Bad debt expense	14,849	—
Stock-based compensation	636,612	—
Loss on disposal of fixed assets	—	—
Intangible Asset Impairment	—	—
Depreciation and amortization expense	48,341	162,209
Amortization of Debt Discount	372,847	89,349
Increase (decrease) in cash resulting from changes in:		
Accounts receivable	(101,693)	683,060
Other current assets	—	9,634
Other assets	—	(13,250)
Accounts payable	471,102	104,093
Prepaid Expenses	(131,933)	(46,231)
Accrued interest	1,009,822	621,806
Accrued and deferred personnel compensation	15,939	(457,687)
Other liabilities - current	219,691	(34,036)
Lease Operating Assets	(35,161)	(30,155)
Deferred revenue and customer deposits	(134,788)	(684,175)
Net Cash Used in Operating Activities of continuing operations	(598,418)	(3,006,891)
Net Cash Used in Operating Activities of discontinuing operations	(4,806,610)	(2,638,089)
Net cash used in operating activities	\$ (5,405,028)	\$ (5,644,980)
INVESTING ACTIVITIES		
Cash paid for patent activities	(8,768)	(6,300)
Purchases of equipment	(4,559)	(18,252)
Net cash used in investing activities	(13,327)	(24,552)
FINANCING ACTIVITIES		
Payments on notes payable	(7,035)	(20,004)
Proceeds from Related Party Debt	5,325,000	400,000
Proceeds from conversion of common stock warrants	—	5,195,487
Net cash provided by (used in) financing activities	5,317,965	5,575,483
Effect of foreign currency translation on cash flow	216,445	125,243
Net Change in cash	116,055	31,194
Cash at beginning of period	\$ 416,395	\$ 426,740
Cash at end of period	532,450	457,934
Supplemental disclosures		
Interest paid	\$ 11,571	\$ 9,110
Non-cash investing and financing activities:		
Fair Value of Options issued with related party debt	\$ 1,389,673	\$ 28,463
Shares Issued for settlement of debt	—	411,823
Shares issued for settlement of debt - related party	701,554	223,937
Par Value of RSU's issued - termination of director's service	\$ —	\$ 545

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Nature of Operations and Basis of Presentation

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 RewardsTM 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.

On September 25, 2024, the Company entered into an Asset Purchase Agreement (the “Asset Purchase Agreement”) with SMS Factory, Inc., a Florida corporation (“SMS Factory”). Pursuant to the Asset Purchase Agreement, SMS Factory purchased all of the right, title and interest in the Company’s SMS/MMS text messaging customer accounts, excluding certain Excluded Assets (as defined in the Asset Purchase Agreement) utilized in the operation of the Company’s SMS/MMS text messaging platform business (the “Business Assets”) effective as of September 25, 2024 (the “Closing Date”). Given that the effect of the Asset Purchase Agreement meets all the initial criteria of ASC Topic 205-20, *Presentation of Financial Statements – Discontinued Operations* for the classification of discontinued operations, the assets, liabilities, and operating results of Mobivity Holdings Corp have been classified as discontinued operations as of September 30, 2024 and December 31, 2023 and for the three and nine months ended September 30, 2024 and 2023. The consolidated financial statements for the prior periods have been adjusted to reflect comparable information.

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) for interim financial information and with the instructions to Form 10-Q and Rule 8-03 of Regulation S-X promulgated by the Securities and Exchange Commission (“SEC”). Accordingly, they do not include all of the information and disclosures required by GAAP for annual financial statements. The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto in the Company’s Annual Report on Form 10-K for the year ended December 31, 2024 filed with the SEC on April 16, 2024.

In the opinion of management, such statements include all adjustments (consisting only of normal recurring items) which are considered necessary for a fair presentation of our condensed consolidated financial statements as of September 30, 2024, and for the three and nine months ended September 30, 2024 and 2023. The results of operations for the three and nine months ended September 30, 2024 are not necessarily indicative of the operating results for the full year ending December 31, 2024.

2. Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. 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. 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 did not affect previously reported net losses.

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

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 September 30, 2024, and December 31, 2023 we recorded an allowance for doubtful accounts of \$35,909 and \$16,107, respectively.

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.

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We conducted our annual impairment tests of goodwill as of December 31, 2023. As a result of these tests, we had a total impairment charge of \$0.

Intangible assets consist of patents and trademarks, purchased customer contracts, purchased customer and merchant relationships, purchased trade names, purchased technology, non-compete agreements, and software development costs. Intangible assets are amortized over the period of estimated benefit using the straight-line method and estimated useful lives ranging from one year to twenty years. No significant residual value is estimated for intangible assets.

The Company's evaluation of its goodwill and intangible assets resulted in no impairment charges for the nine months ended September 30, 2024 and 2023, respectively.

Software Development Costs

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

Capitalized costs for those products that are canceled or abandoned are charged to product development expenses 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 assets resulted in no impairment charges for the three months ended September 30, 2024 and 2023, respectively.

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 ASC 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.

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, 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 fees 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.

Accounting Standards Update ("ASU") No. 2014-09, Revenue from Contracts with Customers ("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 under ASC 606 through the following steps:

- identification of the contract, or contracts, with a customer;
- identification of the performance obligations in the contract;
- identification 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 nine months ended September 30, 2024 and 2023, two customers accounted for 52% and 51% of our revenues, respectively.

Comprehensive 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 a comprehensive loss. For the three months ended September 30, 2024 and 2023, the comprehensive loss was \$1,173,384, and \$1,697,258 respectively. For the nine months ended September 30, 2024 and 2023, the comprehensive loss was \$2,804,769 and \$3,299,175 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 trade shows, sales enablement, content creation, paid engagement and other direct costs. Advertising expense was \$151,953 and \$169,549 for the nine months ended September 30, 2024 and 2023, 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.

Net Loss Per Common Share

Basic net loss per share excludes any dilutive effects of options, shares subject to repurchase, and warrants. Diluted net loss per share includes the impact of potentially dilutive securities. During the three and nine months ended September 30, 2024 and 2023, we had securities outstanding which could potentially dilute basic earnings per share in the future. Stock-based compensation, stock options and warrants were excluded from the computation of diluted net loss per share when their effect would have been anti-dilutive.

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 is 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 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. Discontinued Operations

On September 25, 2024, the Company entered into an Asset Purchase Agreement (the "Asset Purchase Agreement") with SMS Factory, Inc., a Florida corporation ("SMS Factory"). Pursuant to the Asset Purchase Agreement, SMS Factory purchased all of the right, title and interest in the Company's SMS/MMS text messaging customer accounts, excluding certain Excluded Assets (as defined in the Asset Purchase Agreement) utilized in the operation of the Company's SMS/MMS text messaging platform business (the "Business Assets") effective as of September 25, 2024 (the "Closing Date").

The following table presents a reconciliation of the carrying amounts of the major classes of these assets and liabilities to the current assets and liabilities of discontinued operations as presented on the Company's Consolidated Balance Sheets:

	<u>As of September 30, 2024</u>	<u>As of December 31, 2023</u>
Assets		\$
Current assets		
Accounts receivable	\$ 450,517	\$ 846,561
Total Assets	<u>\$ 450,517</u>	<u>\$ 846,561</u>
Liabilities		
Current liabilities		
Accounts Payable	\$ 2,261,892	\$ 3,257,088
Total Liabilities	<u>\$ 2,261,892</u>	<u>\$ 3,257,088</u>

The following table provides details about the major classes of line items constituting "Income (loss) from discontinued operations" as presented on the Company's Consolidated Statements of Loss:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenues	\$ 1,072,865	\$ 1,582,891	\$ 3,473,012	\$ 5,192,311
Cost of Revenue	570,704	1,125,209	2,093,161	3,475,879
Gross Profit	<u>502,161</u>	<u>457,682</u>	<u>1,379,851</u>	<u>1,716,432</u>

Operating Expenses				
Bad Debt Expense	(29,232)	—	70,428	—
General and administrative	476,788	940,240	1,381,340	2,657,125
Sales and marketing	566,510	575,880	1,837,504	1,692,206
Engineering, research and development	738,649	888,671	2,254,966	2,310,888
Depreciation and amortization	2,360	29,380	13,335	126,880
Total operating expenses	1,755,075	2,434,171	5,557,573	6,787,099
Loss from Operations	(1,252,914)	(1,976,489)	(4,177,722)	(5,070,667)
Other income/(expense)				
Loss on settlement of debt	(30,896)	—	(29,711)	(10,487)
Interest expense	—	—	—	—
Settlement Losses	—	(12,601)	—	(24,630)
Foreign currency gain	—	(99)	(25)	(380)
Total other income/(expense)	(30,896)	(12,700)	(29,736)	(35,497)
Net Loss from Discontinued Operations	\$ (1,283,810)	\$ (1,989,189)	\$ (4,207,458)	\$ (5,106,164)

The Company's execution of the Asset Purchase Agreement has met the criteria to be reported as discontinued operations. In accordance with GAAP, assets and liabilities of discontinued operations are presented separately in the Consolidated Balance Sheets, and results of discontinued operations are reported as a separate component of Consolidated net loss in the Consolidated Statements of Loss, for all periods presented, resulting in changes to the presentation of certain prior period amounts. Cash flows from discontinued operations are not reported separately in the Consolidated Statements of Cash Flows. The assets and liabilities of discontinued operations are presented separately in the Consolidated Balance Sheets for all periods presented.

4. Going Concern

We had \$532,450 of cash as of September 30, 2024. We had a net loss of \$7,228,914 for the nine months ended September 30, 2024, and we used \$5,405,028 of cash in our operating activities during that time. In the nine months ended September 30, 2023 we had a net loss of \$8,528,529 and used \$5,644,980 of cash in our operating expenses. We raised \$3.0 million in cash Convertible Notes issued during 2023. We raised an additional \$5.3 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, and 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 \$137.2 million as of September 30, 2024. 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 12 months with 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. Intangibles

Intangible assets

The following table presents details of our purchased intangible assets as of September 30, 2024 and December 31, 2023:

	Balance at December 31, 2023	Additions	Impairments	Amortization	Foreign Exchange and Other	Balance at September 30, 2024
Patents and trademarks	\$ 53,663	\$ 8,768	\$ —	\$ (4,930)	\$ —	\$ 57,501
Customer and merchant relationships	6,138	—	—	\$ (6,138)	—	—
Trade names	1,609	—	—	\$ (1,609)	—	—
	<u>\$ 61,410</u>	<u>\$ 8,768</u>	<u>\$ —</u>	<u>\$ (12,677)</u>	<u>\$ —</u>	<u>\$ 57,501</u>

The intangible assets are being amortized on a straight-line basis over their estimated useful lives of one year to twenty years.

Amortization expense for intangible assets was \$12,677 and \$28,689 for the nine months ended September 30, 2024 and 2023, respectively, and is included in depreciation and amortization on the accompanying unaudited condensed consolidated statements of operations and comprehensive loss.

Amortization expense for intangible assets was \$1,819 and \$10,747 for the three months ended September 30, 2024 and 2023, respectively.

The estimated future amortization expense of our intangible assets as of September 30, 2024 was as follows:

Year ending December 31,	Amount
2024	\$ 1,811
2025	\$ 7,246
2026	\$ 7,246
2027	\$ 7,246
2028	\$ 7,246
Thereafter	\$ 26,706
Total	<u>\$ 57,501</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 following table presents details of our software development costs as of September 30, 2024 and December 31, 2023:

	Balance at December 31, 2023	Additions	Amortization	Balance at September 30, 2024
Software Development Costs	\$ 4,506	\$ —	\$ (4,418)	\$ 88
	<u>\$ 4,506</u>	<u>\$ —</u>	<u>\$ (4,418)</u>	<u>\$ 88</u>

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

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Amortization expense for software development costs was \$1,140 and \$18,120 for the three months ended September 30, 2024 and 2023, respectively, and is included in depreciation and amortization on the accompanying unaudited condensed consolidated statements of operations and comprehensive loss.

Amortization expense for software development costs was \$4,418 and \$95,694 for the nine months ended September 30, 2024 and 2023, respectively.

The estimated future amortization expense of software development costs as of September 30, 2024 is as follows:

Year ending December 31,	Amount
2024	\$ 88
2025	—
2026	—
2027	—
2028	—
Thereafter	—
Total	\$ 88

6. Operating Lease Assets

The Company entered into a lease agreement on February 1, 2021, for 8,898 square feet, for its office facilities in Chandler, AZ through January 2027. Monthly rental payments, excluding common area maintenance charges, are \$25,953 to \$28,733. The first twelve months of the lease included a 50% abatement period and a deposit of \$110,000 was required. The lessor contributed \$110,000 towards the purchase of office furniture as part of the lease agreement. As of September 30, 2024, we have an operating lease asset balance of \$600,624 and an operating lease liability balance of \$731,764 recorded in accordance with ASC 842, Leases (ASC “842”).

The Company entered in to a sublease on March 1, 2024 for its office facilities in Chandler, AZ through February 28, 2025. Monthly rental payments including rental of office furniture and excluding taxes, are \$24,470.

The following are additional details related to leases recorded on our balance sheet as of September 30, 2024:

Leases	Classification	Balance at September 30, 2024
Assets		
Current		
Operating lease assets	Operating lease assets	\$ —
Noncurrent		
Operating lease assets	Noncurrent operating lease assets	\$ 600,624
Total lease assets		\$ 600,624
Liabilities		
Current		
Operating lease liabilities	Operating lease liabilities	\$ 295,486
Noncurrent		
Operating lease liabilities	Noncurrent operating lease liabilities	\$ 436,278
Total lease liabilities		\$ 731,764

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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,

2024	\$	82,863
2025		337,568
2026		344,241
2027		28,733
2028		—
Thereafter		—
Total future lease payments		793,405
Less: imputed interest		(61,641)
Total	\$	731,764

Weighted Average Remaining Lease Term (years)

Operating leases	2.33
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Weighted Average Discount Rate

Operating leases	6.75%
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7. Notes Payable and Interest Expense

The following table presents details of our notes payable as of September 30, 2024 and December 31, 2023:

Facility	Maturity	Interest Rate	Balance at September 30, 2024	Balance at December 31, 2023
ACOA Note	February 1, 2024	15%	—	7,154
Related Party Secured Promissory Note	June 30, 2026	8%	5,718,738	5,677,251
Related Party Convertible Notes	various	15%	5,850,870	1,587,361
Related Party Unsecured Promissory Note	June 30, 2026	8%	271,875	271,875
Convertible Notes	Various	15%	224,836	215,959
Total Debt			12,066,319	7,759,600
Less current portion			(3,840,625)	(3,079,654)
Long-term debt, net of current portion			\$ 8,225,694	\$ 4,679,946

ACOA Note

On November 6, 2017, Livelenz (a wholly owned subsidiary of the Company), 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, and the commitments will terminate, on February 1, 2024. The monthly principal payment amount of \$3,000 CAD increased to \$3,500 CAD beginning on November 1, 2019, \$4,000 CAD on August 1, 2021, \$4,500 CAD on August 1, 2022, and \$2,215 CAD during the remaining term of the agreement. Payments from April-December of 2020 were voluntarily deferred by ACOA due to COVID-19.

During the nine months ended September 30, 2024 we repaid \$7,035 USD of principal. The final payment was made on February 28, 2024 and the loan is paid in full.

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”).

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 January 31, 2023, the Company then entered into Amendment No. 1 (the “Amendment”), which amends our existing Credit Facility Agreement^[1], dated as of November 11, 2022, between the Company and Thomas B. Akin, and any convertible notes issued thereunder. The Amendment amends the existing Credit Facility Agreement to extend the maturity of the agreement and related convertible notes thereunder until December 1, 2025. Principal payments have been deferred to a period beginning on January 1, 2024 and ending December 1, 2025, and further provides that any accrued interest on unpaid advances under the agreement is to be paid quarterly in shares of our common stock, at a price per share equal to the volume-weighted average price of our common stock quoted on the Over-The Counter Venture Market operated by OTC Markets Group Inc. (“OTCQB®”) over the ninety (90) trading days immediately preceding such date. The Amendment provides for corresponding amendments to the form of convertible notes to be issued under the Credit Agreement in the future and any outstanding convertible notes issued under the existing Credit Facility Agreement. The Amendment was considered a debt modification as the cash flows under the amended terms do not differ by at least 10% from the cash flows under the original agreement.

On January 31, 2024 amended terms were agreed upon and the Company then entered into Amendment No. 2 (the “Amendment”) signed on May 3, 2024, which amends the terms of the Credit Facility Agreement, between the Company and Thomas B. Akin, and any convertible notes issued thereunder. The Amendment amends the existing Credit Facility Agreement to extend the maturity of the agreement and related convertible notes thereunder until June 30, 2026. Principal payments have been deferred to a period beginning on July 31, 2024 and ending June 30, 2026.

On August 13, 2024 amended terms were agreed upon and the Company then entered into Amendment No. 3 (the “Amendment”) signed on May 3, 2024, which amends the terms of the Credit Facility Agreement, between the Company and Thomas B. Akin, and any convertible notes issued thereunder. The Amendment amends the existing Credit Facility Agreement to extend the maturity of the agreement and related convertible notes thereunder until June 30, 2026. Principal payments have been deferred to a period beginning on October 31, 2024 and ending September 30, 2026.

During the nine months ended September 30, 2024, a total of \$681,432 of interest was accrued by the company. The company recorded amortized discount expense of \$64,053.

As of September 30, 2024, the Company had drawn a total of \$5,873,125, with a debt discount of \$201,087 for a net principal balance of \$5,672,038 and has equity payable balance \$336,417.

Related Party 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.

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”).

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During first quarter 2024 the Company issued 8 Convertible Notes payable to related parties for \$1,950,000. As an inducement we issued 3,249,997 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 the second quarter of 2024 the Company issued 8 Convertible Notes payable to related parties for \$2,100,000. As an inducement we issued 3,499,997 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 the third quarter of 2024 the Company issued 4 Convertible Notes payable to related parties for \$1,275,000. As an inducement we issued 2,124,999 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 the nine months ended September 30, 2024 accrued interest of \$293,735 was recorded in connection with the related party convertible notes. The Company recorded \$299,917 in amortized debt discount in connections with related party convertible notes.

As of September 30, 2024 the Convertible Notes issued to related parties had a principal balance of \$7,325,000 with a debt discount of \$1,425,974 for a net principal balance of \$5,899,026 and accrued interest of \$313,233.

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 UP Note.

On January 31, 2023, the Lender agreed to postpone the 24-month repayment period to a later period commencing on January 31, 2024, and further agreed that interest accrued on the loan between July 1, 2022 and December 1, 2025 is to be settled in shares of the Company's common stock quarterly.

On January 31 2024, the Lender agreed to postpone the 24-month repayment period to a later period commencing on July 31, 2024.

During the nine months ended September 30, 2024, a total of \$20,122 of interest was accrued by the company and recorded to equity payable.

As of September 30, 2024, the Company had an outstanding principal balance of \$271,875, an equity payable balance of \$20,122 of accrued interest.

Convertible Notes

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")

During the nine months ended September 30, 2024 the company recorded accrued interest of \$15,222 in connection with convertible notes and \$8,876 in amortized debt discount.

As of September 30, 2024 the Convertible Notes had a principal balance of \$250,000 with a debt discount of \$25,165 for a net principal balance of \$224,835 and accrued interest of \$16,509.

Interest Expense

Interest expense was \$529,841 and \$237,376 during the three months ended September 30, 2024 and 2023, respectively.

Interest expense was \$1,429,977 and \$720,265 during the nine months ended September 30, 2024 and 2023, respectively.

8. Stockholders' Equity

Common Stock and Equity Payable

2023

On January 31, 2023 a total of 545,012 shares were issued to John Harris, a former director. The shares were issued based on the total Restricted Stock Units earned by Mr. Harris as director compensation that were fully vested as of March 29, 2022. Restricted stock expense is recorded on the date it vests and no expense was recognized during the six months ended June 30, 2023.

On March 27, 2023 a total of 154,106 shares of common stock were granted from equity payable to Thomas Akin as settlement of \$166,432 of interest payable. The Company recorded a loss on settlement of interest payable of \$44,325 on December 31, 2022.

On March 27, 2023 a total of 9,651 shares of common stock were granted from equity payable to Talkot Fund LP as settlement of \$10,423 of interest payable. The Company recorded a loss on settlement of interest payable of \$2,757 on December 31, 2022.

On March 31, 2023 a total of \$195,171 of interest was accrued and settled to equity payable for the issuance of 180,715 shares of common stock. The company recorded a loss of settlement of interest payable of \$10,315.

On March 31, 2023 a total of \$10,196 of interest was accrued and settled to equity payable for the issuance of 9,441 shares of common stock. The company recorded a loss of settlement of interest payable of \$542.

During March of 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 \$3,587,487. As an inducement for the holder's exercise of the warrants, we issued the holders' 1,792,745 new warrants to purchase common stock at \$2.00 per share over a three-year period expiring in March 2026. 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.

On June 30, 2023 a total of \$196,148 of interest was accrued and settled to equity payable for the issuance of 181,620 shares of common stock.

On June 30, 2023 a total of \$10,309 of interest was accrued and settled to equity payable for the issuance of 9,546 shares of common stock.

During August and September of 2023, 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.

During the nine months ended September 30, 2023 a total of 163,757 shares were issued from stock payable related to related party accrued interest.

As of the September 30, 2023 we had an equity payable balance of \$100,862.

2024

On June 30, 2024 a total of \$445,379 of interest was accrued and settled to equity payable for the issuance of 1,093,267 shares of common stock.

On June 30, 2024 a total of \$20,617 of interest was accrued and settled to equity payable for the issuance of 50,609 shares of common stock.

On September 30, 2024 a total of \$225,136 of interest was accrued and settled to equity payable for the issuance of 964,593 shares of common stock.

On September 30, 2024 a total of \$10,422 of interest was accrued and settled to equity payable for the issuance of 44,653 shares of common stock.

During the nine months ended September 30, 2024 2,516,394 shares were issued for \$1,355,081 from equity payable and \$235,558 equity payable was recorded.

As of the nine months ended September 30, 2024 we had an equity payable balance of \$336,420.

Stock-based PlansStock Option Activity

The following table summarizes stock option activity for the nine months ended September 30, 2024.

	Options		Weighted Average Exercise Price		Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2022	6,691,216	\$	1.19		5.86
Granted	2,678,500	\$	—		—
Exercised	—	\$	—		—
Forfeited/canceled	(329,893)	\$	—		—
Expired	(1,742,468)	\$	0.90		7.28
Outstanding at December 31, 2023	7,297,355	\$	—		—
Granted	260,000	\$	—		—
Exercised	—	\$	—		—
Forfeited/canceled	(949,520)	\$	—		—
Expired	(2,163,335)	\$	—		—
Outstanding at September 30, 2024	4,444,500	\$	0.92		7.72

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.

2024

On April 1, 2024, the Company granted two employees 250,000 options to purchase shares of the Company's common stock at the closing price as of April 1, 2024 of \$0.502 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 April 1, 2034. The total estimated value using the Black-Scholes Model, based on a volatility rate of 73.63% and an option fair value of \$0.212377 was \$53,094.

On August 14, 2024, the Company granted one employee 10,000 options to purchase shares of the Company's common stock at the closing price as of August 14, 2024 of \$0.502 per share. The option shares will vest 25% immediately, then equally in 36 monthly installments thereafter, and are exercisable until August 14, 2034. The total estimated value using the Black-Scholes Model, based on a volatility rate of 73.63% and an option fair value of \$0.0724 was \$724.

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Stock-Based Compensation Expense from Stock Options and Warrants

The impact on our results of operations of recording stock-based compensation expense for the three and nine months ended September 30, 2024 and 2023 were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
General and administrative	\$ 3,261	\$ 62,599	\$ (35,842)	\$ 181,382
Sales and marketing	105,100	108,348	301,245	248,790
Engineering, research, and development	40,429	46,830	127,461	119,334
	<u>\$ 148,790</u>	<u>\$ 217,777</u>	<u>\$ 392,864</u>	<u>\$ 549,506</u>

Valuation Assumptions

The fair value of each stock option award was calculated on the date of the grant using the Black-Scholes option pricing model. The following weighted average assumptions were used for the nine months ended September 30, 2024 and 2023.

	Nine Months Ended September 30,	
	2024	2023
Risk-free interest rate	4.69%	3.99%
Expected life (years)	7.00	7.50
Expected dividend yield	—%	—%
Expected volatility	73.63%	73.47%

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

The expected life of the stock options represents the weighted-average period that the stock options are expected to remain outstanding and was determined based on the 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 the Company's 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 2024 and 2023 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 for the year ended December 31, 2023 and for the nine months ended September 30, 2024:

	Shares
Outstanding at December 31, 2022	1,929,933
Awarded	414,104
Released	(545,012)
Canceled/forfeited/expired	—
Outstanding at December 31, 2023	1,799,025
Awarded	715,205
Released	—
Canceled/forfeited/expired	—
Outstanding at September 30, 2024	<u>2,514,230</u>
Expected to vest at September 30, 2024	2,514,230
Vested at September 30, 2024	2,514,230
Unvested at September 30, 2024	—
Unrecognized expense at September 30, 2024	\$ —

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 \$0.64 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.

In the nine months ended September 30, 2023 the Company recorded \$195,006 in restricted stock expense as board compensation.

2024

On March 31, 2024 the company granted five independent directors a total of 162,500 restricted stock units. The units were valued at \$81,250 or \$0.50 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, 2024 the company granted five independent directors a total of 187,210 restricted stock units. The units were valued at \$81,249 or \$0.434 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) 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, 2024 the company granted five independent directors a total of 365,495 restricted stock units. The units were valued at \$81,250 or \$0.222 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, 2026, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

In the nine months ended September 30, 2024, the Company recorded \$243,749 in restricted stock expense as board compensation.

Stock Based Compensation from Restricted Stock

The impact on our results of operations of recording stock-based compensation expense for restricted stock units for the three and nine months ended September 30, 2024 and 2023 was as follows:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2024	2023	2024	2023
General and administrative	\$ 81,250	\$ 65,001	\$ 243,749	\$ 195,006
	<u>\$ 81,250</u>	<u>\$ 65,001</u>	<u>\$ 243,749</u>	<u>\$ 195,006</u>

As of September 30, 2024, there was no unearned restricted stock unit compensation.

Warrants

The following table summarizes investor warrants as of September 30, 2024 and the years ended December 31, 2023 and 2022:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2022	6,147,898	\$ 1.45	2.27
Granted	9,563,787	\$ —	—
Exercised	(5,548,463)	\$ —	—
Canceled/forfeited/expired	—	\$ —	—
Outstanding at December 31, 2023	10,163,222	\$ 0.94	2.48
Granted	8,916,660	\$ —	—
Exercised	—	\$ —	—
Canceled/forfeited/expired	—	\$ —	—
Outstanding at September 30, 2024	<u>19,079,882</u>	<u>\$ 0.77</u>	<u>2.13</u>

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.

2024

During the first quarter of 2024, one warrant holders was issued 3,291,664 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 \$466,594 of stock-based expense related to warrants issued with issuance of convertible notes. The total estimated value of the warrants using the Black-Scholes Model is based on an average volatility rate of 93% and an option fair value of \$0.1418.

During the second quarter of 2024, one warrant holders was issued 3,499,997 warrants as an inducement for Convertible Notes issued at the exercise price of \$.60 per share, resulting in additional capital of \$2,100,000. The Company recorded \$371,242 of stock-based expense related to warrants issued with issuance of convertible notes. The total estimated value of the warrants using the Black-Scholes Model is based on an average volatility rate of 91% and an option fair value of \$0.1768.

During the third quarter of 2024, one warrant holders was issued 2,124,999 warrants as an inducement for Convertible Notes issued at the exercise price of \$.60 per share, resulting in additional capital of \$1,275,000. The Company recorded \$176,219 of stock-based expense related to warrants issued with issuance of convertible notes. The total estimated value of the warrants using the Black-Scholes Model is based on an average volatility rate of 104% and an option fair value of \$0.1403.

9. Fair Value Measurements

Fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, the authoritative guidance establishes a three-tier value hierarchy, which prioritizes the inputs used in measuring fair value as follows: (Level 1) observable inputs such as quoted prices in active markets; (Level 2) inputs other than the quoted prices in active markets that are observable either directly or indirectly; and (Level 3) unobservable inputs in which there is little or no market data, which requires us to develop our own assumptions. This hierarchy requires companies to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. On a recurring basis, we measure certain financial assets and liabilities at fair value.

The following table presents assets that are measured and recognized at fair value as of September 30, 2024 on a recurring and non-recurring basis:

Description	Level 1	Level 2	Level 3	Gains (Losses)
Goodwill (non-recurring)	\$ —	\$ —	\$ —	\$ —
Intangibles, net (non-recurring)	\$ —	\$ —	\$ 57,589	\$ —

The following table presents assets that are measured and recognized at fair value as of December 31, 2023 on a recurring and non-recurring basis:

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

10. 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 Defendant’s motion to dismiss. 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.

Ruhi Reimer vs. Checkers Drive-In Restaurants, Inc. - JAMS Ref No. 5410000618 – this is a single Claimant arbitration action filed against Mobivity’s business partner alleging that text messages were sent to the consumer in violation of the TCPA’s regulations relating to the National Do Not Call Registry. The parties are beginning discovery at this time and a Merits Hearing has been set for January 14, 2025. Based on our current understanding, we believe that the case is pretextual and was set up in advance by the Claimant and his attorneys. Because discovery has only just started, it is premature to assess whether there is any material risk of an adverse award.

Abdoud v. Circle K Stores Case – United States District Court, Dist. Arizona, Case No 2:23-cv-01683-DWL – this is a putative TCPA class action alleging that Mobivity and its business partner initiated text messages in violation of the TCPA’s regulations relating to the National Do Not Call Registry. We believe that plaintiff has sued the wrong defendant and that the client’s other servicer is actually responsible for any text messages that were sent to the putative class. We are actively attempting to persuade Plaintiff’s counsel to drop Mobivity from the suit.

Operating Lease

As of September 30, 2024, we have an operating lease asset balance for this lease of \$600,624 and an operating lease liability balance for this lease of \$731,764 recorded in accordance with ASC 842.

11. Related Party Transactions

Secured Promissory Notes

On June 30, 2021, we entered into a Credit Facility Agreement with Thomas Akin, one of the Company's directors (the "Lender"). The Credit Facility Agreement was amended on November 11, 2022 to allow the Company to borrow up to \$6,000,000. The Credit Facility Agreement was amended again on January 31, 2023 to extend the maturity of the agreement and related convertible notes thereunder until December 1, 2025. Principal payments have been deferred to a period beginning on January 1, 2024 and ending December 1, 2025.

As of September 30, 2024, the Company had drawn a total of \$5,873,125, with a debt discount of \$201,087 for a net principal balance of \$5,672,038 and has equity payable balance \$336,417.

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.

As of September 30, 2024, the Company had an outstanding principal balance of \$271,875, an equity payable balance of \$20,122 of accrued interest.

Convertible Notes

During first quarter of 2024, the Company issued 8 Convertible Notes payable to related parties for \$1,950,000. As an inducement we issued 3,249,997 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 the second quarter of 2024 the Company 8 Convertible Notes payable to related parties for \$2,100,000. As an inducement we issued 3,499,997 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 the third quarter of 2024 the Company issued 4 Convertible Notes payable to related parties for \$1,275,000. As an inducement we issued 2,124,999 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 September 30, 2024 the Convertible Notes issued to related parties had a principal balance of \$7,325,000 with a debt discount of \$1,425,974 for a net principal balance of \$5,899,026 and accrued interest of \$313,233.

For more details regarding the three related party transactions, please refer to Note 7 - Notes Payable and Interest Expense.

12. Sales of Certain Contracts

Acquisition by SMS Factory

On September 25, 2024, the Company entered into an Asset Purchase Agreement (the "Asset Purchase Agreement") with SMS Factory, Inc., a Florida corporation ("SMS Factory"). Pursuant to the Asset Purchase Agreement, SMS Factory purchased all of the right, title and interest in the Company's SMS/MMS text messaging customer accounts, excluding certain Excluded Assets (as defined in the Asset Purchase Agreement) utilized in the operation of the Company's SMS/MMS text messaging platform business (the "Business Assets") effective as of September 25, 2024 (the "Closing Date").

In consideration for the Business Assets, SMS Factory is expected to assume certain Performance Obligations and pay to the Company, for a period of two years following the Closing Date, an Earn-Out Payment in an amount equal to two times the Gross Profit earned from each Customer Account, including an upfront pre-payment of the Earn-Out Payment equal to \$303,000.

The Asset Purchase Agreement includes customary representations, warranties and covenants by the parties.

13. Subsequent Events

Convertible Notes

During October 2024, the Company issued one Convertible Notes to Thomas B. Akin for a total amount of \$350,000.

Related Party Notes Payable

The Company entered into Amendment No. 4 (the "Amendment") to Amended and Restated Credit Facility Agreement and Convertible Notes (the Credit Facility Agreement), signed on November 21, 2024, which amends the terms of the Credit Facility Agreement, between the Company and Thomas B. Akin, and any convertible notes issued thereunder. The Amendment amends the existing Credit Facility Agreement to extend the maturity of the agreement and related convertible notes thereunder until March 31, 2027. Principal payments have been deferred to a period beginning on April 30, 2025 and ending March 31, 2027.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

This Quarterly Report on Form 10-Q contains “forward-looking statements” as defined in Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, in connection with the Private Securities Litigation Reform Act of 1995 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. Such forward-looking statements include statements about our expectations, beliefs or intentions regarding our potential product offerings, business, financial condition, results of operations, strategies or prospects. You can identify forward-looking statements by the fact that these statements do not relate strictly to historical or current matters. Rather, forward-looking statements relate to anticipated or expected events, activities, trends, or results as of the date they are made and are often identified by the use of words such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” or “will,” and similar expressions or variations. Because forward-looking statements relate to matters that have not yet occurred, these statements are inherently subject to risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements. These factors include those risks disclosed under the caption “Risk Factors” included in our 2023 annual report on Form 10-K filed with the Securities and Exchange Commission, or the SEC, on April 17, 2024, and in our subsequent filings with the SEC. Furthermore, such forward-looking statements speak only as of the date of this report. We undertake no obligation to update any forward-looking statements to reflect events or circumstances occurring after the date of such statements.

Overview

Mobivity Holdings Corp. (the “Company” or “us”, “our”, or we”) 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, Recurrency™, enables

- Transformation of messy point-of-sale (POS) data collected from thousands of locations and digital environments 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 2 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 or implemented at all.

Recent Events

2024 Related Party Convertible Notes

During the first quarter of 2024 the Company issued 8 Convertible Notes payable to related parties for \$1,950,000. As an inducement we issued 3,249,997 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 the second quarter of 2024 the Company issued 8 Convertible Notes payable to related parties for \$2,100,000. As an inducement we issued 3,499,997 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 the third quarter of 2024 the Company issued 4 Convertible Notes payable to related parties for \$1,275,000. As an inducement we issued 2,124,999 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.

2024 Related Party Notes Payable

The Company entered into Amendment No. 2 (the “Amendment”) to Amended and Restated Credit Facility Agreement and Convertible Notes (the Credit Facility Agreement), signed on May 3, 2024, which amends the terms of the Credit Facility Agreement, between the Company and Thomas B. Akin, and any convertible notes issued thereunder. The Amendment amends the existing Credit Facility Agreement to extend the maturity of the agreement and related convertible notes thereunder until June 30, 2026. Principal payments have been deferred to a period beginning on July 31, 2024 and ending June 30, 2026.

Acquisition of Certain Contracts by SMS Factory

On September 25, 2024, the Company entered into an Asset Purchase Agreement (the “Asset Purchase Agreement”) with SMS Factory, Inc., a Florida corporation (“SMS Factory”). Pursuant to the Asset Purchase Agreement, SMS Factory purchased all of the right, title and interest in the Company’s SMS/MMS text messaging customer accounts, excluding certain Excluded Assets (as defined in the Asset Purchase Agreement) utilized in the operation of the Company’s SMS/MMS text messaging platform business (the “Business Assets”) effective as of September 25, 2024 (the “Closing Date”).

In consideration for the Business Assets, SMS Factory is expected to assume certain Performance Obligations and pay to the Company, for a period of two years following the Closing Date, an Earn-Out Payment in an amount equal to two times the Gross Profit earned from each Customer Account, including an upfront pre-payment of the Earn-Out Payment equal to \$303,000. The Asset Purchase Agreement includes customary representations, warranties and covenants by the parties.

Results of Operations

Revenues

Revenues consist primarily of those generated by 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.

Revenues for the three months ended September 30, 2024, were \$226,208 an increase of \$176,028 compared to \$50,180 for the same period in 2023.

Revenues for the nine months ended September 30, 2024, were \$900,008 an increase of \$716,595 compared to \$183,413 for the same period in 2023.

This decrease is primarily due to a decrease of in subscription revenue.

Cost of Revenues

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

Cost of revenues for the three months ended September 30, 2024, was \$120,125, an increase of \$84,454, or 237%, compared to \$35,671 for the same period in 2023.

Cost of revenues for the nine months ended September 30, 2024, was \$541,161, an increase of \$418,379, or 237%, compared to \$122,782 for the same period in 2023.

This increase is primarily due to an decrease in SMS/MMS Messaging costs.

Bad Debt Expense

Bad Debt expense for the nine months ended September 30, 2024 was \$14,849, an increase of \$14,849, or 100%, compared to \$0 for the nine months ended September 30, 2023. This increase is due to a decrease in past due invoices.

Bad Debt expense for the three months ended September 30, 2024 was a gain of \$7,575 an decrease of \$7,575, or 100%, compared to \$0 for the three months ended September 30, 2023. This decrease is due to a decrease in past due invoices.

General and Administrative

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

General and administrative expenses decreased \$1,122,415, or 83%, to \$229,968, during the three months ended September 30, 2024, compared to \$1,352,383 for the same period in 2023. The decrease in general and administrative expenses was primarily due to a decrease in stock related expense for the warrant exercise that occurred during the same period in 2023.

General and administrative expenses decreased \$1,707,767, or 76%, to \$542,990, during the nine months ended September 30, 2024, compared to \$2,250,757 for the same period in 2023. The decrease in general and administrative expenses was primarily due to a decrease in stock related expense for the warrant exercise that occurred during the same period in 2023.

Sales and Marketing

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

Sales and marketing expenses increased \$65,195, or 49%, to \$197,713 during the three months ended September 30, 2024, compared to \$132,518 for the same period in 2023. The increase is primarily due to an increase in travel and tradeshow expenses.

Sales and marketing expenses increased \$231,439, or 75% to \$541,762 during the nine months ended September 30, 2024, compared to \$310,323 for the same period in 2023. The increase is primarily due to an increase in travel and tradeshow expenses.

Engineering, Research & Development

Engineering, research & development costs include salaries, stock-based compensation expenses, travel, consulting costs, and other expenses.

Engineering, research & development expenses increased \$243,877, or 305%, to \$323,752 during the three months ended September 30, 2024, compared to \$79,875 for the same period in 2023. This increase is primarily due to an increase in payroll expenses.

Engineering, research & development expenses increased \$643,831, or 328%, to \$840,207 during the nine months ended September 30, 2024, compared to \$196,376 for the same period in 2023. This increase is primarily due to an increase in payroll expenses.

Depreciation and Amortization

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

Depreciation and amortization expense decreased \$426, or 41%, to \$612 during the three months ended September 30, 2024 compared to \$1,038 for the same period in 2023. This decrease is primarily due to decrease in intangible assets due to impairment at the end of 2023.

Depreciation and amortization expense decreased \$1,210 or 30%, to \$2,812 during the nine months ended September 30, 2024 compared to \$4,022 for the same period in 2023. This decrease is primarily due to decrease in intangible assets due to impairment at the end of 2023.

Interest Expense

Interest expense increased \$292,465, or 123%, to \$529,841 during the three months ended September 30, 2024, compared to \$237,376 in the same period in 2023. This increase in interest expense is primarily related to the increased balance on related party notes payable and the issuance of Convertible Notes.

Interest expense increased \$709,712, or 99%, to \$1,429,977 during the nine months ended September 30, 2024, compared to \$720,265 in the same period in 2023. This increase in interest expense is primarily related to the increased balance on related party notes payable and the issuance of Convertible Notes.

Settlement Losses

Settlement losses consist of legal settlement for TCPA settlements.

Settlement losses for the three months ended September 30, 2024 and 2023 were \$0 and \$399, respectively.

Settlement losses for the nine months ended September 30, 2024 and 2023 were \$0 and \$870, respectively.

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 three months ended September 30, 2024 and 2023 was \$6,514 and \$7,699, respectively.

Loss on settlement of debt for the nine months ended September 30, 2024 and 2023 was \$0 and \$370, 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 three and nine months ended September 30, 2024, was \$1 Canadian equals \$0.74 U.S. Dollars, respectively. This compares to an average rate of \$1 Canadian equals \$0.74 during the same period in 2023. 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 gain of \$1,358 and a loss of \$91,825 for the three months ended September 30, 2024 and 2023, respectively.

The change in foreign currency was a gain of \$216,687 and a gain of \$123,190 for the nine months ended September 30, 2024 and 2023, respectively.

Liquidity and Capital Resources

As of September 30, 2024, we had current assets of \$1,367,564, including \$532,450 in cash, and current liabilities of \$8,090,773, resulting in a working capital deficit of \$6,723,209.

We believe as of the date of this report, we do not have the working capital on hand, along with our expected cash flow from operations and budget reductions, to sufficiently fund our current level of operations through the end of the next 12 months or beyond. We will require additional capital and will seek to obtain additional working capital through the sale of our securities and, if available, bank lines of credit. There can be no assurance we will be able to obtain access to capital as and when needed, or that the terms of any available financing will be commercially reasonable.

The Company entered in to a sublease on March 1, 2024 for its office facilities in Chandler, AZ through February 28, 2025. Monthly rental payments including rental of office furniture and excluding taxes, are \$24,470. The Company has transition to a 100% remote work force and this has resulted in a decrease in monthly rental expense.

Cash Flows

	Nine Months Ended September 30,	
	2024	2023
Net cash provided by (used in):		
Operating activities	\$ (5,405,028)	\$ (5,644,980)
Investing activities	(13,327)	(24,552)
Financing activities	5,317,965	5,575,483
Effect of foreign currency translation on cash flow	216,445	125,243
Net change in cash	<u>\$ 116,055</u>	<u>\$ 31,194</u>

Operating Activities

We used cash in operating activities totaling \$5,405,028 during the nine months ended September 30, 2024 and used cash in operating activities totaling \$5,644,980 during the nine months ended September 30, 2023. Key drivers of the cash used in operating activities are the net loss of \$7,228,914, a net loss from discontinued operations of \$4,207,458 changes to accounts receivable of \$86,844, accrued interest of \$1,009,822, stock-based compensation of \$636,612, accounts payable of \$471,102, and amortization of debt discount of \$372,874.

Investing Activities

Investing activities during the nine months ended September 30, 2024, consisted of \$4,559 of equipment purchases compared to \$20,004 in the nine months ended September 30, 2023 and \$8,768 of cash paid for patent activities compared to \$0 compared to the same period in 2023.

Financing Activities

Financing activities during the nine months ended September 30, 2024 consisted of \$5,325,000 of proceeds from related party convertible notes compared to \$400,000 in the nine months ended September 30, 2023. In addition, there was \$0 proceeds from conversion of warrants compared to \$5,195,487 additional paid in capital from a warrant conversion to common stock in the nine months ended September 30, 2023. In the nine months ended September 30, 2024, payments of \$7,035 were made on notes payable compared to \$20,004 in the same period in 2023.

Critical Accounting Estimates

We have adopted various accounting policies to prepare our condensed consolidated financial statements in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP). The preparation of these financial statements requires us to make estimates, judgments, and assumptions. Our significant accounting policies and estimates are disclosed in Note 2 to the accompanying notes to the condensed consolidated financial statements. There were no material changes to our critical accounting policies and estimates during the nine months ended September 30, 2024.

Refer to Note 2, "Summary of Significant Accounting Policies," in the accompanying notes to the condensed consolidated financial statements for a discussion of recent accounting pronouncements.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements.

Item 3. Quantitative and Qualitative Disclosures about Market Risk.

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

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

As required by Rule 13a-15(b) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), our management, with the participation of our Principal Executive Officer and Interim Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures, as defined in Exchange Act Rule 13a-15(e), as of the end of the period covered by this report. “Disclosure controls and procedures,” as defined in Exchange Act Rule 13a-15(e), are controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Principal Executive Officer and Interim Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. Based on this evaluation, our management, including our Principal Executive Officer and Interim Chief Financial Officer, concluded that as of September 30, 2024 our disclosure controls and procedures were not effective.

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.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act, that occurred during the nine months ended September 30, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings.

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 the Company 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 Company’s motion to dismiss. The matter has been under submission with the Court of Appeals 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.

Item 1A. Risk Factors.

In addition to the other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider the factors discussed in “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2023 (the “Form 10-K”), which could materially affect our business, financial condition or future results. There have been no material changes in the risk factors disclosed in the Form 10-K.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information

During the three months ended September 30, 2024, 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 6. Exhibits

<u>Exhibit No.</u>	<u>Description</u>
2.1	Asset Purchase Agreement, dated September 25, 2024, by and between Mobivity Holdings Corp. and SMS Factory, Inc.
3.1	Restated Articles of Incorporation filed with the Nevada Secretary of State on August 12, 2022 (incorporated by reference to Exhibit 3.1[FD1] to the Company's Quarterly Report on Form 10-Q filed on May 9, 2024).[FD1]Note, we added the specific exhibit references (it is typically not sufficient to refer to the report as a whole).
3.2	Bylaws (incorporated by reference to Exhibit 3.2 to the Registration Statement on Form S-1 filed on October 20, 2008)
3.3	Amendment No. 1 to Bylaws (incorporated by reference to Exhibit 3.2 to the Registration Statement on Form S-1 filed on October 20, 2008)
3.4	Amendment No. 2 to the Bylaws, effective as of May 20, 2013 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed May 24, 2013)
10.1	Amendment No. 4 to Amended and Restated Credit Facility Agreement and Convertible Notes, dated as of November 21, 2024, between Mobivity Holdings Corp. and Thomas B. Akin*
31.1	Certification by Principal Executive Officer pursuant to Section 302 of Sarbanes Oxley Act of 2002 *
31.2	Certification by Principal Financial Officer pursuant to Section 302 of Sarbanes Oxley Act of 2002 *
32.1	Certification Pursuant to 18 U.S.C. Section 1350 *
101.INS	Inline XBRL Instance Document *
101.SCH	Inline XBRL Taxonomy Schema Document
101.CAL	Inline XBRL Taxonomy Calculation Linkbase Document *
101.DEF	Inline XBRL Taxonomy Definition Linkbase Document *
101.LAB	Inline XBRL Taxonomy Label Linkbase Document*
101.PRE	Inline XBRL Taxonomy Presentation Linkbase Document *
104	Cover Page Interactive Data File (embedded within the Inline XBRL and contained in Exhibit 101)

* Filed electronically herewith

SIGNATURES

Pursuant to the requirements 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

Mobivity Holdings Corp.

Date: November 26, 2024

By: /s/ Bryce D. Daniels
Bryce D. Daniels
President
(Principal Executive Officer)

Date: November 26, 2024

By: /s/ Skye Fossey-Tomaske
Skye Fossey-Tomaske
Interim Chief Financial Officer
(Principal Accounting Officer)

CERTAIN CONFIDENTIAL INFORMATION, IDENTIFIED BY BRACKETED ASTERISKS [***], HAS BEEN OMITTED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into as of September 25, 2024, by and between Mobivity Holdings Corp., a Nevada corporation (“**Seller**”), and SMS Factory, Inc., a Florida corporation (“**Buyer**”).

RECITALS

- A. Seller operates an SMS/MMS text messaging platform business (the “**Business**”) and also is a provider of technology connecting mobile gaming audiences to real world brands and offers (the “**Excluded Business**”).
- B. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Customer Accounts (defined below) and Buyer desires to assume from Seller, and Seller desires to assign to Buyer, the Assumed Liabilities (defined below), in each case for consideration and in accordance with the terms and conditions of this Agreement.
- C. Buyer and Seller desire to enter into this Agreement in order to set forth their mutual understandings and agreements with respect to the foregoing.
- D. Capitalized terms used but not defined in the context of the Section in which such term first appears shall have the meanings set forth in Section 7.8.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I. PURCHASE AND SALE OF ASSETS.

Section 1.1. **Purchase and Sale of Assets.** Upon the terms and subject to the conditions set forth in this Agreement, Seller hereby sells, transfers, assigns, conveys, and delivers to Buyer, and Buyer hereby purchases and acquires from Seller, all of the Acquired Assets, free and clear of all Liens. “**Acquired Assets**” means all right, title, and interest in and to all of the Seller’s SMS/MMS text messaging customer accounts, used in the operation of the Business, but specifically excluding the Excluded Assets, including the following:

- (a) The accounts, contracts, customer records and agreements to which Seller is a party relating to the Business, including those listed on Exhibit A, and all associated rights of Seller (the “**Customer Accounts**”). Exhibit A, shall list the name of each Customer Account, the contact person for each account and related contact details, whether a contract exists for said Customer Account and whether, as of the Closing Date, Seller has received a prepayment from that customer.

Section 1.2. **Excluded Assets.** “**Excluded Assets**” means all other assets of Seller not used or useful in the operation of the Business, including any assets related to or used in or necessary for the Excluded Business.

Section 1.3. **Assumption of Liabilities.** On and subject to the terms and conditions of this Agreement, Buyer agrees to assume and become responsible for the Assumed Liabilities as of the Closing. Buyer shall not assume or have any responsibility with respect to any Liability of Seller that is not an Assumed Liability. “**Assumed Liabilities**” means all obligations of Seller arising from and after Closing under the Contracts listed on Exhibit A.

Section 1.4. **Excluded Liabilities.** Notwithstanding anything to the contrary contained in Section 1.3. or elsewhere in this Agreement, Seller shall maintain sole responsibility of, and solely shall retain, pay, perform any Liabilities arising out of or relating to the operation of Seller’s Business prior to the Closing, any Liability of Seller under this Agreement or any other document executed in connection with the transactions contemplated hereby, including any Liability of Seller for expenses incurred by Seller or its affiliates in connection with this Agreement, or any Liability of Seller based upon Seller’s acts or omissions occurring after the Closing (collectively, the “**Excluded Liabilities**”).

Section 1.5. **Purchase Price.** On the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer will assume the Assumed Liabilities and will pay to Sellers an amount equal to the following (collectively, the “**Purchase Price**”):

For a period of two (2) years following the Closing Date (the “**Measurement Period**”), Buyer shall pay Seller two (2) times the Gross Profit earned from each Customer Account (collectively, the “**Earn-out Payment**”), in accordance with Section 1.7. For the purposes of this Agreement, “**Gross Profit**” is defined as the Gross Revenues collected by Buyer from each Customer Account, less:

- (i) \$0.001 for each SMS purchased by that customer; and
- (ii) \$.01234 for each MMS purchased by that customer; and
- (iii) All applicable surcharges.

In the event that a customer shall have prepaid their Customer Account to Seller prior to the Closing Date, Buyer shall apply such pre-payment to that Customers Account and such pre-payment so applied shall be a further reduction in the Earn-out Payment owing to Seller.

Section 1.6 **Pre-Payment of the Purchase Price.** At Closing, Buyer will pay Seller \$303,000 in cash by wire transfer of immediately available funds to a bank account designated in writing by Seller as a pre-payment of the Earnout Payments (the “**Earnout Pre-Payment**”).

Section 1.7. **Earn-out Payment.** Semi-annually, commencing on the date which is six (6) months from the Closing Date, and continuing on the same date in the 12th, 18th and 24th month following the Closing, Buyer shall pay Seller the Earn-out Payment by wire transfer of immediately available funds to a bank account designated in writing by Seller. Buyer shall apply, as a reduction, the Earnout Pre-Payment against each Earnout Payment due Seller until the Earnout Pre-Payment is exhausted. If, at the end of the Measurement Period, any amount of the Earnout Pre-Payment has not been applied to Earnout Payments made to the Seller, Seller shall refund the excess Earnout Pre-Payment to Buyer within thirty (30) days of the end of the Measurement Period. Buyer agrees and acknowledges that it will (i) not take or omit to take any action with the primary purpose of decreasing Gross Profit during the Measurement Period (or any other period which would impact the Gross Profit during the Measurement Period), and (ii) not, directly or indirectly, take any action or omit to take any action with the primary purpose of avoiding or reducing the Earn-Out Payment payable to Seller.

Section 1.8. **Closing.** The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall take place on the date hereof by the remote exchange of electronic copies of documents and signatures, or at another date, time or place, as the parties may mutually agree. The date on which the Closing occurs is referred to in this Agreement as the “**Closing Date**.”

Section 1.9. **Closing Obligations.**

(a) At the Closing, Seller shall deliver or cause to be delivered to Buyer:

- (1) an assignment of all of the Acquired Assets that are intangible personal property, which assignment shall also contain Buyer’s undertaking and assumption of the Assumed Liabilities (the “**Assignment and Assumption Agreement**”), in substantially the form of Exhibit B, duly executed by Seller;
- (2) a certificate of the Chief Executive Officer of Seller certifying and attaching all requisite resolutions or actions of Seller’s board of directors approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and any other document relating to the transactions contemplated hereby.

(b) At the Closing, Buyer shall deliver, or cause to be delivered, to Seller:

- (1) the Earnout Pre-Payment;
-

(2) the Assignment and Assumption Agreement, duly executed by Buyer; and

(3) a certificate of the Secretary of Buyer certifying and attaching all requisite resolutions or actions of Buyer's board of directors approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and any other document relating to the transactions contemplated hereby.

ARTICLE II. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller hereby represents and warrants to Buyer as follows, as of the date of this Agreement, except as set forth in the Disclosure Schedules:

Section 2.1. **Organization.** Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Nevada and has all corporate power and authority necessary to own or lease its assets and to carry on the Business as currently conducted. Seller is duly qualified or licensed to do business and is in good standing in each of the jurisdictions where the nature of the Business makes such qualification necessary.

Section 2.2. **Authority.** Seller has the requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder. The execution, delivery and performance by Seller of this Agreement, and the consummation by Seller of the transactions contemplated hereby, have been duly and validly authorized by Seller's board and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby or to perform its obligations hereunder. This Agreement has been duly and validly executed and delivered by Seller and, assuming this Agreement constitutes the legal, valid and binding agreement of Buyer, constitutes a legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms. Upon the execution and delivery by Seller of any other document to which Seller is a party in connection with this Agreement, each of such other documents will constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

Section 2.3. **Non-Contravention; Filings and Consents.**

(a) The execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not and will not (with or without notice or lapse of time, or both):

- (1) contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or bylaws of Seller;
- (2) contravene, conflict with or result in a violation or breach of any provision of any Law or Order;
- (3) require any consent or approval under, violate, conflict with, result in any breach of or any loss of any benefit under, or constitute a change of control or Default under, or result in termination or give to others any right of termination, vesting, amendment, acceleration or cancellation of any Contract to which Seller is a party, or by which its properties or assets may be bound or affected or any Governmental Authority affecting, or relating in any way to the Business; or
- (4) result in the imposition or creation of any Lien on, or with respect to, any of the Acquired Assets.

(b) The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby by Seller do not and will not require any Permit of, action by, filing with or notification to, any Governmental Authority. For purposes of this Agreement, "**Governmental Authority**" means any national, state or local, domestic or foreign or international, government or any judicial, legislative, executive, administrative or regulatory authority, tribunal, agency, body, entity or commission or other governmental, quasi-governmental or regulatory authority or agency, domestic or foreign or international.

Section 2.4. Litigation.

(a) There is no complaint, claim, action, suit, litigation, proceeding or governmental or administrative investigation pending or, to the Knowledge of Seller, threatened against or affecting Seller with regard to the Business, including in respect of the transactions contemplated hereby, whether by any owner of a Customer Account or any Governmental Authority. Seller is not subject to any outstanding Order that prohibits Seller from selling/assigning the Customer Accounts to Buyer.

(b) To the Knowledge of Seller, no event has occurred, or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any complaint, claim, action, suit, litigation, proceeding or governmental or administrative investigation by any owner of a Customer Account or any Governmental Authority.

Section 2.5. Compliance with Laws; Permits.

(a) Since January 1, 2020, Seller has not been in conflict with, in Default or, with notice, lapse of time or both, would be in Default, with respect to or in violation of any material (i) statute, law, ordinance, rule, regulation or requirement of a Governmental Authority (each, a “**Law**”), including but not limited to the Telephone Consumer Protection Act and the California Consumer Privacy Act or (ii) order, judgment, writ, decree or injunction issued by any court, agency or other Governmental Authority (each, an “**Order**”) applicable to Seller or by which any property or asset of Seller is bound or affected.

(b) Since January 1, 2020, Seller has not received any written notice:

- (1) of any Default or violation as described in clause (a) above;
- (2) of any administrative, civil or criminal investigation or audit by any Governmental Authority relating to Seller; or
- (3) from any Governmental Authority alleging that Seller is not in compliance with any Law or Order.

(c) Seller has all permits, licenses, orders, registrations, certificates, variances, authorizations, consents, approvals, franchises, and similar rights from Governmental Authorities required to conduct the Business as currently conducted (“**Permits**”) and such Permits are valid and in full force and effect. Seller is in compliance with the terms of such Permits and, as of the date of this Agreement, has not received written notice from any Governmental Authority threatening to revoke, or indicating that it is investigating whether to revoke, any such Permit.

Section 2.6. Customer Account Contracts.

(a) Exhibit A, lists as of the date hereof, and Seller has made available to Buyer true, correct and complete copies of each of the Customer Account contracts (each, a “**Customer Account Contract**”) to which Seller is a party.

(b) (i) each Customer Account Contract is valid and binding on Seller that is a party thereto and, to the Knowledge of Seller, each other party thereto, and is in full force and effect and enforceable in accordance with its terms, except to the extent enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, relating to creditors’ rights generally, and to general equitable principles, and unless expired or terminated in accordance with its terms; (ii) Seller and, to the Knowledge of Seller, each other party thereto, have performed and complied with all obligations required to be performed or complied with by them under each Customer Account Contract; and (iii) there is no Default under any Customer Account Contract by Seller or, to the Knowledge of Seller, by any other party, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a Default thereunder by Seller or, to the Knowledge of Seller, by any other party thereto.

Section 2.7. **Brokers; Certain Expenses.** No agent, broker, investment banker, financial advisor or other firm or Person, whose fees and expenses shall be paid solely by Seller, is or shall be entitled to receive any brokerage, finder's, financial advisor's, transaction or other fee or commission in connection with this Agreement or the transactions contemplated hereby based upon agreements made by or on behalf of Seller.

Section 2.8. **Independent Investigation; Non-reliance.** Seller represents that no representations or warranties have been made to Seller by Buyer other than the representations and warranties contained in this Agreement and that, in entering into the transactions contemplated by this Agreement, Seller is not relying upon any information other than that contained in this Agreement and the results of its own independent investigation.

Section 2.9 **Employees.** To the Knowledge of Seller, no current employee and over the past two (2) years no former employee of Seller is a party to, or is otherwise bound by, a contract or similar arrangement with any of the Customer Accounts regarding SMS/MMS text messaging.

Section 2.10 **Customer Account Records.** Seller's Customer Account files and records, all of which have been made available to Buyer, are materially complete and correct and represent actual bona fide transactions and have been maintained in accordance with sound business practices. Following the Closing, and continuing through the end of the Measurement Period, upon a reasonable request by Buyer, upon notice and during normal business hours, Seller shall make its Customer Account records available to Buyer for review.

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer represents and warrants to Seller as follows, as of the date of this Agreement:

Section 3.1. **Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of Florida and has the requisite corporate power to carry on its business as now conducted.

Section 3.2. **Authority.** Buyer has all necessary corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by Buyer and, assuming due authorization, execution and delivery of this Agreement by Seller, constitutes a legal, valid and binding agreement of Buyer, enforceable in accordance with its terms against Buyer.

Section 3.3. **Consents and Approvals.** The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby require no consent, approval, authorization or filing with or notice to any Governmental Authority other than any actions or filings the absence of which are not reasonably likely to prevent, materially delay or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement.

Section 3.4. **Non-Contravention.** The execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated by this Agreement do not and will not (with or without notice or lapse of time or both) (i) contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or bylaws of Buyer; (ii) assuming compliance with the matters referred to in Section 3.3., contravene, conflict with or result in a violation or breach of any Law or Order; or (iii) require any consent or approval under, violate, conflict with, result in any breach of any loss of any benefit under, or constitute a change of control or Default under, or result in termination or give to others any right of termination, vesting, amendment, acceleration or cancellation of any contract to which Buyer is a party, or by which its properties or assets may be bound or affected, with such exceptions, in the case of each of clauses (ii) and (iii) of this section, as would not reasonably be expected to prevent, materially delay or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement.

Section 3.5. **Independent Investigation; Non-reliance.** Buyer represents that no representations or warranties have been made to Buyer by Seller other than the representations and warranties contained in Article II of this Agreement and that, in entering into the transactions contemplated by this Agreement, Buyer is not relying upon any information other than that contained in Article II of this Agreement and the results of its own independent investigation.

ARTICLE IV. COVENANTS.

Section 4.1. **Non-Solicitation.**

(a) During the period of twenty-four months following the Closing (the “**Restricted Period**”), Seller shall not, directly or indirectly solicit the trade of, or trade with, any customer whose Customer Account is a part of the Acquired Assets such that the customer reduces the amount of business that it does (or, but for that solicitation, would do) with Buyer. Notwithstanding the foregoing, nothing in the Article IV shall prohibit Seller from operating the Excluded Business.

(b) If Seller shall be in breach of subsection (a) above, then the time period set forth in that subsection shall, as it relates to the breaching party, be extended by the length of time during which the breaching party is in breach of any of those provisions.

(c) Seller acknowledges and agrees that Buyer would be irreparably damaged if any of the provisions of this Section 4.1 are not complied with in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that Buyer shall be entitled to an injunction or injunctions to prevent breaches of this Section 4.1, and shall have the right to specifically enforce Section 4.1 and its terms and provisions against Seller in addition to any other remedy to which Buyer may be entitled under this Agreement, at Law or in equity.

(d) It is the intent of the parties that each provision of this Section 4.1 be adjudicated valid and enforced to the fullest extent permissible under the Laws and public policies of each jurisdiction in which adjudication of the validity or enforcement of Section 4.1 is sought. In furtherance of the foregoing, each provision of Section 4.1 shall be severable from each other provision, and any provision of Section 4.1 that is prohibited or unenforceable in any jurisdiction shall be subject to the following: (i) if the prohibited or unenforceable provision is contrary to or conflicts with any requirement of any statute, rule or regulation in effect in the jurisdiction, then the requirement shall be incorporated into, or substituted for, the prohibited or unenforceable provision to the minimum extent necessary to make the provision valid or enforceable; (ii) the Governmental Authority or arbitrator considering the matter is authorized to (or, if that Governmental Authority or arbitrator is unwilling or fails to do so, then the parties shall) amend the unenforceable provision to the minimum extent necessary to make the provision valid or enforceable, and the parties consent to the entry of an order amending the provision to that extent for that purpose; and (iii) if any unenforceable provision cannot be or is not reformed and made valid or enforceable under this Section 4.1, then the prohibited or unenforceable provision shall be ineffective in that jurisdiction to the minimum extent necessary to make the remainder of Section 4.1 valid or enforceable in that jurisdiction. Any application of the foregoing provisions to any provision of Section 4.1 shall not (x) affect the validity or enforceability of any other provision of Section 4.1, or (y) prevent the prohibited or unenforceable provision from being adjudicated valid or enforced as written in any other jurisdiction.

Section 4.2. **Press Releases.** Buyer and Seller shall consult with each other before issuing any press release or making any other public statement with respect to this Agreement or the transactions contemplated hereby and shall not issue any such press release or make any such other public statement without the consent of the other party, which shall not be unreasonably withheld, except as such release or statement may be required by Law or any listing agreement with or rule of any national securities exchange or the OTC Markets.

Section 4.3. **Payment of All Taxes Resulting from Sale of Assets by Seller.** Seller shall pay in a timely manner all taxes resulting from or payable in connection with the sale of the Acquired Assets pursuant to this Agreement, regardless of the Person on whom such taxes are imposed by Laws. Under no circumstances shall this Section 4.3 be interpreted to (a) obligate Seller to pay the income Taxes of any of its shareholders or (b) create any rights, as a third-party beneficiary or otherwise, in favor of any Person other than Buyer or Seller.

Section 4.4. **Customer and Other Business Relationships.** No later than thirty (30) days after the Closing Date, Seller shall communicate with all of its Customer Accounts informing each such customer that Seller will no longer be in the Business as of December 31, 2024, and further advising each such customer of the sale of the Acquired Assets hereby. Seller will use its commercially reasonable efforts and cooperate with Buyer in Buyer's efforts to continue and maintain for the benefit of Buyer those business relationships of Seller relating to the Customer Accounts and Business existing prior to the Closing. Seller will collect the Customer Account accounts receivable in a manner that is not detrimental to any of such relationships. Seller will refer to Buyer all inquiries relating to the Business after Closing.

Section 4.5. **Retention of and Audit Rights to Records.** After the Measurement Period, Buyer shall retain for a period two (2) years following the expiration or earlier termination of this Agreement those records of Seller relating to the Business delivered to Buyer. Buyer shall provide reasonable access to Seller, during normal business hours and on at least three days' prior written notice, to Buyers records relating to the calculation and payment of the Earn-out Payments.

ARTICLE V. INDEMNIFICATION.

Section 5.1. **Indemnification by Seller.** Seller shall defend, indemnify and hold harmless Buyer and its respective directors, officers, employees and agents from and against any and all claims (including without limitation any investigation, action or other proceeding) and Liabilities that constitute, or arise out of or in connection with:

- (a) Any breach of a representation or warranty of Seller contained in Article II of this Agreement, any exhibit, or any certificate or instrument delivered by Seller pursuant to this Agreement;
- (b) any default by Seller in the performance or observance of any of its covenants or agreements under this Agreement; or
- (c) any third-party claim based upon, resulting from or arising out of the Business of Seller conducted on or prior to the Closing Date.

Section 5.2. **Indemnification by Buyer.** Buyer shall defend, indemnify and hold harmless Seller and its respective directors, officers, employees and agents from and against any and all claims (including without limitation any investigation, action or other proceeding) and Liabilities that constitute, or arise out of or in connection with:

- (a) Any breach of a representation or warranty of Buyer contained in Article III of this Agreement, any exhibit, or any certificate or instrument delivered by Buyer pursuant to this Agreement;
- (b) any default by Buyer in the performance or observance of any of its covenants or agreements under this Agreement, including the payment of any Earn-out Payments; or
- (c) any third-party claim based upon, resulting from or arising out of the Business, Acquired Assets or Assumed Liabilities conducted after the Closing Date.

Section 5.3. **Survival of Representations and Warranties.** All representations, warranties, and covenants made in this Agreement or in connection with the transactions contemplated in this Agreement shall survive the Closing until the one (1) year anniversary of the Closing Date; provided, however, that the representations and warranties in Section 2.1, (Organization and Corporate Power), Section 2.2, (Corporate Authorization), Section 2.3, (Non-Contravention); and Section 2.7, (Brokers); (collectively, the "**Fundamental Representations**"), shall survive until 60 days after the expiration of the applicable statute of limitations.

Section 5.4. **Sole Recourse.** Buyer's sole and exclusive recourse with respect to Seller's indemnification obligations set forth in Section 5.1 shall be limited to and offset against any Earn-out Payments owed and/or paid by Buyer to Seller and Seller shall have no Liability beyond the amount of any Earn-out Payments and Pre-Paid Earnout Payments actually received.

ARTICLE VI. [RESERVED.]

Article VII. MISCELLANEOUS.

Section 7.1. **Entire Agreement; Assignment; Amendments.** This Agreement (including the exhibits to this Agreement) constitute the entire agreement and supersede all oral agreements and understandings and all written agreements prior to the date hereof between or on behalf of the parties with respect to the subject matter hereof. This Agreement shall not be assigned by any party by operation of Law or otherwise without the prior written consent of the other parties hereto. This Agreement may be amended only by a writing signed by each of the parties, and any amendment shall be effective only to the extent specifically set forth in that writing.

Section 7.2. **Severability; Expenses; Further Assurances.** If any term, condition or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible. Except as otherwise specifically provided in this Agreement, each party shall be solely responsible for the expenses it may incur in connection with the negotiation, preparation, execution, delivery, performance and enforcement of this Agreement. The parties shall from time to time do and perform any additional acts and execute and deliver any additional documents and instruments that may be required by Law or reasonably requested by any party to establish, maintain or protect its rights and remedies under, or to effect the intents and purposes of, this Agreement.

Section 7.3. **Notices.** Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) upon confirmation of receipt by the addressee, if such notice or communication is delivered via email to the email address specified in this [Section 7.3](#), or (b) upon receipt at address of the addressee specified in this [Section 7.3](#), if such notice or communication is delivered by U.S. mail, courier or other physical delivery service. The addresses for such notices and communications shall be as follows:

If to Buyer, to:

SMS Factory, Inc.
11231 Highway US1, #432
North Palm Beach, FL 33408
E-mail: yuval@smsfactory.com
Attention: Yuval Madar, President

with a copy (which will not constitute notice to Buyer) to:

Ansell Grimm and Aaron
1500 Lawrence Avenue
Ocean, NJ 07712
E-mail: Rhibberd@Ansell.law
Attention: Roy Hibberd, Esq.

If to Sellers, to:

Mobivity Holdings, Inc.
3133 West Frye Road, Suite 215
Chandler, Arizona 85226
E-mail: bryce.daniels@mobivity.com
Attention: Bryce Daniels

with a copy (which will not constitute notice to Seller) to:

Faegre Drinker Biddle & Reath LLP
90 S. Seventh Street
Minneapolis, MN 55402
E-mail: steve.conley@faegredrinker.com
Attention: Steve Conley

or to such other address as the Person to whom notice is given may have previously furnished to the others in writing in the manner set forth above. Rejection or other refusal to accept or the inability for delivery to be effected because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

Section 7.4. **Governing Law.** This Agreement, and any dispute arising out of, relating to, or in connection with this Agreement, shall be governed by and construed in accordance with the Laws of the State of Florida, without giving effect to any choice or conflict of Law provision or rule (whether of the state of Florida or of any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the state of Florida.

Section 7.5. **Headings.** The descriptive headings in this Agreement are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 7.6. **Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 7.7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. At the Closing, signature pages of counterparts may be exchanged by facsimile or by electronic transmittal of scanned images thereof, in each case subject to appropriate customary confirmations in respect thereof by the signatory for the party providing a facsimile or scanned image and that party's closing counsel.

Section 7.8. **Certain Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

"Default" means any breach or violation of, default under, contravention of, or conflict with, any contract, Law, Order, or Permit, any occurrence of any event that with the passage of time or the giving of notice or both would constitute a breach or violation of, default under, contravention of, or conflict with, any contract, Law, Order, or Permit, or any occurrence of any event that with or without the passage of time or the giving of notice would give rise to a right of any Person to exercise any remedy or obtain any relief under, terminate or revoke, suspend, cancel, or modify or change the current terms of, or renegotiate, or to accelerate the maturity or performance of, or to increase or impose any Liability under, any contract, Law, Order, or Permit.

"Disclosure Schedules" means the Disclosure Schedules attached to this Agreement and incorporated as if fully set forth herein.

"Knowledge of Seller" means the actual knowledge of Bryce Daniels, Jennifer Taylor and Jeff Michaels.

"Liability" means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Lien" means, with respect to any property or asset, all pledges, liens, mortgages, charges, encumbrances, hypothecations, options, rights of first refusal, rights of first offer and security interests of any kind or nature whatsoever.

"Person" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint -stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, all at or on the date and year first above written.

BUYER: SMS Factory, Inc.

By: /s/ Yuval Madar
Name: Yuval Madar
Title: President

SELLER: Mobivity Holdings Corp.

By: /s/ Bryce Daniels
Name: Bryce Daniels
Title: Chief Executive Officer

EXHIBIT A. LIST OF ACCOUNTS

EXHIBIT B. ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”), dated as of September 25, 2024, is made and entered into by and between Mobivity Holdings Corp., a Nevada corporation (“**Seller**”) and SMS Factory, Inc., a Florida corporation, (“**Buyer**”).

WHEREAS, capitalized terms used but not defined herein shall have the meanings assigned to those terms in the Asset Purchase Agreement (as defined herein);

WHEREAS, Seller and Buyer have entered into an Asset Purchase Agreement, dated of even date herewith (the “Asset Purchase Agreement”), pursuant to which, on the terms and subject to the conditions of the Asset Purchase Agreement, Seller has agreed to sell, transfer, assign, convey and deliver to Buyer, and Buyer has agreed to purchase, acquire and accept from Seller, all of Seller’s right, title and interest in, to and under the Acquired Assets; and

WHEREAS, pursuant to the Asset Purchase Agreement, Buyer has agreed to assume and timely perform, pay and discharge in accordance with its respective terms, the Assumed Liabilities.

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. This Assignment is executed, delivered and accepted pursuant to, and is subject to, the Asset Purchase Agreement. The Asset Purchase Agreement shall at all times govern the rights and duties of the parties with respect to the Acquired Assets and all interested parties are hereby given notice of its existence. If there is any conflict between the terms and provisions of this Assignment and those of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall control.
2. On the terms and subject to the conditions set forth in the Asset Purchase Agreement, Seller hereby sells, transfers, assigns, grants, conveys and delivers to Buyer, and Buyer hereby purchases, assumes, acquires and accepts from Seller, all of Seller’s right, title and interest in, to and under the Acquired Assets. Nothing herein contained shall be deemed to sell, transfer, assign, grant, convey or deliver the excluded Assets to Buyer, and Seller shall retain all right title and interest to, in and under the Excluded Assets.
3. Pursuant to the terms and subject to the conditions set forth in the Asset Purchase Agreement, Seller hereby contributes, conveys, transfers, and assigns, and Buyer hereby assumes and agrees to timely perform, pay, discharge, or otherwise satisfy, the obligations of the customer List of Accounts attached hereto as Exhibit A.
4. This Assignment shall be governed by the provisions of the Asset Purchase Agreement, unless the context otherwise requires, including but not limited to the representations, warranties, covenants, agreements and indemnities relating to the Acquired Assets, and the provisions concerning severability, construction, enforcement, governing law and jurisdiction.
5. This Assignment shall be binding upon and inure to the benefit of Buyer and Seller and their respective successors and permitted assigns. Nothing in this Assignment, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Assignment.
6. This Assignment may not be modified or amended except by a written instrument signed by the parties. In addition, no waiver of any provision of this Assignment shall be binding unless set forth in a writing signed by the party granting the waiver. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Assignment or of the same circumstance or event upon any recurrence thereof.
7. This Assignment may be executed in multiple counterparts, each of which shall be deemed to be an original hereof, but all of which, taken together, shall constitute one and the same agreement as of the date hereof. Any delivery of signature pages of counterparts by way of facsimile or by electronic transmittal of scanned images thereof shall constitute delivery hereof, in each case subject to appropriate customary confirmations in respect thereof by the signatory for the party providing a facsimile or scanned image.
8. Neither the failure of any party hereto to exercise any right, power or remedy provided under this Assignment or to insist upon compliance by any other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof, shall constitute a waiver by such party of its right to exercise any such right, power or remedy or to demand such compliance.

(signatures on next page)

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be executed by their duly authorized representatives as of the date first above written.

Seller: Mobivity Holdings Corp.

Buyer: SMS Factory, Inc.

By: Yuval Madar, President

By: Bryce Daniels, CEO

Signature Page to Assignment and Assumption Agreement

EXHIBIT A. LIST OF ACCOUNTS

**AMENDMENT NO. 4 TO
AMENDED AND RESTATED CREDIT FACILITY AGREEMENT AND CONVERTIBLE NOTES**

THIS AMENDMENT NO. 4 TO AMENDED AND RESTATED CREDIT FACILITY AND CONVERTIBLE NOTES is dated as of November 21, 2024 (this “**Amendment**”), between Mobivity Holdings Corp., a Nevada corporation (“**Borrower**”) and Thomas B. Akin, an individual (“**Lender**”) (each, a “**Party**” and together, the “**Parties**”).

BACKGROUND

A. The Parties entered into that certain Amended and Restated Credit Facility Agreement dated as of November 11, 2022, as amended by that certain Amendment 1 to Amended and Restated Credit Facility Agreement and Convertible Notes, dated as of January 31, 2023, Amendment No. 2 to Amended and Restated Credit Facility Agreement, dated as of May 3, 2024 and Amendment No.3 to Amended and Restated Credit Facility Agreement and Convertible Notes, dated as of August 13, 2024 (the “**Existing Credit Agreement**”);

B. Advances under the Existing Credit Agreement were evidenced by the terms of one or more convertible notes (the “**Existing Notes**”), a form of which is attached to the Existing Credit Agreement;

C. The Parties now desire to amend the Existing Credit Agreement and the Existing Notes as provided herein; and

D. Unless otherwise defined herein, capitalized terms used in this Amendment shall have the meanings ascribed to them in the Existing Credit Agreement.

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

AGREEMENT

1. Amendments to Existing Credit Agreement. Upon satisfaction of the conditions set forth in Section 3 hereof, the Existing Credit Agreement is amended pursuant to this Amendment to:

- (a) Amend and restate Section 2.3(b) in its entirety to read as follows:

“Without limiting the foregoing Section 2.3(a), Borrower shall repay the principal amount of all Advances in 24 equal monthly installments commencing on April 30, 2025 and continuing thereafter on the first day of each month (or, if such first day is not a Business Day, on the Business Day immediately succeeding such first day). Interest on the unpaid Advances will accrue from the date of each Advance at a rate equal to fifteen percent (15%) per annum and shall be paid quarterly in kind in Common Stock of the Borrower at a price per share equal to the volume-weighted average price of the Common Stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the ninety (90) Trading Days immediately preceding such date. Interest will be calculated on the basis of 365 days in a year.”

(b) Amend Section 1 of Exhibit A to Existing Credit Agreement in its entirety to read as follows:

“1. Payment Terms; Maturity. This Note shall bear interest on the unpaid principal amount at the rate of fifteen percent (15%) per annum and shall be paid quarterly in kind in Common Stock of the Borrower at a price per share equal to the volume-weighted average price of the Common Stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the ninety (90) Trading Days immediately preceding such date. The unpaid principal amount shall be paid in 24 equal monthly installments commencing on April 30, 2025 and continuing on the first day of each of the next 23 months thereafter (or, if such first day is not a Business Day, on the Business Day immediately succeeding such first day), with a final payment due on March 3, 2027 at which time all principal shall be due and payable. All payments of principal under this Note will be made in lawful money of the United States of America in immediately available funds at such place as may be designated by Lender to Borrower in writing.”

2. Amendments to Existing Notes. Upon satisfaction of the conditions set forth in Section 3 hereof, each Existing Note is amended pursuant to this Amendment to:

(a) Amend Section 1 in its entirety to read as follows:

“1. Payment Terms; Maturity. This Note shall bear interest on the unpaid principal amount at the rate of fifteen percent (15%) per annum and shall be paid quarterly in kind in Common Stock of the Borrower at a price per share equal to the volume-weighted average price of the Common Stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the ninety (90) Trading Days immediately preceding such date. The unpaid principal amount shall be paid in 24 equal monthly installments commencing on April 30, 2024 and continuing on the first day of each of the next 23 months thereafter (or, if such first day is not a Business Day, on the Business Day immediately succeeding such last day), with a final payment due on March 31, 2027 at which time all principal shall be due and payable. All payments of principal under this Note will be made in lawful money of the United States of America in immediately available funds at such place as may be designated by Lender to Borrower in writing.”

3. Conditions. Notwithstanding any other provision of this Amendment and without affecting in any manner the rights of the Lender hereunder, it is understood and agreed that the effectiveness of Sections 1 and 2 hereof is subject to the execution and delivery of this Amendment by Borrower and Lender.

4. No Modification. Except as expressly set forth herein, nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Existing Credit Agreement, the Existing Notes or constitute a course of conduct or dealing among the parties. Except as amended or consented to hereby, the Existing Credit Agreement and Existing Notes remain unmodified and in full force and effect.

5. Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Electronically delivered signature pages (PDFs, facsimile, etc.) shall be deemed to be the functional equivalent of originally executed signature pages for all purposes.

6. Successors and Assigns. This Amendment shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and permitted assigns of Lenders. Neither Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated without the prior written consent of the Lender.

7. Governing Law. This Amendment and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of Arizona.

8. Severability. In case any provision in or obligation under this Amendment or any instrument or agreement required hereunder shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

9. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10. Reaffirmation. Borrower hereby (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under the Existing Credit Agreement (after giving effect hereto), and (ii) ratifies and reaffirms the grant of security interest in the Collateral. Borrower hereby consents to this Amendment and acknowledges that the Existing Credit Agreement otherwise remains in full force and effect and is hereby ratified and reaffirmed. The execution of this Amendment shall not operate as a waiver of any right, power or remedy of the Lender or constitute a waiver of any provision of any of the Existing Credit Agreement or the Existing Notes, except as expressly set forth herein.

11. Entire Understanding. This Amendment sets forth the entire understanding of the Parties with respect to the matters set forth herein, and shall supersede any prior negotiations or agreements, whether written or oral, with respect thereto.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has executed this Amendment as of the date set forth above.

BORROWER:

MOBIVITY HOLDINGS CORP.,
a Nevada corporation

By: /s/ Skye Fossey-Tomaske

Name: Skye Fossey-Tomaske

Title: Interim Chief Financial Officer

LENDER:

/s/Thomas B. Akin

Thomas B. Akin

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

Pursuant to Rule 13a-14(a) adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Bryce D. Daniels, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Mobivity Holdings Corp. for the quarter ended September 30, 2024;
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: November 26, 2024

By: /s/ Bryce D. Daniels
Bryce D. Daniels
President
(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, Skye Fossey-Tomaske, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Mobivity Holdings Corp. for the quarter ended September 30, 2024;
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: November 26, 2024

By: /s/ Skye Fossey-Tomaske
Skye Fossey-Tomaske
Principal 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 Quarterly Report on Form 10-Q of Mobivity Holdings Corp., a Nevada corporation (the “Company”), for the period ended September 30, 2024, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), we, Bryce D. Daniels, Principal Executive Officer of the Company, and Skye Fossey-Tomaske, Principal 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: November 26, 2024

/s/ Bryce D. Daniels

Bryce D. Daniels
President
(Principal Executive Officer)

/s/ Skye Fossey-Tomaske

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