

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

FORM 10-K

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

For the fiscal year ended December 31, 2022

Or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the transition period from _____ to _____

Commission file number 000-53851

Mobivity Holdings Corp.

(Exact Name of Registrant as Specified in Its Charter)

Nevada
(State or Other Jurisdiction of
Incorporation or Organization)

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

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

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

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

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

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

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

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

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

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

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

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

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

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

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates as of June 30, 2022 was \$70,218,462, calculated at the price at which the common equity was last sold.

As of March 30, 2022, the registrant had 65,607,411 shares of common stock issued and outstanding.

MOBIVITY HOLDINGS CORP.
ANNUAL REPORT ON FORM 10-K
FISCAL YEAR ENDED DECEMBER 31, 2022
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FORWARD-LOOKING STATEMENTS

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

Part I

Item 1. Business

General Information

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

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

- Transform messy point-of-sale (POS) data collected from thousands of points of sale into usable intelligence.
- Measure, predict, and boost guest frequency and spend by channel.
- Deploy and manage one-time use offer codes and attribute sales accurately across every channel, promotion and media program.
- Deliver 1:1 promotions and offers with customized mobile messaging, personalized receipt promotions and integrated loyalty programs.

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

We are living in a data-driven economy. By 2003 — when the concept of “big data” became common vernacular in marketing - there was as much data being created every two days as had been created in all of time prior to 2003. Today, big data has grown at such a rate that 90% of the world’s data has been created in the past two years. Unfortunately, despite there being so much data accumulated, only 1% of data is being utilized today by most businesses.

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

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

The Recurrency Platform

The Recurrency™ platform unlocks valuable POS and mobile data to help transform customer transactions into actionable and attributable marketing insights. Our technology provides transactional data, in real-time, that uncovers market-basket information and attributes both online and traditional promotions. Recurrency is comprised of seven components.

1. POS Data Capture

Recurrency captures, normalizes, integrates, and stores transaction data and is compatible with most POS systems used by restaurants and retailers today. The result is a clean useful dataset upon which to predict and influence customers' buying behavior and deliver basket-level insights.

2. Analytics Powered by Machine Learning

Recurrency uses Machine Learning ("ML") to uncover patterns in the buying behaviors of consumers and leverages that data to suggest pricing optimizations, and guide marketing campaigns.

3. Offers and Promotions

Recurrency provides a digital wallet system for creating and managing dynamic offers and promotions, enabling accurate and complete closed-loop attribution across all channels, media and marketing efforts. Retailers can deploy one-time, limited-use and multi-use promotions across all online and offline marketing channels that are scannable at the POS or redeemable online, enabling fraud-free, controllable promotion delivery and attribution at scale. Marketing teams can use the comprehensive attribution analysis and insights to optimize media mix and spend for maximum Return on Marketing Spend ("ROMS").

4. Predictive Offers

Recurrency leverages the normalized data captured at the POS and applies Artificial Intelligence ("AI") to build profiles of both known and anonymous customers, analyzes pre and post-redemption behavior and then predicts offers that will drive the highest increases in customer spend and frequency at the lowest discount possible. The result is optimized, personalized promotions that produce the highest ROMS possible.

5. Personalized Receipt Promotions

Recurrency unlocks the power of transactional data to create relevant and timely customer messages printed on the receipts already being generated at the POS. Both clients and agencies are using Recurrency to drive better results and make decisions around offers, promotions, and customer engagement through the medium of the printed receipt. Software integrated with leading POS systems, such as Oracle, MICROS, or installed directly onto receipt printer platforms, such as Epson's OmniLink product, dynamically controls what is printed on receipts including images, coupons, announcements, or other calls-to-action, such as invitations to participate in a survey. Recurrency offers a Web-based interface where users can design receipt content and implement business rules to dictate what receipt content is printed in particular situations. All receipt content is also transmitted to cloud-based Recurrency for storage and analysis.

6. Customized Mobile Messaging

Recurrency transforms standard short message service ("SMS"), multimedia messaging service ("MMS"), and rich communication services ("RCS") into a data-driven marketing medium. Recurrency tracks and measures offer effectiveness at a more granular level than other solutions, allowing clients to create smarter offers and drive higher redemption rates. Our proprietary platform connects to all wireless carriers so that any consumer, on any wireless service (for example, Verizon), can join our customer's SMS/MMS mobile marketing campaign. Our customers use Recurrency's self-service interface to build, segment, target and optimize mobile messaging campaigns to drive increased guest frequency and spend. Recurrency is an industry leader in RCS messaging and has an industry leading broadcast reach.

7. Belly Loyalty

The Company's Belly Loyalty ("Belly") solution drives increased customer engagement and frequency with a customer-facing digital rewards platform via an app and digital pad. Using Belly, customers can customize rewards and leverage pre-built email campaigns and triggers to encourage greater frequency as well as identify and reactivate lapsed customers.

Company Strategy

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

- *Exploit the competitive advantages and operating leverage of our technology platform.* The core of our business is our proprietary POS Data Capture technology. Several years of development went into designing POS Data Capture such that the process of intercepting POS data and performing actions, such as controlling the receipt printer with receipt is scalable, portable to a wide variety of POS platforms, and does not impact performance factors including the print speed of a typical receipt printer. Furthermore, we believe the transmission of POS data to our cloud-based data stores presents a very competitive and innovative method of enabling POS data access. Additionally, we believe that our Recurrency platform is more advanced than technologies offered by our competitors and provides us with a significant competitive advantage. With more than ten years of development, we believe that our platform operates SMS/MMS text messaging transactions at a “least cost” relative to competitors while also being capable of supporting SMS/MMS text messaging transactional volume necessary to support our goal of several thousand end users. Leveraging our Recurrency platform allows for full attribution of SMS/MMS offers, which we believe is a unique combination of both SMS/MMS text messaging and POS data.
- *Evolve our sales and customer support infrastructure to uniquely serve very large customer implementations such as franchise-based brands who operate a large number of locations.* Over the past few years, we have focused our efforts on the development of our technology and solutions with the goal of selling and supporting small and medium-sized businesses. Going forward, we intend to increase significantly our investments in sales and customer support resources tailored to selling to customers that operate franchise brands. Today we support more than 30,000 merchant locations globally.
- *Acquire complementary businesses and technologies.* We will continue to search and identify unique opportunities which we believe will enhance our product features and functionality, revenue goals, and technology. We intend to target companies with some or all of the following characteristics: (1) an established revenue base; (2) strong pipeline and growth prospects; (3) break-even or positive cash flow; (4) opportunities for substantial expense reductions through integration into our platform; (5) strong sales teams; and (6) technology and services that further build out and differentiate our platform. Our acquisitions have historically been consummated through the issuance of a combination of our common stock and cash.
- *Build our intellectual property portfolio.* We currently have nine issued patents that we believe have significant potential application in the technology industry. We plan to continue our investment in building a strong intellectual property portfolio.

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

Recent Developments

Secured Notes 2021

During the year ended December 31, 2021, we issued to one of our directors, secured notes in the principal aggregate amount of \$3,478,125, including cash in the amount of \$3,206,250 and \$271,875 of principal and accrued interest under the 2020 secured note that was rolled into the Credit Facility, which are due and payable two years after issuance. These Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. On November 19, 2021, a payment of \$200,000 was paid toward the principal balance of the note. As of December 31, 2021, we had \$3,278,125 as a remaining balance of these 2021 Notes and accrued interest of \$149,040.

Unsecured Promissory Notes 2021

During the year ended December 31, 2021, we issued to Talkot Capital LLC, unsecured notes in the principal aggregate amount of \$ 271,875, which are due and payable two years after issuance (the "2021 Unsecured Notes"). These 2021 Unsecured Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. As of December 31, 2021, we had \$271,875 as a remaining balance of these 2021 Notes and accrued interest of \$23,200.

Secured Notes 2022

During the year ended December 31, 2022, we issued to one of our directors, secured notes in the principal aggregate amount of \$5,173,125, including cash in the amount of \$4,901,250 and \$271,875 of principal and accrued interest under the 2020 Secured Note that was rolled into the Credit Facility, which are due and payable in 24 equal payments beginning January 31, 2023 (the "2022 Secured Notes"). The 2022 Secured Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. On November 19, 2021, a payment of \$200,000 was paid toward the principal balance of the 2022 Secured Notes. As of December 31, 2022, we have \$5,173,125 as a remaining balance of the 2022 Secured Notes and accrued interest of \$387,918. A total of \$151,398 of accrued interest was settled into 140,185 shares of common stock and the Company recorded a loss on debt settlement of interest payable \$2,259. A total of \$166,434 in accrued interest was accrued for the fourth quarter of 2022 and recorded to equity payable. A total of 154,106 shares were issued in March of 2023.

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

The foregoing description of the A&R Credit Agreement and Convertible Note does not purport to be complete and is qualified in its entirety by reference to the A&R Credit Agreement and Convertible Note, which was filed with the United States Securities and Exchange Commission (the "SEC") on the Company's Current Report on Form 8-K dated November 11, 2022, and Amendment No. 1 to the A&R Credit Agreement and Convertible Note filed with the SEC on the Company's Current Report on Form 8-K dated January 31, 2023.

Unsecured Promissory Notes 2022

During the year ended December 31, 2022, we issued to Talkot Capital LLC, unsecured notes in the principal aggregate amount of \$ 271,875, which are due and payable two years after issuance (the "2022 Unsecured Notes"). The 2022 Unsecured Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. As of December 31, 2022, we have \$271,875 as a remaining balance of these 2022 Unsecured Notes and accrued interest of \$55,530. A total of \$10,352 of interest was converted into 9,585 shares of common stock and the Company recorded a loss on settlement of interest payable of \$162. A total of \$10,423 was accrued and recorded to equity payable of 9,651 shares of common stock and the Company recorded a loss on settlement of interest payable of \$2,918.

2022 Warrant Exercises

On February 7, 2022, seventeen warrant holders exercised their common stock purchase warrant for 3,163,190 shares at the exercise price of \$0.80 per share, resulting in additional capital of \$2,530,552. As an inducement for the holder's exercise of the warrants, we issued the holders 2,530,552 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in February 2025.

2022 Private Placement

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

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

Industry Background

Traditionally only sophisticated e-commerce brands, such as Amazon, were capable of personalizing and targeting their marketing to consumers as they navigated online shopping experiences that tracked their every move, all the way to check out. But despite the scale and success of e-commerce, it still accounts for just around 10% of commerce conducted in the U.S. The other 90% of "offline" merchants struggle to leverage data to combine with digital marketing channels and replicate the same personalized marketing tactics employed by successful e-commerce operators. Particularly, merchants are challenged with connecting purchase data collected by traditional point-of-sale terminals and mapping those transactions back to consumers to ensure that follow on marketing messages are personalized to the consumers purchase history.

Offline marketers will increasingly invest in technologies that leverage data to power personalized, digital consumer experiences and mimic how e-commerce marketers operate. This is a trend that has growing support from various industry analysts as well. McKinsey recently reported that "data activated marketing" can boost sales

15%-20% and significantly improve the return on investment ("ROI") on marketing spend across marketing channels. While the upside of data driven marketing may seem obvious, marketers are also converging their digital and offline worldviews when it comes to thinking about how they allocate their marketing budgets. Gartner's 2015–2016 Chief Marketing Officer (CMO) Spend Survey reported that 98 percent of CMOs no longer make a clear distinction between marketing online and offline and say the disciplines are merging. We believe that these trends reveal a material insight into how the market is converging towards our value proposition and will further propel our growth; as the market increasingly convinces itself of the upside of targeting its marketing based off of consumer data, as suggested by the McKinsey study, and the Gartner study suggests that offline and digital marketing disciplines are merging, then our unique approach to merging offline point-of-sale data with digital channels.

Data driven marketing will also leverage the rapidly emerging field of “cognitive computing,” where computers are becoming intelligent – often referred to as “artificial intelligence”. Google CEO, Sundar Pichai, has described how Google is shifting from a mobile first world, to an AI first world; and actions speak louder than words - Google has acquired more artificial intelligence startups than Facebook and Microsoft combined. A recent forecast by Tractica (a market intelligence firm that focuses on human interaction with technology) suggests that annual worldwide AI revenue will grow at a combined annual growth rate of more than 49% to \$36.8 billion by 2025. One of the key drivers to progress in this field is called “machine learning,” which aims to give computers the ability to learn without being explicitly programmed. This could open up entirely new possibilities where marketing becomes not just automated, but autonomous and entirely free of human intervention. Machine learning is powered by collecting massive amounts of data that can “train” machines to think on their own; an article in Fortune last year went as far as calling “data the new oil”. Jim Hare, research vice president at Gartner, proclaimed "As AI accelerates up the Hype Cycle, many software providers are looking to stake their claim in the biggest gold rush in recent years.”

The Mobivity Solution

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

- *Capture*: Recall that more than 90% of our economy still functions “offline”. Our Recurrency solution plays an integral part in bringing brick and mortar businesses into the digital future by creating an extensible point of access to their POS data. Recapture is a lightweight software client that can be installed in just about any POS system and immediately enables applications to operate off of real-time POS data.
- *Analyze*: Often times marketers spend a large portion of their budget on marketing programs with little to no visibility into attributable sales. A 2016 IAB/Winterberry study reported cross-channel measurement and attribution would be the No. 1 tactic occupying respondents’ time last year, a whopping 63 percent year-over-year increase from the previous year. This is because understanding consumers’ offline behavior is mission-critical for brands and agencies looking to bridge the gap between the online and offline worlds. Our Recurrency solution allows for easy access to POS data enabling full attribution of our campaigns, along with potentially linking offline POS data to other forms of digital marketing such as social or search advertising.
- *Motivating Consumers*: We motivate consumers and employees to improve business performance through our Recurrency solution. This is where our ability to engage consumers through their mobile phone and track their behavior to any of these offline cash registers, combines with machine learning and artificial intelligence techniques to dial-in targeted marketing engagements that cause consumers to spend more. Recurrency has engaged more than nine million consumers across more than 30,000 retail locations while examining billions of purchase transactions. In one study, we worked with the analytics and data team of one of our largest clients where we studied the behavior of consumers both before and after their enrollment in an SMS marketing program. Together, we took a universe of hundreds of thousands of consumers and examined their purchases for a period of time before they joined. We then tracked their purchases after they joined the program and learned that these consumers increased their overall spend by forty five percent. Restaurants fight tooth and nail for every 1% increase in spend, so this was an amazing result. Another brand challenged us to increase their customer frequency which had historically been an average of just one visit every 60 days. By leveraging our Recurrency platform, we were able to create a targeted offer program that printed coupons on consumers’ receipts. In some cases, consumers returned in eight days – far better than the historical average of 60 days. Within 90 days since launching the program, consumers were returning within days (instead of months) and the program is on pace to generate an ROI of more than 400%.

In the future, we intend to develop additional platform features with the goal of driving additional value by helping brick and mortar brands leverage POS data to drive business growth.

Marketing and Sales

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

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

Our services are predominantly marketed and sold in the form of a recurring software licensing fee that is determined by desired features and the number of physical locations our customers would like to deploy the services in. For example, a customer who exclusively utilizes our SMS/MMS feature for one location will pay a much lower recurring licensing fee than a marketer who desires our full breadth of product features and needs to drive localized marketing campaigns across 500 locations in various cities or locales.

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

Research and Development

We have developed an internal and external software development team with many years of experience in the mobile advertising and marketing industries. Our research and development activities are focused on enhancements to our platform, including extending our technology into payment processing, location-based services, application analytics, and other technical opportunities in the evolving mobile industry.

Our total engineering, research and development expenditures in 2022 and 2021 were \$3,583,773 and \$3,535,742, respectively.

Competition

Combining POS data, cognitive computing, and various marketing applications is relatively new. The majority of our competitors are start-ups or early stage growth companies helping to pioneer the technology necessary to extract POS data and integrate that data with technology channels such as mobile messaging, e-mail, social media, and others. Competitors in this arena include Punchh, Personica, Bridg, Sparkfly, Paytronix and PosIQ.

We also believe that POS manufacturers could also pose a competitive threat by vertically integrating similar features and capabilities into their core products. Leading vendors in the POS space include Oracle/Micros, NCR, IBM, Square, First Data/Clover, and others.

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

- *Intellectual Property.* We currently own nine patents that cover various approaches to facilitating SMS/MMS text messaging solutions and manipulating receipt content.
- *Competitive pricing.* We are unaware of any solution in the market that offers the ability to aggregate and analyze POS data, activate mobile messaging campaigns, convert print receipts into targeted marketing transactions, and shape employee performance in real-time all from a single platform (Recurrency). Our platform approach will allow for bundled pricing strategies, or a la carte tactics, that could create unfair pricing advantages.
- *Scalability.* We believe that our platform is more scalable than most if not all of our competitors. We have scaled from around 1,000 POS integrations to more than 20,000 in just three years. Aside from the POS manufacturers themselves, we are unaware of any other solutions provider who is currently integrated with as many POS devices as we are.

Customers

During the years ended December 31, 2022 and 2021 two customers accounted for 51% and 73% of our revenues, respectively

Seasonality

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

Intellectual Property-

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

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

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

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

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

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

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

Government Regulation

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

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

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

- *Deceptive Trade Practice Law in the U.S.* The FTC and state attorneys general are given broad powers by legislatures to curb unfair and deceptive trade practices. These laws and regulations apply to mobile marketing campaigns and behavioral advertising. The general guideline is that all material terms and conditions of the offer must be "clearly and conspicuously" disclosed to the consumer prior to the buying decision. The balancing of the desire to capture a potential customer's attention, while providing adequate disclosure, can be challenging in the mobile context due to the lack of screen space available to provide required disclosures.
- *Behavioral Advertising.* Behavioral advertising is a technique used by online publishers and advertisers to increase the effectiveness of their campaigns. Behavioral advertising uses information collected from an individual's web-browsing behavior, such as the pages they have visited or the searches they have made, to select which advertisements to display to that individual. This data can be valuable for online marketers looking to personalize advertising initiatives or to provide geo-tags through mobile devices. Many businesses adhere to industry self-governing principles, including an opt-out regime whereby information may be collected until an individual indicates that he or she no longer agrees to have this information collected. The FTC and EU member states are considering regulations in this area, which may include implementation of a more rigorous opt-in regime. An opt-in policy would prohibit businesses from collecting and using information from individuals who have not voluntarily consented. Among other things, the implementation of an opt-in regime could require substantial technical support and negatively impact the market for our mobile advertising products and services. A few states have also introduced bills in recent years that would restrict behavioral advertising within the state. These bills would likely have the practical effect of regulating behavioral advertising nationwide because of the difficulties behind implementing state-specific policies or identifying the location of a particular consumer. There have also been a large number of class action suits filed against companies engaged in behavioral advertising.
- *Behavioral Advertising-Privacy Regulation.* Our business is affected by U.S. federal and state, as well as EU member state and foreign country, laws and regulations governing the collection, use, retention, sharing and security of data that we receive from and about our users. In recent years, regulation has focused on the collection, use, disclosure and security of information that may be used to identify or that actually identifies an individual, such as an Internet Protocol ("IP") address or a name. Although the mobile and Internet advertising privacy practices are currently largely self-regulated in the U.S., the FTC has conducted numerous discussions on this subject and suggested that more rigorous privacy regulation is appropriate, including regulation of non-personally identifiable information which could, with other information, be used to identify an individual. Within the EU, member state data protection authorities typically regard IP addresses as personal information, and legislation adopted recently in the EU requires consent for the placement of a cookie on a user device. In addition, EU data protection authorities are following with interest the FTC's discussions regarding behavioral advertising and may follow suit by imposing additional privacy requirements for mobile advertising practices.
- *Marketing-Privacy Regulation.* In addition, there are U.S. federal and state laws and EU member state and other country laws that govern SMS/MMS and telecommunications-based marketing, generally requiring senders to transmit messages (including those sent to mobile devices) only to recipients who have specifically consented to receiving such messages. U.S. federal, EU member state and other country laws also govern e-mail marketing, generally imposing an opt-out requirement for emails sent within an existing business relationship.
- *SMS/MMS and Location-Based Marketing Best Practices and Guidelines.* We voluntarily comply with the guidelines of the Mobile Marketing Association, or MMA, a global association of 700 agencies, advertisers, mobile device manufacturers, wireless operators and service providers and others interested in the potential of marketing via the mobile channel. The MMA has published a code of conduct and best practices guidelines for use by those involved in mobile messaging activities. The guidelines were developed by a collaboration of the major carriers and they require adherence to them as a condition of service. We voluntarily comply with the MMA code of conduct, which generally require notice and user consent for delivery of location-based services. In addition, the Cellular Telephone Industry Association, or CTIA, has developed Best Practices and Guidelines to promote and protect user privacy regarding location-based services.
- *TCPA.* The United States Telephone Consumer Protection Act, or TCPA, prohibits unsolicited voice and text calls to cell phones through the use of an automatic telephone-dialing system ("ATDS") unless the recipient has given prior consent. The statute also prohibits companies from initiating telephone solicitations to individuals on the national Do-Not-Call list, and restricts the hours when such messages may be sent. Violations of the TCPA can result in statutory damages of \$500 per violation (i.e., for each individual text message). U.S. state laws impose additional regulations on voice and text calls. We believe that our platform does not employ an ATDS within the meaning of the TCPA based on case law construing that term.
- *CAN-SPAM.* The U.S. Controlling the Assault of Non-Solicited Pornography and Marketing Act, or CAN SPAM Act, prohibits all commercial e-mail messages, as defined in the law, to mobile phones unless the device owner has given "express prior authorization." Recipients of such messages must also be allowed to opt-out of receiving future messages the same way they opted-in. Senders have ten business days to honor opt-out requests. The FCC has compiled a list of domain names used by wireless service providers to which marketers may not send commercial e-mail messages. Senders have 30 days from the date the domain name is posted on the FCC site to stop sending unauthorized commercial e-mail to addresses containing the domain name. Violators are subject to fines of up to \$6.0 million and up to one year in jail for some spamming activities. Carriers, the FTC, the FCC, and State Attorneys General may bring lawsuits to enforce alleged violations of the Act.

- *Communications Privacy Acts.* Foreign and U.S. federal and state laws impose liability for intercepting communications while in transit or accessing the contents of communications while in storage. EU member state laws also require consent for our receiving this information, and if our carrier customers fail to obtain such consent we could be subjected to civil or even criminal penalties.
- *Security Breach Notification Requirements.* EU member state laws require notice to the member state data protection authority of a data security breach involving personal data if the breach poses a risk to individuals. In addition, Germany enacted a broad requirement to notify individuals in the event of a data security breach that is likely to be followed by notification requirements to data subjects in other EU member states. In the U.S., various states have enacted data breach notification laws, which require notification of individuals and sometimes state regulatory bodies in the event of breaches involving certain defined categories of personal information. Japan and Uruguay have also enacted security breach notice requirements. This new trend suggests that breach notice statutes may be enacted in other jurisdictions, including by the U.S. at the federal level, as well.
- *Children.* The Children's Online Privacy Protection Act prohibit the knowing collection of personal information from children under the age of 13 without verifiable parental consent, and strictly regulate the transmission of requests for personal information to such children. Other countries do not recognize the ability of children to consent to the collection of personal information. In addition, it is likely that behavioral advertising regulations will impose special restrictions on use of information collected from minors for this purpose.
- *Data Privacy Acts.* Individual states and countries have enacted or are moving forward with privacy compliance rules based on industry and types of data collected, such as the California Consumer Privacy Act ("CCPA"), Nevada's Senate Bill 220 and the EU's General Data Protection Regulation ("GDPR"). The acts provide residents the right to know what data is being collected about them and have access to it, whether that information is sold and the ability to refuse that data being sold, as well as the ability to opt out of it's collection. Penalties for non-compliance vary by state and country, for instance the maximum penalty of the CCPA is \$7,500 for intentional violations. The largest financial impact of CCPA on a business is the provisioning of the right of consumers to bring forward lawsuits. These situations may arise from instances where their "non-encrypted or non-redacted personal information" is breached, regardless of the harm done to the data. Under the CCPA, consumers can collect between \$100 and \$750 for each event. If the damages are greater than \$750, then the consumer may receive even more.

Employees

As of March 22, 2023, we had 38 employees, consisting of 23 full-time in research and development, 9 full-time in sales and marketing, and 6 full-time in general and administrative.

Item 1A. Risk Factors.

Risks Relating to Our Business

We may need additional financing to execute our business plan and fund operations, which additional financing may not be available on reasonable terms or at all. As of December 31, 2022, we had working capital deficit of \$6,596,741. We raised \$2.6 million in cash from the exercise of warrants in February 2022 and we raised \$2.1 million in Private Placement funding in 2022. In addition, we raised \$3.6 million from the exercise of warrants in the first quarter of 2023. While we believe that our additional cash from our warrant conversion along with our expected cash flow from operations, may not be sufficient to fund our 12-month plan of operations, there can be no assurance that we will not require significant additional capital within 12 months. Also, we expect that we may require additional capital beyond the next 12 months unless we are able to achieve and maintain a profitable operation. In the event we require additional capital we will endeavor to raise additional funds through various financing sources, including the sale of our equity and debt securities and the procurement of commercial debt financing. However, there can be no guarantees that such funds will be available on commercially reasonable terms, if at all. If such financing is not available on satisfactory terms, we may be unable to expand or continue our business as desired and operating results may be adversely affected. Any debt financing will increase expenses and must be repaid regardless of operating results and may involve restrictions limiting our operating flexibility. If we issue equity securities to raise additional funds, the percentage ownership of our existing stockholders will be reduced, and our stockholders may experience additional dilution in net book value per share.

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

Our business may be adversely affected by the COVID-19 outbreak. In December 2019, a novel strain of coronavirus, COVID-19, was reported to have surfaced in Wuhan, China. During 2020, this coronavirus spread to other countries, including the United States, and efforts to contain the spread of COVID-19 intensified. The United States and other countries had a series of lock-downs and self-isolation procedures, which have significantly limited business operations and restricted internal and external meetings. Further, the outbreak and any preventative or protective actions that we or our customers may take in respect of COVID-19 may result in a period of disruption to other work in progress. Our customers' businesses could be disrupted, and our future costs and potential revenues and technology evaluations could be negatively affected. Any resulting financial impact cannot be reasonably estimated at this time but may materially affect our business and financial condition. The extent to which COVID-19 impacts our results will depend on future developments, which are highly uncertain and cannot be predicted. New information may emerge concerning the severity and variants of COVID-19 along with the development of vaccines and the actions to contain COVID-19 or treat its impact, among others.

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

We may not be able to enhance our platform to keep pace with technological and market developments, or to remain competitive against potential new entrants in our markets. The market for mobile marketing and advertising services is emerging and is characterized by rapid technological change, evolving industry standards, frequent new product introductions and short product life cycles. Our current platform and services may not in the future be acceptable to marketers and advertisers. To keep pace with technological developments, satisfy increasing customer requirements and achieve acceptance of our marketing and advertising campaigns, we will need to enhance our current mobile marketing solutions and continue to develop and introduce on a timely basis new, innovative mobile marketing services offering compatibility, enhanced features and functionality on a timely basis at competitive prices. Our inability, for technological or other reasons, to enhance, develop, introduce and deliver compelling mobile marketing services in a timely manner, or at all, in response to changing market conditions, technologies or customer expectations could have a material adverse effect on our operating results or could result in our mobile marketing services platform becoming obsolete. Our ability to compete successfully will depend in large measure on our ability to maintain a technically skilled development and engineering staff and to adapt to technological changes and advances in the industry, including providing for the continued compatibility of our mobile marketing services platform with evolving industry standards and protocols. In addition, as we believe the mobile marketing market is likely to grow substantially, other companies which are larger and have significantly more capital to invest than us may emerge as competitors. For example, in August of 2019 Attentive Mobile raised \$40M in private venture financing. Similarly, in November of 2019, Punchh raised \$40M in private venture funding. New entrants could seek to gain market share by introducing new technology or reducing pricing. This may make it more difficult for us to sell our products and services, and could result in increased pricing pressure, reduced profit margins, increased sales and marketing expenses or the loss of market share or expected market share, any of which may significantly harm our business, operating results and financial condition.

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

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

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

We depend on third party providers for a reliable Internet infrastructure and the failure of these third parties, or the Internet in general, for any reason would significantly impair our ability to conduct our business. We outsource all of our data center facility management to third parties who host the actual servers and provide power and security in multiple data centers in each geographic location. These third-party facilities require uninterrupted access to the Internet. If the operation of our servers is interrupted for any reason, including natural disaster, financial insolvency of a third-party provider, or malicious electronic intrusion into the data center, our business would be significantly damaged. As has occurred with many Internet-based businesses, on occasion in the past, we have been subject to "denial-of-service" attacks in which unknown individuals bombarded our computer servers with requests for data, thereby degrading the servers' performance. While we have historically been successful in relatively quickly identifying and neutralizing these attacks, we cannot be certain that we will be able to do so in the future. If either a third-party facility failed, or our ability to access the Internet was interfered with because of the failure of Internet equipment in general or we become subject to malicious attacks of computer intruders, our business and operating results will be materially adversely affected.

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

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

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

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

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

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

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

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

We currently operate in limited vertical markets. Our customers primarily operate in the quick serve restaurant ("QSR") industry and we expanded to the convenience store market. Should this industry be impacted by economical or other unforeseen events, it could have a significant negative impact on our financial performance.

Risks Related to our Common Stock

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

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

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

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

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

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

We are a “smaller reporting company” and, as such are allowed to provide less disclosure than larger public companies. We are currently a “smaller reporting company,” meaning that we are not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent company that is not a smaller reporting company and have a public float of less than \$75 million and annual revenues of less than \$50 million during the most recently completed fiscal year. As a “smaller reporting company”, we are able to provide simplified executive compensation disclosures in our SEC filings, are exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that independent registered public accounting firms provide an attestation report on the effectiveness of internal control over financial reporting, and have certain other decreased disclosure obligations in SEC filings, including, among other things, we are only required to provide two years of audited financial statements in annual reports. Decreased disclosures in our SEC filings due to our status as a “smaller reporting company” may make it harder for investors to analyze our results of operations and financial prospects.

Item 1B. Unresolved Staff Comments.

Not Applicable.

Item 2. Properties.

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

We had a lease through April 2022 for 3,248 square feet of office space located in Halifax, Nova Scotia, at a monthly rental expense of \$3,371 per month, excluding common area maintenance charges.

Item 3. Legal Proceedings.

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

Item 4. Mine Safety Disclosures

Not Applicable.

Part II

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

Our common stock is quoted on the OTCQB® Venture Market under the stock symbol “MFON”.

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

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

Holders of Record

As of March 20, 2022, there were 149 holders of record of our common stock, not including shares held in street name.

Dividend Policy

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

Stock Repurchases

We did not repurchase any of our common stock in 2022 or 2021.

Securities Authorized for Issuance Under Equity Compensation Plans

The following table sets forth additional information as of December 31, 2022 with respect to the shares of common stock that may be issued upon the exercise of options and other rights under our existing equity compensation plans and arrangements in effect as of December 31, 2022. The information includes the number of shares covered by, and the weighted average exercise price of, outstanding options and the number of shares remaining available for future grant, excluding the shares to be issued upon exercise of outstanding options.

Plan Category	Number of securities to be issued upon exercise of outstanding options (a)	Weighted-average exercise price of outstanding options	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans not approved by security holders ⁽¹⁾	14,769,047	\$ 1.37	3,315,968
Equity compensation plans approved by security holders	—	—	—
Total	14,769,047	\$ 1.37	3,315,968

⁽¹⁾Comprised of our 2010, 2013, 2016 and 2022 Incentive Stock Plans.

Item 6. [Reserved]

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

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

Overview

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

The Company's Recurrency platform enables multi-unit retailers to leverage the power of their own data to yield maximum customer spend, frequency and loyalty while achieving the highest ROMS possible. Our customers use Recurrency to:

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

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

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

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

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

Recent Events

Related Party Notes

During the year ended December 31, 2022, we issued to one of our directors, secured Notes in the principal aggregate amount of \$5,173,125, which are due and payable two years after issuance. These Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. On November 19, 2021, a payment of \$200,000 was paid toward the principal balance of the note. As of December 31, 2022, we have \$5,173,125 as a remaining balance of these 2022 Notes and accrued interest of \$387,918. A total of \$151,398 of accrued interest was settled into 140,185 shares of common stock and the Company recorded a loss on debt settlement of interest payable \$2,259. A total of \$166,432 was accrued and recorded to equity payable of 154,106 shares of common stock and the Company recorded a loss on settlement of interest payable of \$44,325.

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

During the year ended December 31, 2022, we issued to Talkot Capital LLC, unsecured Notes in the principal aggregate amount of \$ 271,875, which are due and payable two years after issuance. These Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. As of December 31, 2022, we have \$271,875 as a remaining balance of these 2022 Notes and accrued interest of \$55,530. A total of \$10,352 of accrued interest was converted into 9,585 shares of common stock and the Company recorded a loss on settlement of interest payable of \$162. A total of \$10,423 was accrued and recorded to equity payable of 9,651 shares of common stock and the Company recorded a loss on settlement of interest payable of \$2,757.

2022 Warrant Exercises

On February 7, 2022, seventeen warrant holders exercised their common stock purchase warrant for 3,163,190 shares at the exercise price of \$.80 per share, resulting in additional capital of \$2,530,552. As an inducement for the holder’s exercise of the warrants, we issued the holders 2,530,552 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in February 2025.

2022 Private Placement

On August 24, 2022, Thomas Akin purchased 625,000 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in August 2025, and 1,500,000 shares at the exercise price of \$0.80 per share, resulting in additional capital of \$1,200,000.

Results of Operations and Financial Conditions

Year Ended December 31, 2022 Compared to Year Ended December 31, 2021

Revenues

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

Revenues for the twelve months ended December 31, 2022 were \$7,533,912, a decrease of \$640,972, or 7.8%, compared to \$8,174,884 for the twelve months ended December 31, 2021. This decrease is primarily due to the decrease in special projects revenue.

Cost of Revenues

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

Cost of revenues for the twelve months ended December 31, 2022 was \$5,328,483, an increase of \$1,026,113, or 23.8%, compared to \$4,302,370 for the twelve months ended December 31, 2021. This increase is primarily due to a one time increase in application costs that is currently under dispute and temporary guaranteed audience costs associated with increasing our key customer's messaging database.

The gross profit margin was 29% and 47% for the twelve months ended December 31, 2022 and 2021, respectively. Lower gross profit margin in 2022 is primarily due to the disputed application bill and the one-time audience building program costs.

Bad Debt

Bad Debt expense for the twelve months ended December 31, 2022 was \$40,383, an decrease of \$733,929, or 94.8%, compared to \$774,312 for the twelve months ended December 31, 2021. This decrease is due primarily to the restructuring of a large current contract in that had 18 months of remaining ASC 606 deductions that were all recognized at the end of 2021.

General and Administrative

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

General and administrative expenses for the twelve months ended December 31, 2022 were \$4,306,929, an increase of \$722,208, or 20.1%, compared to \$3,584,721 for the twelve months ended December 31, 2021. The increase in general and administrative expense was primarily due an increase in rent due to the end of the 50% abatement period, and an increase in insurance costs for 2022.

Sales and Marketing Expense

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

Sales and marketing expenses for the twelve months ended December 31, 2022 were \$2,616,596, a decrease of \$1,385,969, or 34.6%, compared to \$4,002,565 for the twelve months ended December 31, 2021. The decrease in 2022 was primarily due to a decrease of advertising and promotion expense of \$383,807 and decrease in payroll related expenses of \$916,754 compared to 2021.

Engineering, Research, and Development Expense

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

Engineering, research, and development expenses for the twelve months ended December 31, 2022, were \$3,060,029, a decrease of \$523,744 or 14.6%, compared to \$3,583,773 for the twelve months ended December 31, 2021. The decrease in expense was primarily due to a decrease in payroll expense.

Depreciation and Amortization Expense

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

Depreciation and amortization expenses for the twelve months ended December 31, 2022, were \$440,326 a decrease of \$266,747, or 38%, compared to \$707,073 for the twelve months ended December 31, 2021. This decrease is primarily attributable to the decrease in amortized assets due to impairment of Goodwill in 2021 and additional impairment of intangible assets during 2022.

Intangible Asset Impairment

Intangible Asset Impairment expenses for the twelve months ended December 31, 2022 were \$552,476, an decrease of \$544,190, compared to \$8,286 for the twelve months ended December 31, 2021.

Goodwill Impairment

Goodwill Impairment expenses for the twelve months ended December 31, 2022 were \$411,183, an increase of \$326,014, compared to \$85,169 for the twelve months ended December 31, 2021. The increase is due to a reduction in expected cash flow for our current Belly products over the next five years.

Interest Income

Interest income consists of stated interest income on our cash balances.

Interest income for the twelve months ended December 31, 2022 was \$0, compared to \$5 for the twelve months ended December 31, 2021. This decrease of \$5, related to lower earnings on cash positions held throughout the year as compared to the prior year.

Interest Expense

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

Interest expense for the twelve months ended December 31, 2022 was \$737,745, an increase of \$469,799, or 175.3%, compared to \$267,966 for the twelve months ended December 31, 2021. The increase is primarily attributable to the increased principal on short- and long-term borrowings during the year.

Loss on Disposal of Fixed Assets

Loss on disposal of fixed assets consists of an asset being disposed of for less than its carrying value.

Loss on disposal of fixed assets for the twelve months ended December 31, 2022 was \$0, a decrease of \$880 or 90%, compared to \$880 for the twelve months ended December 31, 2021. The decrease is due to reduced amount of assets that were disposed of during the year.

Settlement Losses

Settlement losses consist of legal settlement for TCPA settlements.

Settlement losses for the twelve months ended December 31, 2022 were \$53,500, an increase of \$53,500 or 100%, compared to \$0 in the twelve months ended December 31, 2021. The increase is due to additional TCPA claims.

Extinguishment of Debt

The gain on extinguishment of debt for the twelve months ended December 31, 2022 was \$0, a decrease of \$891,103 or 100%, compared to \$891,103 for the twelve months ending December 31, 2021. The decrease was due to full forgiveness of our Paycheck Protection Program loan in 2021.

Foreign Currency

The Company's financial results are impacted by volatility in the Canadian/U.S. Dollar exchange rate. The average U.S. Dollar exchange rate for the year ended December 31, 2022 and 2021 was \$1 Canadian equals \$0.77 and \$0.79 U.S. Dollars, respectively. The Company's functional or measurement currency is the U.S. Dollar. Based on a U.S. Dollar functional currency, the following are the key areas impacted by foreign currency volatility:

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

The change in foreign currency was a gain of \$2,119 and a loss of \$8,661 for the years ended December 31, 2022 and 2021, respectively.

Liquidity and Capital Resources

We have \$362,835 of cash as of December 31, 2022. We had a net loss of \$10 million for the year ended 2022, and we used \$6.7 million of cash in our operating activities during 2022. We raised \$2.6 million in cash from the exercise of warrants in February 2022 and we have raised \$2.1 million in Private Placement funding in 2022. In addition, we raised \$3.6 million in warrant conversion funding in the first quarter of 2023. Our additional cash from our warrant conversion along with our expected cash flow from operations, may not be sufficient to fund our 12-month plan of operations, and there can be no assurance that we will not require significant additional capital within 12 months.

If our cash reserves prove insufficient to sustain operations, we plan to raise additional capital by selling shares of capital stock or other equity or debt securities. In addition we currently have an additional \$800,000 available on our current line of credit. We may need additional financing thereafter until we can achieve profitability. If we cannot, we will be forced to curtail our operations or possibly be forced to evaluate a sale or liquidation of our assets. Any future financing may involve substantial dilution to existing investors.

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

Cash Flows

	For the Year Ended December 31,	
	2022	2021
Net cash provided by (used in):		
Operating activities	\$ (6,688,551)	\$ (4,484,598)
Investing activities	(30,269)	(378,472)
Financing activities	(6,456,410)	2,364,722
Effect of foreign currency translation on cash flow	(46,274)	(49,048)
Net change in cash	<u>\$ (308,684)</u>	<u>\$ (2,547,396)</u>

Operating Activities

We incurred a net loss in operating activities totaling \$6,688,551 in 2022 and \$4,484,598 in 2021, respectively. The increase in net loss in operating activities in 2022 compared to 2021 was due primarily to the costs associated with the March 2022 warrant conversion, an increase in interest, intangible asset impairment and goodwill impairment.

Investing Activities

Investing activities during 2022 included \$13,087 of capitalized software development costs and \$17,182 of equipment purchases. Investing activities during 2021 included \$299,253 of capitalized software development costs and \$79,219 of equipment purchases.

Financing Activities

Financing activities for 2022 include net proceeds from conversion of common stock warrants of \$2,550,552, proceeds from proceeds from PIPE funding of \$2,050,000 and proceeds from related party notes payable of \$1,895,000 offset by payments on notes payable of \$39,142

Critical Accounting Policies and Estimates

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

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

Income Taxes

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

Revenue Recognition and Concentrations

Our Recurrency platform is a hosted solution. We generate revenue from licensing our software to clients in our software as a service model, per-message and per-minute transactional fees, and customized professional services. We recognize license/subscription fees over the period of the contract, service fees as the services are performed, and per-message or per-minute transaction revenue when the transaction takes place. Under Topic 606, revenue is recognized when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. We consider authoritative guidance on multiple deliverables in determining whether each deliverable represents a separate unit of accounting. Some customers are billed on a month-to-month basis with no contractual term and are collected by credit card or electronic funds transfer. Revenue is recognized at the time that the services are rendered, and the selling price is fixed with a set range of plans. Cash received in advance of the performance of services is recorded as deferred revenue.

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

We determine revenue recognition through the following steps:

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

During the years ended December 31, 2022 and 2021 two customers accounted for 51% and 73% of our revenues, respectively.

Share-based compensation expense

Share-based compensation cost is measured at the date of grant, based on the calculated fair value of the stock-based award, and is recognized as expense over the employee's requisite service period (generally the vesting period of the award). We estimate the fair value of employee stock options granted using the Black-Scholes Option Pricing Model. Key assumptions used to estimate the fair value of stock options include the exercise price of the award, the fair value of our common stock on the date of grant, the expected option term, the risk-free interest rate at the date of grant, the expected volatility and the expected annual dividend yield on our Company's common stock. We have elected to account for forfeitures as they occur to determine the amount of compensation cost to be recognized in each period.

Derivative Financial Instruments

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

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

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements.

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

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

Item 8. Financial Statements



REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

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

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Mobivity Holdings Corp. (the Company) as of December 31, 2022 and 2021, and the related consolidated statements of operations and comprehensive loss, stockholders' equity (deficit), and cash flows for each of the years in the two-year period ended December 31, 2022, and the related notes (collectively referred to as the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

Going Concern

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

Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

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

Critical Audit Matters

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

Revenue Recognition

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

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

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

/s/ M&K CPAS, PLLC

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

Houston, TX

March 31, 2023

Mobivity Holdings Corp.
Consolidated Balance Sheets

	December 31, 2022	December 31, 2021
ASSETS		
Current assets		
Cash	\$ 426,740	\$ 735,424
Accounts receivable, net of allowance for doubtful accounts of \$34,446 and \$56,340, respectively	1,081,183	578,303
Other current assets	195,017	227,458
Total current assets	1,702,940	1,541,185
Goodwill	—	411,183
Right to use lease assets	981,896	1,187,537
Intangible assets and software development costs, net	194,772	1,124,720
Other assets	137,917	173,325
TOTAL ASSETS	\$ 3,017,525	\$ 4,437,950
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities		
Accounts payable	\$ 3,412,612	\$ 3,823,909
Accrued interest	443,448	172,239
Accrued and deferred personnel compensation	569,347	495,533
Deferred revenue and customer deposits	902,727	377,170
Related party notes payable, net - current maturities	2,711,171	819,531
Notes payable, net - current maturities	32,617	69,052
Operating lease liability	251,665	229,240
Other current liabilities	49,541	9,071
Total current liabilities	8,373,128	5,995,745
Non-current liabilities		
Related party notes payable, net - long-term	2,481,290	2,498,711
Notes payable, net - long-term	31,092	39,086
Operating lease liability	936,924	1,188,589
Total non-current liabilities	3,449,306	3,726,386
Total liabilities	11,822,434	9,722,131
Commitments and Contingencies (See Note 13)		
Stockholders' equity (deficit)		
Common stock, \$0.001 par value; 100,000,000 shares authorized; 61,311,155 and 55,410,695, shares issued and outstanding	61,311	55,411
Equity payable	324,799	100,862
Additional paid-in capital	108,806,353	102,446,921
Accumulated other comprehensive income (loss)	(100,963)	(52,088)
Accumulated deficit	(117,896,409)	(107,835,287)
Total stockholders' equity (deficit)	(8,804,909)	(5,284,181)
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)	\$ 3,017,525	\$ 4,437,950

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Consolidated Statements of Operations and Comprehensive Loss

	For the Year Ended December 31,	
	2022	2021
Revenues		
Revenues	\$ 7,533,912	\$ 8,174,884
Cost of revenues	5,328,483	4,302,370
Gross profit	2,205,429	3,872,514
Operating expenses		
Bad Debt	40,383	774,312
General and administrative	4,306,929	3,584,721
Sales and marketing	2,616,596	4,002,565
Engineering, research, and development	3,060,029	3,583,773
Goodwill Impairment	411,183	85,169
Intangible asset impairment	552,476	8,286
Depreciation and amortization	440,326	707,073
Total operating expenses	11,427,922	12,745,899
Loss from operations	(9,222,493)	(8,873,385)
Other income/(expense)		
Interest income	—	5
Gain on Extinguishment of Debt	—	891,103
Interest expense	(737,745)	(267,966)
Loss on disposal of fixed assets	—	(880)
Settlement Losses	(53,500)	
Loss on settlement of debt	(49,503)	—
Foreign currency gain (loss)	2,119	(8,661)
Total other income (expense)	(838,629)	613,601
Loss before income taxes	(10,061,122)	(8,259,784)
Income tax expense	—	—
Net Loss	(10,061,122)	(8,259,784)
Other comprehensive income (loss), net of income tax		
Foreign currency translation adjustments	(48,875)	(28,642)
Comprehensive loss	\$ (10,109,997)	\$ (8,288,426)
Net loss per share:		
Basic and Diluted	\$ (0.17)	\$ (0.15)
Weighted average number of shares:		
Basic and Diluted	59,241,798	55,410,695

See accompanying notes to consolidated financial statements.

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

	Common Stock		Equity	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Dollars	Payable				
Balance, December 31, 2020	55,410,695	\$ 55,411	\$ 100,862	\$ 101,186,889	\$ (23,446)	\$ (99,575,503)	\$ 1,744,213
Issuance of common stock for cash	—	—	—	—	—	—	—
Fair value of options issued with related party debt	—	—	—	262,758	—	—	262,758
Stock based compensation	—	—	—	997,274	—	—	997,274
Foreign currency translation adjustment	—	—	—	—	(28,642)	—	(28,642)
Net loss	—	—	—	—	—	(8,259,784)	(8,259,784)
Balance, December 31, 2021	55,410,695	\$ 55,411	\$ 100,862	\$ 102,446,921	\$ (52,088)	\$ (107,835,287)	\$ (5,284,181)
Issuance of common stock for warrants exercised	3,188,190	3,188	—	2,547,364	—	—	2,550,552
Issuance of stock for PIPE financing	2,562,500	2,562	—	2,047,438	—	—	2,050,000
Issuance of common stock for Settlement of Interest Payable on Related Party Debt	149,770	150	223,937	164,021	—	—	388,108
Fair value of options issued with related party debt	—	—	—	143,039	—	—	143,039
Stock based compensation	—	—	—	1,457,570	—	—	1,457,570
Foreign currency translation adjustment	—	—	—	—	(48,875)	—	(48,875)
Net loss	—	—	—	—	—	(10,061,122)	(10,061,122)
Balance, December 31, 2022	61,311,155	\$ 61,311	\$ 324,799	\$ 108,806,353	\$ (100,963)	\$ (117,896,409)	\$ (8,804,909)

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Consolidated Statements of Cash Flows

	For the Year Ended December 31,	
	2022	2021
OPERATING ACTIVITIES		
Net loss	\$ (10,061,122)	\$ (8,259,784)
Adjustments to reconcile net loss to net cash used in operating activities:		
Bad debt expense	40,383	774,312
Loss on settlement of debt -Related Party	49,503	—
Gain on Extinguishment of Debt	—	(891,103)
Stock-based compensation	1,457,570	997,274
Loss on disposal of fixed assets	—	880
Intangible Asset Impairment	552,476	8,286
Goodwill Impairment	411,183	85,169
Depreciation and amortization expense	440,326	707,073
Amortization of debt discount	122,258	31,000
Increase (decrease) in cash resulting from changes in:		
Accounts receivable	(543,263)	(365,213)
Other current assets	32,102	40,133
Operating lease assets/liabilities	(23,599)	(2,575)
Contracts receivable, long-term	—	707,928
Other assets	(31)	2,330
Accounts payable	(411,297)	1,888,498
Accrued interest	609,814	168,673
Accrued and deferred personnel compensation	(79,283)	270,590
Accrued Professional Fees	148,402	—
Other liabilities - non-current	—	(415,766)
Other liabilities - current	40,470	(2,876)
Deferred revenue and customer deposits	525,557	(229,427)
Net cash used in operating activities	(6,688,551)	(4,484,598)
INVESTING ACTIVITIES		
Purchases of equipment	(17,182)	(79,219)
Cash paid for patents	—	—
Capitalized software development costs	(13,087)	(299,253)
Net cash used in investing activities	(30,269)	(378,472)
FINANCING ACTIVITIES		
Payments on notes payable	(39,142)	(561,528)
Payments on related party notes payable	—	(280,000)
Proceeds from related party notes payable	1,895,000	3,206,250
Proceeds from conversion of common stock warrants	2,550,552	—
Proceeds from PIPE funding	2,050,000	—
Net cash provided by financing activities	6,456,410	2,364,722
Effect of foreign currency translation on cash flow	(46,274)	(49,048)
Net change in cash	(308,684)	(2,547,396)
Cash at beginning of period	735,424	3,282,820
Cash at end of period	\$ 426,740	\$ 735,424
Supplemental disclosures:		
Cash paid during period for:		
Interest	\$ —	\$ 68,389
Non-cash investing and financing activities:		
Non cash investing and financing activities:		
Fair Value of options Issued with related party debt	\$ 143,039	\$ —
Debt Discount on Related Party Debt	\$ 262,658	\$ —
Fixed Assets contribution by lessor	\$ —	\$ 110,000
Debt Discount on related party Debt	\$ —	\$ 262,658
Refinancing of debt-related party	\$ —	\$ 43,750
Initial ROU and asset lease liability	\$ —	\$ 1,458,527
Shares Issued for settlement of debt - related party	\$ 338,605	\$ —

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Notes to Consolidated Financial Statements

1. Nature of Operations

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

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

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

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

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

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

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

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

2. Summary of Significant Accounting Policies

Principles of Consolidation

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

Use of Estimates

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

Reclassifications

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

Acquisitions

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

Cash and Cash Equivalents

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

Accounts Receivable, Allowance for Doubtful Accounts and Concentrations

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

As of December 31, 2022 and 2021, we recorded an allowance for doubtful accounts of \$34,446 and \$56,340, respectively.

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

As of December 31, 2022, we had four customers whose balance represented 86% of total accounts receivable. As of December 31, 2021, we had three customers whose balance represented 94% of total accounts receivable.

Goodwill and Intangible Assets

Goodwill is tested for impairment at a minimum on an annual basis. Goodwill is tested for impairment at the reporting unit level by first performing a qualitative assessment to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying value. If the reporting unit does not pass the qualitative assessment, then the reporting unit's carrying value is compared to its fair value. The fair values of the reporting units are estimated using market and discounted cash flow approaches. Goodwill is considered impaired if the carrying value of the reporting unit exceeds its fair value. The discounted cash flow approach uses expected future operating results. Failure to achieve these expected results may cause a future impairment of goodwill at the reporting unit.

We conducted our annual impairment tests of goodwill as of December 31, 2022 and 2021. As a result of these tests, we had a total impairment charges of \$411,183 and \$85,169 as of December 31, 2022 and 2021, respectively

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

The Company's evaluation of its long-lived assets resulted in \$552,476 and \$8,286 of intangible impairment expense during the years ended December 31, 2022 and December 31, 2021.

Software Development Costs

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

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

The Company evaluates the future recoverability of capitalized software development costs on an annual basis. For products that have been released in prior years, the primary evaluation criterion is ongoing relations with the customer. The Company's evaluation of its capitalized software development asset resulted in impairment charges of \$0 for the year ended December 31, 2022 and \$0 for the year ended December 31, 2021.

Impairment of Long-Lived Assets

We evaluate long-lived assets (including intangible assets) for impairment whenever events or changes in circumstances indicate that the carrying amount of a long-lived asset may not be recoverable. An asset is considered impaired if its carrying amount exceeds the undiscounted future net cash flow the asset is expected to generate.

Foreign Currency Translation

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

Derivative Financial Instruments

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

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

Revenue Recognition and Concentrations

Our Recurrency platform is a hosted solution. We generate revenue from licensing our software to clients in our software as a service model, per-message and per-minute transactional fees, and customized professional services. We recognize license/subscription fees over the period of the contract, service fees as the services are performed, and per-message or per-minute transaction revenue when the transaction takes place. Under Topic 606, revenue is recognized when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. We consider authoritative guidance on multiple deliverables in determining whether each deliverable represents a separate unit of accounting. Some customers are billed on a month-to-month basis with no contractual term and are collected by credit card. Revenue is recognized at the time that the services are rendered, and the selling price is fixed with a set range of plans. Cash received in advance of the performance of services is recorded as deferred revenue.

During the years ended December 31, 2022 and 2021, two customers accounted for 51% and 55% of our revenues, respectively.

Comprehensive Income (Loss)

Comprehensive loss is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. We are required to record all components of comprehensive loss in the consolidated financial statements in the period in which they are recognized. Net loss and other comprehensive loss, including foreign currency translation adjustments and unrealized gains and losses on investments, are reported, net of their related tax effect, to arrive at comprehensive loss. For the twelve months ended December 31, 2022 and 2021, the comprehensive loss was \$10,109,997, and \$8,288,426 respectively.

Stock-based Compensation

We primarily issue stock-based awards to employees in the form of stock options. We determine compensation expense associated with stock options based on the estimated grant date fair value method using the Black-Scholes valuation model. We recognize compensation expense using a straight-line amortization method over the respective vesting period.

Research and Development Expenditures

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

Advertising Expense

Direct advertising costs are expensed as incurred and consist primarily of E-commerce advertisements, sales enablement, content creation, and other direct costs. Advertising expense was \$377,201 and \$962,049 for years ended December 31, 2022 and 2021, respectively. We also include the cost of attending trade shows under marketing expense. We recorded \$101,044 and \$50,267 of expense related to those activities for the years ended December 31, 2022 and 2021, respectively.

Income Taxes

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

Computation of Net Loss per Common Share

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

We had the following dilutive common stock equivalents as of December 31, 2022 and 2021 which were excluded from the calculation because their effect was anti-dilutive.

	December 31,	
	2022	2021
Outstanding employee options	6,691,216	6,246,466
Outstanding restricted stock units	1,929,933	1,685,141
Outstanding warrants	6,147,898	3,246,690
	<u>14,769,047</u>	<u>11,178,297</u>

Recent Accounting Pronouncements

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

In August 2020, the FASB issued ASU 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity ("ASU 2020-06" or the "ASU"). ASU No. 2020-06 requires that the if-converted method of computing diluted Earnings per Share. The company adopted the ASU on January 1, 2022.

3. Going Concern

We have \$426,740 of cash as of December 31, 2022. We had a net loss of \$10 million for the year then ended, and we used \$6.7 million of cash in our operating activities during 2022. We raised \$2.6 million in cash from the exercise of warrants in February 2022 and we have raised \$2.1 million in Private Placement funding in 2022. In addition, we raised \$3.6 million from the exercise of warrants in the first quarter of 2023. There is substantial doubt that our additional cash from our warrant conversion along with our expected cash flow from operations, will be sufficient to fund our 12-month plan of operations, there can be no assurance that we will not require significant additional capital within 12 months.

As shown in the accompanying financial statements, the Company has incurred net losses from operations resulting in an accumulated deficit of \$117,896,409 as of December 31, 2022. Further losses are anticipated in the development of the Company's business raising substantial doubt about the Company's ability to continue as a going concern. The ability to continue as a going concern is dependent upon the Company generating profitable operations in the future and/or obtaining the necessary financing to meet its obligations and repay its liabilities arising from normal business operations when they come due. Management intends to finance operating costs over the next twelve months with the proceeds from the sale of securities, and/or revenues from operations. These financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts, or amounts and classification of liabilities that might result from this uncertainty.

4. Goodwill and Intangible Assets

Goodwill

The following table presents goodwill and impairment for the years ended December 31, 2022 and 2021:

	Goodwill
December 31, 2020	\$ 496,352
Acquired	—
Impairment	(85,169)
December 31, 2021	411,183
Acquired	—
Impairment	(411,183)
December 31, 2022	<u>\$ —</u>

We conducted our annual impairment test of goodwill as of December 31, 2022 and 2021, which resulted in impairment charges of \$411,183 and \$85,169 respectively.

Intangible assets

The following table presents components of identifiable intangible assets for the years ended December 31, 2022 and 2021:

	December 31, 2022				December 31, 2021			
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)
Patents and trademarks	\$ 57,595	\$ (4,897)	\$ 52,698	14	\$ 105,543	\$ (47,948)	\$ 57,595	14
Customer and merchant relationships	545,533	(514,843)	30,690	10	2,321,112	(1,775,579)	545,533	10
Trade name	32,393	(24,343)	8,050	10	197,955	(165,562)	32,393	10
Acquired technology	112,191	(112,191)	—	10	621,030	(508,839)	112,191	10
Non-compete agreement	29,212	(29,212)	—	2	79,300	(50,088)	29,212	2
	<u>\$ 776,924</u>	<u>\$ (685,486)</u>	<u>\$ 91,438</u>		<u>\$ 3,324,940</u>	<u>\$ (2,548,016)</u>	<u>\$ 776,924</u>	

During the years ended December 31, 2022 and 2021, we recorded amortization expense related to our intangible assets of \$133,010 and \$163,760, respectively, which is included in depreciation and amortization in the consolidated statement of operations.

During the years ended December 31, 2022 and 2021, we recorded impairment of \$552,476 and \$8,286 respectively related to our intangible assets.

Expected future intangible asset amortization as of December 31, 2022 is as follows:

Year ending December 31,	Amount
2022	\$ 35,885
2023	12,639
2024	4,891
2025	4,891
2025	4,891
Thereafter	28,241
Total	<u>\$ 91,438</u>

5. Software Development Costs

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

The following table presents details of our software development costs for the years ended December 31, 2022 and 2021:

December 31, 2022				December 31, 2021			
Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)
\$ 2,578,611	\$ (2,475,277)	\$ 103,334	2	\$ 2,565,525	\$ (2,217,729)	\$ 347,796	2
<u>\$ 2,578,611</u>	<u>\$ (2,475,277)</u>	<u>\$ 103,334</u>		<u>\$ 2,565,525</u>	<u>\$ (2,217,729)</u>	<u>\$ 347,796</u>	

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

During the years ended December 31, 2022 and 2021, we capitalized \$13,087 and \$299,253 respectively of software development. We recorded amortization expense for software development costs of \$257,548 and \$391,365, respectively which is included in depreciation and amortization in the consolidated statement of operations.

During the years ended December 31, 2022 and 2021, we recorded impairment charges of \$0 and \$0, respectively related to our software development costs.

The estimated future amortization expense of software development costs as of December 31, 2022 is as follows:

Year ending December 31,	Amount
2023	98,828
2024	4,506
2025	—
2026	—
2027	—
Thereafter	—
Total	<u>\$ 103,334</u>

6. Operating Lease Assets

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

The following are additional details related to leases recorded on our balance sheet as of December 31, 2021:

Leases	Classification	Balance at December 31, 2022
Assets		
Current		
Operating lease assets	Operating lease assets	\$ —
Noncurrent		
Operating lease assets	Noncurrent operating lease assets	981,896
Total lease assets		\$ 981,896
Liabilities		
Current		
Operating lease liabilities	Operating lease liabilities	\$ 251,665
Noncurrent		
Operating lease liabilities	Noncurrent operating lease liabilities	\$ 936,924
Total lease liabilities		\$ 1,188,589

During the year ended December 31, 2022, we recorded amortization expense of \$23,599 and during the year ended December 31, 2021, we recorded a credit to amortization expense of \$2,575 related to the accretion of the lease liability, which is included in depreciation and amortization in the consolidated statement of operations.

Rent expense was \$371,213 and \$258,368 for the years ended December 31, 2022 and 2021, respectively.

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

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

Year ending December 31,	Amount
2023	\$ 324,221
2024	330,894
2025	337,568
2026	344,241
2027	28,733
Thereafter	—
Total future lease payments	1,365,657
Less: imputed interest	(177,068)
Total	\$ 1,188,589
Weighted Average Remaining Lease Term (years)	
Operating leases	4.08
Weighted Average Discount Rate	
Operating leases	6.75%

7. Notes Payable and Related Party Notes Payable

The following table presents details of our notes payable as of December 31, 2022 and 2021:

Facility	Maturity	Interest Rate	December 31, 2022	December 31, 2021
ACOA Note	February 1, 2024	—	34,231	76,642
TD Bank	December 31, 2022	—	29,478	31,496
Related Party Notes	various	15%	5,192,461	3,318,242
Total Debt			5,256,170	3,426,380
Less current portion			(2,743,788)	(888,583)
Long-term debt, net of current portion			<u>\$ 2,512,382</u>	<u>\$ 2,537,797</u>

Principal payments on notes payables are due as follows:

Year ending December 31,	Amount
2023	\$ 2,743,788
2024	2,497,643
2025	14,739
2026	—
2027	—
Thereafter	—
Total future debt payments	<u>5,256,170</u>

ACOA Note

On November 6, 2017, Livelenz, entered into an amendment of the original agreement dated December 2, 2014 with the Atlantic Canada Opportunities Agency (“ACOA”). Under this agreement the note will mature without interest and repayments began on June 1, 2016, while the commitments 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, and will increase to \$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. During the twelve months ended December 31, 2021, we repaid \$10,485 CAD of principal. Nine months of payments were voluntarily deferred by ACOA due to COVID-19.

During the twelve months ended December 31, 2022 \$45,052 CAD in principle was paid toward the ACOA loan.

Wintrust Loan

On November 14, 2018, we entered into a Loan and Security Agreement with Wintrust Bank(the Loan and Security Agreement"). The Loan and Security Agreement provides for a single-term loan to us in the original principal amount of \$1,000,000. Interest accrues on the unpaid principal amount at the rate of prime plus 1.5%. The loan is a three-year loan and was interest-only payable for the first six months of the loan. Commencing on May 1, 2019, we made monthly payments of principal in the amount of \$33,333 in addition to the monthly payment of accrued interest. The loan is secured by all of our assets other than our intellectual property. We used the proceeds of the loan to re-finance a loan in the principal amount of \$1,000,000 we assumed as part of the acquisition of the Belly assets.

On August 7, 2020, the Company entered into an amendment of their Loan and Security Agreement with Wintrust Bank. Under this agreement, the covenant calculation was amended to calculate covenants under a borrowing base methodology. The Company had defaulted under the March 31, 2020 and June 30, 2020 covenants, which were waived upon execution of the amendment and there were no defaults after the amendment. During the twelve months ended December 31, 2021, we repaid \$400,000 of principal. The loan was paid in full on June 30, 2021.

Chase Loan

On April 10, 2020, we entered into a commitment loan with Chase Bank, N.A. under the CARES act and SBA Paycheck Protection Program, in the principal aggregate amount of \$891,103, which is due and payable two years after issuance. This loan bears interest on the unpaid balance at the rate of one percent (1%) per annum. The note contains a deferral period of six months, for which no interest or principal payments are due. Forgiveness of the loan may be obtained by meeting certain SBA requirements. The entire loan was forgiven on July 21, 2021, at which time the company recorded a gain on extinguishment of debt in the amount of \$891,103.

TD Bank Loan

On April 22, 2020, we entered into a commitment loan with TD Bank under the Canadian Emergency Business Account (“CEBA”), in the principal aggregate amount of \$40,000 CAD, which is due and payable on December 31, 2022. This note bears interest on the unpaid balance at the rate of zero percent (0%) per annum during the initial term. Under this note no interest or principal payments are due until December 31, 2023. Under the conditions of the loan, thirty-three percent (33%) of the loan will be forgiven if sixty-seven percent (67%) is repaid prior to the initial term date.

Related Party Notes

Secured Promissory Notes

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

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

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

On June 10, 2022, the Company took a draw of an additional \$500,000 under the Credit Agreement.

On August 09, 2022 the Company took a draw of an additional \$300,000 under the Credit Agreement.

On November 22, 2022 the Company took a draw of an additional \$375,000 under the Credit Agreement.

On November 30, 2022 the Company took a draw of an additional \$250,000 under the Credit Agreement.

On December 27, 2022 the Company took a draw of an additional \$470,000 under the Credit Agreement.

During the year ended December 31, 2022 the Company issued warrants to purchase an aggregate of 338,708 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under the Credit Agreement. The estimated aggregate fair value of the warrants issued is \$143,039 using the Black-Scholes option valuation model as of December 31, 2022.

As of December 31, 2022, the Company had drawn a total of \$5,173,125 and we have accrued interest of \$387,918. A total of \$151,398 of accrued interest was settled into 140,185 shares of common stock and the Company recorded a loss on debt settlement of interest payable \$2,259. A total of \$166,432 was accrued and recorded to equity payable of 154,106 shares of common stock and the Company recorded a loss on settlement of interest payable of \$44,325.

Unsecured Promissory Note

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

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

As of December 31, 2022, the Company had a principal balance of \$271,875, and accrued interest of \$55,530. A total of \$10,352 of accrued interest was converted into 9,585 shares of common stock and the Company recorded a loss on settlement of interest payable of \$162. A total of \$10,423 was accrued and recorded to equity payable of 9,651 shares of common stock and the Company recorded a loss on settlement of interest payable of \$2,757.

Interest Expense

The following table summarizes interest expense for the years ended December 31, 2022 and 2021:

	December 31,	
	2022	2021
Interest expense	\$ 737,745	\$ 267,966
Total interest expense	\$ 737,745	\$ 267,966

8. Common Stock and Equity Payable***Common Stock*****2022**

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

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

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

2021

During the year ended December 31, 2021 the Company did not issue any shares but, and recorded stock-based compensation expense of \$260,005 related to restricted stock units for members of our board of directors. The Company recorded stock-based compensation expense of \$187,501 related to restricted stock units for employee compensation.

As of December 31, 2022 we had an equity payable balance of \$100,862.

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

We have the 2010 Incentive Stock Option Plan, the 2013 Incentive Stock Option Plan, the 2016 Stock Incentive Plan and the 2022 Equity Incentive Plan under which we have granted stock options to our directors, officers and employees. As of December 31, 2022, 14,769,047 shares were authorized under the plans and 22,585,015 shares were available for future grant.

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

The following table summarizes stock option activity under our stock-based plans as of and for the years ended December 31, 2022 and 2021:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2020	6,007,552	\$ 1.20	6.77	\$ 527,868
Granted	637,500	\$ 1.56	—	\$ —
Exercised	—	\$ 1.61	—	\$ —
Forfeit/canceled	(272,029)	\$ 2.18	—	\$ —
Expired	(126,557)	\$ 1.17	—	\$ —
Outstanding at December 31, 2021	6,246,466	\$ 1.20	7.17	\$ 4,056,639
Granted	1,375,000	\$ 1.02	—	\$ —
Exercised	—	\$ —	—	\$ —
Forfeit/canceled	(330,623)	\$ 1.09	—	\$ —
Expired	(599,627)	\$ 0.98	—	\$ —
Outstanding at December 31, 2022	6,691,216	\$ 1.19	5.86	\$ 2,086,829
Expected to vest at December 31, 2022	6,691,216	\$ 1.19	5.85	\$ 2,086,829
Exercisable at December 31, 2022	3,987,966	\$ 1.22	3.98	\$ 1,314,652
Unrecognized expense at December 31, 2022	\$ 1,698,126			

The aggregate intrinsic value of options was calculated as the difference between the exercise price of the underlying awards and the quoted price of our common stock. At December 31, 2022, options to purchase 4,057,500 shares of common stock were in-the-money.

The weighted average grant-date fair value of options granted during the years 2022 and 2021 was \$0.99 and \$0.79, respectively.

2021

On March 26, 2021, the Company granted five employee a total of 67,500 options to purchase shares of the Company common stock at the closing price as of March 26, 2021, of \$1.80 per share. The Option Shares will vest ratably over forty-eight (48) months and are exercisable until March 26, 2031. The total estimated value using the Black-Scholes Model, based on a volatility rate of 73.97% and an option fair value of \$1.16 was \$78,492.

On May 17, 2021, the Company granted one employee a total of 20,000 options to purchase shares of the Company common stock at the closing price as of May 17, 2021, of \$1.67 per share. The option shares will vest ratably over forty-eight (48) months and are exercisable until January 21, 2031. The total estimated value using the Black-Scholes Model, based on a volatility rate of 74.79% and an option fair value of \$0.93 was \$18,628.

On August 11, 2021, the Company granted one employee a total of 5,000 options to purchase shares of the Company common stock at the closing price as of August 11, 2021, of \$1.53 per share. The option shares will vest ratably over forty-eight (48) months and are exercisable until August 11, 2031. The total estimated value using the Black-Scholes Model, based on a volatility rate of 73.29% and an option fair value of \$1.12 was \$5,606.

On December 15, 2021, the Company granted nineteen employees a total of 545,000 options to purchase shares of the Company common stock at the closing price as of December 15, 2021, of \$1.53 per share. The option shares will vest ratably over forty-eight (48) months and are exercisable until February 18, 2029. The total estimated value using the Black-Scholes Model, based on a volatility rate of 71.53% and an option fair value of \$0.97 was \$528,434.

In the twelve months ended December 31, 2021, the company recorded stock-based plans amortized expense of \$549,768.

2022

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

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

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

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

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

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

Stock-based Compensation Expense

The impact on our results of operations of recording stock-based compensation expense for the years ended December 31, 2022 and 2021 was as follows:

	Years Ended December 31,	
	2022	2021
General and administrative	\$ 262,060	\$ 289,782
Sales and marketing	113,838	81,093
Engineering, research, and development	211,712	178,893
	<u>\$ 587,610</u>	<u>\$ 549,768</u>

As of December 31, 2022, there was approximately \$1,527,647 of unearned stock-based compensation that will be expensed from 2022 through 2026. If there are any modifications or cancellations of the underlying unvested awards, we may be required to accelerate, increase or cancel all or a portion of the remaining unearned stock-based compensation expense. Future unearned stock-based compensation will increase to the extent we grant additional equity awards.

Stock Option Valuation Assumptions

We calculated the fair value of each stock option award on the date of grant using the Black-Scholes option pricing model. The ranges of assumptions were used for the years ended December 31, 2022 and 2021:

	Years Ended December 31,	
	2022	2021
Risk-free interest rate	0.25% to 0.38%	0.42% to 0.58%
Expected life (years)	7.00	6.00
Expected dividend yield	—	—
Expected volatility	72.337% to 76.15%	77.36% to 78.21%

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

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

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

The expected volatility in 2022 and 2021 is based on the historical publicly traded price of our common stock.

Restricted stock units

The following table summarizes restricted stock unit activity under our stock-based plans as of and for the years ended December 31, 2022 and 2021:

	Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2020	1,436,728	\$ 0.86	—	\$ 1,120,404
Awarded	654,663	\$ 1.77	—	\$ 60,003
Released	—	\$ —	—	\$ —
Canceled/forfeited/expired	(406,250)	\$ 1.80	—	\$ —
Outstanding at December 31, 2021	1,685,141	\$ 1.18	—	\$ 1,180,407
Awarded	244,792	\$ 1.06	—	\$ 260,579
Released	—	\$ —	—	\$ —
Canceled/forfeited/expired	—	\$ —	—	\$ —
Outstanding at December 31, 2022	1,929,933	\$ 0.75	—	\$ 1,440,986
Vested at December 31, 2022	1,929,933	\$ —	—	\$ 1,865,401
Unvested at December 31, 2022	—	\$ —	—	\$ —
Unrecognized expense at December 31, 2022	\$ —			

2021

On March 26, 2021 an employee was granted 500,000 restricted stock units. These restricted stock units were issued as compensation. The units were valued at \$900,000 or \$1.80 per share, based on the closing stock price on the date of grant. Units vested 1/48th monthly for four years. The total units vested in 2022 were 114,583.

On March 26, 2021 the Company issued to four independent directors a total of 36,112 restricted stock units. These restricted stock units were issued for the \$65,000 of board compensation earned for the first quarter of 2021. The units were valued at \$65,000 or \$1.80 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit will be issued to the director upon the earliest to occur of (A) March 26, 2024, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On May 12, 2021, the Company granted four independent directors a total of 38,924 restricted stock units. The units were valued at \$65,000 or \$1.67 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit will be issued to the director upon the earliest to occur of (A) May 12, 2024, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On August 11, 2021, the Company granted four independent directors a total of 37,144 restricted stock units. The units were valued at \$65,000 or \$1.75 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit will be issued to the director upon the earliest to occur of (A) August 11, 2024, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On December 15, 2021, the Company granted four independent directors a total of 42,484 restricted stock units. The units were valued at \$65,000 or \$1.53 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will be issued to the director upon the earliest to occur of (A) December 15, 2024, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

In the twelve months ended December 31, 2021, the company recorded \$447,506 in restricted stock units as board compensation.

2022

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

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

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

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

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

Restricted Stock Unit Compensation Expense

The impact on our results of operations of recording stock-based compensation expense for years ended December 31, 2022 and 2021 was as follows:

	Years Ended December 31,	
	2022	2021
General and administrative	\$ 260,010	\$ 260,005
Sales and Marketing	—	187,501
	<u>\$ 260,010</u>	<u>\$ 447,506</u>

10. Warrants to Purchase Common Stock

The following table summarizes investor warrant activity as of and for the years ended December 31, 2022 and 2021:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2020	2,691,459	\$ 1.99	2.94
Granted	580,231	\$ —	—
Exercised	—	\$ —	—
Canceled/forfeited/expired	(25,000)	\$ —	—
Outstanding at December 31, 2021	3,246,690	\$ 2.26	3.59
Granted	6,089,398	\$ —	—
Exercised	—	\$ —	—
Canceled/forfeited/expired	(3,188,190)	\$ —	—
Outstanding at December 31, 2022	<u>6,147,898</u>	<u>\$ 1.45</u>	<u>2.27</u>

We did record stock-based compensation expense of \$609,950 and \$0 for the years ended December 31, 2022 and 2021, respectively in connection with the exercise of investor-based warrants.

Warrants Exercised in 2021

On June 30, 2021, the Company issued warrants to purchase an aggregate of 227,994 shares of its common stock at an exercise price of \$1.67 per share for 119,760 inducement warrants and VWAP for 108,234 additional warrants in connection with the issuance of a loan by a related party. The warrants are exercisable for a period commencing upon issuance of the notes and ending 36 months after issuance of the financing. The estimated aggregate fair value of the warrants issued is \$119,103 using the Black-Scholes option valuation model.

On August 11, 2021, the Company issued warrants in connection with the Credit Agreement by the related party exercisable at a rate equal to the 30-day VWAP for 10,072 additional warrants in connection with the issuance of a loan by a related party. The warrants are exercisable for a period commencing upon issuance of the notes and ending 36 months after issuance of the financing. The estimated aggregate fair value of the warrants issued is \$5,285 using the Black-Scholes option valuation model.

As of September 30, 2021, we had outstanding warrants to purchase 2,666,459 shares of common stock at \$2.06 per share. These warrants expire in 2023. We also have outstanding warrants to purchase 238,066 shares of common stock at the stated price per share in connection with the issuance of a loan with a related party. These warrants expire in 2024.

Warrants Exercised in 2022

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

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

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

11. Income Taxes

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

For the years ended December 31, 2022 and 2021 the provisions for income taxes were as follows:

	2022	2021
Federal – current	\$ —	\$ —
State – current	—	—

Foreign – current	—	—
Total	\$ —	\$ —

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

Significant components of our net deferred tax assets and liabilities as of December 31, 2022 and 2021 are as follows:

	2022	2021
Deferred tax assets (liabilities):		
Net operating loss carryforwards	\$ 19,791,000	\$ 16,915,000
Stock based compensation	4,781,000	4,372,000
Accrued compensation	231,300	31,000
Depreciation and amortization	3,305,000	3,783,000
Other	—	2,000
Total deferred tax assets	28,108,300	25,103,000
Valuation allowance for net deferred tax assets	(28,108,300)	(25,103,000)
Total	\$ —	\$ —

The Company has provided a valuation allowance against deferred tax assets recorded as of December 31, 2022 and 2021 due to uncertainties regarding the realization of such assets.

The net change in the total valuation allowance for the year ended December 31, 2022 was an increase of approximately \$2,479,000. The net change in the total valuation allowance for the year ended December 31, 2021 was an increase of approximately \$568,000. In assessing the valuation of deferred tax assets, the Company considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during periods in which those temporary differences become deductible. The Company considers projected future taxable income and planning strategies in making this assessment. Based on the level of historical operating results and projections for the taxable income for the future, the Company has determined that it is more likely than not that the deferred tax assets will not be realized. Accordingly, the Company has recorded a valuation allowance to reduce deferred tax assets to zero. There can be no assurance that the Company will ever be able to realize the benefit of some or all of the federal and state loss carryforwards, either due to ongoing operating losses or due to ownership changes, which limit the usefulness of the loss carryforwards.

As of December 31, 2022, the Company has available net operating loss carryforwards of approximately \$64,000,000 for federal income tax purposes, which will start to expire in 2026. The net operating loss carryforwards for state purposes are approximately \$61,000,000 and will start to expire in 2028.

The difference between the provision for income taxes and income taxes computed using the U.S. federal income tax rate for the years ended December 31, 2022 and 2021 was as follows:

	2022	2021
Computed expected tax expense	\$ (2,088,000)	\$ (1,735,000)
State taxes, net of federal benefit	(1,030,000)	(799,000)
Expiration of NOL carryforwards	(684,000)	87,000
Other	101,000	142,000
Change in valuation allowance	3,701,000	1,729,000
Total	\$ ----	\$ ----

The Company has determined that during 2010 it experienced a “change of ownership” as defined by Section 382 of the Internal Revenue Code. As such, utilization of net operating loss carryforwards and credits generated before the 2010 change in ownership will be limited to approximately \$207,000 per year until such carryforwards are fully utilized. The pre change net operating loss carryforward was approximately \$6,000,000. Since 2010 the Company has not conducted a study to assess whether a change of control has occurred or whether there have been multiple changes of control since inception due to the significant complexity and cost associated with such a study. If the Company has experienced a change of control, as defined by Section 382, at any time since 2010, utilization of the net operating loss carryforwards tax credit carryforwards would be subject to further annual limitation under Section 382. Any limitation may result in expiration of a portion of the net operating loss carryforwards before utilization.

The Company files income tax returns in the U.S. federal jurisdiction, Arizona, and California. Because the Company is carrying forward federal and state net operating losses from 2006, the Company is subject to U.S. federal and state income tax examinations by tax authorities for all years since 2006. The Company does not have a liability for any uncertain tax positions. As of December 31, 2022, no accrued interest or penalties are recorded in the financial statements.

12. Fair Value Measurements of Financial Instruments

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

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

The following table summarizes our financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2021:

Description	Level 1	Level 2	Level 3	Gains (Losses)
Goodwill (non-recurring)	\$ —	\$ —	\$ 411,183	\$ —
Intangibles, net (non-recurring)	\$ —	\$ —	\$ 1,124,720	\$ —

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

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

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

As of the date of this report, the company has one pending legal proceeding related to TCPA (Telephone Consumer Protection Act) Violation. This is a putative class action complaint alleging that Defendant initiated telephone solicitations through text messages in violation of the Florida Telephone Solicitation Act, Fla. Stat. §501.059 ("FTSA"). The defense of the matter was tendered to the Company by its client, Sonic Industries, Inc., and our firm is managing the defense of the matter. The Company intends to seek an individual settlement of the matter, and if one cannot be reached, the Company intends to vigorously defend the matter. The discovery process has not begun so it is not possible at this time to calculate an accurate assessment of the Company's exposure. No settlement loss has been accrued as it is too early in the proceedings estimate what it if any settlement loss will occur.

During the year ending December 31, 2022 the Company has settled three TCPA claims for a total settlement loss of \$53,500.

Operating Lease

The Company had a lease through January 2021 for 10,395 square feet of office space located at 55 N. Arizona Ave., Suite 310, Chandler, Arizona. Monthly rental payments, excluding common area maintenance charges, are \$20,140. As of December 31, 2022, we have an operating lease asset balance for this lease of \$0 and an operating lease liability balance for this lease of \$0 recorded in accordance with ASC 842.

We have entered into a new lease starting in February of 2021 for 8,898 square feet of office space located at 3133 W. Frye Road, Suite 215, Chandler, Arizona. Monthly rental payments, excluding common area maintenance charges, will be \$25,953 to \$28,733. The first twelve months of the lease included a 50% abatement period. As of December 31, 2022, we have an operating lease asset balance for this lease of \$1,177,094 and an operating lease liability balance for this lease of \$1,404,533 recorded in accordance with ASC 842.

The Company also had a lease through April 2022 for 3,248 square feet of office space located in Halifax, Nova Scotia, at a monthly rental expense of \$3,371 per month, excluding common area maintenance charges. As of December 31, 2022, we have an operating lease asset balance for this lease of \$10,443 and an operating lease liability balance for this lease of \$13,296 recorded in accordance with ASC 842.

14. Employee Benefit Plan

The Company has an employee savings plan (the "Plan") pursuant to Section 401(k) of the Internal Revenue Code (the "Code"), covering all of its employees. Participants in the Plan may contribute a percentage of compensation, but not in excess of the maximum allowed under the Code. The Company may make contributions at the discretion of its Board of Directors. During the years ended December 31, 2022 and 2021, the Company made no contributions to the Plan.

15. Related Party Transactions

Related Party Notes

Secured Promissory Notes

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

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

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

On June 10, 2022, the Company took a draw of an additional \$500,000 under the Credit Agreement.

On August 09, 2022 the Company took a draw of an additional \$300,000 under the Credit Agreement.

On November 22, 2022 the Company took a draw of an additional \$375,000 under the Credit Agreement.

On November 30, 2022 the Company took a draw of an additional \$250,000 under the Credit Agreement.

On December 27, 2022 the Company took a draw of an additional \$470,000 under the Credit Agreement.

During the year ended December 31, 2022 the Company issued warrants to purchase an aggregate of 338,708 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under the Credit Agreement. The estimated aggregate fair value of the warrants issued is \$143,039 using the Black-Scholes option valuation model as of December 31, 2022.

As of December 31, 2022, the Company had drawn a total of \$5,173,125 and we have accrued interest of \$387,918. A total of \$151,398 of accrued interest was settled into 140,185 shares of common stock and the Company recorded a loss on debt settlement of interest payable \$2,259. A total of \$166,432 was accrued and recorded to equity payable of 154,106 shares of common stock and the Company recorded a loss on settlement of interest payable of \$44,325.

Unsecured Promissory Note

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

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

As of December 31, 2022, the Company had a principal balance of \$271,875, and accrued interest of \$55,530. A total of \$10,352 of accrued interest was converted into 9,585 shares of common stock and the Company recorded a loss on settlement of interest payable of \$162. A total of \$10,423 was accrued and recorded to equity payable of 9,651 shares of common stock and the Company recorded a loss on settlement of interest payable of \$2,757.

Related Party Warrant Exercise

On February 7, 2022, Thomas Akin exercised his common stock purchase warrant for 1,604,389 shares at the exercise price of \$0.80 per share, resulting in additional capital of \$1,283,518. As an inducement for the holder's exercise of the warrants, we issued the holders 1,604,398 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in February 2025.

On February 7, 2022, Talkot Fund LP exercised his common stock purchase warrant for 517,292 shares at the exercise price of \$0.80 per share, resulting in additional capital of \$413,834. As an inducement for the holder's exercise of the warrants, we issued the holders 517,292 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in February 2025.

Related Party Private Placement

On August 24, 2022, the Company received private investment funds from Thomas Akin to purchase 625,000 shares of its common stock at a price of \$0.80 per share, resulting in additional capital of \$500,000 and issued the holder 625,000 new warrants to purchase common stock at \$1.50 per share over a three year period expiring

in August 2025.

16. Subsequent Events

2023 Warrants Exercise

During the quarter ended March 30, 2023, 15 warrant holders exercised their common stock purchase warrant for 3,587,487 shares at the exercise price of \$1.00 per share, resulting in additional capital of \$3,557,487. As an inducement for the holder's exercise of the warrants, we issued the holders' 1,793,745 new warrants to purchase common stock at \$2.00 per share over a three-year period expiring in February 2025.

2023 Relate Party Notes Payable

On January 31, 2023, the Company entered into Amendment No. 1 (the "Amendment") to the Amended and Restated Credit Facility Agreement and Convertible Notes which amends our existing Amended and Restated Credit Facility Agreement, dated as of November 11, 2022, between the Company and Thomas B. Akin, a director of the Company (the "Existing Credit Agreement" and as amended by the Amendment, the "Credit Agreement") and any convertible notes issued thereunder. The Amendment amends the Existing Credit Agreement to extend the maturity of the Credit 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 Credit 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 OTCQB® Venture Market operated by OTC Markets Group Inc. over the ninety (90) trading days immediately preceding such date. The Amendment provides for corresponding amendments to the form of convertible note to be issued under the Credit Agreement in the future and any outstanding convertible notes issued under the Existing Credit Agreement.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, a copy of which was filed with the SEC on the Company's Current Report on Form 8-K dated January 31, 2023, and is attached as Exhibit 10.1 to such Current Report on Form 8-K and incorporated herein by reference.

2023 Shares Issued

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.

On March 27, 2023 a total of 154,106 shares of common stock were issued to Thomas Akin as settlement of interest payable.

On March 27, 2023 a total of 9,651 shares were issued to Talkot Fund LP as settlement of interest payable.

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

None

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

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

As required by paragraph (b) of Rules 13a-15 or 15d-15 under the Exchange Act, our management, with the participation of our president (our principal executive officer) and our chief financial officer (our principal financial officer and principal accounting officer) evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this annual report, being December 31, 2022 (the "Evaluation Date"). Based on such evaluation and subject to the foregoing, such officers have concluded that, as of the Evaluation Date, the Company's disclosure controls and procedures are not effective at the reasonable assurance level to ensure that information required to be disclosed by the Company in the reports that the Company files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and to ensure that information required to be disclosed by the Company in the reports that the Company files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

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

Management's Report on Internal Control over Financial Reporting

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

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

Under the supervision of our Chief Executive Officer, being our principal executive officer, and our Chief Financial Officer, being our principal financial officer and principal accounting officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2022 using the criteria established in Internal Control—2013 Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). This evaluation included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Based on this evaluation under the criteria established in Internal Control – Integrated Framework, our management concluded that our internal control over financial reporting was not effective as of December 31, 2022.

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

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

Changes in Internal Control

There was no change in our internal control over financial reporting, as defined in Rules 13a-15(f) under the Exchange Act, that occurred during the fiscal year ended December 31, 2022 and 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

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

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Information about our Executive Officers and Directors

The following table sets forth information concerning our executive officers and directors, including their ages, as of March 20, 2022:

Name	Age	Position
Dennis Becker	49	Chief Executive Officer and Chairman of the Board of Directors
Lisa Brennan	56	Chief Financial Officer
Benjamin Weinberger	44	Chairman of Compensation Committee and Director
Philip Guarascio	81	Chairman of Governance and Nominating Committee and Director
Doug Schneider	60	Director
Thomas Akin	70	Chairman of Audit Committee and Director

Dennis Becker - Chief Executive Officer, Chairman of the Board of Directors

Dennis Becker was appointed our Chief Executive Officer and a Director effective as of our acquisition of Mobivity, Inc. in November 2010. Mr. Becker has also served as President and Chief Executive Officer of Mobivity, Inc. since September 2007. Our board of directors appointed Mr. Becker as Chairman of the Board of Directors effective as of March 31, 2017. Mr. Becker was a founder of Frontieric Corporation, a pioneer in providing complex call routing and merchant processing applications, where he was Chief Executive Officer from 2002 to 2005. Mr. Becker was also Chief Executive Officer of Bexel Technologies, which served solutions to large enterprises, from 1999 to 2001. Mr. Becker studied Computer Science at the University of Oregon and served in the United States Air Force.

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

Lisa Brennan - Chief Financial Officer

On December 7, 2020, the board of directors of the Company appointed Lisa Brennan to serve as Chief Financial Officer of the Company. Ms. Brennan has over 25 years of executive financial management experience with both public and private companies. From 2017 to 2018, Ms. Brennan was the CFO of Network Group, LLC, a co-working company, where her responsibilities included Accounting, Legal, Planning, Treasury and Investor Relations. From 2013 to 2017, Ms. Brennan was the CFO and VP Financial Planning at Merchant Customer Exchange “MCX”, a mobile payment technology business, where her responsibilities included Strategic and Financial Planning and Financial Operations, culminating in the company’s acquisition by JPMorgan Chase. Ms. Brennan holds a BA, Summa Cum Laude, in Mathematics and Economics from Wellesley College, an MS in mathematics from Brandeis University and an MBA from the Massachusetts Institute of Technology Sloan School of Business.

Ms. Brennan is the daughter of Philip Guarascio, a member of our Board of Directors. Ms. Brennan has extensive knowledge of Generally Accepted Accounting Principles and preparation of financial statements for a publicly traded company. As a result of these and other professional qualifications, we have concluded that Ms. Brennan is qualified to serve as an officer.

Benjamin Weinberger - Director

Benjamin Weinberger has served as a director since May 23, 2022. Mr. Weinberger's distinguished 20-year career spans roles as a founder, CEO and Chief Product Officer building and scaling digital media and entertainment businesses. He formerly served as founding SVP and Chief Product Officer at Sling TV where he helped define the next generation of television. Prior to Sling TV, Mr. Weinberger was the co-founder and CEO of Digitalsmiths, a product leader in the field of video search, recommendations and personalization. Under his leadership, Digitalsmiths developed video discovery solutions that have been adopted by several of the biggest names in cable, satellite, telco and broadcast media. In 2014, Digitalsmiths was acquired by TiVo for \$135 million. He currently serves as an advisor to Drive by DraftKings and is on the board of directors of Librestream Technologies and FrndlyTV. Mr. Weinberger graduated with honors from the Department of Radio and Television at Southern Illinois University Carbondale in 2001.

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

Philip Guarascio - Chairman of Governance and Nominating Committee and Director

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

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

Doug Schneider - Director

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

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

Thomas Akin – Chairman of the Audit Committee and Director

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

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

Delinquent Section 16(a) Reports

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

Based upon a review of forms filed and information provided by the Company's officers and directors, we believe that all Section 16(a) reporting requirements were met during fiscal year end 2022, except for the following (i) each member of the Board of Directors have not filed a Form 4 with respect to their director grants received on March 29, 2022, May 16, 2022, September 30, 2022 and December 31, 2022; and (ii) each executive officer has not filed a Form 4 with respect to their employee grants received. In addition, Mr. Akin filed a late Form 4 for the acquisition of Company securities on May 10, 2022, July 11, 2022 and September 30, 2022. These late filings were unintentional and due to administrative oversight.

Additional Information about our Board and its Committees

All of our directors except Mr. Becker are considered by our board of directors to be "independent" as defined in Rule 5605(a)(2) of the rules of the Nasdaq Stock Market.

Audit Committee

During the year ended December 31, 2022, our audit committee was comprised of Thomas Akin, John Harris, Doug Schneider and Benjamin Weinberger. Our board of directors has appointed Mr. Akin to serve as chairman of the audit committee effective as of April 1, 2017.

All members of our audit committee are independent, as independence is defined in Rule 5605(a)(2) of the rules of the Nasdaq Stock Market.

Compensation Committee

During the year ended December 31, 2022, our compensation committee was comprised of John Harris, Benjamin Weinberger, Philip Guarascio and Thomas Akin. Mr. Weinberger currently serves as compensation committee chair.

Governance and Nominating Committee

During the year ended December 31, 2022, our governance and nominating committee was comprised of Philip Guarascio, John Harris, Benjamin Weinberger and Thomas Akin. Mr. Guarascio currently serves as governance and nominating committee chair.

Code of Ethics

We have adopted a code of ethics for all our employees, including our principal executive officer, principal financial officer and principal accounting officer or controller, and/or persons performing similar functions. This code is available on the "Investor Relations—Governance Documents" section of our website at www.mobivity.com. The information on our website is not, and shall not be deemed to be, a part hereof or incorporated into this or any of our other filings with the SEC.

Item 11. Executive Compensation

The following table summarizes the total compensation earned by our Chief Executive Officer (principal executive officer) and our other two most highly paid executive officers for the years ended December 31, 2022 and 2021. In reviewing the table, please note that:

- Lisa Brennan has served as our Chief Financial Officer since December 7, 2020.
- Lisa Brennan has served as our Chief Financial Officer since December 7, 2020.

Summary Compensation Table*

Name and Principal Position	Year	Salary	Bonus	Stock Awards (1)	Option Awards (1)	All Other Compensation	Total
Dennis Becker, Chairman & CEO	2022	\$ 310,000	\$ 90,000	\$ —	\$ —	\$ —	\$ 400,000
	2021	\$ 310,000	\$ 65,000	\$ —	\$ —	\$ —	\$ 375,000
Lisa Brennan, CFO	2022	\$ 225,000	\$ —	\$ —	\$ —	\$ —	\$ 225,000
	2021	\$ 225,000	\$ —	\$ —	\$ —	\$ —	\$ 225,000

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

- (1) The value of the stock and stock option compensation was computed using the Black-Scholes Option Pricing Model and represents the aggregate grant date fair value computed in accordance with ASC Topic 718. For information on the method and assumptions used to calculate the compensation costs, see Note 9 to our audited consolidated financial statements contained herein.

The following table presents the outstanding option awards held by each of our named executive officers as of December 31, 2022, including the value of the options awards.

Outstanding Equity Awards at December 31, 2022*

Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Equity Incentive Plan Awards; Number of Securities Underlying Unexercised Options (#)	Option Exercise Price	Option Expiration Date
Dennis Becker, CEO & Chairman	100,000	—	\$ 1.28	1/22/2025
Dennis Becker, CEO & Chairman	1,251,978	—	\$ 1.80	6/17/2023
Dennis Becker, CEO & Chairman	1,000,000	—	\$ 0.60	5/15/2027
Dennis Becker, CEO & Chairman	500,000	500,000 (1)	\$ 1.04	5/17/2029
Lisa Brennan, CFO	337,500	262,500 (2)	\$ 1.55	12/7/2030

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

- (1) Represents options that vest on May 17, 2023, subject to continued service on the vesting date .
- (2) This option vests as follows: 12,500 of the shares vest each month over a 48-month period which commenced on December 7, 2020, subject to continued service on each vesting date.

Employment Agreements

Dennis Becker

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

On June 17, 2013, the Company granted Mr. Becker an option to purchase 1,251,978 shares of Company common stock, over a ten-year period from the date of grant, at an exercise price of \$1.80 per share, representing the closing price of the Company's common stock on June 17, 2013. The options vest and first become exercisable at the rate of 1/48 per month over a 48-month period commencing on the date of grant.

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

Effective November 17, 2016, the board increased Mr. Becker's annual base salary by \$35,000 to \$310,000 based on his annual merit review.

On May 15, 2017, the Company granted Mr. Becker an option to purchase 1,000,000 shares of Company common stock, over a ten-year period from the date of grant, at an exercise price of \$0.60 per share, representing the closing price of the Company's common stock on May 15, 2017. The options will vest and first become exercisable at the rate of 25% vesting after one year from the date of grant and 1/36 per month afterwards.

On May 17, 2019, the Company granted Mr. Becker an option to purchase 1,000,000 shares of Company common stock, over a ten-year period from the date of grant, at an exercise price of \$1.04 per share, representing the closing price of the Company's common stock on May 17, 2019. Of the options, 500,000 vested immediately, and 500,000 options will vest and first become exercisable on May 17, 2023. Mr. Becker's options shall otherwise be on terms and conditions contained in the Company's current equity incentive plan.

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

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

Lisa Brennan

On December 7, 2020, we appointed Lisa Brennan as Chief Financial Officer. In connection with the appointment, the Company entered into an employment agreement dated December 7, 2020 with Ms. Brennan.

Pursuant to her employment agreement, the Company agreed to pay Ms. Brennan an annual base salary of \$225,000, subject to annual review by the board. Ms. Brennan will be eligible for annual performance bonuses of up to 30% of her base salary for meeting key performance requirements, quotas, and assigned objectives determined annually by the board. Also pursuant to her employment agreement with the Company, Ms. Brennan is eligible to participate in all benefits, plans, and programs, including improvements or modifications of the same, which are now, or may hereafter be, available to other executive employees of the Company. Ms. Brennan's employment agreement contains standard provisions concerning noncompetition, nondisclosure, and indemnification.

Pursuant to Ms. Brennan's employment agreement, the Company has granted Ms. Brennan an option to purchase 600,000 shares of Company common stock, over a ten-year period from the date of grant, at an exercise price of \$1.55 per share, representing the closing price of the Company's common stock on December 7, 2020. The options will vest and first become exercisable at the rate of 1/48th per month over a 48-month period commencing on the date of grant. Ms. Brennan's options shall otherwise be on terms and conditions contained in the Company's current equity incentive plan.

In the event Ms. Brennan's employment with the Company is terminated by the Company without Cause (as defined in the agreement), the Company shall pay Ms. Brennan, in addition to all other amounts then due and payable, three additional monthly installments of her base salary.

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

Non-Employee Director Compensation

2022 Director Compensation Table

Name	Fees Earned or Paid in Cash	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	Nonqualified Deferred Compensation Earnings	All Other Compensation	Total
Doug Schneider	\$ 65,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 65,000
John Harris	\$ 16,250	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 16,250
Thomas Akin	\$ 65,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 65,000
Philip Guarascio	\$ 65,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 65,000
Benjamin Weinberger	\$ 48,750	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 48,750

The Company recorded an expense of \$65,000 per director related to restricted stock units for members of our board of directors for the twelve months ended December 31, 2022.

Item 12. Security Ownership of Certain Beneficial Owners and Management

Securities Authorized for Issuance Under Equity Compensation Plans

The information required by this Item concerning equity compensation plans is incorporated herein by reference from Part II, Item 5 of this report.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth as of March 28, 2023, certain information regarding the beneficial ownership of our common stock. The table sets forth the beneficial ownership of (i) each person who, to our knowledge, beneficially owns more than 5% of our outstanding shares of Common stock; (ii) each of our directors and executive officers; and (iii) all of our executive officers and directors as a group. The number of shares owned includes all shares beneficially owned by such persons, as calculated in accordance with Rule 13d-3 promulgated under the Exchange Act. The number of shares beneficially owned by a person includes shares of common stock underlying options or warrants held by that person that are currently exercisable or exercisable within 60 days of March 18, 2023. The shares issuable pursuant to the exercise of those options or warrants are deemed outstanding for computing the percentage ownership of the person holding those options and warrants but are not deemed outstanding for the purposes of computing the percentage ownership of any other person. Unless otherwise indicated, the address of each shareholder is c/o the Company, 3133 W. Frye Road, Chandler, AZ 85226.

Name of Beneficial Owner	Amount And Nature of Beneficial Ownership	Percentage of Class (1)
Dennis Becker (2)	3,043,981	5%
Lisa Brennan (3)	—	—
Doug Schneider (4)	662,537	1%
John Harris (5)	670,844	1%
Philip Guarascio (6)	596,539	1%
Thomas Akin (7)	28,154,115	43%
Executive Officers and Directors as a Group (six persons)	33,128,016	50%

5% or Greater Beneficial Owners

Bruce Terker (8) 950 West Valley Road, Suite 2900, Wayne, PA 19087	8,648,582	13%
Cornelis F. Wit (9) 2700 N. Military Trail, Suite 210, Boca Raton, FL 33431	3,828,669	6%

(1) Applicable percentage of ownership is based upon 63,418,667 shares of common stock outstanding as of March 28, 2023.

(2) Includes 2,851,978 shares of common stock issuable pursuant to presently exercisable stock options, including options that will vest within 60 days of March 28, 2023.

(3) Includes no shares of common stock issuable pursuant to presently exercisable stock options, including options that will vest within 60 days of March 28, 2023.

(4) Includes 522,222 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of March 28, 2023. Includes 74,447 shares of common stock owned of record by The Schneider Family Trust.

(5) Includes 545,012 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of March 28, 2023.

(6) Includes 519,542 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of March 28, 2023.

(7) Includes 7,423,232 shares of common stock owned of record by Talkot Fund, L.P., 405,678 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of March 23, 2023 and 3,085,398 of stock warrants to purchase Common Stock.

(8) Based on a Schedule 13G/A filed with the SEC on February 2, 2023 by Bruce E. Terker, that he has shared voting power with respect to 7,861,082 shares and shared dispositive power with respect to 7,861,082 shares of our common stock.

(9) Based on a Schedule 13G/A filed with the SEC on February 16, 2022 by Cornelis F. Wit, that he has sole voting power with respect to 3,828,669 shares and sole dispositive power with respect to 3,828,669 shares of our common stock.

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

Certain Relationships and Related Transactions

Related Party Notes

Secured Promissory Notes

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

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

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

On June 10, 2022, the Company took a draw of an additional \$500,000 under the Credit Agreement.

On August 09, 2022 the Company took a draw of an additional \$300,000 under the Credit Agreement.

On November 22, 2022 the Company took a draw of an additional \$375,000 under the Credit Agreement.

On November 30, 2022 the Company took a draw of an additional \$250,000 under the Credit Agreement.

On December 27, 2022 the Company took a draw of an additional \$470,000 under the Credit Agreement.

During the year ended December 31, 2022 the Company issued warrants to purchase an aggregate of 338,708 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under the Credit Agreement. The estimated aggregate fair value of the warrants issued is \$143,039 using the Black-Scholes option valuation model as of December 31, 2022.

As of December 31, 2022, the Company had drawn a total of \$5,173,125 and we have accrued interest of \$387,918. A total of \$151,398 of accrued interest was settled into 140,185 shares of common stock and the Company recorded a loss on debt settlement of interest payable \$2,259. A total of \$166,432 was accrued and recorded to equity payable of 154,106 shares of common stock and the Company recorded a loss on settlement of interest payable of \$44,325.

Unsecured Promissory Note

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

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

As of December 31, 2022, the Company had a principal balance of \$271,875, and accrued interest of \$55,530. A total of \$10,352 of accrued interest was converted into 9,585 shares of common stock and the Company recorded a loss on settlement of interest payable of \$162. A total of \$10,423 was accrued and recorded to equity payable of 9,651 shares of common stock and the Company recorded a loss on settlement of interest payable of \$2,757.

Related Party Warrant Exercise

On February 7, 2022, Thomas Akin exercised his common stock purchase warrant for 1,604,389 shares at the exercise price of \$0.80 per share, resulting in additional capital of \$1,283,518. As an inducement for the holder's exercise of the warrants, we issued the holders 1,604,398 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in February 2025.

On February 7, 2022, Talkot Fund LP exercised his common stock purchase warrant for 517,292 shares at the exercise price of \$0.80 per share, resulting in additional capital of \$413,834. As an inducement for the holder's exercise of the warrants, we issued the holders 517,292 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in February 2025.

Related Party Private Placement

On August 24, 2022, the Company received private investment funds from Thomas Akin to purchase 625,000 shares of its common stock at a price of \$0.80 per share, resulting in additional capital of \$500,000 and issued the holder 625,000 new warrants to purchase common stock at \$1.50 per share over a three year period expiring in August 2025.

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

Indemnification Agreements with Directors and Executive Officers

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

Item 14. Principal Accounting Fees and Services

The following table represents aggregate fees billed to us for the years ended December 31, 2022 and 2021 by M&K CPAs, our principal auditors for such periods.

	2022	2021
Audit Fees	\$ 92,000	\$ 41,000
Audit-Related Fees	54,500	33,000
Tax Fees	4,000	6,000
All Other Fees	—	—
Total Fees	<u>\$ 150,500</u>	<u>\$ 80,000</u>

Audit-Related Fees. Audit-Related Fees in 2021 consist of costs of review for our quarterly 10-Q filing for three quarters. Audit-Related Fees in 2022 consist of costs of review for our quarterly 10-Q filing for three quarters, 2022 audit fees and 2021 audit fees.

Tax Fees. Tax Fees for 2021 consist of both federal and state Corporate tax returns. Tax Fees for 2021 consist of both federal and state Corporate tax returns in 2022.

All Other Fees. There were no such fees incurred in 2022 or 2021.

Board of Directors' Pre-Approval Policies and Procedures

The board of directors has adopted a policy for the pre-approval of audit and non-audit services rendered by our independent auditors, M&K CPAs, who's firm ID is 2738. The policy generally pre-approves specified services in the defined categories of audit services, audit-related services and tax services up to specified amounts. Pre-approval may also be given as part of the board's approval of the scope of the engagement of the independent auditors or on an individual explicit case-by-case basis before the independent auditors are engaged to provide each service.

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

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(1) Financial Statements

The Financial Statements of Mobivity Holdings Corp. and Report of Independent Registered Public Accounting Firm are included in a separate section of this Form 10-K beginning on page 22.

(a)(2) Financial Statement Schedules

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

EXHIBIT INDEX

Exhibit Number	Description
3.1	Articles of Incorporation (1)
3.2	Bylaws (1)
3.3	Amendment No. 1 to Bylaws (2)
3.4	Articles of Merger filed August 6, 2012 (4)
3.5	Amendment No. 2 to the Bylaws, effective as of May 20, 2013 (7)
3.6	Amendment to Articles of Incorporation filed with the Nevada Secretary of State on November 12, 2013 (8)
4.1	Description of Capital Stock (9)
10.1	Employment Agreement dated December 24, 2010 with Dennis Becker (3)**
10.2	2013 Stock Incentive Plan of the Company adopted July 18, 2013 (5) **
10.3	Loan and Security Agreement dated November 14, 2018 between the Company and Wintrust Bank (6)
10.4	Employment Agreement dated December 7, 2020 with Lisa Brennan* **
10.5	Mobivity Holdings Corp. 2016 Stock Incentive Plan* **[A1]
10.6	Mobivity Holdings Corp. 2022 Equity Incentive Plan (10) **
10.7	Form of Restricted Stock Unit Award Agreement under 2022 Equity Incentive Plan (Director Form)*
10.8	Form of Restricted Stock Unit Award Agreement under 2022 Equity Incentive Plan (Employee Form)* **
10.9	Form of Non-Qualified Stock Option Agreement under 2022 Equity Incentive Plan (Director Form)*
10.10	Form of Non-Qualified Stock Option Agreement under 2022 Equity Incentive Plan (Employee Form)* **
10.11	Amended and Restated Credit Facility Agreement, dated as of November 11, 2022, between Mobivity Holdings Corp. and Thomas B. Akin (11)
10.12	Convertible Note, dated as of November 15, 2022 (11)
10.13	Amendment No. 1 to Amended and Restated Credit Facility Agreement and Convertible Notes, dated as of January 31, 2023, between Mobivity Holdings Corp. and Thomas B. Akin (12)
10.14	Form of Exercise Notice for Offer to Amend and Exercise completed March 16, 2023 (13)
10.15	Form of New Warrant issued March 16, 2023 (13)
21.1	List of Subsidiaries (6)
31.1	Certification of Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
31.2	Certification of Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
32.1	Certification of Chief Executive Officer, and Chief Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*
101.INS	The following financial statements from the Company's Annual Report on Form 10-K for the year ended December 31, 2022, formatted in Inline XBRL: (i) Balance Sheets, (ii) Statements of Operations and Comprehensive Loss, (iii) Statements of Stockholders' Equity, (iv) Statements of Cash Flows, and (v) Notes to the Financial Statements*
101.1	Cover page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101.1)
*	Filed herewith
**	Indicates management compensatory plan, contract or arrangement
(1)	Incorporated by reference to the Registration Statement on Form S-1 filed with the SEC on October 20, 2008, File No. 333-154455
(2)	Incorporated by reference to the Company's Current Report on Form 8-K filed December 2, 2011
(3)	Incorporated by reference to the Company's Current Report on Form 8-K filed January 18, 2011
(4)	Incorporated by reference to the Company's Current Report on Form 8-K filed August 10, 2012
(5)	Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed August 14, 2013
(6)	Incorporated by reference to the Company's Annual Report on Form 10-K filed April 15, 2019
(7)	Incorporated by reference to the Company's Current Report on Form 8-K filed May 24, 2013
(8)	Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed November 14, 2013
(9)	Incorporated by reference to the Company's Quarterly Report on Form 10-K filed March 30, 2022
(10)	Incorporated by reference to the Company's Registration Statement on Form S-8 filed September 22, 2022
(11)	Incorporated by reference to the Company's Quarterly Report on Form 8-K filed November 17, 2022
(12)	Incorporated by reference to the Company's Registration Statement on Form 8-K filed February 6, 2023
(13)	Incorporated by reference to the Company's Registration Statement on Form 8-K filed March 16, 2023

Item 16. Form 10-K Summary

None.

SIGNATURES

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

DATE: March 30, 2023

MOBIVITY HOLDINGS CORP.

/s/ Dennis Becker

Dennis Becker

Chief Executive Officer

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Dennis Becker</u>	Chief Executive Officer and Chairman of the Board	March 31, 2023
<u>/s/ Lisa Brennan</u>	Chief Financial Officer	March 31, 2023
<u>/s/ Philip Guarascio</u>	Director	March 31, 2023
<u>/s/ Ben Weinberger</u>	Director	March 31, 2023
<u>/s/ Doug Schneider</u>	Director	March 31, 2023
<u>/s/ Thomas Akin</u>	Director	March 31, 2023

DESCRIPTION OF CAPITAL STOCK

Mobivity Holdings Corp. (“Company”, “we”, “us” and “our”) has one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, namely our common stock, par value \$0.001 per share.

The following is a summary of the rights of our common and of certain provisions of our Articles of Incorporation, as amended (“Articles of Incorporation”), and Bylaws, as amended (“Bylaws”). For more detailed information, please see our Articles of Incorporation and Bylaws, which are incorporated by reference as exhibits to the Annual Report on Form 10-K to which this description is an exhibit.

Common Stock

Our Articles of Incorporation authorizes us to issue up to 100,000,000 shares of common stock, \$0.001 par value per share. Holders of shares of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders generally. Stockholders are entitled to receive such dividends as may be declared from time to time by the Board out of funds legally available therefore, and in the event of liquidation, dissolution or winding up of the company to share ratably in all assets remaining after payment of liabilities. The holders of shares of common stock have no preemptive, conversion, subscription rights or cumulative voting rights.

Dividends

We have never paid cash dividends on our common stock and we do not anticipate the payment of cash dividends on our common stock in the foreseeable future.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Colonial Stock Transfer Co, Inc., 66 Exchange Place, Ste 100., Salt Lake City, UT 84111.

EMPLOYMENT AGREEMENT

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

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

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

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

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

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

(b) "Cause" means:

(i) commission by Employee of a felony;

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

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

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

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

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

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

- (viii) Employee's violation of any provision of the policies, work rules, procedures or standards of the Company;
- (ix) Employee's failure to perform his duties under this Agreement; or
- (x) Employee's violation of any covenant or obligation under this Agreement or any other agreement with the Company.

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

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

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

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

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

2. **Employment, Duties and Term.**

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

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

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

3. **Compensation.**

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

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

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

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

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

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

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

4. **Termination**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to the Company:

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

If to Employee:

Facsimile: _____
E-mail: _____

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

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

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

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

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

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

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

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

(Signatures begin on next page)

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

“EMPLOYEE”:

By: /s/ Lisa Brennan, individually

“COMPANY”:

MOBIVITY HOLDINGS CORPORATION

By: /s/ Dennis Becker

Name: Dennis Becker

Title: CEO

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

MOBIVITY HOLDINGS CORP. 2016 STOCK INCENTIVE PLAN

1. Purpose of Plan.

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

2. Definitions.

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

2.1. “Board” means the Company’s Board of Directors.

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

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

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

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

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

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

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

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

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2.10. “Eligible Recipients” means all employees, officers and directors of the Company or any Subsidiary, and any person who has a relationship with the Company or any Subsidiary.

2.11. “Exchange Act” means the Securities Exchange Act of 1934, as amended.

2.12. “Fair Market Value” means, with respect to the Common Stock, as of any date: (i) the mean between the reported high and low sale prices of the Common Stock at the end of the regular trading session if the Common Stock is listed, admitted to unlisted trading privileges, or reported on any national securities exchange or on the NASDAQ Global Select or Global Market on such date (or, if no shares were traded on such day, as of the next preceding day on which there was such a trade); or (ii) if the Common Stock is not so listed, admitted to unlisted trading privileges, or reported on any national exchange or on the NASDAQ Global Select or Global Market, the closing bid price as of such date at the end of the regular trading session, as reported by the Nasdaq Capital Market, OTC Bulletin Board, The OTC Market, or other comparable service; or (iii) if the Common Stock is not so listed or reported, such price as the Committee determines in good faith in the exercise of its reasonable discretion.

2.13. “Incentive Award” means an Option, Restricted Stock Award or Performance Stock Award granted to an Eligible Recipient pursuant to the Plan.

2.14. “Incentive Stock Option” means a right to purchase Common Stock granted to an Eligible Recipient pursuant to Section 6 of the Plan that qualifies as an “incentive stock option” within the meaning of Section 422 of the Code.

2.15. “NonStatutory Stock Option” means a right to purchase Common Stock granted to an Eligible Recipient pursuant to Section 6 of the Plan that does not qualify as an Incentive Stock Option.

2.16. “Option” means an Incentive Stock Option or a NonStatutory Stock Option.

2.17. “Participant” means an Eligible Recipient who receives one or more Incentive Awards under the Plan.

2.18. “Performance Criteria” means the performance criteria that may be used by the Committee in granting Performance Stock Awards contingent upon achievement of such performance goals as the Committee may determine in its sole discretion. The Committee may select one criterion or multiple criteria for measuring performance, and the measurement may be based upon Company, Subsidiary or business unit performance, or the individual performance of the Eligible Recipient, either absolute or by relative comparison to other companies, other Eligible Recipients or any other external measure of the selected criteria.

2.19. “Performance Stock Awards” means an award of Common Stock granted to an Eligible Recipient pursuant to Section 8 of the Plan and which may be subject to the future achievement of Performance Criteria or be free of any performance or vesting conditions.

2.20. “Previously Acquired Shares” means shares of Common Stock that are already owned by the Participant or, with respect to any Incentive Award, that are to be issued upon the grant, exercise or vesting of such Incentive Award.

2.21. “Restricted Stock Award” means an award of Common Stock granted to an Eligible Recipient pursuant to Section 7 of the Plan that is subject to the restrictions on transferability and the risk of forfeiture imposed by the provisions of such Section 7.

2.22. “Retirement” means normal or approved early termination of employment or service.

2.23. “Securities Act” means the Securities Act of 1933, as amended.

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

3. Plan Administration

3.1. The Committee. The Plan will be administered by the Board or by a committee of the Board. So long as the Company has a class of its equity securities registered under Section 12 of the Exchange Act, any committee administering the Plan will consist solely of two or more members of the Board who are “nonemployee directors” within the meaning of Rule 16b3 under the Exchange Act. Such a committee, if established, will act by majority approval of the members (unanimous approval with respect to action by written consent), and a majority of the members of such a committee will constitute a quorum. As used in the Plan, “Committee” will refer to the Board or to such a committee, if established. To the extent consistent with applicable corporate law of the Company’s jurisdiction of incorporation, the Committee may delegate to any officers of the Company the duties, power and authority of the Committee under the Plan pursuant to such conditions or limitations as the Committee may establish; provided, however, that only the Committee may exercise such duties, power and authority with respect to Eligible Recipients who are subject to Section 16 of the Exchange Act. The Committee may exercise its duties, power and authority under the Plan in its sole and absolute discretion without the consent of any Participant or other party, unless the Plan specifically provides otherwise. Each determination, interpretation or other action made or taken by the Committee pursuant to the provisions of the Plan will be conclusive and binding for all purposes and on all persons, and no member of the Committee will be liable for any action or determination made in good faith with respect to the Plan or any Incentive Award granted under the Plan.

3.2. Authority of the Committee

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

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

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

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

4. Shares Available for Issuance.

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

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

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

5. Participation.

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

6. Options.

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

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

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

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

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

7. Restricted Stock Awards.

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

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

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

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

8. Performance Stock Awards.

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

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

9. Effect of Termination of Employment or Other Service.

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

- (a) All outstanding Options then held by the Participant will, to the extent exercisable as of such termination, remain exercisable for a period of six (6) months after such termination (but in no event after the expiration date of any such Option); and
- (b) All Restricted Stock Awards then held by the Participant that have not vested as of such termination will be terminated and forfeited; and
- (c) All outstanding Performance Stock Awards then held by the Participant that have not vested as of such termination will be terminated and forfeited.

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

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

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

- (a) All outstanding Options then held by the Participant will, to the extent exercisable as of such termination, remain exercisable in full for a period of three months after such termination (but in no event after the expiration date of any such Option). Options not exercisable as of such termination will be forfeited and terminate; and
- (b) All Restricted Stock Awards then held by the Participant that have not vested as of such termination will be terminated and forfeited; and
- (c) All outstanding Performance Stock Awards then held by the Participant that have not vested as of such termination will be terminated and forfeited.

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

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

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

10. Payment of Withholding Taxes.

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

exercise of an Incentive Stock Option, or (b) require the Participant promptly to remit the amount of such withholding to the Company before taking any action, including issuing any shares of Common Stock, with respect to an Incentive Award.

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

11. Change in Control.

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

- (a) the sale, lease, exchange or other transfer, directly or indirectly, of substantially all of the assets of the Company (in one transaction or in a series of related transactions) to any Successor;
- (b) the approval by the stockholders of the Company of any plan or proposal for the liquidation or dissolution of the Company;
- (c) any Successor (as defined in Section 11.2 below), other than a Bona Fide Underwriter (as defined in Section 11.2 below), becomes after the effective date of the Plan the "beneficial owner" (as defined in Rule 13d3 under the Exchange Act), directly or indirectly, of (i) 25% or more, but not 50% or more, of the combined voting power of the Company's outstanding securities ordinarily having the right to vote at elections of directors, unless the transaction resulting in such ownership has been approved in advance by the Continuity Directors (as defined in Section 11.2 below), or (ii) more than 50% of the combined voting power of the Company's outstanding securities ordinarily having the right to vote at elections of directors (regardless of any approval by the Continuity Directors);

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(d) a merger or consolidation to which the Company is a party if the stockholders of the Company immediately prior to effective date of such merger or consolidation have "beneficial ownership" (as defined in Rule 13d3 under the Exchange Act), immediately following the effective date of such merger or consolidation, of securities of the surviving corporation representing (i) 50% or more, but not more than 80%, of the combined voting power of the surviving corporation's then outstanding securities ordinarily having the right to vote at elections of directors, unless such merger or consolidation has been approved in advance by the Continuity Directors, or (ii) less than 50% of the combined voting power of the surviving corporation's then outstanding securities ordinarily having the right to vote at elections of directors (regardless of any approval by the Continuity Directors); or

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

Board.

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

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

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

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

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

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

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

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

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

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

12. Rights of Eligible Recipients and Participants: Transferability.

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

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

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12.3 Restrictions on Transfer.

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

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

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

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

13. Securities Law and Other Restrictions.

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

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14. Plan Amendment, Modification and Termination.

The Board may suspend or terminate the Plan or any portion thereof at any time, and may amend the Plan from time to time in such respects as the Board may deem advisable in order that Incentive Awards under the Plan will conform to any change in applicable laws or regulations or in any other respect the Board may deem to be in the best interests of the Company; provided, however, that no such amendments to the Plan will be effective without approval of the Company's stockholders if:

(i) stockholder approval of the amendment is then required pursuant to Section 422 of the Code or the rules of any stock exchange or the NASDAQ Global Select, Global or Capital Market or similar regulatory body; or (ii) such amendment seeks to modify Section 3.2(d) hereof. No termination, suspension or amendment of the Plan may adversely affect any outstanding Incentive Award without the consent of the affected Participant; provided, however, that this sentence will not impair the right of the Committee to take whatever action it deems appropriate under Sections 3.2(c), 4.3 and 11 of the Plan.

15. Effective Date and Duration of the Plan.

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

16. Miscellaneous.

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

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

MOBIVITY HOLDINGS CORP.
2016 STOCK PLAN
RESTRICTED STOCK UNIT AWARD AGREEMENT

This **AWARD AGREEMENT** (this “Agreement”) is entered into on the [[GRANTDATEWORDS]] (the “Grant Date”) by and between MOBIVITY HOLDINGS CORP., a Nevada corporation (the “Company”), and [[FIRSTNAME]] [[LASTNAME]] (the “Participant”).

1. **Grant of Restricted Stock Unit.** This agreement evidences a grant of a Restricted Stock Unit, on the date written above (the “Grant Date”), by the Company to the Participant under the Mobivity Holdings Corp. 2016 Stock Plan (as amended from time to time, the “Plan”).
2. **Shares Subject to the Award.** The Restricted Stock Units evidenced by this Agreement relates to [[SHARESGRANTED]] shares of Common Stock.
3. **Vesting of Restricted Stock Unit Award.** The Restricted Stock Unit Award evidenced by this Agreement will vest starting on [[VESTINGSTARTDATE]]. The Participant will become vested in the shares of Common Stock represented by the Restricted Stock Unit Award granted pursuant to this Award Agreement, provided that the Participant remains actively employed by the Company on each such vesting date. The options shall vest as follows: [[VESTINGTEMPLATEDESC]].
4. **Settlement of Restricted Stock Units.** The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will, to the extent the Participant’s rights with respect to the Restricted Stock Unit have become vested in accordance with Paragraph 3, be issued to the Participant upon the earliest to occur of (A) three years after the grant date, (B) a Change in Control of the Company, and (C) the termination of the Participant’s employment with the Company.
5. **Forfeiture of Restricted Stock Units.** Upon the Participant’s termination of employment with the Company, all Restricted Stock Units not then-vested in accordance with Paragraph 3 will be immediately forfeited.
6. **No Assurance of Value.** The Participant acknowledges that the value of a Restricted Stock Unit will be dependent upon the future financial condition, operating results and prospects of the Company, which are subject to a number of risks and uncertainties that are difficult to predict and in many instances are beyond the Company's control. Accordingly, there is no assurance that the Participant will realize any value from this or any Restricted Stock Unit. The Participant further acknowledges that no representation has been made to, or relied upon by, the Participant regarding the value of a Restricted Stock Unit.
7. **Stock Incentive Plan.** The Restricted Stock Units granted to the Participant, as described above, are payable in accordance with the terms and conditions set forth in this Agreement and the terms and conditions of the Plan, which terms and conditions are incorporated into this Agreement by reference and a copy of the document governing the Plan has been provided to the Participant. Unless otherwise specified in this Agreement, capitalized terms that are not defined in the Agreement but are defined in the Plan have the same meaning as they do in the Plan. By entering into this Agreement, the Participant acknowledges, accepts and agrees to be bound by the terms and conditions set forth in the Plan and this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Award Agreement as of the date first above written.

MOBIVITY HOLDINGS CORP.

By: _____

Name: Lisa Brennan

Title: Chief Financial Officer

PARTICIPANT:

[[FIRSTNAME]] [[LASTNAME]]

**MOBIVITY HOLDINGS CORP.
2022 EQUITY INCENTIVE PLAN**

1. Purpose

. The purpose of the Mobivity Holdings Corp. 2022 Equity Incentive Plan (the “Plan”) is to attract and retain the best available personnel for positions of responsibility with the Company, to provide additional incentives to them and align their interests with those of the Company’s stockholders, and to thereby promote the Company’s long-term business success.

2. Definitions

. In this Plan, the following definitions will apply.

(a) “Affiliate” means any entity that is a Subsidiary or Parent of the Company, or any other entity in which the Company owns, directly or indirectly, at least 20% of combined voting power of the entity’s Voting Securities and which is designated by the Committee as covered by the Plan.

(b) “Agreement” means the written or electronic agreement, notice or other document containing the terms and conditions applicable to each Award granted under the Plan, including all amendments thereto. An Agreement is subject to the terms and conditions of the Plan.

(c) “Award” means a grant made under the Plan in the form of Options, Stock Appreciation Rights, Restricted Stock, Stock Units, or an Other Stock-Based Award.

(d) “Board” means the Board of Directors of the Company.

(e) “Cause” means what the term is expressly defined to mean in a then-effective written agreement (including an Agreement) between a Participant and the Company or any Affiliate, or in the absence of any such then-effective agreement or definition a Participant’s (i) embezzlement or misappropriation of Company funds or property, (ii) failure to comply, as determined by the Company, with any applicable confidentiality, noncompetition or data security agreement or obligation, (iii) failure to comply, as determined by the Company, with any applicable Company policy; (iv) failure to perform satisfactorily the duties reasonably required of the Participant by the Company (other than by reason of Disability); (v) material violation of any law, rule, regulation, court order or regulatory directive (other than traffic violations, misdemeanors or other minor offenses); (vi) material breach of the Company’s business conduct or ethics code or of any fiduciary duty or nondisclosure, non-solicitation, non-competition or similar obligation owed to the Company or any Affiliate; (vii) engaging in any act or practice that involves personal dishonesty on the part of the Participant or demonstrates a willful and continuing disregard for the best interests of the Company and its Affiliates; or (viii) engaging in dishonorable or disruptive behavior, practices or acts which would be reasonably expected to harm or bring disrepute to the Company or any of its Affiliates, their business or any of their customers, employees or vendors.

(f) “Change in Control” means any one of the following:

(1) An Exchange Act Person becomes the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company representing more than 50% of the combined voting power of the Company’s then outstanding Voting Securities, except that the following will not constitute a Change in Control:

(A) any acquisition of securities of the Company by an Exchange Act Person from the Company for the purpose of providing financing to the Company;

(B) any formation of a Group consisting solely of beneficial owners of the Company’s Voting Securities as of the effective date of this Plan;

(C) any repurchase or other acquisition by the Company of its Voting Securities that causes any Exchange Act Person to become the beneficial owner of more than 50% of the Company’s Voting Securities; or

(D) with respect to any particular Participant, any acquisition of securities of the Company by the Participant, any Group including the Participant, or any entity controlled by the Participant or a Group including the Participant.

(E) If, however, an Exchange Act Person or Group referenced in clause (A), (B) or (C) above acquires beneficial ownership of additional Company Voting Securities after initially becoming the beneficial owner of more than 50% of the combined voting power of the Company’s Voting Securities by one of the means described in those clauses, then a Change in Control will be deemed to have occurred. Furthermore, a Change in Control will occur if a Person becomes the beneficial owner of more than 50% of the Company’s Voting Securities as the result of a Corporate Transaction only if the Corporate Transaction is itself a Change in Control pursuant to subsection 2(f)(3).

(2) Individuals who are Continuing Directors cease for any reason to constitute a majority of the members of the Board.

(3) A Corporate Transaction is consummated, unless, immediately following such Corporate Transaction, all or substantially all of the individuals and entities who were the beneficial owners of the Company’s Voting Securities immediately prior to such Corporate Transaction beneficially own, directly or indirectly, more than 50% of the combined voting power of the then outstanding Voting Securities of the surviving or acquiring entity resulting from such Corporate Transaction (including beneficial ownership through any Parent of such entity) in substantially the same proportions as their ownership, immediately prior to such Corporate Transaction, of the Company’s Voting Securities.

Notwithstanding the foregoing, if Award provides for a change in the time or form of payment upon a Change in Control, then no Change in Control shall be deemed to have occurred upon an event described in this Section 2(f) unless the event would also constitute a change in ownership or effective control of, or a change in the ownership of a substantial portion of the assets of, the Company under Section 409A.

(g) “Code” means the Internal Revenue Code of 1986, as amended and in effect from time to time. For purposes of the Plan, references to sections of the Code shall be deemed to include any applicable regulations thereunder and any successor or similar statutory provisions.

(h) “Committee” means two or more Non-Employee Directors designated by the Board to administer the Plan under Section 3, each member of which shall be (i) an independent director within the meaning of applicable stock exchange rules and regulations and (ii) a non-employee director within the meaning of Exchange Act Rule 16b-3. The Committee shall be the Compensation Committee of the Board unless otherwise specified by the Board.

(i) “Company” means Mobivity Holdings Corp., a Nevada corporation, and any successor thereto.

(j)“ Continuing Director” means an individual (i) who is, as of the effective date of the Plan, a director of the Company, or (ii) who becomes a director of the Company after the effective date hereof and whose initial election, or nomination for election by the Company’s stockholders, was approved by at least a majority of the then Continuing Directors, but excluding, for purposes of this clause (ii), an individual whose initial assumption of office occurs as the result of an actual or threatened proxy contest involving the solicitation of proxies or consents by a person or Group other than the Board, or by reason of an agreement intended to avoid or settle an actual or threatened proxy contest.

(k)“ Corporate Transaction” means (i) a sale or other disposition of all or substantially all of the assets of the Company, or (ii) a merger, consolidation, share exchange or similar transaction involving the Company, regardless of whether the Company is the surviving entity.

(l)“ Disability” means (A) any permanent and total disability under any long-term disability plan or policy of the Company or its Affiliates that covers the Participant, or (B) if there is no such long-term disability plan or policy, “total and permanent disability” within the meaning of Code Section 22(e)(3).

(m)“ Employee” means an employee of the Company or an Affiliate.

(n)“ Exchange Act” means the Securities Exchange Act of 1934, as amended and in effect from time to time.

(o)“ Exchange Act Person” means any natural person, entity or Group other than (i) the Company or any Affiliate; (ii) any employee benefit plan (or related trust) sponsored or maintained by the Company or any Affiliate; (iii) an underwriter temporarily holding securities in connection with a registered public offering of such securities; or (iv) an entity whose Voting Securities are beneficially owned by the beneficial owners of the Company’s Voting Securities in substantially the same proportions as their beneficial ownership of the Company’s Voting Securities.

(p)“ Exchange Program” means a program under which (i) outstanding Options or SARs are surrendered or cancelled in exchange for Options or SARs of the same type (which may have lower or higher exercise prices and different terms), Awards of a different type and/or cash, or (ii) the exercise price of an outstanding Option or SAR is reduced.

(q)“ Fair Market Value” means the fair market value of a Share determined as follows:

(1) If the Shares are readily tradable on an established securities market (as determined under Section 409A), then Fair Market Value will be the closing sales price for a Share on the principal securities market on which it trades on the date for which it is being determined, or if no sale of Shares occurred on that date, on the next preceding date on which a sale of Shares occurred, as reported in *The Wall Street Journal* or such other source as the Committee deems reliable; or

(2) If the Shares are not then readily tradable on an established securities market (as determined under Section 409A), then Fair Market Value will be determined by the Committee as the result of a reasonable application of a reasonable valuation method that satisfies the requirements of Section 409A.

(r)“ Full Value Award” means an Award other than an Option Award or Stock Appreciation Right Award.

(s)“ Global Service Provider” means a Service Provider who is located outside of the United States, who is not compensated from a payroll maintained in the United States, or who is otherwise subject to (or could cause the Company to be subject to) legal, tax or regulatory requirements of countries outside of the United States.

(t)“ Good Reason” means what the term is expressly defined to mean in a then-effective written agreement (including an Agreement) between a Participant and the Company or any Affiliate, or in the absence of such then-effective agreement or definition, means the existence of one or more of the following conditions without the Participant’s written consent, so long as the Participant provided written notice to the Company of the existence of the condition not later than 90 days after the initial existence of the condition, the condition has not been remedied by the Company within 30 days after its receipt of such notice, and the Participant terminates the Participant’s employment within 180 days of the initial existence of the condition: (i) any material, adverse change in the Participant’s duties, responsibilities, or authority; (ii) a material reduction in the Participant’s base salary or bonus opportunity that is not part of a general reduction applicable to employees in the same classification or grade as the Participant; or (iii) a geographical relocation of the Participant’s principal office location by more than 50 miles, provided that (A) if the Participant’s principal place of Services is the Participant’s personal residence, this clause (iii) shall not apply and (B) neither the Participant’s relocation to remote work or back to the office from remote work will be considered a relocation of such employee’s principal location of Services for purposes of this definition.

(u)“ Grant Date” means the date on which the Committee approves the grant of an Award under the Plan, or such later date as may be specified by the Committee on the date the Committee approves the Award.

(v)“ Group” means two or more persons who act, or agree to act together, as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding, voting or disposing of securities of the Company.

(w)“ Non-Employee Director” means a member of the Board who is not an Employee.

(x)“ Option” means a right granted under the Plan to purchase a specified number of Shares at a specified price. An “Incentive Stock Option” or “ISO” means any Option designated as such and granted in accordance with the requirements of Code Section 422. A “Non-Qualified Stock Option” or “NQSO” means an Option other than an Incentive Stock Option.

(y)“ Other Stock-Based Award” means an Award described in Section 11 of this Plan.

(z)“ Parent” means a “parent corporation,” as defined in Code Section 424(e).

(aa)“ Participant” means a Service Provider to whom a then-outstanding Award has been granted under the Plan.

(bb)“ Performance-Based Award” means an Award that is conditioned on the achievement of specified performance goals.

(cc)“ Plan” means this Mobivity Holdings Corp. 2022 Equity Incentive Plan, as amended and in effect from time to time.

(dd)“ Restricted Stock” means Shares issued to a Participant that are subject to such restrictions on transfer, vesting conditions and other restrictions or limitations as may be set forth in this Plan and the applicable Agreement.

(ee)“ Section 409A” means Section 409A of the Code, and the regulations and guidance promulgated thereunder.

(ff)“ Service” means the provision of services by a Participant to the Company or any Affiliate in any Service Provider capacity. A Service Provider’s Service shall be deemed to have terminated either upon an actual cessation of providing services to the Company or any Affiliate or upon the entity to which the Service Provider provides services ceasing to be an Affiliate. Except as otherwise provided in this Plan or any Agreement, Service shall not be deemed terminated in the case of (i) any

approved leave of absence; (ii) transfers among the Company and any Affiliates in any Service Provider capacity; or (iii) any change in status so long as the individual remains in the service of the Company or any Affiliate in any Service Provider capacity.

(gg)“ Service Provider” means an Employee, a Non-Employee Director, or any natural person who is a consultant or advisor, or is employed by a consultant or advisor retained by the Company or any Affiliate, and who provides services (other than in connection with (i) a capital-raising transaction or (ii) promoting or maintaining a market in Company securities) to the Company or any Affiliate.

(hh)“ Share” means a share of Stock.

(ii)“ Stock” means the common stock, \$.001 par value per Share, of the Company.

(jj)“ Stock Appreciation Right” or “SAR” means the right to receive, in cash and/or Shares as determined by the Committee, an amount equal to the appreciation in value of a specified number of Shares between the Grant Date of the SAR and its exercise date.

(kk)“ Stock Unit” means a right to receive, in cash and/or Shares as determined by the Committee, the Fair Market Value of a Share, subject to such restrictions on transfer, vesting conditions and other restrictions or limitations as may be set forth in this Plan and the applicable Agreement.

(ll)“ Subsidiary” means a “subsidiary corporation,” as defined in Code Section 424(f), of the Company.

(mm)“ Substitute Award” means an Award granted upon the assumption of, or in substitution or exchange for, outstanding awards granted by a company or other entity acquired by the Company or any Affiliate or with which the Company or any Affiliate combines. The terms and conditions of a Substitute Award may vary from the terms and conditions set forth in the Plan to the extent that the Committee at the time of the grant may deem appropriate to conform, in whole or in part, to the provisions of the award in substitution for which it has been granted.

(nn)“ Voting Securities” of an entity means the outstanding equity securities (or comparable equity interests) entitled to vote generally in the election of directors of such entity.

3. Administration of the Plan.

(a) Administration. The authority to control and manage the operations and administration of the Plan shall be vested in the Committee in accordance with this Section 3.

(b) Scope of Authority. Subject to the terms of the Plan, the Committee shall have the authority, in its discretion, to take such actions as it deems necessary or advisable to administer the Plan, including:

(1) determining the Service Providers to whom Awards will be granted, the timing of each such Award, the type of and the number of Shares or amount of cash covered by each Award, the terms, conditions, performance criteria, restrictions and other provisions of Awards, and the manner in which Awards are paid or settled;

(2) cancelling or suspending an Award, accelerating the vesting or extending the exercise period of an Award, or otherwise amending the terms and conditions of any outstanding Award, subject to the requirements of Section 15(d);

(3) adopting sub-plans or special provisions applicable to Awards, establishing, amending or rescinding rules to administer the Plan, interpreting the Plan and any Award or Agreement, reconciling any inconsistency, correcting any defect or supplying an omission or reconciling any inconsistency in the Plan or any Agreement, and making all other determinations necessary or desirable for the administration of the Plan;

(4) granting Substitute Awards under the Plan;

(5) taking such actions as are provided in Section 3(c) with respect to Awards to Global Service Providers;

(6) requiring or permitting the deferral of the settlement of an Award, and establishing the terms and conditions of any such deferral; and

(7) instituting an Exchange Program, the terms and conditions of which shall be determined by the Committee in its sole discretion.

(8) Notwithstanding the foregoing, the Board shall perform the duties and have the responsibilities of the Committee with respect to Awards made to Non-Employee Directors.

(c) Awards to Global Service Providers. The Committee may grant Awards to Global Service Providers, on such terms and conditions different from those specified in the Plan as may, in the judgment of the Committee, be necessary or desirable to comply with applicable foreign laws and regulatory requirements and to promote achievement of the purposes of the Plan. In connection therewith, the Committee may establish such subplans or annexes to Award Agreements and modify exercise procedures and other Plan rules and procedures to the extent such actions are deemed necessary or desirable, and may take any other action that it deems advisable to obtain local regulatory approvals or to comply with any necessary local governmental regulatory exemptions.

(d) Acts of the Committee: Delegation. A majority of the members of the Committee shall constitute a quorum for any meeting of the Committee, and any act of a majority of the members present at any meeting at which a quorum is present or any act unanimously approved in writing by all members of the Committee shall be the act of the Committee. Any such action of the Committee shall be valid and effective even if one or more members of the Committee at the time of such action are later determined not to have satisfied all of the criteria for membership in clauses (i) and (ii) of Section 2(h). To the extent not inconsistent with applicable law or stock exchange rules, the Committee may delegate all or any portion of its authority under the Plan to any one or more of its members or, as to Awards to Participants who are not subject to Section 16 of the Exchange Act, to one or more directors or executive officers of the Company or to a committee of the Board comprised of one or more directors of the Company. The Committee may also delegate non-discretionary administrative responsibilities in connection with the Plan to such other persons as it deems advisable.

(e) Finality of Decisions. The Committee’s interpretation of the Plan and of any Award or Agreement made under the Plan and all related decisions or resolutions of the Board or Committee shall be final and binding on all parties with an interest therein.

(f) Indemnification. Each person who is or has been a member of the Committee or of the Board, and any other person to whom the Committee delegates authority under the Plan, shall be indemnified by the Company, to the maximum extent permitted by law, against liabilities and expenses imposed upon or reasonably incurred by such person in connection with or resulting from any claims against such person by reason of the performance of the individual's duties under the Plan. This right to indemnification is conditioned upon such person providing the Company an opportunity, at the Company’s expense, to handle and defend the claims before such person undertakes to handle and defend them on such person’s own behalf. The Company will not be required to indemnify any person for any amount paid in settlement of

a claim unless the Company has first consented in writing to the settlement. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such person or persons may be entitled under the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise.

4. Shares Available Under the Plan

(a) Maximum Shares Available. Subject to Section 4(b) and to adjustment as provided in Section 12(a), the number of Shares that may be the subject of Awards and issued under the Plan shall be 12,000,000 Shares issued under the Plan may come from authorized and unissued shares or treasury shares. In determining the number of Shares to be counted against this share reserve in connection with any Award, the following rules shall apply:

(1) Where the number of Shares subject to an Award is variable on the Grant Date, the number of Shares to be counted against the share reserve shall be the maximum number of Shares that could be received under that particular Award, until such time as it can be determined that only a lesser number of shares could be received.

(2) Where two or more types of Awards are granted to a Participant in tandem with each other, such that the exercise of one type of Award with respect to a number of Shares cancels at least an equal number of Shares of the other, the number of Shares to be counted against the share reserve shall be the largest number of Shares that would be counted against the share reserve under either of the Awards.

(3) Shares subject to Substitute Awards shall not be counted against the share reserve, nor shall they reduce the Shares authorized for grant to a Participant in any calendar year.

(4) Awards that may be settled solely in cash shall not be counted against the share reserve, nor shall they reduce the Shares authorized for grant to a Participant in any calendar year.

(b) Effect of Forfeitures and Other Actions. Any Shares subject to an Award that expires, is cancelled or forfeited, is settled for cash or otherwise does not result in the issuance of all of the Shares subject to such Award (including as a result of the settlement in Shares of the exercise of a Stock Appreciation Right) shall, to the extent of such cancellation, forfeiture, expiration, cash settlement or non-issuance, again become available for Awards under this Plan, and the share reserve under Section 4(a) shall be correspondingly replenished. In addition, if (i) payment of the exercise price of any Award is made through the tendering (either actually or by attestation) of Shares by the Participant or by the withholding of Shares by the Company, (ii) satisfaction of any tax withholding obligations arising from any Award occurs through the tendering (either actually or by attestation) of Shares by the Participant or by the withholding of Shares by the Company, or (iii) any Shares are repurchased by the Company with proceeds received from the exercise of a stock option issued under this Plan, then the Shares so tendered, withheld or repurchased shall become available for Awards under this Plan and the share reserve under Section 4(a) shall be correspondingly replenished.

(c) Effect of Plans Operated by Acquired Companies. If a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall supplement the Share reserve under Section 4(a). Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan absent the acquisition or combination, and shall only be made to individuals who were not Employees or Non-Employee Directors prior to such acquisition or combination.

(d) No Fractional Shares. Unless otherwise determined by the Committee, the number of Shares subject to an Award shall always be a whole number. No fractional Shares may be issued under the Plan, but the Committee may, in its discretion, adopt any rounding convention it deems suitable or pay cash in lieu of any fractional Share in settlement of an Award.

5. Eligibility

. Participation in the Plan is limited to Service Providers. Incentive Stock Options may only be granted to Employees who are not Global Service Providers.

6. General Terms of Awards

(a) Award Agreement. Each Award shall be evidenced by an Agreement setting forth the amount of the Award together with such other terms and conditions applicable to the Award (and not inconsistent with the Plan) as determined by the Committee. If an Agreement calls for acceptance by the Participant, the Award evidenced by the Agreement will not become effective unless acceptance of the Agreement in a manner permitted by the Committee is received by the Company within 30 days of the date the Agreement is delivered to the Participant. An Award to a Participant may be made singly or in combination with any form of Award. Two types of Awards may be made in tandem with each other such that the exercise of one type of Award with respect to a number of Shares reduces the number of Shares subject to the related Award by at least an equal amount.

(b) Vesting and Term. Each Agreement shall set forth the period until the applicable Award is scheduled to vest and, if applicable, expire (which shall not be more than ten years from the Grant Date), and, consistent with the requirements of this Section 6, the applicable vesting conditions and any applicable performance period. The Committee may provide in an Agreement for such vesting conditions and timing as it may determine. Unless the Committee provides otherwise, the vesting of Awards granted hereunder will be suspended during any unpaid leave of absence.

(c) Transferability. Except as provided in this Section 6(c), (i) during the lifetime of a Participant, only the Participant or the Participant's guardian or legal representative may exercise an Option or SAR, or receive payment with respect to any other Award; and (ii) no Award may be sold, assigned, transferred, exchanged or encumbered, voluntarily or involuntarily, other than by will or the laws of descent and distribution. Any attempted transfer in violation of this Section 6(c) shall be of no effect. The Committee may, however, provide in an Agreement or otherwise that an Award (other than an Incentive Stock Option) may be transferred pursuant to a domestic relations order or may be transferable by gift to any "family member" (as defined in General Instruction A.1(a)(5) to Form S-8 under the Securities Act of 1933) of the Participant. Any Award held by a transferee shall continue to be subject to the same terms and conditions that were applicable to that Award immediately before the transfer thereof. For purposes of any provision of the Plan relating to notice to a Participant or to acceleration or termination of an Award upon the death or termination of Service of a Participant, the references to "Participant" shall mean the original grantee of an Award and not any transferee.

(d) Designation of Beneficiary. To the extent permitted by the Committee, a Participant may designate a beneficiary or beneficiaries to exercise any Award or receive a payment under any Award that is exercisable or payable on or after the Participant's death. Any such designation shall be on a form approved by the Company and shall be effective upon its receipt by the Company.

(e) Termination of Service. Unless otherwise provided in an applicable Agreement or another then-effective written agreement between a Participant and the Company, and subject to Section 12 of this Plan, if a Participant's Service with the Company and all of its Affiliates terminates, the following provisions shall apply (in all cases subject to the scheduled expiration of an Option or SAR Award, as applicable):

(1) Upon termination of Service for Cause, or upon conduct during a post-termination exercise period that would constitute Cause, all unexercised Option and SAR Awards and all unvested portions of any other outstanding Awards shall be immediately forfeited without consideration.

(2) Upon termination of Service for any other reason, all unvested and unexercisable portions of any outstanding Awards shall be immediately forfeited without consideration.

(3) Upon termination of Service for any reason other than Cause, death or Disability, the currently vested and exercisable portions of Option and SAR Awards may be exercised for a period of three months after the date of such termination. However, if a Participant thereafter dies during such three-month period, the vested and exercisable portions of the Option and SAR Awards may be exercised for a period of one year after the date of such termination.

(4) Upon termination of Service due to death or Disability, the currently vested and exercisable portions of Option and SAR Awards may be exercised for a period of one year after the date of such termination.

(f) Rights as Stockholder. No Participant shall have any rights as a stockholder with respect to any Shares covered by an Award unless and until the date the Participant becomes the holder of record of the Shares, if any, to which the Award relates.

(g) Performance-Based Awards. Any Award may be granted as a Performance-Based Award if the Committee establishes one or more measures of corporate, business unit or individual performance which must be attained, and the performance period over which the specified performance is to be attained, as a condition to the grant, vesting, exercisability, lapse of restrictions and/or settlement in cash or Shares of such Award. In connection with any such Award, the Committee shall determine the extent to which performance measures have been attained and other applicable terms and conditions have been satisfied, and the degree to which the grant, vesting, exercisability, lapse of restrictions and/or settlement of such Award has been earned. Any Performance-Based Award shall additionally be subject to the requirements of Section 16 of this Plan. Except as provided in Section 16 with respect to Performance-Based Award, the Committee shall also have the authority to provide, in an Agreement or otherwise, for the modification of a performance period and/or adjustments to or waivers of the achievement of performance goals.

(h) Dividends and Dividend Equivalents. Any dividends, dividend equivalents or distributions paid with respect to Shares that are subject to the unvested portion of an Award will be subject to the same restrictions as the Shares to which such dividends or distributions relate. Dividends and dividend equivalents on Performance-Based Awards will be subject to the same terms and conditions, including vesting conditions and the achievement of any applicable performance goals, as the original Award. No dividends, dividend equivalents or distributions will be paid with respect to Shares subject to an Option or SAR Award. In its discretion, the Committee may provide in an Award Agreement for a Stock Unit Award or an Other Stock-Based Award that the Participant will be entitled to receive dividend equivalents, based on dividends actually declared and paid on outstanding Shares, on the units or other Share equivalents subject to the Stock Unit Award or Other Stock-Based Award. The additional terms of any such dividend equivalents will be as set forth in the applicable Agreement, including whether such dividend equivalents will be credited with interest or deemed to be reinvested in additional units or Share equivalents.

7. Stock Option Awards

(a) Type and Exercise Price. The Agreement pursuant to which an Option Award is granted shall specify whether the Option is an Incentive Stock Option or a Non-Qualified Stock Option. The exercise price at which each Share subject to an Option Award may be purchased shall be determined by the Committee and set forth in the Agreement, and shall not be less than the Fair Market Value of a Share on the Grant Date, except in the case of Substitute Awards (to the extent consistent with Section 409A and, in the case of Incentive Stock Options, Code Section 424).

(b) Payment of Exercise Price. The purchase price of the Shares with respect to which an Option Award is exercised shall be payable in full at the time of exercise. The purchase price may be paid in cash or in such other manner as the Committee may permit, including by payment under a broker-assisted sale and remittance program, by withholding Shares otherwise issuable to the Participant upon exercise of the Option or by delivery to the Company of Shares (by actual delivery or attestation) already owned by the Participant (in either case, such Shares having a Fair Market Value as of the date the Option is exercised equal to the purchase price of the Shares being purchased).

(c) Exercisability and Expiration. Each Option Award shall be exercisable in whole or in part on the terms provided in the Agreement. No Option Award shall be exercisable at any time after its scheduled expiration. When an Option Award is no longer exercisable, it shall be deemed to have terminated.

(d) Incentive Stock Options.

(1) An Option Award will constitute an Incentive Stock Option Award only if the Participant receiving the Option Award is an Employee who is not a Global Service Provider, and only to the extent that (i) it is so designated in the applicable Agreement and (ii) the aggregate Fair Market Value (determined as of the Option Award's Grant Date) of the Shares with respect to which Incentive Stock Option Awards held by the Participant first become exercisable in any calendar year (under the Plan and all other plans of the Company and its Affiliates) does not exceed \$100,000 or such other amount specified by the Code. To the extent an Option Award granted to a Participant exceeds this limit, the Option Award shall be treated as a Non-Qualified Stock Option Award. The maximum number of Shares that may be issued upon the exercise of Incentive Stock Option Awards under the Plan shall be the total number of Shares in the Plan's share reserve as specified in the first sentence of Section 4(a), subject to adjustment as provided in Section 12(a).

(2) No Participant may receive an Incentive Stock Option Award under the Plan if, immediately after the grant of such Award, the Participant would own (after application of the rules contained in Code Section 424(d)) Shares possessing more than 10% of the total combined voting power of all classes of stock of the Company or an Affiliate, unless (i) the per Share exercise price for such Award is at least 110% of the Fair Market Value of a Share on the Grant Date and (ii) such Award will expire no later than five years after its Grant Date.

(3) For purposes of continued Service by a Participant who has been granted an Incentive Stock Option Award, no approved leave of absence may exceed three months unless reemployment upon expiration of such leave is provided by statute or contract. If reemployment is not so provided, then on the date six months following the first day of such leave, any Incentive Stock Option held by the Participant shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Non-Qualified Stock Option.

(4) If an Incentive Stock Option Award is exercised after the expiration of the exercise periods that apply for purposes of Code Section 422, or otherwise fails to qualify as an Incentive Stock Option, such Option shall thereafter be treated as a Non-Qualified Stock Option.

(e) Extension if Exercise Prevented by Law. Notwithstanding the foregoing, if the exercise of an Option Award during the applicable post-termination of Service exercise period as set forth in Section 6(e) or in the applicable Agreement is prevented by Section 17(c), the Option shall remain exercisable until the later of (i) 30 days after the date the exercise of the Option would no longer be prevented by such provision, or (ii) the end of the applicable post-termination exercise period, but in no event later than the scheduled expiration date of the Option as set forth in the applicable Agreement.

(f) Automatic Exercise of Non-Qualified Stock Options. The Committee may, by Plan rule adopted in accordance with Section 3(b)(3), provide that to the extent any portion of a vested and exercisable Non-Qualified Stock Option remains unexercised immediately prior to the close of business on the expiration date of the Option (either the originally scheduled expiration date or such earlier date on which the Option would otherwise expire pursuant to the Plan or the applicable Agreement in connection with a termination of Service other than due to Cause) (an "Automatic Exercise Date"), the entire vested and exercisable portion of such Option will be exercised on the Automatic Exercise Date without any further action by the Participant to whom the Option was granted (or the person or persons to whom the Option may have been transferred in accordance with Section 6(c) of the Plan and any applicable Agreement), but only if (i) the Fair Market Value of a Share on the Automatic Exercise Date is at least \$.50 greater than the per share exercise price of the Option, and (ii) no Option exercise suspension permitted or required under the Plan and applicable Agreements is then in effect. The aggregate exercise price for any Option exercise under this Section 7(f) and any related withholding taxes will be paid by the Company retaining from the total number of Shares as to which the Option is being exercised a number of shares having an aggregate Fair Market Value as of the Automatic Exercise Date equal to the amount of such aggregate exercise price plus the applicable withholding taxes. The Committee shall have the authority to limit or modify the applicability of this provision to Participants who are subject to Section 3(c) of the Plan. Nothing in this Section 7(f) shall preclude the Committee from unilaterally modifying or repealing any such Plan rule at any time, and any such modification or repeal shall be applicable to all Option Awards then outstanding as well as to Option Awards granted thereafter.

8. Stock Appreciation Right Awards

(a) Nature of Award. An Award of Stock Appreciation Rights shall be subject to such terms and conditions as are determined by the Committee, and shall provide a Participant the right to receive upon exercise of the SAR Award all or a portion of the excess of (i) the Fair Market Value as of the date of exercise of the SAR Award of the number of Shares as to which the SAR Award is being exercised, over (ii) the aggregate exercise price for such number of Shares. The per Share exercise price for any SAR Award shall be determined by the Committee and set forth in the applicable Agreement, and shall not be less than the Fair Market Value of a Share on the Grant Date, except in the case of Substitute Awards (to the extent consistent with Section 409A).

(b) Exercise of SAR. Each SAR Award may be exercisable in whole or in part at the times, on the terms and in the manner provided in the Agreement. No SAR Award shall be exercisable at any time after its scheduled expiration. When a SAR Award is no longer exercisable, it shall be deemed to have terminated. Upon exercise of a SAR Award, payment to the Participant shall be made at such time or times as shall be provided in the Agreement in the form of cash, Shares or a combination of cash and Shares as determined by the Committee. The Agreement may provide for a limitation upon the amount or percentage of the total appreciation on which payment (whether in cash and/or Shares) may be made in the event of the exercise of a SAR Award.

9. Restricted Stock Awards

(a) Vesting and Consideration. Shares subject to a Restricted Stock Award shall be subject to vesting and the lapse of applicable restrictions based on such conditions or factors and occurring over such period of time as the Committee may determine in its discretion. The Committee may provide whether any consideration other than Services must be received by the Company or any Affiliate as a condition precedent to the grant of a Restricted Stock Award, and may correspondingly provide for Company reacquisition or repurchase rights if such additional consideration has been required and some or all of a Restricted Stock Award does not vest.

(b) Shares Subject to Restricted Stock Awards. Unvested Shares subject to a Restricted Stock Award shall be evidenced by a book-entry in the name of the Participant with the Company's transfer agent or by one or more Stock certificates issued in the name of the Participant. Any such Stock certificate shall be deposited with the Company or its designee, together with an assignment separate from the certificate, in blank, signed by the Participant, and bear an appropriate legend referring to the restricted nature of the Restricted Stock evidenced thereby. Any book-entry shall be subject to comparable restrictions and corresponding stop transfer instructions. Upon the vesting of Shares of Restricted Stock, and the Company's determination that any necessary conditions precedent to the release of vested Shares (such as satisfaction of tax withholding obligations and compliance with applicable legal requirements) have been satisfied, such vested Shares shall be made available to the Participant in such manner as may be prescribed or permitted by the Committee. Except as otherwise provided in the Plan or an applicable Agreement, a Participant with a Restricted Stock Award shall have all the rights of a shareholder, including the right to vote the Shares of Restricted Stock.

10. Stock Unit Awards

(a) Vesting and Consideration. A Stock Unit Award shall be subject to vesting and the lapse of applicable restrictions based on such conditions or factors and occurring over such period of time as the Committee may determine in its discretion. If vesting of a Stock Unit Award is conditioned on the achievement of specified performance goals, the extent to which the goals are achieved over the specified performance period shall determine the number of Stock Units that will be earned and eligible to vest, which may be greater or less than the target number of Stock Units stated in the Agreement. The Committee may provide whether any consideration other than Services must be received by the Company or any Affiliate as a condition precedent to the settlement of a Stock Unit Award.

(b) Settlement of Award. Following the vesting of a Stock Unit Award, and the Company's determination that any necessary conditions precedent to the settlement of the Award (such as satisfaction of tax withholding obligations and compliance with applicable legal requirements) have been satisfied, settlement of the Award and payment to the Participant shall be made at such time or times in the form of cash, Shares (which may themselves be considered Restricted Stock under the Plan) or a combination of cash and Shares as determined by the Committee.

11. Other Stock-Based Awards

. The Committee may from time to time grant Shares and other Awards that are valued by reference to and/or payable in whole or in part in Shares under the Plan. The Committee shall determine the terms and conditions of such Awards, which shall be consistent with the terms and purposes of the Plan. The Committee may direct the Company to issue Shares subject to restrictive legends and/or stop transfer instructions that are consistent with the terms and conditions of the Award to which the Shares relate.

12. Changes in Capitalization, Corporate Transactions, Change in Control

(a) Adjustments for Changes in Capitalization. In the event of any equity restructuring (within the meaning of FASB ASC Topic 718) that causes the per share value of Shares to change, such as a stock dividend, stock split, spinoff, rights offering or recapitalization through an extraordinary dividend, the Committee shall make such adjustments as it deems equitable and appropriate to (i) the aggregate number and kind of Shares or other securities issued or reserved for issuance under the Plan, (ii) the number and kind of Shares or other securities subject to outstanding Awards, (iii) the exercise price of outstanding Options and SARs, and (iv) any maximum limitations

prescribed by the Plan with respect to certain types of Awards or the grants to individuals of certain types of Awards. In the event of any other change in corporate capitalization, including a merger, consolidation, reorganization, or partial or complete liquidation of the Company, such equitable adjustments described in the foregoing sentence may be made as determined to be appropriate and equitable by the Committee to prevent dilution or enlargement of rights of Participants. In either case, any such adjustment shall be conclusive and binding for all purposes of the Plan. No adjustment shall be made pursuant to this Section 12(a) in connection with the conversion of any convertible securities of the Company, or in a manner that would cause Incentive Stock Options to violate Section 422(b) of the Code or cause an Award to be subject to adverse tax consequences under Section 409A of the Code.

(b) Corporate Transactions. Unless otherwise provided in an applicable Agreement or another written agreement between a Participant and the Company, the following provisions shall apply to outstanding Awards in the event of a Change in Control that involves a Corporate Transaction.

(1) Continuation, Assumption or Replacement of Awards. In the event of a Corporate Transaction, then the surviving or successor entity (or its Parent) may continue, assume or replace Awards outstanding as of the date of the Corporate Transaction (with such adjustments as may be required or permitted by Section 12(a)), and such Awards or replacements therefor shall remain outstanding and be governed by their respective terms, subject to Section 12(b)(4) below. A surviving or successor entity may elect to continue, assume or replace only some Awards or portions of Awards. For purposes of this Section 12(b)(1), an Award shall be considered assumed or replaced if, in connection with the Corporate Transaction and in a manner consistent with Section 409A (and Code Section 424 if the Award is an ISO), either (i) the contractual obligations represented by the Award are expressly assumed by the surviving or successor entity (or its Parent) with appropriate adjustments to the number and type of securities subject to the Award and the exercise price thereof that preserves the intrinsic value of the Award existing at the time of the Corporate Transaction, or (ii) the Participant has received a comparable equity-based award that preserves the intrinsic value of the Award existing at the time of the Corporate Transaction and contains terms and conditions that are substantially similar to those of the Award.

(2) Acceleration. If and to the extent that outstanding Awards under the Plan are not continued, assumed or replaced in connection with a Corporate Transaction, then the Committee shall have the authority, in an Award Agreement, or at any time while an Award remains outstanding, to provide for the full or partial vesting and exercisability of one or more outstanding unvested Awards under the Plan and the release from restrictions on transfer and repurchase or forfeiture conditions of such Awards in connection with a Corporate Transaction, on such terms and conditions as the Committee may specify. The Committee's actions may vary among individual Participants and among Awards held by an individual Participant. The Committee shall also have the authority to condition any such Award's vesting and exercisability or release from forfeiture or repurchase restrictions upon the subsequent termination of the Continuous Service of the Grantee within a specified period following the effective date of the Corporate Transaction. The Committee may provide that any Awards so vested or released from such limitations in connection with a Corporate Transaction, shall remain fully exercisable until the expiration or sooner termination of the Award.

(3) Payment for Awards. If and to the extent that outstanding Awards under the Plan are not continued, assumed or replaced in connection with a Corporate Transaction, then the Committee may provide that some or all of such outstanding Awards shall be canceled at or immediately prior to the effective time of the Corporate Transaction in exchange for payments to the holders as provided in this Section 12(b)(3). The Committee will not be required to treat all Awards similarly for purposes of this Section 12(b)(3). The payment for any Award canceled shall be in an amount equal to the difference, if any, between (i) the fair market value (as determined in good faith by the Committee) of the consideration that would otherwise be received in the Corporate Transaction for the number of Shares subject to the Award, and (ii) the aggregate exercise price (if any) for the Shares subject to such Award. If the amount determined pursuant to the preceding sentence is not a positive number with respect to any Award, such Award may be canceled pursuant to this Section 12(b)(3) without payment of any kind to the affected Participant. With respect to an Award whose vesting is subject to the satisfaction of specified performance goals, the number of Shares subject to such an Award for purposes of this Section 12(b)(3) shall be the number of Shares as to which the Award would have been deemed "fully vested" for purposes of Section 12(b)(2). Payment of any amount under this Section 12(b)(3) shall be made in such form, on such terms and subject to such conditions as the Committee determines in its discretion, which may or may not be the same as the form, terms and conditions applicable to payments to the Company's stockholders in connection with the Corporate Transaction, and may, in the Committee's discretion, include subjecting such payments to vesting conditions comparable to those of the Award canceled, subjecting such payments to escrow or holdback terms comparable to those imposed upon the Company's stockholders under the Corporate Transaction, or calculating and paying the present value of payments that would otherwise be subject to escrow or holdback terms.

(4) Termination After a Corporate Transaction. If and to the extent that Awards are continued, assumed or replaced under the circumstances described in Section 12(b)(1), and if within twelve (12) months after the Corporate Transaction a Participant experiences an involuntary termination of Service for reasons other than Cause, then (i) outstanding Option and SAR Awards issued to the Participant that are not yet fully exercisable shall immediately become exercisable in full and shall remain exercisable for three (3) months following the Participant's termination of employment, and (ii) any Full Value Awards that are not yet fully vested shall immediately vest in full (with vesting in full for a performance-based award determined as if the performance goals are satisfied at the target level of performance).

(c) Other Change in Control. In the event of a Change in Control that does not involve a Corporate Transaction, the Committee may, in its discretion, take such action as it deems appropriate with respect to outstanding Awards, which may include: (i) providing for the cancellation of any Award in exchange for payments in a manner similar to that provided in Section 12(b)(3) or (ii) making such adjustments to the Awards then outstanding as the Committee deems appropriate to reflect such Change in Control, which may include the acceleration of vesting in full or in part. The Committee will not be required to treat all Awards similarly in such circumstances, and may include such further provisions and limitations in any Award Agreement as it may deem equitable and in the best interests of the Company.

(d) Dissolution or Liquidation. Unless otherwise provided in an applicable Agreement, in the event of a proposed dissolution or liquidation of the Company, the Committee will notify each Participant as soon as practicable prior to the effective date of such proposed transaction. An Award will terminate immediately prior to the consummation of such proposed action.

(e) Parachute Payment Limitation.

(1) Notwithstanding any other provision of this Plan or any other plan, arrangement or agreement to the contrary, if any of the payments or benefits provided or to be provided by the Company or its Affiliates to a Participant or for the Participant's benefit pursuant to the terms of this Plan or otherwise ("Covered Payments") constitute parachute payments ("Parachute Payments") within the meaning of Section 280G of the Code, and would, but for this Section 12(e) be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law and any interest or penalties with respect to such taxes (collectively, the "Excise Tax"), then the Covered Payments shall be payable either (i) in full or (ii) reduced to the minimum extent necessary to ensure that no portion of the Covered Payments is subject to the Excise Tax, whichever of the foregoing clauses (i) or (ii) results in the Participant's receipt on an after-tax basis of the greatest amount of payments and benefits after taking into account the applicable federal, state, local and foreign income, employment and excise taxes (including the Excise Tax).

(2) Any such reduction shall be made in accordance with Section 409A of the Code and the following: (i) the Covered Payments which do not constitute deferred compensation subject to Section 409A of the Code shall be reduced first, and (ii) Covered Payments that are cash payments shall be reduced before non-cash payments, and Covered Payments to be made on a later payment date shall be reduced before payments to be made on an earlier payment date.

(3) If, notwithstanding the initial application of this Section 12(e), the Internal Revenue Service determines that any Covered Payment constitutes an "excess parachute payment" (as defined by Section 280G(b) of the Code), this Section 12(e) will be reapplied based on the Internal Revenue Service's determination, and the Participant will be required to promptly repay the portion of the Covered Payments required to avoid imposition of the Excise Tax together with interest at the applicable federal rate (as defined in Section 7872(f)(2)(A) of the Code) from the date of the Participant's receipt of the excess payments until the date of repayment).

(4) Any determination required under this Section 12(e) shall be made in writing in good faith by the accounting firm which was the Company's independent auditor immediately before the Change in Control (the "Accountants"), which shall provide detailed supporting calculations to the Company and the Participant as requested by the Company or the Participant. The Company and the Participant shall provide the Accountants with such information and documents as the Accountants may reasonably request in order to make a determination under this Section 12(e).

13. Plan Participation and Service Provider Status

. Status as a Service Provider shall not be construed as a commitment that any Award will be made under the Plan to that Service Provider or to eligible Service Providers generally. Nothing in the Plan or in any Agreement or related documents shall confer upon any Service Provider or Participant any right to continued Service with the Company or any Affiliate, nor shall it interfere with or limit in any way any right of the Company or any Affiliate to terminate the person's Service at any time with or without Cause or change such person's compensation, other benefits, job responsibilities or title.

14. Tax Withholding

. The Company or any Affiliate, as applicable, shall have the right to (i) withhold from any cash payment under the Plan or any other compensation owed to a Participant an amount sufficient to cover any required withholding taxes related to the grant, vesting, exercise or settlement of an Award, and (ii) require a Participant or other person receiving Shares under the Plan to pay a cash amount sufficient to cover any required withholding taxes before actual receipt of those Shares. In lieu of all or any part of a cash payment from a person receiving Shares under the Plan, the Committee may permit the Participant to satisfy all or any part of the required tax withholding obligations (but not to exceed the maximum individual statutory tax rate in each applicable jurisdiction) by authorizing the Company to withhold a number of the Shares that would otherwise be delivered to the Participant pursuant to the Award, or by transferring to the Company Shares already owned by the Participant, with the Shares so withheld or delivered having a Fair Market Value on the date the taxes are required to be withheld equal to the amount of taxes to be withheld.

15. Effective Date, Duration, Amendment and Termination of the Plan

(a) Effective Date. The Plan shall become effective on the date it is approved by the Board, subject to approval by the Company's stockholders, and the date of such Board approval shall be considered the date of the Plan's adoption for purposes of Treasury Regulation §1.422-2(b)(2)(i). If the Company's stockholders fail to approve the Plan within 12 months of its approval by the Board, the Plan and any Awards already made thereunder will be of no further force or effect.

(b) Duration of the Plan. The Plan shall remain in effect until all Shares subject to it are distributed, all Awards have expired or terminated, the Plan is terminated pursuant to Section 15(c), or the tenth anniversary of the effective date of the Plan, whichever occurs first (the "Termination Date"). Awards made before the Termination Date shall continue to be outstanding in accordance with their terms and the terms of the Plan unless otherwise provided in the applicable Agreements.

(c) Amendment and Termination of the Plan. The Board may at any time terminate, suspend or amend the Plan. The Company shall submit any amendment of the Plan to its stockholders for approval only to the extent required by applicable laws or regulations or the rules of any securities exchange on which the Shares may then be listed. No termination, suspension, or amendment of the Plan may materially impair the rights of any Participant under a previously granted Award without the Participant's consent, unless such action is necessary to comply with applicable law or stock exchange rules.

(d) Amendment of Awards. The Committee may unilaterally amend the terms of any Agreement evidencing an Award previously granted, except that no such amendment may materially impair the rights of any Participant under the applicable Award without the Participant's consent, unless such amendment is necessary to comply with applicable law or stock exchange rules or any compensation recovery policy as provided in Section 17(i).

16. Performance-Based Award

(a) Designation of Awards. If the Committee determines that an Award is Performance-Based, then the lapsing of restrictions thereon and the distribution of cash, Shares or other property pursuant thereto, as applicable, shall be subject to the achievement over the applicable performance period of one or more performance goals based on one or more of the performance measures specified by the Committee. The Committee will select the applicable performance measure(s) and specify the performance goal(s) based on those performance measures for any performance period, specify in terms of an objective formula or standard the method for calculating the amount payable to a Participant if the performance goal(s) are satisfied, and certify the degree to which applicable performance goals have been satisfied and any amount that vests and is payable in connection with an Award subject to this Section 16. In specifying the performance goals applicable to any performance period, the Committee may provide that one or more objectively determinable adjustments shall be made to the performance measures on which the performance goals are based, which may include adjustments that would cause such measures to be considered "non-GAAP financial measures" within the meaning of Rule 101 under Regulation G promulgated by the Securities and Exchange Commission, including adjustments for events that are unusual in nature or infrequently occurring, such as a Change in Control, acquisitions, divestitures, restructuring activities or asset write-downs, or for changes in applicable tax laws or accounting principles. The Committee may also adjust performance measures for a performance period in connection with an event described in Section 12(a) to prevent the dilution or enlargement of a Participant's rights with respect to a Performance-Based Award. The Committee may also provide, in an Agreement or otherwise, that the achievement of specified performance goals in connection with an Award subject to this Section 16 may be waived upon the death or Disability of the Participant.

17. Other Provisions

(a) Unfunded Plan. The Plan shall be unfunded and the Company shall not be required to segregate any assets that may at any time be represented by Awards under the Plan. Neither the Company, its Affiliates, the Committee, nor the Board shall be deemed to be a trustee of any amounts to be paid under the Plan nor shall anything contained in the Plan or any action taken pursuant to its provisions create or be construed to create a fiduciary relationship between the Company and/or its Affiliates, and a Participant. To the extent any person has or acquires a right to receive a payment in connection with an Award under the Plan, this right shall be no greater than the right of an unsecured general creditor of the Company.

(b) Limits of Liability. Except as may be required by law, neither the Company nor any member of the Board or of the Committee, nor any other person participating (including participation pursuant to a delegation of authority under Section 3(d) of the Plan) in any determination of any question under the Plan, or in the interpretation, administration or application of the Plan, shall have any liability to any party for any action taken, or not taken, in good faith under the Plan.

(c) Compliance with Applicable Legal Requirements and Company Policies. No Shares distributable pursuant to the Plan shall be issued and delivered unless and until the issuance of the Shares complies with all applicable legal requirements, including compliance with the provisions of applicable state and federal securities laws, and the requirements of any securities exchanges on which the Company's Shares may, at the time, be listed. During any period in which the offering and issuance of Shares under the Plan is not registered under federal or state securities laws, Participants shall acknowledge that they are acquiring Shares under the Plan for investment purposes and not for resale, and that Shares may not be transferred except pursuant to an effective registration statement under, or an exemption from the registration requirements of, such securities laws. Any stock certificate or book-entry evidencing Shares issued under the Plan that are subject to securities law restrictions shall bear or be accompanied by an appropriate restrictive legend or stop transfer instruction. Notwithstanding any other provision of this Plan, the acquisition, holding or disposition of Shares acquired

pursuant to the Plan shall in all events be subject to compliance with applicable Company policies, including those relating to insider trading, pledging or hedging transactions, minimum post-vesting holding periods and stock ownership guidelines, and to forfeiture or recovery of compensation as provided in Section 17(i).

(d) Other Benefit and Compensation Programs. Payments and other benefits received by a Participant under an Award made pursuant to the Plan shall not be deemed a part of a Participant's regular, recurring compensation for purposes of the termination, indemnity or severance pay laws of any country and shall not be included in, nor have any effect on, the determination of benefits under any other employee benefit plan, contract or similar arrangement provided by the Company or an Affiliate unless expressly so provided by such other plan, contract or arrangement, or unless the Committee expressly determines that an Award or portion of an Award should be included to accurately reflect competitive compensation practices or to recognize that an Award has been made in lieu of a portion of competitive cash compensation.

(e) Governing Law. To the extent that federal laws do not otherwise control, the Plan and all determinations made and actions taken pursuant to the Plan shall be governed by the laws of the State of Nevada without regard to its conflicts-of-law principles and shall be construed accordingly.

(f) Severability. If any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

(g) Section 409A. It is intended that all Awards under the Plan will be exempt from, or will comply with, Section 409A, and to the maximum extent permitted the Awards the Plan will be limited, construed and interpreted in accordance with this intent. Notwithstanding anything to the contrary in the Plan or any Agreement, with respect to any Award that constitutes a deferral of compensation subject to Section 409A:

(1) If any amount is payable under such Award upon a termination of Service, a termination of Service will be deemed to have occurred only at such time as the Participant has experienced a "separation from service" as such term is defined for purposes of Section 409A;

(2) Each amount to be paid under an Award or this Plan shall be construed as a separate and distinct payment for purposes of Section 409A; and

(3) If any amount shall be payable with respect to any such Award as a result of a Participant's "separation from service" at such time as the Participant is a "specified employee" within the meaning of Section 409A, then no payment shall be made, except as permitted under Section 409A, prior to the first business day after the earlier of (i) the date that is six months after the Participant's separation from Service or (ii) the Participant's death. Unless the Committee has adopted a specified employee identification policy as contemplated by Section 409A, specified employees will be identified in accordance with the default provisions specified under Section 409A.

None of the Company, the Board, the Committee nor any other person involved with the administration of this Plan shall (i) in any way be responsible for ensuring the exemption of any Award from, or compliance by any Award with, the requirements of Section 409A, (ii) have any obligation to design or administer the Plan or Awards granted thereunder in a manner that minimizes a Participant's tax liabilities, including the avoidance of any additional tax liabilities under Section 409A, or (iii) shall have any liability to any Participant for any such tax liabilities.

(h) Rule 16b-3. It is intended that the Plan and all Awards granted pursuant to it shall be administered by the Committee so as to permit the Plan and Awards to comply with Exchange Act Rule 16b-3. If any provision of the Plan or of any Award would otherwise frustrate or conflict with the intent expressed in this Section 17(h), that provision to the extent possible shall be interpreted and deemed amended in the manner determined by the Committee so as to avoid the conflict. To the extent of any remaining irreconcilable conflict with this intent, the provision shall be deemed void as applied to Participants subject to Section 16 of the Exchange Act to the extent permitted by law and in the manner deemed advisable by the Committee.

(i) Forfeiture and Compensation Recovery.

(1) The Committee may specify in an Agreement that the Participant's rights, payments, and benefits with respect to an Award will be subject to reduction, cancellation, forfeiture or recovery by the Company upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include termination of Service for Cause; violation of any material Company or Affiliate policy; breach of noncompetition, non-solicitation or confidentiality provisions that apply to the Participant; a determination that the payment of the Award was based on an incorrect determination that financial or other criteria were met or other conduct by the Participant that is detrimental to the business or reputation of the Company or its Affiliates.

(2) Awards and any compensation associated therewith may be made subject to forfeiture, recovery by the Company or other action pursuant to any compensation recovery policy adopted by the Board or the Committee at any time, including in response to the requirements of Section 10D of the Exchange Act and any implementing rules and regulations thereunder, or as otherwise required by law. Any Agreement may be unilaterally amended by the Committee to comply with any such compensation recovery policy.

Mobivity Holdings Corp.
2022 EQUITY INCENTIVE PLAN

Restricted Stock Unit Award Agreement

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

Name of Participant: [_____]

Number of Restricted Stock Units: [_____]

Grant Date: [_____]

Vesting Schedule:

Scheduled Vesting Dates

Number of Restricted Stock Units that Vest

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

PARTICIPANT: Mobivity Holdings Corp.

By: _____

Title: _____

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

Terms and Conditions

1. **Grant of Restricted Stock Units.** The Company hereby confirms the grant to you, as of the Grant Date and subject to the terms and conditions in this Agreement and the Plan, of the number of Restricted Stock Units specified on the cover page of this Agreement (the “Units”). Each Unit represents the right to receive one Share of the Company’s common stock. Prior to their settlement or forfeiture in accordance with the terms of this Agreement, the Units granted to you will be recorded for book-keeping purposes only, with the Units simply representing an unfunded and unsecured contingent obligation of the Company.
2. **Restrictions Applicable to Units.** Neither this Award nor the Units subject to this Award may be sold, assigned, transferred, exchanged or encumbered, voluntarily or involuntarily, other than (i) a transfer upon your death in accordance with your will, by the laws of descent and distribution or pursuant to a beneficiary designation submitted in accordance with Section 6(d) of the Plan, or (ii) pursuant to a domestic relations order. Following any such transfer, this Award shall continue to be subject to the same terms and conditions that were applicable to this Award immediately prior to its transfer. Any attempted transfer in violation of this Section 2 shall be void and without effect. The Units and your right to receive Shares in settlement of the Units under this Agreement shall be subject to forfeiture as provided in Section 5 until satisfaction of the vesting conditions set forth in Section 4.
3. **No Shareholder Rights.** The Units subject to this Award do not entitle you to any rights of a holder of the Company’s common stock. You will not have any of the rights of a shareholder of the Company in connection with the grant of Units subject to this Agreement unless and until Shares are issued to you upon settlement of the Units as provided in Section 6.
4. **Vesting of Units.** For purposes of this Agreement, “Vesting Date” means any date, including the Scheduled Vesting Dates specified in the Vesting Schedule on the cover page of this Agreement, on which Units subject to this Agreement vest as provided in this Section 4.
 - (a) **Scheduled Vesting.** If you remain a Service Provider continuously from the Grant Date specified on the cover page of this Agreement, then the Units will vest in the amounts and on the Scheduled Vesting Dates specified in the Vesting Schedule.
 - (b) **Accelerated or Continued Vesting.** The vesting of outstanding Units will be accelerated or continued under the circumstances provided below:
 - (1) **Change in Control.** [In the event of a Change in Control which occurs within six (6) months following the Grant Date of this Award, 50% of unvested Units shall vest upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider. All unvested Units shall in full vest upon the occurrence of a Change in Control that occurs following six months from your Grant Date while you continue to be a Service Provider.] [All unvested Units shall vest in full upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider.]
 - (2) **Death or Disability.** If your Service terminates prior to the final Scheduled Vesting Date due to your death or Disability, then the Units scheduled to vest as of the next Scheduled Vesting Date shall vest as of such termination date.
5. **Effect of Termination of Service.** Except as otherwise provided in accordance with Section 4(b) above, if you cease to be a Service Provider, you will forfeit all unvested Units.
6. **Settlement of Units.** After any Units vest pursuant to Section 4, the Company shall, as soon as practicable (but no later than the 15th day of the third calendar month following the Vesting Date), cause to be issued and delivered to you (or to your personal representative or your designated beneficiary or estate in the event of your death, as applicable) one Share in payment and settlement of each vested Unit. Delivery of the Shares shall be effected by the issuance of a stock certificate to you, by an appropriate entry in the stock register maintained by the Company’s transfer agent with a notice of issuance provided to you, or by the electronic delivery of the Shares to a brokerage account you designate, and shall be in complete satisfaction and settlement of such vested Units. The Company will pay any original issue or transfer taxes with respect to the issue and transfer of Shares to you pursuant to this Agreement, and all fees and expenses incurred by it in connection therewith. If the Units that vest include a fractional Unit, the Company shall round the number of vested Units to the nearest whole Unit prior to issuance of Shares as provided herein. Notwithstanding the foregoing, if the ownership or issuance of Shares to you as provided herein is not feasible due to applicable exchange controls, securities or tax laws or other provisions of applicable law, as determined by the Committee in its sole discretion, you (or your permitted transferee) shall receive in lieu of Shares cash in an amount equal to the Fair Market Value (as of the date vesting of the Units occurs) of the Shares otherwise issuable in settlement of the vested Units.
7. **Dividend Equivalents.** If the Company pays cash dividends on its Shares while any Units subject to this Agreement are outstanding, then on each dividend payment date a dividend equivalent dollar amount equal to the number of Units credited to your account pursuant to this Agreement as of the dividend record date times the dollar amount of the cash dividend per Share shall be deemed reinvested in additional Units as of the dividend payment date and such additional Units shall be credited to your account. The number of additional Units so credited shall be determined based on the Fair Market Value of a Share on the dividend payment date. Any additional Units so credited will be subject to the same terms and conditions, including the timing of vesting and settlement, applicable to the underlying Units to which the dividend equivalents relate.
9. **Nature of the Award.** You understand that the value that may be realized, if any, from the Award is contingent, and depends on the future market price of the Company’s common stock, among other factors. You further confirm your understanding that the Award is intended to promote employee retention and stock ownership and to align employees’ interests with those of shareholders, is subject to vesting conditions and will be cancelled if vesting conditions are not satisfied.

You also understand that (i) the Plan is discretionary in nature and may be suspended or terminated by the Company at any time; (ii) the grant of an Award is voluntary and occasional and does not create any contractual or other right to receive future Awards, or benefits in lieu of Awards even if Awards have been granted repeatedly in the past; (iii) all decisions with respect to any future award will be at the sole discretion of the Company; (iv) your participation in the Plan is voluntary; (v) the value of this Award is an extraordinary item of compensation which is outside the scope of your employment contract with your actual employer, if any; (vi) this Award and past or future Awards are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments; and (vii) no claim or entitlement to compensation or damages arises from termination of this Award or diminution in value of this Award, and you irrevocably release the Company and its Affiliates from any such claim that may arise.
10. **Administration.** You understand that the Company and its Affiliates hold certain personal information about you, including, but not limited to, information such as your name, home address, telephone number, date of birth, salary, nationality, job title, social security number, social insurance number or other such tax identity number and details of all Awards or other entitlement to shares of common stock awarded, cancelled, exercised, vested, unvested or outstanding in your favor (“Personal Data”).

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

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

11. **Additional Provisions.**

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

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

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

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

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

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

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

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

Mobivity Holdings Corp.
2022 EQUITY INCENTIVE PLAN

Restricted Stock Unit Award Agreement

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

Name of Participant: [_____]

Number of Restricted Stock Units: [_____]

Grant Date: [_____]

Vesting Schedule:

Scheduled Vesting Dates

Number of Restricted Stock Units that Vest

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

PARTICIPANT: Mobivity Holdings Corp.

By: _____

Title: _____

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

Terms and Conditions

1. **Grant of Restricted Stock Units.** The Company hereby confirms the grant to you, as of the Grant Date and subject to the terms and conditions in this Agreement and the Plan, of the number of Restricted Stock Units specified on the cover page of this Agreement (the “Units”). Each Unit represents the right to receive one Share of the Company’s common stock. Prior to their settlement or forfeiture in accordance with the terms of this Agreement, the Units granted to you will be recorded for book-keeping purposes only, with the Units simply representing an unfunded and unsecured contingent obligation of the Company.
2. **Restrictions Applicable to Units.** Neither this Award nor the Units subject to this Award may be sold, assigned, transferred, exchanged or encumbered, voluntarily or involuntarily, other than (i) a transfer upon your death in accordance with your will, by the laws of descent and distribution or pursuant to a beneficiary designation submitted in accordance with Section 6(d) of the Plan, or (ii) pursuant to a domestic relations order. Following any such transfer, this Award shall continue to be subject to the same terms and conditions that were applicable to this Award immediately prior to its transfer. Any attempted transfer in violation of this Section 2 shall be void and without effect. The Units and your right to receive Shares in settlement of the Units under this Agreement shall be subject to forfeiture as provided in Section 5 until satisfaction of the vesting conditions set forth in Section 4.
3. **No Shareholder Rights.** The Units subject to this Award do not entitle you to any rights of a holder of the Company’s common stock. You will not have any of the rights of a shareholder of the Company in connection with the grant of Units subject to this Agreement unless and until Shares are issued to you upon settlement of the Units as provided in Section 6.
4. **Vesting of Units.** For purposes of this Agreement, “Vesting Date” means any date, including the Scheduled Vesting Dates specified in the Vesting Schedule on the cover page of this Agreement, on which Units subject to this Agreement vest as provided in this Section 4.
 - (a) **Scheduled Vesting.** If you remain a Service Provider continuously from the Grant Date specified on the cover page of this Agreement, then the Units will vest in the amounts and on the Scheduled Vesting Dates specified in the Vesting Schedule.
 - (b) **Accelerated or Continued Vesting.** The vesting of outstanding Units will be accelerated or continued under the circumstances provided below:
 - (1) **Change in Control.** [In the event of a Change in Control which occurs within six (6) months following the Grant Date of this Award, 50% of unvested Units shall vest upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider. All unvested Units shall in full vest upon the occurrence of a Change in Control that occurs following six months from your Grant Date while you continue to be a Service Provider.] [All unvested Units shall vest in full upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider.]
 - (2) **Death or Disability.** If your Service terminates prior to the final Scheduled Vesting Date due to your death or Disability, then the Units scheduled to vest as of the next Scheduled Vesting Date shall vest as of such termination date.
5. **Effect of Termination of Service.** Except as otherwise provided in accordance with Section 4(b) above, if you cease to be a Service Provider, you will forfeit all unvested Units.
6. **Settlement of Units.** After any Units vest pursuant to Section 4, the Company shall, as soon as practicable (but no later than the 15th day of the third calendar month following the Vesting Date), cause to be issued and delivered to you (or to your personal representative or your designated beneficiary or estate in the event of your death, as applicable) one Share in payment and settlement of each vested Unit. Delivery of the Shares shall be effected by the issuance of a stock certificate to you, by an appropriate entry in the stock register maintained by the Company’s transfer agent with a notice of issuance provided to you, or by the electronic delivery of the Shares to a brokerage account you designate, and shall be subject to the tax withholding provisions of Section 8 and compliance with all applicable legal requirements as provided in Section 17(c) of the Plan, and shall be in complete satisfaction and settlement of such vested Units. The Company will pay any original issue or transfer taxes with respect to the issue and transfer of Shares to you pursuant to this Agreement, and all fees and expenses incurred by it in connection therewith. If the Units that vest include a fractional Unit, the Company shall round the number of vested Units to the nearest whole Unit prior to issuance of Shares as provided herein. Notwithstanding the foregoing, if the ownership or issuance of Shares to you as provided herein is not feasible due to applicable exchange controls, securities or tax laws or other provisions of applicable law, as determined by the Committee in its sole discretion, you (or your permitted transferee) shall receive in lieu of Shares cash in an amount equal to the Fair Market Value (as of the date vesting of the Units occurs) of the Shares otherwise issuable in settlement of the vested Units, net of any amount required to satisfy withholding tax obligations as provided in Section 8 of this Agreement.
7. **Dividend Equivalents.** If the Company pays cash dividends on its Shares while any Units subject to this Agreement are outstanding, then on each dividend payment date a dividend equivalent dollar amount equal to the number of Units credited to your account pursuant to this Agreement as of the dividend record date times the dollar amount of the cash dividend per Share shall be deemed reinvested in additional Units as of the dividend payment date and such additional Units shall be credited to your account. The number of additional Units so credited shall be determined based on the Fair Market Value of a Share on the dividend payment date. Any additional Units so credited will be subject to the same terms and conditions, including the timing of vesting and settlement, applicable to the underlying Units to which the dividend equivalents relate.
8. **Tax Consequences and Withholding.** No Shares will be delivered to you in settlement of vested Units unless you have made arrangements acceptable to the Company for payment of any federal, state, local or foreign withholding taxes that may be due as a result of the delivery of the Shares. You hereby authorize the Company (or any Affiliate) to withhold from payroll or other amounts payable to you any sums required to satisfy such withholding tax obligations, and otherwise agree to satisfy such obligations in accordance with the provisions of Section 14 of the Plan. You may elect to satisfy such withholding tax obligations by having the Company withhold a number of Shares that would otherwise be issued to you in settlement of the Units and that have a fair market value equal to the amount of such withholding tax obligations by notifying the Company of such election prior to the Vesting Date.
9. **Nature of the Award.** You understand that the value that may be realized, if any, from the Award is contingent, and depends on the future market price of the Company’s common stock, among other factors. You further confirm your understanding that the Award is intended to promote employee retention and stock ownership and to align employees’ interests with those of shareholders, is subject to vesting conditions and will be cancelled if vesting conditions are not satisfied.

You also understand that (i) the Plan is discretionary in nature and may be suspended or terminated by the Company at any time; (ii) the grant of an Award is voluntary and occasional and does not create any contractual or other right to receive future Awards, or benefits in lieu of Awards even if Awards have been granted repeatedly in the past; (iii) all decisions with respect to any future award will be at the sole discretion of the Company; (iv) your participation in the Plan is voluntary; (v) the value of this Award is an extraordinary item of compensation which is outside the scope of your employment contract with your actual employer, if any; (vi) this Award and past or future Awards are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation,

redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments; and (vii) no claim or entitlement to compensation or damages arises from termination of this Award or diminution in value of this Award, and you irrevocably release the Company and its Affiliates from any such claim that may arise.

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

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

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

11. **Additional Provisions.**

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

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

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

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

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

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

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

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

Mobivity Holdings Corp

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

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

Name of Participant: **[_____]

No. of Shares Covered: **[_____]

Grant Date: _____, 2022

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

Expiration Date: _____, 20__

Vesting and Exercise Schedule:

Dates

Portion of Shares as to Which
Option Becomes Vested and Exercisable

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

PARTICIPANT: Mobivity Holdings Corp.

By: _____

Title: _____

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

Option Terms and Conditions

1. **Non-Qualified Stock Option.** This Option is not intended to be an “incentive stock option” within the meaning of Section 422 of the Internal Revenue Code and will be interpreted accordingly.
 2. **Vesting and Exercisability of Option.**
 - (a) **Scheduled Vesting.** This Option will vest and become exercisable as to the number of Shares and on the dates specified in the Vesting and Exercise Schedule on the cover page to this Agreement, so long as your Service to the Company does not end. The Vesting and Exercise Schedule is cumulative, meaning that to the extent the Option has not already been exercised and has not expired or been terminated or cancelled, you or the person otherwise entitled to exercise the Option as provided in this Agreement may at any time purchase all or any portion of the Shares subject to the vested portion of the Option.
 - (b) **Accelerated Vesting.** The vesting of outstanding Options will be accelerated or continued under the circumstances provided below:
 - (1) **Change in Control.** [In the event of a Change in Control which occurs within six (6) months following the Grant Date of this Award, 50% of unvested Options shall vest and become exercisable upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider. All unvested Options shall vest and become exercisable in full upon the occurrence of a Change in Control that occurs following six months from your Grant Date while you continue to be a Service Provider.] [All unvested Options shall vest and become exercisable in full upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider.]
 - (2) **Death or Disability.** If your Service terminates prior to the final Scheduled Vesting Date due to your death or Disability, then the Options scheduled to vest as of the next Scheduled Vesting Date shall vest as of such termination date.
 3. **Expiration.** This Option will expire and will no longer be exercisable at 5:00 p.m. Central Time on the earliest of:
 - (a) The expiration date specified on the cover page of this Agreement;
 - (b) Upon your termination of Service for Cause;
 - (c) Upon the expiration of any applicable period specified in Section 6(e) of the Plan or Section 2 of this Agreement during which this Option may be exercised after your termination of Service; or
 - (d) The date (if any) fixed for termination or cancellation of this Option pursuant to Section 12 of the Plan.
 4. **Service Requirement.** Except as otherwise provided in Section 6(e) of the Plan or Section 2 of this Agreement, this Option may be exercised only while you continue to provide Service to the Company or any Affiliate, and only if you have continuously provided such Service since the Grant Date of this Option.
 5. **Exercise of Option.** Subject to Section 4, the vested and exercisable portion of this Option may be exercised in whole or in part at any time during the Option term by delivering a written or electronic notice of exercise to the Company’s Chief Financial Officer or to such other party as may be designated by such officer, and by providing for payment of the exercise price of the Shares being acquired. The notice of exercise must be in a form approved by the Company and state the number of Shares to be purchased, the method of payment of the aggregate exercise price and the directions for the delivery of the Shares to be acquired, and must be signed or otherwise authenticated by the person exercising the Option. If you are not the person exercising the Option, the person submitting the notice also must submit appropriate proof of his/her right to exercise the Option.
 6. **Payment of Exercise Price.** When you submit your notice of exercise, you must include payment of the exercise price of the Shares being purchased through one or a combination of the following methods:
 - (a) Cash (including personal check, cashier’s check or money order);
 - (b) By means of a broker-assisted cashless exercise in which you irrevocably instruct your broker to deliver proceeds of a sale of all or a portion of the Shares to be issued pursuant to the exercise to the Company in payment of the exercise price of such Shares; or
 - (c) By delivery to the Company of Shares (by actual delivery or attestation of ownership in a form approved by the Company) already owned by you that are not subject to any security interest and that have an aggregate Fair Market Value on the date of exercise equal to the exercise price of the Shares being purchased; or
 - (d) By authorizing the Company to retain, from the total number of Shares as to which the Option is being exercised, that number of Shares having a Fair Market Value on the date of exercise equal to the exercise price for the total number of Shares as to which the Option is being exercised.
- However, if the Committee determines, in any given circumstance, that payment of the exercise price with Shares or by authorizing the Company to retain Shares is undesirable for any reason, you will not be permitted to pay any portion of the exercise price in that manner.
8. **Delivery of Shares.** As soon as practicable after the Company receives the notice of exercise and payment of the exercise price as provided above, and has determined that all other conditions to exercise, have been satisfied, it shall deliver to the person exercising the Option, in the name of such person, the Shares being purchased, as evidenced by issuance of a stock certificate or certificates, electronic delivery of such Shares to a brokerage account designated by such person, or book-entry registration of such Shares with the Company’s transfer agent. The Company shall pay any original issue or transfer taxes with respect to the issue or transfer of the Shares and all fees and expenses incurred by it in connection therewith. All Shares so issued shall be fully paid and nonassessable.
 9. **Transfer of Option.** During your lifetime, only you (or your guardian or legal representative in the event of legal incapacity) may exercise this Option except in the case of a transfer described below. You may not assign or transfer this Option except (i) for a transfer upon your death in accordance with your will, by the laws of descent and distribution or pursuant to a beneficiary designation submitted in accordance with Section 6(d) of the Plan, (ii) pursuant to a domestic relations order, or (iii) with the prior written approval of the Company, by gift to a “family member” as the term is defined under General Instruction A(5) to Form S-8 under the

Securities Act. The Option held by any such transferee will continue to be subject to the same terms and conditions that were applicable to the Option immediately prior to its transfer and may be exercised by such transferee as and to the extent that the Option has become exercisable and has not terminated in accordance with the provisions of the Plan and this Agreement.

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

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

Mobivity Holdings Corp

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

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

Name of Participant: **[_____]

No. of Shares Covered: **[_____]

Grant Date: _____, 2022

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

Expiration Date: _____, 20__

Vesting and Exercise Schedule:

Dates

Portion of Shares as to Which
Option Becomes Vested and Exercisable

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

PARTICIPANT: Mobivity Holdings Corp.

By: _____

Title: _____

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

Option Terms and Conditions

1. **Non-Qualified Stock Option.** This Option is not intended to be an “incentive stock option” within the meaning of Section 422 of the Internal Revenue Code and will be interpreted accordingly.
 2. **Vesting and Exercisability of Option.**
 - (a) **Scheduled Vesting.** This Option will vest and become exercisable as to the number of Shares and on the dates specified in the Vesting and Exercise Schedule on the cover page to this Agreement, so long as your Service to the Company does not end. The Vesting and Exercise Schedule is cumulative, meaning that to the extent the Option has not already been exercised and has not expired or been terminated or cancelled, you or the person otherwise entitled to exercise the Option as provided in this Agreement may at any time purchase all or any portion of the Shares subject to the vested portion of the Option.
 - (b) **Accelerated Vesting.** The vesting of outstanding Options will be accelerated or continued under the circumstances provided below:
 - (1) **Change in Control.** [In the event of a Change in Control which occurs within six (6) months following the Grant Date of this Award, 50% of unvested Options shall vest and become exercisable upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider. All unvested Options shall vest and become exercisable in full upon the occurrence of a Change in Control that occurs following six months from your Grant Date while you continue to be a Service Provider.] [All unvested Options shall vest and become exercisable in full upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider.]
 - (2) **Death or Disability.** If your Service terminates prior to the final Scheduled Vesting Date due to your death or Disability, then the Options scheduled to vest as of the next Scheduled Vesting Date shall vest as of such termination date.
 3. **Expiration.** This Option will expire and will no longer be exercisable at 5:00 p.m. Central Time on the earliest of:
 - (a) The expiration date specified on the cover page of this Agreement;
 - (b) Upon your termination of Service for Cause;
 - (c) Upon the expiration of any applicable period specified in Section 6(e) of the Plan or Section 2 of this Agreement during which this Option may be exercised after your termination of Service; or
 - (d) The date (if any) fixed for termination or cancellation of this Option pursuant to Section 12 of the Plan.
 4. **Service Requirement.** Except as otherwise provided in Section 6(e) of the Plan or Section 2 of this Agreement, this Option may be exercised only while you continue to provide Service to the Company or any Affiliate, and only if you have continuously provided such Service since the Grant Date of this Option.
 5. **Exercise of Option.** Subject to Section 4, the vested and exercisable portion of this Option may be exercised in whole or in part at any time during the Option term by delivering a written or electronic notice of exercise to the Company’s Chief Financial Officer or to such other party as may be designated by such officer, and by providing for payment of the exercise price of the Shares being acquired and any related withholding taxes. The notice of exercise must be in a form approved by the Company and state the number of Shares to be purchased, the method of payment of the aggregate exercise price and the directions for the delivery of the Shares to be acquired, and must be signed or otherwise authenticated by the person exercising the Option. If you are not the person exercising the Option, the person submitting the notice also must submit appropriate proof of his/her right to exercise the Option.
 6. **Payment of Exercise Price.** When you submit your notice of exercise, you must include payment of the exercise price of the Shares being purchased through one or a combination of the following methods:
 - (a) Cash (including personal check, cashier’s check or money order);
 - (b) By means of a broker-assisted cashless exercise in which you irrevocably instruct your broker to deliver proceeds of a sale of all or a portion of the Shares to be issued pursuant to the exercise to the Company in payment of the exercise price of such Shares; or
 - (c) By delivery to the Company of Shares (by actual delivery or attestation of ownership in a form approved by the Company) already owned by you that are not subject to any security interest and that have an aggregate Fair Market Value on the date of exercise equal to the exercise price of the Shares being purchased; or
 - (d) By authorizing the Company to retain, from the total number of Shares as to which the Option is being exercised, that number of Shares having a Fair Market Value on the date of exercise equal to the exercise price for the total number of Shares as to which the Option is being exercised.
- However, if the Committee determines, in any given circumstance, that payment of the exercise price with Shares or by authorizing the Company to retain Shares is undesirable for any reason, you will not be permitted to pay any portion of the exercise price in that manner.
7. **Withholding Taxes.** You may not exercise this Option in whole or in part unless you make arrangements acceptable to the Company for payment of any federal, state, local or foreign withholding taxes that may be due as a result of the exercise of this Option. You hereby authorize the Company (or any Affiliate) to withhold from payroll or other amounts payable to you any sums required to satisfy such withholding tax obligations, and otherwise agree to satisfy such obligations in accordance with the provisions of Section 14 of the Plan. You may satisfy such withholding tax obligations by delivering Shares you already own or by having the Company retain a portion of the Shares being acquired upon exercise of the Option, provided you notify the Company in advance of any exercise of your desire to pay withholding taxes in this manner. Delivery of Shares upon exercise of this Option is subject to the satisfaction of applicable withholding tax obligations.
 8. **Delivery of Shares.** As soon as practicable after the Company receives the notice of exercise and payment of the exercise price as provided above, and has determined that all other conditions to exercise, including satisfaction of withholding tax obligations and compliance with applicable laws as provided in Section 17(c) of the Plan, have been satisfied, it shall deliver to the person exercising the Option, in the name of such person, the Shares being purchased, as evidenced by

issuance of a stock certificate or certificates, electronic delivery of such Shares to a brokerage account designated by such person, or book-entry registration of such Shares with the Company's transfer agent. The Company shall pay any original issue or transfer taxes with respect to the issue or transfer of the Shares and all fees and expenses incurred by it in connection therewith. All Shares so issued shall be fully paid and nonassessable.

9. **Transfer of Option.** During your lifetime, only you (or your guardian or legal representative in the event of legal incapacity) may exercise this Option except in the case of a transfer described below. You may not assign or transfer this Option except (i) for a transfer upon your death in accordance with your will, by the laws of descent and distribution or pursuant to a beneficiary designation submitted in accordance with Section 6(d) of the Plan, (ii) pursuant to a domestic relations order, or (iii) with the prior written approval of the Company, by gift to a "family member" as the term is defined under General Instruction A(5) to Form S-8 under the Securities Act. The Option held by any such transferee will continue to be subject to the same terms and conditions that were applicable to the Option immediately prior to its transfer and may be exercised by such transferee as and to the extent that the Option has become exercisable and has not terminated in accordance with the provisions of the Plan and this Agreement.
10. **No Stockholder Rights Before Exercise.** Neither you nor any permitted transferee of this Option will have any of the rights of a stockholder of the Company with respect to any Shares subject to this Option until a certificate evidencing such Shares has been issued, electronic delivery of such Shares has been made to your designated brokerage account, or an appropriate book entry in the Company's stock register has been made. No adjustments shall be made for dividends or other rights if the applicable record date occurs before your stock certificate has been issued, electronic delivery of your Shares has been made to your designated brokerage account, or an appropriate book entry in the Company's stock register has been made, except as otherwise described in the Plan.
11. **Governing Plan Document.** This Agreement and Option are subject to all the provisions of the Plan, and to all interpretations, rules and regulations which may, from time to time, be adopted and promulgated by the Committee pursuant to the Plan. If there is any conflict between the provisions of this Agreement and the Plan, the provisions of the Plan will govern.
12. **Choice of Law.** This Agreement will be interpreted and enforced under the laws of the state of Nevada (without regard to its conflicts or choice of law principles).
13. **Binding Effect.** This Agreement will be binding in all respects on your heirs, representatives, successors and assigns, and on the successors and assigns of the Company.
14. **Other Agreements.** You agree that in connection with the exercise of this Option, you will execute such documents as may be necessary to become a party to any stockholder, voting or similar agreements as the Company may require.
15. **Restrictive Legends.** The Company may place a legend or legends on any certificate representing Shares issued upon the exercise of this Option summarizing transfer and other restrictions to which the Shares may be subject under applicable securities laws, other provisions of this Agreement, or other agreements contemplated by Section 14 of this Agreement. You agree that in order to ensure compliance with the restrictions referred to in this Agreement, the Company may issue appropriate "stop transfer" instructions to its transfer agent.
16. **Compensation Recovery Policy.** To the extent that any compensation paid or payable pursuant to this Agreement is considered "incentive-based compensation" within the meaning and subject to the requirements of Section 10D of the Exchange Act, such compensation shall be subject to potential forfeiture or recovery by the Company in accordance with any compensation recovery policy adopted by the Board of Directors of the Company or any committee thereof in response to the requirements of Section 10D of the Exchange Act and any implementing rules and regulations thereunder adopted by the Securities and Exchange Commission or any national securities exchange on which the Company's common stock is then listed. This Agreement may be unilaterally amended by the Company to comply with any such compensation recovery policy.
17. **Electronic Delivery and Acceptance.** The Company may deliver any documents related to this Option Award by electronic means and request your acceptance of this Agreement by electronic means. You hereby consent to receive all applicable documentation by electronic delivery and to participate in the Plan through an on-line (and/or voice activated) system established and maintained by the Company or the Company's third-party stock plan administrator.

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

AMENDED AND RESTATED CREDIT FACILITY AGREEMENT

This Amended and Restated Credit Facility Agreement (this “**Agreement**”) is entered into as of November 11, 2022, between Mobivity Holdings Corp., a Nevada corporation (“**Borrower**”), and Thomas B. Akin, an individual (“**Lender**”).

RECITALS

- A. Borrower is in the business of developing and operating proprietary platforms over which brands and enterprises can conduct national and localized, data-driven marketing campaigns.
- B. In order to fund the further development and commercialization of Borrower’s business, Lender and Borrower entered into a Credit Facility Agreement dated as of June 30, 2021 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the “**Existing Credit Agreement**”), pursuant to which Lender provided certain financial accommodations to Borrower on the terms and conditions set forth in the Existing Credit Agreement.
- C. Borrower and Lender now desire to amend and restate the Existing Credit Agreement in its entirety in the form of this Agreement, without constituting any novation of the Existing Credit Agreement or the indebtedness created thereunder.

AGREEMENT

NOW THEREFORE, for and in consideration of the loans and advances to be made by Lender to Borrower hereunder, the mutual covenants, promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. Definitions.

The following terms when used in this Agreement will have the following meanings both in the singular and plural forms thereof, except where the context requires otherwise:

“**Advance**” means any advance of funds by Lender under this Agreement.

“**Advance Warrant**” has the meaning given to it in Section 2.6.

“**Agreement**” means this Amended and Restated Credit Facility Agreement, as originally executed and as may be amended, restated, modified, supplemented or replaced from time to time by written agreement between Borrower and Lender.

“**Business Day**” means any day except Saturday, Sunday and any day which shall be a national legal holiday in The United States of America.

“**Collateral**” has the meaning given to it in Section 5.2.

“**Common Stock**” means the \$0.001 par value common stock of Borrower.

“**Credit Line Period**” means the period commencing on the date of this Agreement and ending on January 30, 2023.

“**Event of Default**” means any event of default described in Section 4 hereof. “**Existing Credit Agreement**” has the meaning given to it in the Recitals. “**Note**” has the meaning given to it in Section 2.1.

“**Obligations**” has the meaning given to it in Section 5.2.

“**Outstanding Interest**” means \$151,398 of unpaid interest owed by Borrower to Lender in respect of advances under the Existing Credit Agreement immediately prior to giving effect to this Agreement.

“**Trading Day**” means any day on which the Common Stock is tradable for any period on the OTCQB ® Venture Market operated by OTC Markets Group Inc. or on the principal securities exchange, market place or other securities market on which the Common Stock is then being traded.

“**VWAP**” means, with respect to any date, the volume-weighted average price of the Common Stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the thirty (30) Trading Days immediately preceding such date.

2. The Loan.

2.1 **Advances.** From time to time during the Credit Line Period, Borrower may request from Lender, and Lender shall advance to Borrower, up to \$6,000,000 of Advances, subject to the terms and upon the conditions set forth in this Agreement, for purposes of funding the further development and commercialization of the Borrower’s business. The Advances shall be evidenced by, and be payable in accordance with, the terms of a convertible promissory note, substantially in the form of Exhibit A attached hereto (the “**Note**”), executed by Borrower and issued to Lender. Notwithstanding any other provision of this Agreement, Borrower shall not be obligated to make any Advance if the amount of such Advance, plus all other outstanding Advances, would exceed \$6,000,000.

2.2 **Manner of Borrowing.** Each request by Borrower for an Advance shall be in writing and signed by an executive officer of Borrower (“**Advance Request**”). Each such Advance Request shall (a) state the amount of the Advance requested and (b) state whether the conditions set forth in Section 3.1 are satisfied as of the date of such request. Each Advance shall be fundable in U.S. dollars by wire transfer from Lender within five (5) Business Days of Lender’s receipt of an Advance Request in accordance with this Section 2.2.

2.3 Payments and Interest.

- (a) On the date of this Agreement, Borrower agrees to pay all Outstanding Interest in kind in Common Stock of the Borrower at a \$1.08 price per share. For the avoidance of doubt, the parties hereto acknowledge and agree that, after giving effect to such payment in kind, there shall be no Advances (as defined in the Existing Credit Agreement) or accrued and unpaid interest outstanding under the Existing Credit Agreement.
- (b) 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.

2.4 **Voluntary Prepayments.** Borrower may prepay the Advances and accrued interest, in whole or in part, without notice, penalty or charge. All amounts prepaid will be applied first to accrued and unpaid interest and then to unpaid principal.

2.5 **Record of Advances.** Lender is hereby authorized (but not required) to record all loans, advances and other extensions of credit by it to Borrower, including the amounts of all Advances payable and paid to Lender from time to time hereunder, all of which shall be evidenced by this Agreement and the Note, in its books and records in accordance with its usual practice, such books and records constituting prima facie evidence of the accuracy of the information contained therein; provided, that the failure of Lender to record such information shall not affect Borrower’s obligations under this Agreement and the Note.

2.6 **Warrant Consideration.** As additional consideration for Lender’s Advances hereunder, Borrower shall issue to Lender one or more warrants (each an “**Advance Warrant**”) to purchase Common Stock in connection with each Advance or series of Advances (none of which were previously included in any Advance Warrant calculation hereunder). Each such Advance Warrant shall be in the form of Exhibit B attached hereto and entitle Lender to purchase a number of shares of Common Stock equal to twenty percent (20%) of the amount of the Advance, or the aggregate amount of all Advances combined for purposes of triggering the obligation to issue an Advance Warrant divided by the VWAP. Each Advance Warrant shall have a term of three years from the date of the Advance Request, or last Advance Request, to which the Advance Warrant relates and shall be exercisable at a price per share equal to the VWAP used in calculating the number of shares of Common Stock issuable upon exercise of such Advance Warrant.

3. Conditions of Lending.

3.1 **Conditions Precedent to all Advances.** The obligation of Lender to make an Advance hereunder is subject to the satisfaction of each of the following, unless waived in writing by Lender:

- (a) no Event of Default will have occurred and be continuing;

(b) no Event of Default will result from the making of any such Advance; and

(c) no change, event, or occurrence, individually or when aggregated with other changes, events, or occurrences, will have occurred and be continuing that is materially adverse to the business, properties, financial condition or results of operations of Borrower, individually, or Borrower and its subsidiaries, taken as a whole.

4. Events of Default and Remedies.

4.1 **Events of Default.** The term “Event of Default” will mean any of the following events:

- (a) Borrower fails to make any payment when due of any principal or interest under this Agreement or the Note within ten (10) Business Days of its receipt of written notice of non-payment from Lender; or
- (b) Borrower applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for itself or any of its property, or makes a general assignment for the benefit of its creditors; or a trustee, receiver or other custodian will otherwise be appointed for Borrower or any of its assets and not be discharged within thirty (30) days; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding will be commenced by or against Borrower and be consented to or acquiesced in by Borrower or remain undismissed for thirty (30) days; or Borrower will take any corporate action to authorize, or in furtherance of, any of the foregoing; or
- (c) Any judgments, writs, warrants of attachment, executions or similar process (not undisputedly covered by insurance) in an aggregate amount in excess of \$500,000 will be issued or levied against Borrower or any of its assets and will not be released, vacated or fully bonded prior to any sale and in any event within thirty (30) days after its issue or levy; or
- (d) Except to the extent addressed elsewhere in this Section 4.1, Borrower materially breaches any of its representations, warranties, covenants or agreements in this Agreement.

4.2 **Remedies.** If an Event of Default described in Section 4.1 occurs, the full unpaid principal balance of the Advances, accrued interest and all other obligations of Borrower to Lender will automatically be due and payable without declaration, notice, presentment, protest or demand of any kind (all of which are hereby expressly waived) and any obligation of Lender hereunder will automatically terminate without any liability to Borrower. Upon any Event of Default, Lender will be entitled to exercise any and all rights and remedies available at law or in equity for the

collection of the unpaid principal balance of the Advances, accrued interest and all other obligations of Borrower to Lender under this Agreement.

5. **Security Interest and Collateral.** In consideration of this Agreement, and to secure the performance and payment of the obligations that may become owing to the Lender pursuant hereto or otherwise, Borrower hereby grants to Lender, among other things, a security interest in the Collateral as hereinafter described.

5.1 **Definitions.** All terms used in this Section 5 which are defined in the Nevada Uniform Commercial Code (the “Code”) shall have the same meanings in this Section as in the Code unless the context in which such terms are used herein indicates otherwise.

5.2 **Security Interest.** To secure the performance and payment of any and all obligations, liabilities and indebtedness of Borrower to Lender arising under this Agreement, however evidenced (including without limitation by promissory note or other instrument) whether direct, indirect, liquidated, or contingent (collectively, the “Obligations”), Borrower grants to Lender a security interest, which shall be superior and prior to all other liens, in all of Borrower right, title and interest in the following property and property rights (collectively, the “Collateral”), being all of the Borrower’s right, title and interest now or hereafter acquired in and to:

5.2.1 All tangible personal property of every kind and description, whether now existing or later acquired, including without limitation, all inventory, goods, materials, supplies, tools, books, records, chattels, furniture, fixtures, equipment and machinery;

5.2.2 All rights to the payment of money, accounts, reserves, deferred payments, refunds, savings and deposits, whether now or later to be received from third parties or deposited by Borrower with third parties (including all utility deposits) contract rights, money instruments, documents, and chattel papers;

5.2.3 All general intangibles and other personal property, including without limitation, contract rights, rights arising under common law, statutes, regulations, choses or things in action, goodwill, registered or unregistered intellectual property rights, patents, trade names, trademarks, service marks, copyrights, blueprints, drawings, purchase orders, customer lists, moneys due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, infringement claims, computer programs, information contained on computer disks board tapes, literature, reports, catalogs, deposit accounts, insurance premium rebates, tax refunds, and tax refund claims; and

5.2.4 All substitutions, replacements, additions, ascensions and proceeds for or to any of the foregoing, and all books, records and files relating to any of the foregoing, including without limitation, computer readable memory and

data and any computer software or hardware reasonably necessary to access and process such memory and data.

5.3 **Representation, Warranties and Covenants.** Borrower hereby represents, warrants and covenants to Lender as follows:

5.3.1 **Borrower Owns Collateral.** Borrower is the owner of the Collateral, except the portion thereof consisting of after-acquired property and Borrower will be the owner of such after-acquired property, free from any lien, except liens permitted by the Lender.

5.3.2 **Places of Business.** The location where the major tangible collateral assets and the books and records of Borrower are kept is 3133 West Frye Road, #215, Chandler, Arizona 85226. Borrower shall not (i) change its location; or (ii) change its legal name without, in each case, giving Lender at least thirty (30) days’ prior written notice of any such change.

5.3.3 **Maintenance of Collateral.** Borrower will, at all times, keep the Collateral in good operating condition and repair, operate and maintain the same in compliance with all laws and insurance policies applicable thereto, and pay promptly when due, all taxes, insurance premiums and other governmental charges upon or relating to any of the property, income or receipts of Borrower.

5.4 **Protection of Collateral.** In the event of the failure of Borrower to (i) maintain in force and pay for any insurance with respect to the Collateral; (ii) keep the Collateral in good repair and operating condition; (iii) keep the Collateral free from any liens, except liens permitted by Lender; and (iv) pay when due all taxes, levies and assessments on or in respect of the Collateral, Lender, at its option, may (but shall not be required to) procure and pay for such insurance, place the Collateral in good repair and operating condition, or otherwise make good any other aforesaid failure of Borrower and all sums advanced by Lender, with interest thereon at a default interest rate which shall be the maximum interest rate allowable by applicable law and shall be part of Borrower’s obligations to Lender, payable on demand.

5.5 **Financing Statements: Further Assurances.** Borrower, concurrently with the execution of this Agreement, and from time to time thereafter as requested by Lender, shall execute and deliver to Lender such financing statements, continuation statements, amendments to financing statements and other documents, in form satisfactory to Lender, as Lender may require to perfect and continue in effect the lien of Lender. Borrower irrevocably appoints Lender its attorney-in-fact, in the name of Borrower or Lender, to execute and file from time to time any such financing statements, continuation statements and amendments thereto, which appointment shall be deemed to be a power coupled with an interest.

5.6 **Remedies Upon Default.** Upon the occurrence of an Event of Default, Lender shall have all the rights and remedies of a secured party under the Code and all other rights and remedies accorded to Lender in equity or law. Upon the request of Lender, Borrower shall assemble and make the Collateral available to Lender at a place designated by Lender. Any notice of sale or

other disposition of the Collateral given not less than ten (10) Business Days prior to such proposed action shall constitute reasonable and fair notice of such action. Borrower shall be liable for any deficiency. Borrower expressly waives any right to have the Collateral marshaled on any foreclosure, sale or other enforcement hereof. Upon the occurrence of an Event of Default, Borrower shall, upon the request of Lender, assemble the Collateral and make it available to Borrower at a time and place reasonably convenient to Borrower.

6. Miscellaneous.

6.1 **Waivers, Amendments.** The provisions of this Agreement and the Note may from time to time be amended, modified, or waived, if such amendment, modification or waiver is in writing and signed by Lender (and, to the extent adverse to Borrower, by Borrower). No failure or delay on the part of Lender or the holder of the Note in exercising any power or right under such documents will operate as a waiver thereof, nor will any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on Borrower in any case will entitle it to any notice or demand in similar or other circumstances.

6.2 **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) the date of transmission, if such notice or communication is delivered via email at the email address set forth in this Section 6.2 prior to 3:00 p.m. (Phoenix time) on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via email at the email address set forth in this Section 6.2 on a day that is not a Business Day or later than 3:00 p.m. (Phoenix time) on any Business Day, (c) the 2nd Business Day following the date of mailing, if sent by U.S. internationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as follows:

If to Borrower:	Mobivity Holdings Corp. 3133 West Frye Road, # 215 Chandler, Arizona 85226 Attn: Dennis Becker, CEO Email: dennis.becker@mobivity.com
If to Lender:	Thomas B. Akin c/o Talkot Capital, LLC 30 Liberty Ship Way, Suite 3110 Sausalito, CA 94965 Attn: Thomas B. Akin Email: takin@talkot.com Attn: Bryce Daniels Email: bryce@talkot.com

or such other address as may be designated in writing hereafter, in the same manner, by such person.

6.3 **Severability.** Any provision of this Agreement or the Note executed pursuant hereto which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such portion or unenforceability without invalidating the remaining provisions of this Agreement or the Note or affecting the validity or enforceability of such provisions in any other jurisdiction.

6.4 **Governing Law; Venue.** This Agreement will be deemed to be a contract made under and governed by the laws of the State of Arizona. Borrower and Lender hereby consent to the personal jurisdiction of the state and federal courts located in the State of Arizona in connection with any controversy related to this Agreement, waive any argument that venue in such forums is not convenient and agrees that any litigation in connection herewith will be venued in the state or federal courts located in the State of Arizona.

6.5 **Successors and Assigns.** This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns, except that Borrower may not assign or transfer its rights hereunder without the prior written consent of Lender.

6.6 **Multiple Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which will constitute one and the same instrument.

[Continued on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

“Borrower”

MOBIVITY HOLDINGS CORP.,
a Nevada corporation

By: /s/ Lisa Brennan

Lisa Brennan

Chief Financial Officer

“Lender”

/s/ Thomas B. Akin

Thomas B. Akin

EXHIBIT A
to Credit Facility Agreement

NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) AND APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO (I) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (II) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

then unpaid shall be due and payable. All payments of principal and interest 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.

\$ _____

, 20____ Chandler, Arizona

FOR VALUE RECEIVED, the undersigned Mobivity Holdings Corp., a Nevada corporation (“**Borrower**”), promises to pay Thomas B. Akin, an individual (“**Lender**”), the principal sum of _____ United States Dollars (US\$_____) or such lesser amount as shall equal the aggregate unpaid principal amount of the Advances (as defined in the Credit Agreement referred to below), together with interest thereon, in the manner and upon the terms and conditions set forth herein.

1. Payment Terms:

Maturity. This Note shall bear interest on the unpaid principal amount at the rate of fifteen percent (15%) per annum. The unpaid principal amount and accrued and unpaid interest thereon shall be paid in 24 equal monthly installments commencing on January 31, 2023 and continuing on the last day of each of the next 23 months thereafter (or, if such last day is not a Business Day, on the Business Day immediately preceding such last day), with a final payment due on December 31, 2024 at which time all principal and interest

2. Credit Agreement. This Note is referred to in, and evidences indebtedness incurred under, the Amended and Restated Credit Facility Agreement dated as of November [●], 2022 (referred to herein, as it may be amended, restated, modified, supplemented or replaced from time to time, as the “**Credit Agreement**”) between Borrower and Lender. The terms and conditions under which Borrower is permitted and required to make prepayments and repayments of principal of such indebtedness or be declared to be immediately due and payable are set forth in the Credit Agreement, the terms and conditions of which are incorporated herein by reference. Terms used herein but not defined shall have the meanings ascribed to them in the Credit Agreement.

3. Conversion.

a) Optional

Conversion. At any time prior to the earliest of (i) the maturity date set forth in Section 1, (ii) a mandatory conversion pursuant to Section 3(b), and (iii) the closing date of a Corporate Transaction, all or part of the outstanding principal and/or accrued but unpaid interest under this Note may, upon the written election of the Lender, be converted into shares of Common Stock of the Company at the

conversion price equal to 85% of the VWAP on the conversion date. The written election of the Lender must specify the amount of outstanding and/or accrued but unpaid interest to be converted and the intended date of such conversion.

b) Mandatory

Conversion. On the date that is five Business Days prior to the date on which the Borrower becomes listed on a national securities exchange (other than the Borrower satisfying any stockholders’ equity requirement to be listed on such national exchange) (the “**Event Date**”), all of the outstanding principal and accrued but unpaid interest on the Event Date will be automatically converted (the “**Mandatory Conversion**”) into shares of Common Stock, at a conversion price equal to 85% of the VWAP on the conversion date (the “**Conversion Price**”).

c) Corporate

Transaction Conversion. On the closing date of a Corporate Transaction, the Lender will be entitled to a cash payment equal to the outstanding principal and accrued but unpaid interest under this Note. “**Corporate Transaction**” means: (1) the closing of the sale, transfer or other disposition, in a single transaction or series of related transactions, of all or substantially all of the Borrower’s assets; (2) the consummation of a merger or consolidation of the Borrower with or into another entity (except a merger or consolidation in which the holders of capital stock of the Borrower immediately prior to such merger or consolidation continue to hold a majority of the outstanding voting securities of the capital stock of the Borrower or the surviving or acquiring entity immediately following the consummation of such transaction); or (3) the closing of the transfer (whether by merger, consolidation or otherwise), in a single transaction or series of related transactions, to a “person” or “group” (within the meaning of Section 13(d) and Section 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) of the Borrower’s capital stock if, after such closing, such person or group would become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the outstanding voting securities of the Borrower (or the surviving or acquiring entity). For the avoidance of doubt, a transaction will not constitute a “Corporate Transaction” if its sole purpose is to change the state of the Borrower’s incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Borrower’s securities immediately prior to such transaction. Notwithstanding the foregoing, the sale of securities in a bona fide financing transaction will not be deemed a “Corporate Transaction.” The Borrower will, not less than ten Business Days prior to the closing date of a Corporate Transaction, give written notice to the Lender stating the material terms and conditions of the Corporate Transaction.

d) No

Fractional Shares. The number of shares and/or units of Borrower securities issuable pursuant to this Section 3 will be rounded down to the nearest whole share.

4. Acts of Conversion.

This Note will be deemed to have been automatically converted on the Event Date, and at such time the rights of the holder of this Note will cease and such holder will be treated for all purposes as the record holder of the Common Stock issuable upon conversion. As promptly as practicable after the Event Date, the Lender will surrender this Note to the Company at its principal office for cancellation. As promptly as practicable after receipt of the Note and the signature pages required by this Section, the Company may at its election either (i) issue a certificate or certificates representing the Common Stock issuable upon conversion, or (ii) not issue any

certificate representing the Common Stock and instead document the Lender’s interest in the Common Stock by recording the Common Stock with the Borrower’s transfer agent (or another custodian selected by the Borrower) in book-entry form.

5. All parties hereto, whether as makers, endorsers or otherwise, severally waive presentment, demand, protest and notice of dishonor in connection with this Note.

6. This Note is made under and governed by the internal laws of the State of Arizona, as provided for in the Credit Agreement.

EXHIBIT B
to Credit Facility Agreement
FORM OF WARRANT

NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) AND APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO (I) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (II) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS. THESE SECURITIES AND THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

**MOBIVITY
HOLDINGS
CORP.
WARRANT TO
PURCHASE
COMMON
STOCK**

Warrant No. [] Original Issue Date:
[], 20____

Mobivity Holdings Corp., a Nevada corporation (the “**Company**”), hereby certifies that, for value received, Thomas B. Akin or his permitted registered assigns (the “**Holder**”), is entitled to purchase from the Company up to a total of _____ shares of common stock, \$0.001 par value (the “**Common Stock**”), of the Company (each such share, a “**Warrant Share**” and all such shares, the “**Warrant Shares**”) at an exercise price per share equal to \$[•] (as adjusted from time to time as provided in Section 9 herein, the “**Exercise Price**”), at any time and from time to time from on or after the date hereof (the “**Trigger Date**”) and through and including 5:00 P.M., prevailing Pacific time, on [•], 20____ (the “**Expiration Date**”), and subject to the following terms and conditions:

This Warrant (this “**Warrant**”) is one of a series of similar warrants issued pursuant to that certain Amended and Restated Credit Facility Agreement (this “**Credit Agreement**”) dated as of November [•], 2022, between the Company and the Holder. All such warrants are referred to herein, collectively, as the “**Warrants**.”

1. **Definitions.** In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Credit Agreement.

2. **Registration of Warrants.** The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “**Warrant Register**”), in the name of the record Holder (which shall include the initial Holder or, as the case may be, any registered assignee to which this Warrant is permissibly assigned hereunder) from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any

exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. **Registration of Transfers.** The Company shall register the transfer of all or any portion of this Warrant in the Warrant Register, upon (i) surrender of this Warrant, with the Form of Assignment attached as Schedule 2 hereto duly completed and signed, to the Company’s transfer agent or to the Company at its address specified herein (ii) delivery, at the request of the Company, of an opinion of counsel reasonably satisfactory to the Company to the effect that the transfer of such portion of this Warrant may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws and (iii) delivery by the transferee of a written statement to the Company certifying that the transferee is an “accredited investor” as defined in Rule 501(a) under the Securities Act and making such representations and certifications as the Company may reasonably request. Upon any such registration or transfer, a new warrant to purchase Common Stock in substantially the form of this Warrant (any such new warrant, a “**New Warrant**”) evidencing the portion of this Warrant so transferred shall be issued to the transferee, and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a Holder of a Warrant.

4. **Exercise and Duration of Warrants.**

(a) All or any part of this Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the Trigger Date and through and including 5:00 P.M. prevailing Pacific time on the Expiration Date. At 5:00 P.M., prevailing Pacific time, on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value and this Warrant shall be terminated and no longer outstanding.

(b) The Holder may exercise this Warrant by delivering to the Company (i) an exercise notice, in the form attached as Schedule 1 hereto (the “**Exercise Notice**”), appropriately completed and duly signed, (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of a “cashless exercise” if so indicated in the Exercise Notice and if a “cashless exercise” may occur at such time pursuant to Section 10 below), and the date such items are

delivered to the Company (as determined in accordance with the notice provisions hereof) is an “**Exercise Date**.” The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

5. **Delivery of Warrant Shares.** Upon exercise of this Warrant, the Company shall promptly issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate a certificate for the Warrant Shares issuable upon such exercise, with an appropriate restrictive legends. The Holder, or any Person permissibly so designated by the Holder to receive Warrant Shares, shall be deemed to have become the holder of record of such Warrant Shares as of the Exercise Date.

6. **Charges, Taxes and Expenses.** Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; *provided, however*, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder or an Affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. **Replacement of Warrant.** If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction (in such case) and, in each case, a customary and reasonable indemnity (which shall not include a surety bond), if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company’s obligation to issue the New Warrant.

8. **Reservation of Warrant Shares.** The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will take all such action as may be necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated

quotation system upon which the Common Shares may be listed.

9. **Certain Adjustments.** The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) **Stock Dividends and Splits.**

If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides its outstanding shares of Common Stock into a larger number of shares, or (iii) combines its outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record

date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) **Fundamental Transactions.**

If, at any time while this Warrant is outstanding (i) the Company effects any merger or consolidation of the Company with or into another Person, in which the Company is not the survivor, (ii) the Company effects any sale of all or substantially all of its assets or a majority of its Common Stock is acquired by a third party, in each case, in one or a series of related transactions, (iii) any tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which all or substantially all of the holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (other than as a result of a subdivision or combination of shares of Common Stock covered by Section 9(a) above) (in any such case, a “**Fundamental Transaction**”), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant without regard to any limitations on exercise contained herein (the “**Alternate Consideration**”). The Company shall not effect any such Fundamental Transaction unless prior to or simultaneously with the consummation thereof, any successor to the Company, surviving entity or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume the obligation to deliver to the Holder, such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to purchase and/or receive (as the case may be), and the other obligations under this Warrant. The provisions of this paragraph (c) shall similarly apply to subsequent transactions analogous to a Fundamental Transaction.

(c) **Number of Warrant Shares.**

Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section, the number of Warrant Shares

that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(d) **Calculations.** All

calculations under this Section 9 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the sale or issuance of any such shares shall be considered an issue or sale of Common Stock.

(e) **Notice of Adjustments.**

Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will, at the written request of the Holder, promptly compute such adjustment, in good faith, in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing

in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company’s transfer agent.

(f) **Notice of Corporate Events.**

If, while this Warrant is outstanding, the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including, without limitation, any granting of rights or warrants to subscribe for or purchase any capital stock of the Company, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then, except if such notice and the contents thereof shall be deemed to constitute material nonpublic information, the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction at least ten (10) Trading Days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all steps reasonably necessary in order to insure that the Holder is given the practical opportunity to exercise this Warrant prior to such time so as to participate in or vote with respect to such transaction; *provided, however*, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

10. **Payment of Exercise Price.** The Holder shall pay the Exercise Price in immediately available funds; *provided, however*, the Holder may, in its sole discretion, commencing on the date that is 18 months from the date of this Warrant, satisfy its obligation to pay the Exercise Price through a “cashless exercise”, in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the total number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the Closing Sale Prices of the shares of Common Stock (as reported by Bloomberg Financial Markets) for the five Trading Days ending on the date immediately preceding the Exercise Date.

B = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

For purposes of this Warrant, “Closing Sale Price” means, for any security as of any date, the last trade price for such security on the principal securities exchange or trading market for such security, as reported by Bloomberg Financial Markets, or, if such exchange or trading market begins to operate on an extended hours basis and does not designate the last trade price, then the last trade price of such security prior to 4:00:00 p.m., New York Time, as reported by Bloomberg Financial Markets, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg

Financial Markets, or, if no last trade price is reported for such security by Bloomberg Financial Markets, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by Pink Sheets LLC. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then the Company shall, within two Business Days submit via facsimile (a) the disputed determination of the Warrant Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company’s independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten Business Days from the time it receives the disputed determinations or calculations. Such investment bank’s or accountant’s determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period. For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued pursuant to the Credit Agreement (provided that the Commission continues to take the position that such treatment is proper at the time of such exercise).

11. No Fractional Shares. No fractional Warrant Shares will be issued in connection with any exercise of this

Warrant. In lieu of any fractional shares which would otherwise be issuable, the number of Warrant Shares to be issued shall be rounded up to the next whole number.

12. Notices. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Credit Agreement prior to 5:00 p.m. (prevailing Pacific time) on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Credit Agreement on a day that is not a Trading Day or later than 5:00 p.m. (prevailing Pacific time) on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service specifying next Business Day delivery, or (iv) upon actual receipt by the party to whom such notice is required to be given, if by hand delivery. The address and facsimile number of a party for such notices or communications shall be as set forth in the Credit Agreement unless changed by such party by two Trading Days’ prior notice to the other party in accordance with this Section 12.

13. Warrant Agent. The Company shall serve as warrant agent under this Warrant. Upon thirty (30) days’ notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this

Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder’s last address as shown on the Warrant Register.

14. Miscellaneous.

(a) The Holder, solely in such Person’s capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person’s capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, amalgamation, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 14(a), the Company shall provide the Holder with copies of the same notices and other information given to the shareholders of the Company, contemporaneously with the giving thereof to the shareholders.

(b) Subject to the restrictions on transfer set forth on the first page hereof, and compliance with applicable securities laws, this Warrant may be assigned by the Holder. This Warrant may not be assigned by the Company except to a successor in the event of a Fundamental Transaction. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder, or their successors and assigns.

(c) GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN ARIZONA, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HERewith OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY

THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. THE COMPANY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

(d) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(e) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby, and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(f) Except as otherwise set forth herein, prior to exercise of this Warrant, the Holder hereof shall not, by reason of being a Holder, be entitled to any rights of a stockholder with respect to the Warrant Shares.

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IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

SCHEDULE 1 FORM OF EXERCISE NOTICE

(To be executed by the Holder to exercise the right to purchase shares of Common Stock under the foregoing Warrant)

Ladies and Gentlemen:

(1) The undersigned is the Holder of Warrant No. [] (the “Warrant”) issued by Mobivity Holdings Corp., a Nevada corporation (the “Company”). Capitalized terms used herein and not otherwise defined herein have the respective meanings set forth in the Warrant.

(2) The undersigned hereby exercises its right to purchase Warrant Shares pursuant to the Warrant.

(3) The Holder intends that payment of the Exercise Price shall be made as (check one):

- ☐ Cash Exercise
- ☐ “Cashless Exercise” under Section 10 of the Warrant

(4) If the Holder has elected a Cash Exercise, the Holder shall pay the sum of \$ in immediately available funds to the Company in accordance with the terms of the Warrant.

(5) Pursuant to this Exercise Notice, the Company shall deliver to the Holder Warrant Shares in accordance with the terms of the Warrant.

Dated: _____

Name of Holder: _____

By: _____ Name: _____ Title: _____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

SCHEDULE 2

MOBIV
HOLDI
CORP.
FORM
OF
ASSIGN

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ (the "Transferee" the right represented by the within Warrant to purchase _____ shares of Common Stock of Mobivity Holdings Corp. (the "Company") to which the within Warrant relates and appoints _____ attorney to transfer said right on the books of the Company with full power of substitution in the premises. In connection therewith, the undersigned represents, warrants, covenants and agrees to and with the Company that:

- (a) the offer and sale of the Warrant contemplated hereby is being made in compliance with Section 4(a)(1) of the United States Securities Act of 1933, as amended (the "Securities Act") or another valid exemption from the registration requirements of Section 5 of the Securities Act and in compliance with all applicable securities laws of the states of the United States;

- (b) the undersigned has not offered to sell the Warrant by any form of general solicitation or general advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, and any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;

- (c) the undersigned has read the Transferee's investment letter included herewith, and to its actual knowledge, the statements made therein are true and correct; and

- (d) the undersigned understands that the Company may condition the transfer of the Warrant contemplated hereby upon the delivery to the Company by the undersigned or the Transferee, as the case may be, of a written opinion

of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that such transfer may be made without registration under the Securities Act and under applicable securities laws of the states of the United States.

Dated: _____,

(Signature must conform in all the presence of: respects

to name of holder as

specified on the

Signature: _____ **Email:** _____

NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO (I) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (II) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

CONVERTIBLE NOTE

\$4,466,043 November 15, 2022
Chandler, Arizona

FOR VALUE RECEIVED, the undersigned Mobivity Holdings Corp., a Nevada corporation ("**Borrower**"), promises to pay Thomas B. Akin, an individual ("**Lender**"), the principal sum of \$4,466,043 United States Dollars (US\$4,466,043) or such lesser amount as shall equal the aggregate unpaid principal amount of the Advances (as defined in the Credit Agreement referred to below), together with interest thereon, in the manner and upon the terms and conditions set forth herein.

1. Payment Terms: Maturity. This Note shall bear interest on the unpaid principal amount at the rate of fifteen percent (15%) per annum. The unpaid principal amount and accrued and unpaid interest thereon shall be paid in 24 equal monthly installments commencing on January 31, 2023 and continuing on the last day of each of the next 23 months thereafter (or, if such last day is not a Business Day, on the Business Day immediately preceding such last day), with a final payment due on December 31, 2024 at which time all principal and interest then unpaid shall be due and payable. All payments of principal and interest 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. Credit Agreement. This Note is referred to in, and evidences indebtedness incurred under, the Amended and Restated Credit Facility Agreement dated as of November 11, 2022 (referred to herein, as it may be amended, restated, modified, supplemented or replaced from time to time, as the "**Credit Agreement**") between Borrower and Lender. The terms and conditions under which Borrower is permitted and required to make prepayments and repayments of principal of such indebtedness or be declared to be immediately due and payable are set forth in the Credit Agreement, the terms and conditions of which are incorporated herein by reference. Terms used herein but not defined shall have the meanings ascribed to them in the Credit Agreement.

3. Conversion.

a) **Optional Conversion.** At any time prior to the earliest of (i) the maturity date set forth in Section 1, (ii) a mandatory conversion pursuant to Section 3(b), and (iii) the closing date of a Corporate Transaction, all or part of the outstanding principal and/or accrued but unpaid interest under this Note may, upon the written election of the Lender, be converted into shares of Common Stock of the Company at the conversion price equal to 85% of the VWAP on the conversion date. The written election of the Lender must specify the amount of outstanding and/or accrued but unpaid interest to be converted and the intended date of such conversion.

b) **Mandatory Conversion.** On the date that is five Business Days prior to the date on which the Borrower becomes listed on a national securities exchange (other than the Borrower satisfying any stockholders' equity requirement to be listed on such national exchange) (the "**Event Date**"), all of the outstanding principal and accrued but unpaid interest on the Event Date will be automatically converted (the "**Mandatory Conversion**") into shares of Common Stock, at a conversion price equal to 85% of the VWAP on the conversion date (the "**Conversion Price**").

c) **Corporate Transaction Conversion.** On the closing date of a Corporate Transaction, the Lender will be entitled to a cash payment equal to the outstanding principal and accrued but unpaid interest under this Note. "**Corporate Transaction**" means: (1) the closing of the sale, transfer or other disposition, in a single transaction or series of related transactions, of all or substantially all of the Borrower's assets; (2) the consummation of a merger or consolidation of the Borrower with or into another entity (except a merger or consolidation in which the holders of capital stock of the Borrower immediately prior to such merger or consolidation continue to hold a majority of the outstanding voting securities of the capital stock of the Borrower or the surviving or acquiring entity immediately following the consummation of such transaction); or (3) the closing of the transfer (whether by merger, consolidation or otherwise), in a single transaction or series of related transactions, to a "person" or "group" (within the meaning of Section 13(d) and Section 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of the Borrower's capital stock if, after such closing, such person or group would become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the outstanding voting securities of the Borrower (or the surviving or acquiring entity). For the avoidance of doubt, a transaction will not constitute a "Corporate Transaction" if its sole purpose is to change the state of the Borrower's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Borrower's securities immediately prior to such transaction. Notwithstanding the foregoing, the sale of securities in a bona fide financing transaction will not be deemed a "Corporate Transaction." The Borrower will, not less than ten Business Days prior to the closing date of a Corporate Transaction, give written notice to the Lender stating the material terms and conditions of the Corporate Transaction.

d) **No Fractional Shares.** The number of shares and/or units of Borrower securities issuable pursuant to this Section 3 will be rounded down to the nearest whole share.

4. Acts of Conversion. This Note will be deemed to have been automatically converted on the Event Date, and at such time the rights of the holder of this Note will cease and such holder will be treated for all purposes as the record holder of the Common Stock issuable upon conversion. As promptly as practicable after the Event Date, the Lender will surrender this Note to the Company at its principal office for cancellation. As promptly as practicable after receipt of the Note and the signature pages required by this Section, the Company may at its election either (i) issue a certificate or certificates representing the Common Stock issuable upon conversion, or (ii) not issue any certificate representing the Common Stock and instead document the Lender's interest in the Common Stock by recording the Common Stock with the Borrower's transfer agent (or another custodian selected by the Borrower) in book-entry form.

5. All parties hereto, whether as makers, endorsers or otherwise, severally waive presentment, demand, protest and notice of dishonor in connection with this Note.

6. This Note is made under and governed by the internal laws of the State of Arizona, as provided for in the Credit Agreement.

MOBIVITY HOLDINGS CORP.,
a Nevada corporation

By: /s/ Lisa Brennan
Name: Lisa Brennan

Title: Chief Financial Officer

**AMENDMENT NO. 1 TO
AMENDED AND RESTATED CREDIT FACILITY AGREEMENT AND CONVERTIBLE NOTES**

THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED CREDIT FACILITY AND CONVERTIBLE NOTES is dated as of January 31, 2023 (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 (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 January 1, 2024 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 January 1, 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 first day), with a final payment due on December 1, 2025 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 January 1, 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 December 1, 2025 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/ Dennis Becker

Name: Dennis Becker

Title: Chief Executive Officer

LENDER:

/s/ Thomas B. Akin

Thomas B. Akin

FORM OF EXERCISE NOTICE

Ladies and Gentlemen:

(1) The undersigned is the Holder of Warrant No. _____ (the "**Warrant**") issued by Mobivity Holdings Corp., a Nevada corporation (the "**Company**"). Capitalized terms used herein and not otherwise defined herein have the respective meanings set forth in the Warrant.

(2) The undersigned hereby exercises its right to purchase _____ Warrant Shares pursuant to the Warrant.

(3) The undersigned understands that upon the exercise of the Warrant in accordance with the offer made by way of the Company's Warrant Offer Letter ("**Offer Letter**") dated February 10, 2023 the undersigned shall receive a New Warrant (as defined in the Offer Letter) to purchase one share of the Company's Common Stock, over a three year period at an exercise price of \$2.00 per share, for every two Warrant Share the holder purchases upon the exercise of a Warrant.

(4) The undersigned acknowledges and represents as follows:

(a) The undersigned had the opportunity to review the Company's Offer Letter and the Company's reports and registration statements on file with the SEC, including:

- The Company's Annual Report on Form 10-K ("**Form 10-K**") for the period ended December 31, 2021; and
- The Company's Quarterly Reports on Form 10-Q for the periods ended March 31, 2022 June 30, 2022 and September 30, 2022.

(b) The undersigned has been advised that officers and directors of the Company, and their affiliates, intend to exercise approximately _____ Warrants.

(c) That the undersigned recognizes that the Warrant Shares as an investment involves a high degree of risk, including, but not limited to, those risks set forth in the "Risk Factors" section of the Company's Form 10-K;

(d) That the undersigned realizes that the Warrant Shares are being issued pursuant to an exemption from registration under the U.S. Securities Act of 1933, as amended ("**Securities Act**") and, as such, the transferability of the Warrant Shares is restricted and that legends may be placed on any certificate representing the Warrant Shares substantially to the following effect:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF A CURRENT AND EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT WITH RESPECT TO SUCH SECURITIES, OR AN OPINION OF THE ISSUER'S COUNSEL TO THE EFFECT THAT REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT.

(5) Payment of the exercise price in the amount of \$_____ (number of Warrant Shares being exercised x \$1.00) is delivered concurrently by check made payable to "Mobivity Holdings Corp." or by wire pursuant to the following instructions:

[MOBIVITY TO CONFIRM WIRE INSTRUCTIONS]

Bank Name: JPMorgan Chase
Bank Address: NY, NY 10004
SWIFT: CHASUS33

Routing/ABA No.: 021000021
Account Name: Mobivity Holdings Corp
3313 West Frye Road, Suite 215
Chandler, AZ 85225
Account Number: 592265786

(6) Pursuant to this Exercise Notice, the Company shall deliver to the Holder _____ Warrant Shares and a New Warrant entitling the Holder to purchase an equal number of shares of Common Stock upon the terms set forth in the New Warrant.

Dated: _____

Name of Holder:

By: _____

Name: _____

Title: _____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant

NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO (I) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (II) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS. THESE SECURITIES AND THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

MOBIVITY HOLDINGS CORP.

WARRANT TO PURCHASE COMMON STOCK

Warrant No. [●]

Original Issue Date: February [●], 2023

Mobivity Holdings Corp., a Nevada corporation (the "*Company*"), hereby certifies that, for value received, [Holder Name], or its permitted registered assigns (the "*Holder*"), is entitled to purchase from the Company up to a total of [●] shares of common stock, \$0.001 par value (the "*Common Stock*"), of the Company (each such share, a "*Warrant Share*" and all such shares, the "*Warrant Shares*") at an exercise price per share equal to \$2.00 (as adjusted from time to time as provided in Section 8 herein, the "*Exercise Price*"), at any time and from time to time from on or after the date hereof (the "*Trigger Date*") and through and including 5:00 P.M., prevailing Pacific time, on February [●], 2026 (the "*Expiration Date*"), and subject to the following terms and conditions:

1. Registration of Warrants. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "*Warrant Register*"), in the name of the record Holder (which shall include the initial Holder or, as the case may be, any registered assignee to which this Warrant is permissibly assigned hereunder) from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

2. Registration of Transfers. The Company shall register the transfer of all or any portion of this Warrant in the Warrant Register, upon (i) surrender of this Warrant, with the Form of Assignment attached as Schedule 2 hereto duly completed and signed, to the Company's transfer agent or to the Company at its address specified herein (ii) delivery, at the request of the Company, of an opinion of counsel reasonably satisfactory to the Company to the effect that the transfer of such portion of this Warrant may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws and (iii) delivery by the transferee of a written statement to the Company certifying that the transferee is an "accredited investor" as defined in Rule 501(a) under the Securities Act and making such representations and certifications as the Company may reasonably request. Upon any such registration or transfer, a new warrant to purchase Common Stock in substantially the form of this Warrant (any such new warrant, a "*New Warrant*") evidencing the portion of this Warrant so transferred shall be issued to the transferee, and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a Holder of a Warrant.

3. Exercise and Duration of Warrants.

(a) All or any part of this Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the Trigger Date and through and including 5:00 P.M. prevailing Pacific time on the Expiration Date. At 5:00 P.M., prevailing Pacific time, on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value and this Warrant shall be terminated and no longer outstanding.

(b) The Holder may exercise this Warrant by delivering to the Company (i) an exercise notice, in the form attached as Schedule 1 hereto (the "*Exercise Notice*"), appropriately completed and duly signed, (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of a "cashless exercise" if so indicated in the Exercise Notice and if a "cashless exercise" may occur at such time pursuant to Section 9 below), and the date such items are delivered to the Company (as determined in accordance with the notice provisions hereof) is an "*Exercise Date*." The delivery by (or on behalf of) the Holder of the Exercise Notice and the applicable Exercise Price shall be accompanied by the delivery by the Holder of a written statement to the Company certifying that the Holder is an "accredited investor" as defined in Rule 501(a) under the Securities Act and making such representations and certifications as the Company may reasonably request. The Holder shall not be required to deliver the original Warrant in order to affect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

4. Delivery of Warrant Shares. Upon exercise of this Warrant, the Company shall promptly issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate a certificate for the Warrant Shares issuable upon such exercise, with an appropriate restrictive legends. The Holder, or any Person permissibly so designated by the Holder to receive Warrant Shares, shall be deemed to have become the holder of record of such Warrant Shares as of the Exercise Date.

5. Charges, Taxes and Expenses. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; *provided, however*, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder or an Affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

6. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction (in such case) and, in each case, a customary and reasonable indemnity (which shall not include a surety bond), if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

7. Reservation of Warrant Shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 8). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will take all such action as may be necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Shares may be listed.

8. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time following the original issue date of this Warrant as set forth in this Section 8.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides its outstanding shares of Common Stock into a larger number of shares, or (iii) combines its outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) Fundamental Transactions. If, at any time while this Warrant is outstanding (i) the Company effects any merger or consolidation of the Company with or into another Person, in which the Company is not the survivor, (ii) the Company effects any sale of all or substantially all of its assets or a majority of its Common Stock is acquired by a third party, in each case, in one or a series of related transactions, (iii) any tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which all or substantially all of the holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (other than as a result of a subdivision or combination of shares of Common Stock covered by Section 8(a) above) (in any such case, a "Fundamental Transaction"), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant without regard to any limitations on exercise contained herein (the "Alternate Consideration"). The Company shall not effect any such Fundamental Transaction unless prior to or simultaneously with the consummation thereof, any successor to the Company, surviving entity or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume the obligation to deliver to the Holder, such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to purchase and/or receive (as the case may be), and the other obligations under this Warrant. The provisions of this paragraph (c) shall similarly apply to subsequent transactions analogous to a Fundamental Transaction.

(c) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(d) Calculations. All calculations under this Section 8 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the sale or issuance of any such shares shall be considered an issue or sale of Common Stock.

(e) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 8, the Company at its expense will, at the written request of the Holder, promptly compute such adjustment, in good faith, in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(f) Notice of Corporate Events. If, while this Warrant is outstanding, the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including, without limitation, any granting of rights or warrants to subscribe for or purchase any capital stock of the Company, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then, except if such notice and the contents thereof shall be deemed to constitute material non-public information, the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction at least ten (10) Trading Days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all steps reasonably necessary in order to insure that the Holder is given the practical opportunity to exercise this Warrant prior to such time so as to participate in or vote with respect to such transaction; *provided, however*, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

9. Payment of Exercise Price. The Holder shall pay the Exercise Price in immediately available funds; *provided, however*, the Holder may, in its sole discretion, satisfy its obligation to pay the Exercise Price through a "cashless exercise," in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the total number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the Closing Sale Prices of the shares of Common Stock (as reported by Bloomberg Financial Markets) for the five Trading Days ending on the date immediately preceding the Exercise Date.

B = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

For purposes of this Warrant, "Closing Sale Price" means, for any security as of any date, the last trade price for such security on the principal securities exchange or trading market for such security, as reported by Bloomberg Financial Markets, or, if such exchange or trading market begins to operate on an extended hours basis and does not designate the last trade price, then the last trade price of such security prior to 4:00:00 p.m., New York Time, as reported by Bloomberg Financial Markets, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if no last trade price is reported for such security by Bloomberg Financial Markets, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by Pink Sheets LLC. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then the Company shall, within two business days submit via facsimile (a) the disputed determination of the Warrant Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten business days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon

all parties absent demonstrable error. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued (provided that the Commission continues to take the position that such treatment is proper at the time of such exercise).

10. No Fractional Shares. No fractional Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares which would otherwise be issuable, the number of Warrant Shares to be issued shall be rounded up to the next whole number.

11. Notices. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via email prior to 5:00 p.m. (prevailing Pacific time) on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via email on a day that is not a Trading Day or later than 5:00 p.m. (prevailing Pacific time) on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service specifying next business day delivery, or (iv) upon actual receipt by the party to whom such notice is required to be given, if by hand delivery. The address and facsimile number of a party for such notices or communications shall be as set forth in the records of the Company unless changed by such party by two Trading Days' prior notice to the other party in accordance with this Section 11.

12. Warrant Agent. The Company shall serve as warrant agent under this Warrant. Upon thirty (30) days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

13. Miscellaneous.

(a) The Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, amalgamation, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 13(a), the Company shall provide the Holder with copies of the same notices and other information given to the shareholders of the Company, contemporaneously with the giving thereof to the shareholders.

(b) Subject to the restrictions on transfer set forth on the first page hereof, and compliance with applicable securities laws, this Warrant may be assigned by the Holder. This Warrant may not be assigned by the Company except to a successor in the event of a Fundamental Transaction. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder, or their successors and assigns.

(c) GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF PHOENIX, ARIZONA FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HERewith OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. THE COMPANY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

(d) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(e) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby, and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(f) Except as otherwise set forth herein, prior to exercise of this Warrant, the Holder hereof shall not, by reason of by being a Holder, be entitled to any rights of a stockholder with respect to the Warrant Shares.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK,
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

MOBIVITY HOLDINGS CORP.

By: _____
Lisa Brennan
Chief Financial Officer

SCHEDULE 1
FORM OF EXERCISE NOTICE

(To be executed by the Holder to exercise the right to purchase shares of Common Stock under the foregoing Warrant)

Ladies and Gentlemen:

(1) The undersigned is the Holder of Warrant No. [•] (the “Warrant”) issued by Mobivity Holdings Corp., a Nevada corporation (the “Company”). Capitalized terms used herein and not otherwise defined herein have the respective meanings set forth in the Warrant.

(2) The undersigned hereby exercises its right to purchase _____ Warrant Shares pursuant to the Warrant.

(3) The Holder intends that payment of the Exercise Price shall be made as (check one):

☐ Cash Exercise

☐ “Cashless Exercise” under Section 9

(4) If the Holder has elected a Cash Exercise, the Holder shall pay the sum of \$ _____ in immediately available funds to the Company in accordance with the terms of the Warrant.

(5) Pursuant to this Exercise Notice, the Company shall deliver to the Holder _____ Warrant Shares in accordance with the terms of the Warrant.

Dated: _____, _____

Name of Holder: _____

By: _____

Name: _____

Title: _____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

SCHEDULE 2

MOBIVITY HOLDINGS CORP.

FORM OF ASSIGNMENT

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ (the "Transferee" the right represented by the within Warrant to purchase _____ shares of Common Stock of Mobivity Holdings Corp. (the "Company") to which the within Warrant relates and appoints _____ attorney to transfer said right on the books of the Company with full power of substitution in the premises. In connection therewith, the undersigned represents, warrants, covenants and agrees to and with the Company that:

- (a) the offer and sale of the Warrant contemplated hereby is being made in compliance with Section 4(a)(1) of the United States Securities Act of 1933, as amended (the "Securities Act") or another valid exemption from the registration requirements of Section 5 of the Securities Act and in compliance with all applicable securities laws of the states of the United States;
- (b) the undersigned has not offered to sell the Warrant by any form of general solicitation or general advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, and any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;
- (c) the undersigned has read the Transferee's investment letter included herewith, and to its actual knowledge, the statements made therein are true and correct; and
- (d) the undersigned understands that the Company may condition the transfer of the Warrant contemplated hereby upon the delivery to the Company by the undersigned or the Transferee, as the case may be, of a written opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that such transfer may be made without registration under the Securities Act and under applicable securities laws of the states of the United States.

Dated: _____

(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

Address of Transferee

In the presence of: _____

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

I, Dennis Becker, certify that:

1. I have reviewed this Report on Form 10-K of Mobivity Holdings Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2023

By: /s/ Dennis Becker
Dennis Becker
Chairman and Chief Executive Officer
(Principal Executive Officer)

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

I, Lisa Brennan, certify that:

1. I have reviewed this Report on Form 10-K of Mobivity Holdings Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2023

By: /s/ Lisa Brennan
Lisa Brennan
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Mobivity Holdings Corp., a Nevada corporation (the “Company”), for the period ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), we, Dennis Becker, Chief Executive Officer of the Company, and Lisa Brennan, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Dated: March 31, 2023

/s/ Dennis Becker

Dennis Becker
Chairman and Chief Executive Officer
(Principal Executive Officer)

/s/ Lisa Brennan

Lisa Brennan
Chief Financial Officer
(Principal Financial and Accounting
Officer)