

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

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended September 30, 2023

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 000-53851

**Mobivity Holdings Corp.**

(Exact Name of Registrant as Specified in Its Charter)

**Nevada**

(State or Other Jurisdiction of  
Incorporation or Organization)

**26-3439095**

(I.R.S. Employer  
Identification No.)

**3133 West Frye Road, # 215**

**Chandler, Arizona 85226**

(Address of Principal Executive Offices)

**(877) 282-7660**

(Registrant's Telephone Number, including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

None

Trading symbol(s)

None

Name of each exchange on which registered

None

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging Company

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

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

As of November 14, 2023, the registrant had 67,949,709 shares of common stock, par value \$0.001 per share, issued and outstanding.

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## PART I – FINANCIAL INFORMATION

## Item 1. Financial Statements

Mobivity Holdings Corp.  
Condensed Consolidated Balance Sheets

	September 30, 2023	December 31, 2022
	(Unaudited)	(Audited)
<b>ASSETS</b>		
<b>Current assets</b>		
Cash	\$ 457,934	\$ 426,740
Accounts receivable, net of allowance for doubtful accounts \$24,381 and \$34,446, respectively	373,980	1,081,183
Other current assets	241,424	195,017
<b>Total current assets</b>	<b>1,073,338</b>	<b>1,702,940</b>
Right to use lease assets	825,041	981,896
Intangible assets and software development costs, net	78,244	194,772
Other assets	118,215	137,917
<b>TOTAL ASSETS</b>	<b>\$ 2,094,838</b>	<b>\$ 3,017,525</b>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
<b>Current liabilities</b>		
Accounts payable	\$ 3,492,562	\$ 3,412,612
Accrued interest	653,431	443,448
Accrued and deferred personnel compensation	111,610	569,347
Deferred revenue and customer deposits	218,552	902,727
Related party notes payable, net - current maturities	2,191,875	2,711,171
Notes payable, net - current maturities	14,363	32,617
Operating lease liability, current	269,815	251,665
Other current liabilities	15,505	49,541
<b>Total current liabilities</b>	<b>6,967,713</b>	<b>8,373,128</b>
<b>Non-current liabilities</b>		
Related party notes payable, net - long term	3,461,472	2,481,290
Notes payable, net - long term	29,432	31,092
Operating lease liability	731,764	936,924
<b>Total non-current liabilities</b>	<b>4,222,668</b>	<b>3,449,306</b>
<b>Total liabilities</b>	<b>11,190,381</b>	<b>11,822,434</b>
<b>Stockholders' deficit</b>		
Common stock, \$0.001 par value; 100,000,000 shares authorized; 67,949,709 and 61,311,155, shares issued and outstanding	67,950	61,311
Equity payable	100,862	324,799
Additional paid-in capital	117,138,356	108,806,353
Accumulated other comprehensive loss	22,227	(100,963)
Accumulated deficit	(126,424,938)	(117,896,409)
<b>Total stockholders' deficit</b>	<b>(9,095,543)</b>	<b>(8,804,909)</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' DEFICIT</b>	<b>\$ 2,094,838</b>	<b>\$ 3,017,525</b>

See accompanying notes to consolidated financial statements.

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
<b>Revenues</b>				
Revenues	\$ 1,633,071	\$ 1,890,437	\$ 5,375,724	\$ 5,787,168
Cost of revenues	1,160,880	1,806,022	3,598,661	4,183,719
<b>Gross profit</b>	<b>472,191</b>	<b>84,415</b>	<b>1,777,063</b>	<b>1,603,449</b>
<b>Operating expenses</b>				
General and administrative	2,292,623	983,428	4,907,882	3,088,588
Sales and marketing	708,398	614,600	2,002,529	1,778,371
Engineering, research, and development	968,546	784,804	2,507,264	2,360,863
Impairment of intangible asset	—	238,143	—	238,143
Depreciation and amortization	30,418	118,317	130,902	353,050
<b>Total operating expenses</b>	<b>3,999,985</b>	<b>2,739,292</b>	<b>9,548,577</b>	<b>7,819,015</b>
<b>Loss from operations</b>	<b>(3,527,794)</b>	<b>(2,654,877)</b>	<b>(7,771,514)</b>	<b>(6,215,566)</b>
<b>Other income/(expense)</b>				
Loss of settlement of debt	—	—	(10,857)	—
Interest expense	(237,376)	(193,501)	(720,265)	(520,454)
Settlement Losses	(13,000)	—	(25,500)	—
Foreign currency gain	(102)	(339)	(393)	2,470
<b>Total other income/(expense)</b>	<b>(250,478)</b>	<b>(193,840)</b>	<b>(757,015)</b>	<b>(517,984)</b>
<b>Loss before income taxes</b>	<b>(3,778,272)</b>	<b>(2,848,717)</b>	<b>(8,528,529)</b>	<b>(6,733,550)</b>
Income tax expense	—	—	—	—
<b>Net loss</b>	<b>(3,778,272)</b>	<b>(2,848,717)</b>	<b>(8,528,529)</b>	<b>(6,733,550)</b>
<b>Other comprehensive loss, net of income tax</b>				
Foreign currency translation adjustments	91,825	(76,228)	123,190	(76,862)
<b>Comprehensive loss</b>	<b>\$ (3,686,447)</b>	<b>\$ (2,924,945)</b>	<b>\$ (8,405,339)</b>	<b>\$ (6,810,412)</b>
<b>Net loss per share:</b>				
<b>Basic and Diluted</b>	<b>(0.06)</b>	<b>(0.05)</b>	<b>(0.13)</b>	<b>(0.12)</b>
<b>Weighted average number of shares:</b>				
<b>Basic and Diluted</b>	<b>66,785,952</b>	<b>60,297,083</b>	<b>64,878,021</b>	<b>58,544,432</b>

*See accompanying notes to consolidated financial statements (unaudited).*

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

	Common Stock		Equity Payable	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Dollars					
<b>Balance, December 31, 2021</b>	<b>55,410,695</b>	<b>\$ 55,411</b>	<b>\$ 100,862</b>	<b>\$ 102,446,921</b>	<b>\$ (52,088)</b>	<b>\$ (107,835,287)</b>	<b>\$ (5,284,181)</b>
Issuance of common stock for warrant exercise	3,188,190	3,188	—	2,547,364	—	—	2,550,552
Issuance of common stock for settlement of interest payable on related party debt	—	—	—	6,201	—	—	6,201
Stock based compensation	—	—	—	589,650	—	—	\$ 589,650
Foreign currency translation adjustment	—	—	—	—	(12,895)	—	(12,895)
Net loss	—	—	—	—	—	(1,933,099)	(1,933,099)
<b>Balance, March 31, 2022</b>	<b>58,598,885</b>	<b>58,599</b>	<b>100,862</b>	<b>105,590,136</b>	<b>(64,983)</b>	<b>(109,768,386)</b>	<b>(4,083,772)</b>
Issuance of common stock for PIPE financing	1,062,500	1,062	—	848,937	—	—	849,999
Fair market value of options issued with related party debt	—	—	—	48,654	—	—	48,654
Stock based compensation	—	—	—	211,775	—	—	\$ 211,775
Foreign currency translation adjustment	—	—	—	—	12,261	—	12,261
Net loss	—	—	—	—	—	(1,951,734)	(1,951,734)
<b>Balance, June 30, 2022</b>	<b>59,661,385</b>	<b>59,661</b>	<b>100,862</b>	<b>106,699,502</b>	<b>(52,722)</b>	<b>(111,720,120)</b>	<b>(4,912,817)</b>
Issuance of common stock for PIPE financing	1,500,000	1,500	—	1,198,501	—	—	1,200,001
Fair market value of options issued with related party debt	—	—	—	18,614	—	—	18,614
Issuance of common stock for settlement of interest payable on related party debt	149,770	150	—	164,021	—	—	164,171
Stock based compensation	—	—	—	192,959	—	—	\$ 192,959
Foreign currency translation adjustment	—	—	—	—	(76,228)	—	(76,228)
Net loss	—	—	—	—	—	(2,848,717)	(2,848,717)
<b>Balance, September 30, 2022</b>	<b>61,311,155</b>	<b>\$ 61,311</b>	<b>\$ 100,862</b>	<b>\$ 108,273,597</b>	<b>\$ (128,950)</b>	<b>\$ (114,568,837)</b>	<b>\$ (6,262,017)</b>

  

	Common Stock		Equity Payable	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Dollars					
<b>Balance, December 31, 2022</b>	<b>61,311,155</b>	<b>\$ 61,311</b>	<b>\$ 324,799</b>	<b>\$ 108,806,353</b>	<b>\$ (100,963)</b>	<b>\$ (117,896,409)</b>	<b>\$ (8,804,909)</b>
Issuance of common stock for warrant exercise	3,587,487	3,587	—	3,583,900	—	—	3,587,487
Issuance of common stock for settlement of interest payable on related party debt	163,757	164	\$ (7,713)	223,773	—	—	216,224
RSU's issued - termination of a director's service	545,012	545	—	(545)	—	—	\$ —
Stock based compensation	—	—	—	810,157	—	—	810,157
Foreign currency translation adjustment	—	—	—	—	31,502	—	31,502
Net loss	—	—	—	—	—	(2,478,175)	(2,478,175)
Balance, March 31, 2023	65,607,411	\$ 65,607	\$ 317,086	\$ 113,423,638	\$ (69,461)	\$ (120,374,584)	\$ (6,637,714)
Issuance of common stock for settlement of interest payable on related party debt	190,156	191	(9,768)	216,033	—	—	206,456
Stock based compensation	—	—	—	228,577	—	—	228,577
Foreign currency translation adjustment	—	—	—	—	(137)	—	(137)
Net loss	—	—	—	—	—	(2,272,082)	(2,272,082)
Balance, June 30, 2023	65,797,567	\$ 65,798	\$ 307,318	\$ 113,868,248	\$ (69,598)	\$ (122,646,666)	\$ (8,474,900)
Issuance of common stock for warrant exercise	1,960,976	1,961	—	1,606,039	—	—	1,608,000
Issuance of common stock for settlement of interest payable on related party debt	191,166	191	(206,456)	206,265	—	—	—
Fair market value of options issued with related party debt	—	—	—	28,463	—	—	28,463
Stock based compensation	—	—	—	1,429,341	—	—	1,429,341
Foreign currency translation adjustment	—	—	—	—	91,825	—	91,825
Net loss	—	—	—	—	—	(3,778,272)	(3,778,272)
<b>Balance, September 30, 2023</b>	<b>67,949,709</b>	<b>67,950</b>	<b>100,862</b>	<b>117,138,356</b>	<b>22,227</b>	<b>(126,424,938)</b>	<b>(9,095,543)</b>

*See accompanying notes to consolidated financial statements (unaudited).*

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

	Nine Months Ended September 30,	
	2023	2022
<b>OPERATING ACTIVITIES</b>		
Net loss	\$ (8,528,529)	\$ (6,733,550)
Adjustments to reconcile net loss to net cash used in operating activities:		
Loss on Settlement of Debt - related party	10,857	—
Bad debt expense	24,143	45,685
Stock-based compensation	2,468,075	994,384
Intangible Asset Impairment	—	238,143
Depreciation and amortization expense	162,209	353,050
Amortization of Debt Discount	89,349	83,334
Increase (decrease) in cash resulting from changes in:		
Accounts receivable	683,060	(337,347)
Other current assets	9,634	(17,148)
Operating lease assets/liabilities	—	(15,029)
Other assets	(13,250)	—
Accounts payable	79,950	(184,859)
Prepaid Expenses	(46,231)	—
Accrued interest	621,806	432,959
Accrued and deferred personnel compensation	(457,687)	(195,975)
Other liabilities - current	(34,036)	133,167
Lease Operating Assets	(30,155)	—
Deferred revenue and customer deposits	(684,175)	236,827
<b>Net cash used in operating activities</b>	<b>\$ (5,644,980)</b>	<b>\$ (4,966,359)</b>
<b>INVESTING ACTIVITIES</b>		
Purchases of equipment	(18,252)	(18,712)
Cash paid for patent activities	(6,300)	—
Capitalized software development cost	—	(12,030)
<b>Net cash used in investing activities</b>	<b>(24,552)</b>	<b>(30,742)</b>
<b>FINANCING ACTIVITIES</b>		
Payments on notes payable	(20,004)	(29,145)
Proceeds from Related Party Debt	400,000	800,000
Proceeds from conversion of common stock warrants	5,195,487	2,550,552
Proceeds from PIPE funding	—	2,050,000
<b>Net cash provided by (used in) financing activities</b>	<b>5,575,483</b>	<b>5,371,407</b>
<b>Effect of foreign currency translation on cash flow</b>	<b>125,243</b>	<b>(92,985)</b>
<b>Net Change in cash</b>	<b>31,194</b>	<b>281,321</b>
<b>Cash at beginning of period</b>	<b>\$ 426,740</b>	<b>\$ 735,424</b>
<b>Cash at end of period</b>	<b>457,934</b>	<b>1,016,745</b>
<b>Supplemental disclosure</b>		
Cash paid during period for:		
Interest Paid	\$ —	\$ —
Fair Value of Options issued with related party debt	\$ 28,463	\$ 73,469
Shares issued for settlement of debt - related party	\$ 411,823	\$ 161,750
Shares issued for stock payable for settlement of debt - related party	\$ 223,937	\$ —
Par Value pf RSU's issued - termination of director's service	\$ 545	\$ —

See accompanying notes to consolidated financial statements.

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

**1. Nature of Operations and Basis of Presentation**

Mobivity Holdings Corp. (the “Company” or “we”) is in the business of developing and operating proprietary platforms over which brands and enterprises can conduct national and localized, data-driven mobile marketing campaigns. Our proprietary platforms, consisting of software available to phones, tablets, PCs, and Point of Sale (“POS”) systems, allow resellers, brands, and enterprises to market their products and services to consumers through text messages sent directly to consumers via mobile phones, mobile smartphone applications, and dynamically printed receipt content. On November 14, 2018, we completed the acquisition of certain operating assets relating to Belly, Inc.’s proprietary digital customer loyalty platform, including client contracts, accounts receivable, and intellectual property. We generate revenue by charging the resellers, brands, and enterprises a per-message transactional fee, through fixed or variable software licensing fees, or via advertising fees.

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) for interim financial information and with the instructions to Form 10-Q and Rule 8-03 of Regulation S-X promulgated by the Securities and Exchange Commission (“SEC”). Accordingly, they do not include all of the information and disclosures required by GAAP for annual financial statements. The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto in the Company’s Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on April 3, 2023.

In the opinion of management, such statements include all adjustments (consisting only of normal recurring items) which are considered necessary for a fair presentation of our condensed consolidated financial statements as of September 30, 2023, and for the three and nine months ended September 30, 2023 and 2022. The results of operations for the three and nine months ended September 30, 2023 are not necessarily indicative of the operating results for the full year ending December 31, 2023.

**2. Summary of Significant Accounting Policies**

*Principles of Consolidation*

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

*Use of Estimates*

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Management believes that these estimates are reasonable; however, actual results may differ from these estimates.

*Reclassifications*

Certain prior year amounts have been reclassified to conform to the current year’s presentation. The reclassifications did not affect previously reported net losses.

*Acquisitions*

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

*Cash*

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

*Accounts Receivable, Allowance for Doubtful Accounts and Concentrations*

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

As of September 30, 2023, and December 31, 2022, we recorded an allowance for doubtful accounts of \$24,381 and \$34,446 respectively.

*Goodwill and Intangible Assets*

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

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We conducted our annual impairment tests of goodwill as of December 31, 2022. As a result of these tests, we had a total impairment charge of \$963,659.

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

The Company's evaluation of its goodwill and intangible assets resulted in no impairment charges for the nine months ended September 30, 2023 and 2022, respectively.

### ***Software Development Costs***

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

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

The Company evaluates the future recoverability of capitalized software development costs on an annual basis. For products that have been released in prior years, the primary evaluation criterion is ongoing relations with the customer. The Company's evaluation of its capitalized software development assets resulted in no impairment charges for the three months ended September 30, 2023 and 2022, respectively

### ***Impairment of Long-Lived Assets***

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

### ***Foreign Currency Translation***

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

### ***Revenue Recognition and Concentrations***

Our Recurrency platform is a hosted solution. We generate revenue from licensing our software to clients in our software as a service model, per-message and per-minute transactional fees, and customized professional services. We recognize license/subscription fees over the period of the contract, service fees as the services are performed, and per-message or per-minute transaction revenue when the transaction takes place. Under 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 fees are collected by credit card. Revenue is recognized at the time that the services are rendered, and the selling price is fixed with a set range of plans. Cash received in advance of the performance of services is recorded as deferred revenue.

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

We determine revenue recognition under ASC 606 through the following steps:

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

During the nine months ended September 30, 2023 and 2022, two customers accounted for 52% and 50% 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 a comprehensive loss. For the three months ended September 30, 2023 and 2022, the comprehensive loss was \$3,686,447, and \$2,924,945 respectively. For the nine months ended September 30, 2023 and 2022, the comprehensive loss was \$8,405,339 and \$6,810,412 respectively.

### ***Stock-based Compensation***

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

### ***Research and Development Expenditures***

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

### ***Advertising Expense***

Direct advertising costs are expensed as incurred and consist primarily of trade shows, sales enablement, content creation, paid engagement and other direct costs. Advertising expense was \$169,549 and \$315,540 for the nine months ended September 30, 2023 and 2022, respectively.

### ***Income Taxes***

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

### ***Net Loss Per Common Share***

Basic net loss per share excludes any dilutive effects of options, shares subject to repurchase, and warrants. Diluted net loss per share includes the impact of potentially dilutive securities. During the three and nine months ended September 30, 2023 and 2022, we had securities outstanding which could potentially dilute basic earnings per share in the future. Stock based compensation, stock options and warrants were excluded from the computation of diluted net loss per share when their effect would have been anti-dilutive.

### ***Recent Accounting Pronouncements***

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

In August 2020, the FASB issued ASU 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity ("ASU 2020-06"). ASU 2020-06 requires that the if-converted method of computing diluted Earnings per Share. The Company adopted ASU 2020-06 on January 1, 2022.

### **3. Going Concern**

We had \$457,934 of cash as of September 30, 2023. We had a net loss of \$8,528,529 for the nine months ended September 30, 2023, and we used \$5,644,980 of cash in our operating activities during that time. In the nine months ended September 30, 2022 we had a net loss of \$6,733,550 and used \$4,966,359 of cash in our operating expenses. We raised \$3.6 million in cash from the exercise of warrants in February of 2023. In addition, we raised \$1.6 million in cash from the exercise in August 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 \$126.4 million as of September 30, 2023. Further losses are anticipated in the development of the Company's business raising substantial doubt about the Company's ability to continue as a going concern. The ability to continue as a going concern is dependent upon the Company generating profitable operations in the future and/or obtaining the necessary financing to meet its obligations and repay its liabilities arising from normal business operations when they come due. Management intends to finance operating costs over the next 12 months with proceeds from the sale of securities, and/or revenues from operations. These financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts, or amounts and classification of liabilities that might result from this uncertainty.

#### 4. Goodwill and Purchased Intangibles

##### Goodwill

The carrying value of goodwill at each of September 30, 2023 and December 31, 2022 was \$0.

The following table presents details of our purchased intangible assets as of September 30, 2023 and December 31, 2022:

##### Intangible assets

	<b>Balance at December 31, 2022</b>	<b>Additions</b>	<b>Impairments</b>	<b>Amortization</b>	<b>Fx and Other</b>	<b>Balance at September 30, 2023</b>
Patents and trademarks	\$ 52,698	\$ 6,300	\$ —	\$ (5,444)	\$ 1,555	\$ 55,109
Customer and merchant relationships	30,690	—	—	\$ (18,414)	—	12,276
Trade names	8,050	—	—	\$ (4,831)	—	3,219
	<u>\$ 91,438</u>	<u>\$ 6,300</u>	<u>\$ —</u>	<u>\$ (28,689)</u>	<u>\$ 1,555</u>	<u>\$ 70,604</u>

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

Amortization expense for intangible assets was \$28,689 and \$107,211 for the nine months ended September 30, 2023 and 2022, respectively, and is included in depreciation and amortization on the accompanying unaudited condensed consolidated statements of operations and comprehensive loss.

Amortization expense for intangible assets was \$10,747 and \$35,724 for the three months ended September 30, 2023 and 2022, respectively.

The estimated future amortization expense of our intangible assets as of September 30, 2023 is as follows:

<b>Year ending December 31,</b>	<b>Amount</b>
2023	\$ 9,193
2024	13,526
2025	5,778
2026	5,778
2027	5,778
Thereafter	30,551
Total	<u>\$ 70,604</u>

#### 5. Software Development Costs

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

The following table presents details of our software development costs as of September 30, 2023 and December 31, 2022:

	<b>Balance at December 31, 2022</b>	<b>Additions</b>	<b>Amortization</b>	<b>Balance at September 30, 2023</b>
Software Development Costs	\$ 103,334	\$ —	\$ (95,694)	\$ 7,640
	<u>\$ 103,334</u>	<u>\$ —</u>	<u>\$ (95,694)</u>	<u>\$ 7,640</u>

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

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Amortization expense for software development costs was \$18,120 and \$61,764 for the three months ended September 30, 2023 and 2022, respectively, and is included in depreciation and amortization on the accompanying unaudited condensed consolidated statements of operations and comprehensive loss.

Amortization expense for software development costs was \$95,694 and \$207,027 for the nine months ended September 30, 2023 and 2022, respectively.

The estimated future amortization expense of software development costs as of September 30, 2023 is as follows:

<b>Year ending December 31,</b>	<b>Amount</b>
2023	\$ 3,134
2024	4,506
2025	—
2026	—
2027	—
Thereafter	—
<b>Total</b>	<b>\$ 7,640</b>

## 6. Operating Lease Assets

The Company entered into a lease agreement on February 1, 2021, for 8,898 square feet, for its office facilities in Chandler, AZ through January 2027. Monthly rental payments, excluding common area maintenance charges, are \$25,953 to \$28,733. The first twelve months of the lease included a 50% abatement period and a deposit of \$110,000 was required. The lessor contributed \$110,000 towards the purchase of office furniture as part of the lease agreement. As of September 30, 2023, we have an operating lease asset balance of \$825,041 and an operating lease liability balance of \$1,001,579 recorded in accordance with ASC 842, Leases (ASC “842”).

The following are additional details related to leases recorded on our balance sheet as of September 30, 2023:

<b>Leases</b>	<b>Classification</b>	<b>Balance at September 30, 2023</b>
<b>Assets</b>		
Current		
Operating lease assets	Operating lease assets	\$ —
Noncurrent		
Operating lease assets	Noncurrent operating lease assets	\$ 825,041
<b>Total lease assets</b>		<b>\$ 825,041</b>
<b>Liabilities</b>		
Current		
Operating lease liabilities	Operating lease liabilities	\$ 269,815
Noncurrent		
Operating lease liabilities	Noncurrent operating lease liabilities	\$ 731,764
<b>Total lease liabilities</b>		<b>\$ 1,001,579</b>

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

**Year ending December 31,**

2023	\$	81,194
2024		330,894
2025		337,568
2026		344,241
2027		28,734
Thereafter		—
Total future lease payments		1,122,631
Less: imputed interest		(121,052)
<b>Total</b>	<b>\$</b>	<b>1,001,579</b>

**Weighted Average Remaining Lease Term (years)**

Operating leases	3.58
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**Weighted Average Discount Rate**

Operating leases	6.75%
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**7. Notes Payable and Interest Expense**

The following table presents details of our notes payable as of September 30, 2023 and December 31, 2022:

Facility	Maturity	Interest Rate	Balance at September 30, 2023	Balance at December 31, 2022
ACOA Note	February 1, 2024	—	14,363	34,231
TD Bank	December 31, 2023	—	29,432	29,478
Related Party Note	various	15%	5,653,347	5,192,461
<b>Total Debt</b>			5,697,142	5,256,170
Less current portion			(2,206,238)	(2,743,788)
<b>Long-term debt, net of current portion</b>			<b>\$ 3,490,904</b>	<b>\$ 2,512,382</b>

**ACOA Note**

On November 6, 2017, Livelenz (a wholly-owned subsidiary of the Company), entered into an amendment of the original agreement dated December 2, 2014, with the Atlantic Canada Opportunities Agency (“ACOA”). Under this agreement, the note will mature, and the commitments will terminate on February 1, 2024. The monthly principal payment amount of \$3,000 CAD increased to \$3,500 CAD beginning on November 1, 2019, \$4,000 CAD on August 1, 2021, \$4,500 CAD on August 1, 2022, and \$2,215 CAD during the remaining term of the agreement. Payments from April-December of 2020 were voluntarily deferred by ACOA due to COVID-19.

During the nine months ended September 30, 2023 we repaid \$20,004 USD of principal.

**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, 2023. 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”).

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

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

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

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

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

During the nine months ended September 30, 2023, a total of \$591,880 of interest was accrued by the company. Interest payable of \$391,139 to Thomas Akin was then surrendered to be converted and exchanged for the issuance of 362,335 shares of restricted common stock. The company recorded a loss of settlement of interest payable of \$10,315 and amortized discount expense of \$89,349.

During the nine months period ending September 30, 2023, the Company issued warrants to purchase an aggregate of 121,808 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under the Credit Agreement. The estimated aggregate fair value of the warrants issued is \$28,463 using the Black-Scholes option valuation model as of September 30, 2023.

As of September 30, 2023, the Company had drawn a total of \$5,573,125 and we have accrued interest of \$589,345 and a discount balance of \$191,653.

### Unsecured Promissory Note

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

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

During the nine months ended September 30, 2023, a total of \$30,926 of interest was accrued by the company. Interest of \$20,504 payable to Talkot Fund, LP was then surrendered to be converted and exchanged for the issuance of 18,987 shares of restricted common stock. The company recorded a loss of settlement of interest payable of \$542.

As of September 30, 2023, the Company had an outstanding principal balance of \$271,875, accrued interest of \$65,952.

### Interest Expense

Interest expense was \$237,376 and \$193,501 during the three months ended September 30, 2023 and 2022, respectively.

Interest expense was \$720,265 and \$520,454 during the nine months ended September 30, 2023 and 2022, respectively.

## 8. Stockholders' Equity

### *Common Stock and Equity Payable*

#### 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 \$2,550,552. As an inducement for the holders' 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. We have recorded an additional stock-based expense of \$382,048.

On June 29, 2022, the Company received private investment funds to purchase 1,062,500 shares of its common stock at a price of \$0.80 per share, resulting in additional capital of \$850,000, and issued the holders 1,062,500 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in June 2025.

On August 24, 2022, the Company received private investment funds to purchase 1,500,000 shares of its common stock at a price of \$0.80 per share, resulting in additional capital of \$1,200,000, and issued the holders 1,500,000 new warrants to purchase common stock at \$1.50 per share over a three year period expiring in August 2025.

During the nine months ended September 30, 2022 a total of \$161,750 of interest was converted into 149,770 shares of Common Stock.

#### 2023

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

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

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

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

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

During March, 15 warrant holders exercised their common stock purchase warrant for 3,587,487 shares at the exercise price of \$1.00 per share, resulting in additional capital of \$3,587,487. As an inducement for the holder's exercise of the warrants, we issued the holders' 1,792,745 new warrants to purchase common stock at \$2.00 per share over a three-year period expiring in February 2025. The Company recorded \$577,000 of stock-based expense related to warrants issued during the warrant conversion offer on February 14, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on a volatility rate of 63% and an option fair value of \$0.3216.

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

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

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

During the nine months ended September 30, 2023 a total of 553,279 shares were issued from stock payable related to related party accrued interest.

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

**Stock-based Plans**Stock Option Activity

The following table summarizes stock option activity for the nine months ended September 30, 2023.

	<b>Options</b>
Outstanding at December 31, 2021	6,246,466
Granted	1,375,000
Exercised	—
Forfeited/canceled	(330,623)
Expired	(599,627)
Outstanding at December 31, 2022	6,691,216
Granted	2,645,000
Exercised	—
Forfeited/canceled	(79,165)
Expired	(1,340,384)
Outstanding at September 30, 2023	<u>7,916,667</u>

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 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.

2023

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

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

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

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

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Stock-Based Compensation Expense from Stock Options and Warrants

The impact on our results of operations of recording stock-based compensation expense for the three and nine months ended September 30, 2023 and 2022 were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
General and administrative	\$ 62,599	\$ 65,800	\$ 181,382	\$ 571,462
Sales and marketing	108,348	20,972	248,790	56,183
Engineering, research, and development	46,830	41,185	119,334	171,734
	<u>\$ 217,777</u>	<u>\$ 127,957</u>	<u>\$ 549,506</u>	<u>\$ 799,379</u>

Valuation Assumptions

The fair value of each stock option award was calculated on the date of the grant using the Black-Scholes option pricing model. The following weighted average assumptions were used for the nine months ended September 30, 2023 and 2022.

	Nine Months Ended September 30,	
	2023	2022
Risk-free interest rate	3.99%	2.47%
Expected life (years)	7.50	5.90
Expected dividend yield	—%	—%
Expected volatility	73.47%	69.23%

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

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

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

The expected volatility in 2023 and 2022 is based on the historical publicly traded price of our common stock.

***Restricted stock units***

The following table summarizes restricted stock unit activity under our stock-based plans for the year ended December 31, 2022 and for the nine months ended September 30, 2023:

	Shares
Outstanding at December 31, 2021	1,685,141
Awarded	244,792
Released	—
Canceled/forfeited/expired	—
Outstanding at December 31, 2022	1,929,933
Awarded	243,048
Released	(545,012)
Canceled/forfeited/expired	—
Outstanding at September 30, 2023	<u>1,627,969</u>
Expected to vest at September 30, 2023	1,627,969
Vested at September 30, 2023	1,526,405
Unvested at September 30, 2023	—
Unrecognized expense at September 30, 2023	\$ —



2022

On March 29, 2022, the company granted four independent directors a total of 78,420 restricted stock units. The units were valued at \$65,002 or \$0.829 per share, based on the closing stock price on the date of the grant. All units vested immediately. The shares of common stock associated with the restricted stock units will be issued to each director upon the earliest to occur of (A) December 15, 2024, (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) December 15, 2024, (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 \$0.9985 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) December 15, 2024, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

During the nine months ended September 30, 2022, the Company recorded \$195,005 in restricted stock expense as board compensation.

2023

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

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

On September 30, 2023, the company granted four independent directors a total of 101,564 restricted stock units. The units were valued at \$65,001 or \$0.64 per share, based on the closing stock price on the date of the grant. All units vest immediately. The shares of common stock associated with the restricted stock units will be issued to each director upon the earliest to occur of (A) September 30, 2026, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

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

***Stock Based Compensation from Restricted Stock***

The impact on our results of operations of recording stock-based compensation expense for restricted stock units for the three and nine months ended September 30, 2023 and 2022 was as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
General and administrative	\$ 65,001	\$ 65,002	\$ 195,006	\$ 195,005
Sales and marketing	\$ —	\$ —	\$ —	\$ —
	<u>\$ 65,001</u>	<u>\$ 65,002</u>	<u>\$ 195,006</u>	<u>\$ 195,005</u>

As of September 30, 2023, there was no unearned restricted stock unit compensation.

***Warrants***

The following table summarizes investor warrants as of September 30, 2023 and the years ended December 31, 2022 and 2021:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2021	3,246,690	\$ 2.26	3.59
Granted	6,089,398	\$ —	—
Exercised	(3,188,190)	\$ —	—
Canceled/forfeited/expired	—	\$ —	—
Outstanding at December 31, 2022	6,147,898	\$ 1.45	2.27
Granted	5,715,697	\$ —	—
Exercised	(5,548,463)	\$ —	—
Canceled/forfeited/expired	—	\$ —	—
Outstanding at September 30, 2023	<u>6,315,132</u>	<u>\$ 1.62</u>	<u>2.50</u>

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 \$382,048 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.

2023

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

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

**9. Fair Value Measurements**

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

The following table presents assets that are measured and recognized at fair value as of September 30, 2023 on a recurring and non-recurring basis:

Description	Level 1	Level 2	Level 3	Gains (Losses)
Goodwill (non-recurring)	\$ —	\$ —	\$ —	\$ —
Intangibles, net (non-recurring)	\$ —	\$ —	\$ 78,244	\$ —

The following table presents assets that are measured and recognized at fair value as of December 31, 2022 on a recurring and non-recurring basis:

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

**10. Commitments and Contingencies****Litigation**

The company had a pending legal proceeding related to a Telephone Consumer Protection Act ("TCPA") violation. This is a putative class action complaint alleging that the 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. During the nine months ended September 30, 2023, the Company has settled five TCPA claims for a total settlement loss of \$25,500 and this amount is included within settlement losses on the accompanying unaudited consolidated statements of operations and comprehensive loss.

**Operating Lease**

As described in Note 6, the Company has a lease agreement for 8,898 square feet, for its office facilities in Chandler, AZ through January 2027. Monthly rental payments, excluding common area maintenance charges, are \$25,953 to \$28,733. The first 12 months of the lease included a 50% abatement period. As of September 30, 2023, we have an operating lease asset balance for this lease of \$825,041 and an operating lease liability balance for this lease of \$1,001,579 recorded in accordance with ASC 842.

## 11. Related Party Transactions

### *Secured Promissory Notes*

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

### *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.

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

### **Related Party Warrant Exercise**

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

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

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

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

## 12. Subsequent Events

The Company has discontinued the sale and operation of the Belly loyalty card platform. The last date of operation was October 15, 2023.

On November 10, 2023 three shareholders purchased convertible notes from the Company in the amount of \$400,000. The Convertible Note accrues interest monthly at 8% per annum. Principal and accrued interest payments are due in full on November 8, 2026 under the Convertible Note. The Convertible Note and all accrued interest thereon are convertible into shares of our common stock, from time to time, at the option of the holder thereof, at a conversion price per share equal to the larger of either \$0.50 or of the volume-weighted average price of our common stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the thirty (30) trading days immediately preceding such date (the "Conversion Price"). For value received the shareholders received 666,668 warrants to purchase common shares at an exercise price of \$0.60 per share over a three year period ending November 10, 2026.

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

*This Quarterly Report on Form 10-Q contains “forward-looking statements” as defined in Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, in connection with the Private Securities Litigation Reform Act of 1995 that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially and adversely from those expressed or implied by such forward-looking statements. Such forward-looking statements include statements about our expectations, beliefs or intentions regarding our potential product offerings, business, financial condition, results of operations, strategies or prospects. You can identify forward-looking statements by the fact that these statements do not relate strictly to historical or current matters. Rather, forward-looking statements relate to anticipated or expected events, activities, trends, or results as of the date they are made and are often identified by the use of words such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” or “will,” and similar expressions or variations. Because forward-looking statements relate to matters that have not yet occurred, these statements are inherently subject to risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements. These factors include those risks disclosed under the caption “Risk Factors” included in our 2020 annual report on Form 10-K filed with the Securities and Exchange Commission, or the SEC, on March 30, 2021, and in our subsequent filings with the SEC. Furthermore, such forward-looking statements speak only as of the date of this report. We undertake no obligation to update any forward-looking statements to reflect events or circumstances occurring after the date of such statements.*

### Overview

Mobivity Holdings Corp. (the “Company” or “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 Software-as-a-Service (“SaaS”) platform, is used by leading brands including Subway, Sonic Drive-In, Baskin Robbins, Chick-fil-A and Checkers/Rally’s across more than 40,000 retail locations globally.

We’re living in a data-driven economy. By 2003 — when the concept of “Big Data” became common vernacular in marketing - the amount of data being created every two days was equal to the amount created in all of the time prior to 2003. Today, 90% of the world’s data has been created in just 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. This 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.

### The Recurrency Platform

Mobivity’s 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, described in detail below.

### 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.

### 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.

### 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”).

### **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.

### **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 or 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 transmitted to cloud-based Recurrency for storage and analysis.

### **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.

### **Belly Loyalty**

Mobivity’s Belly Loyalty 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 to 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 of 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 Mobivity’s 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 the SMS/MMS text messaging transactional volume necessary to serve 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 that 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 significantly increase 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 applications 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 Events**

#### ***2023 Warrants Exercises***

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.

During the quarter ended September 30, 2023, 18 warrant holders exercised their common stock purchase warrant for 1,906,976 shares at the exercise price of \$.82 per share, resulting in additional capital of \$3,557,487. As an inducement for the holder’s exercise of the warrants, we issued the holders’ 1,793,745 new warrants to purchase common stock at \$.82 per share over a three-year period expiring between August and September 2026. The Company recorded \$1,146,047 of stock-based expense related to warrants issued during the warrant conversion offer on September 6, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on an average volatility rate of 72% and an option fair value of \$0.2922.

### ***2023 Related 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.

On May 08, 2023 a total of 180,715 shares of common stock were issued to Thomas Akin as settlement of interest payable.

On May 08, 2023 a total of 9,441 shares were issued to Talkot Fund LP as settlement of interest payable.

On July 17, 2023 a total of 181,620 shares of common stock were issued to Thomas Akin as settlement of interest payable.

On July 17, 2023 a total of 9,546 shares were issued to Talkot Fund LP as settlement of interest payable.

## **Results of Operations**

### ***Revenues***

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

Revenues for the three months ended September 30, 2023, were \$1,633,071 a decrease of \$257,366 compared to the same period in 2022.

Revenues for the nine months ended September 30, 2023, were \$5,375,724 a decrease of \$411,444 or 7% compared to the same period in 2022

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

### ***Cost of Revenues***

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

Cost of revenues for the three months ended September 30, 2023, was \$1,160,880, a decrease of \$645,142, or 36%, compared to \$1,806,022 for the same period in 2022.

Cost of revenues for the nine months ended September 30, 2023, was \$3,598,661, a decrease of \$585,058, or 14%, compared to \$4,183,719 for the same period in 2022.

This increase is primarily due to an decrease of \$500,000 in application expense.

### ***General and Administrative***

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

General and administrative expenses increased \$1,309,195 or 133% to \$2,292,623, during the three months ended September 30, 2023, compared to \$983,428 for the same period in 2022. The increase in general and administrative expenses was primarily due to an increase in stock related expense for the warrant exercise that occurred during the period.

General and administrative expenses increased \$1,819,294 or 59% to \$4,907,882 during the nine months ended September 30, 2023, compared to \$3,088,588 for the same period in 2022. The increase in general and administrative expenses was primarily due to an increase in stock related expense for the warrant exercise that occurred during the period.

### ***Sales and Marketing***

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

Sales and marketing expenses increased \$93,798, or 15%, to \$708,398 during the three months ended September 30, 2023, compared to \$614,600 for the same period in 2022. The increase is primarily due to and \$112,000 increase in payroll expense.

Sales and marketing expenses increased \$224,158, or 13%, to \$2,002,529 during the nine months ended September 30, 2023, compared to \$1,778,371 for the same period in 2022. The increase is primarily due to a \$297,000 increase in payroll.





### ***Engineering, Research & Development***

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

Engineering, research & development expenses increased \$183,742, or 23%, to \$968,546 during the three months ended September 30, 2023, compared to \$784,804 for the same period in 2022. This decrease is primarily due to an increase of \$62,000 in payroll expense.

Engineering, research & development expenses increased \$146,401, or 6%, to \$2,507,264 during the nine months ended September 30, 2023, compared to \$2,360,863 for the same period in 2022. This decrease is primarily due to a \$238,000 decrease in payroll expenses.

### ***Depreciation and Amortization***

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

Depreciation and amortization expense decreased \$87,899 or 74%, to \$30,418 during the three months ended September 30, 2023 compared to \$118,317 for the same period in 2022. This decrease is primarily due to decrease in intangible assets due to impairment at the end of 2022.

Depreciation and amortization expenses decreased \$222,148 or 63%, to \$130,902 during the nine months ended September 30, 2023 compared to \$353,050 for the same period in 2022. This decrease is primarily due to decrease in intangible assets due to impairment at the end of 2022.

### ***Impairment of Intangible Assets***

Impairment of intangible asset expenses decreased to \$0 during the three months ended September 30, 2023 compared to \$238,143 for the same period in 2022.

Impairment of intangible asset expenses decreased to \$0 during the nine months ended September 30, 2023 compared to \$238,143 for the same period in 2022.

### ***Interest Expense***

Interest expense increased \$43,875, or 23%, to \$237,376 during the three months ended September 30, 2023, compared to \$193,501 in the same period in 2022. This increase in interest expense is primarily related to the increased balance on related party notes payable.

Interest expense increased \$199,811 or 38%, to \$720,265 during the nine months ended September 30, 2023, compared to \$520,454 in the same period in 2022. This increase in interest expense is primarily related to the increase balance on related party notes payable.

### ***Settlement Losses***

Settlement losses consist of legal settlement for TCPA settlements.

Settlement losses for the three and nine months ended September 30, 2023 were \$13,000 and \$25,500, respectively. There were no settlement losses for the three and nine months ended September 30, 2022.

### ***Loss on Settlement of Debt***

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

Loss on settlement of debt for the three and nine months ended September 30, 2023 was \$0 and \$10,857, respectively. There was no loss on settlement of debt for the three and nine months ended September 30, 2022.

### ***Foreign Currency***

The Company's financial results are impacted by volatility in the Canadian/U.S. Dollar exchange rate. The average U.S. Dollar exchange rate for the three and nine months ended September 30, 2023, was \$1 Canadian equals \$0.75 and \$0.74 U.S. Dollars, respectively. This compares to an average rate of \$1 Canadian equals \$0.77 and \$0.78 during the same period in 2022. 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 \$91,825 and a loss of \$76,228 for the three months ended September 30, 2023 and 2022, respectively.

The change in foreign currency was a gain of \$123,190 and a loss of \$76,862 for the nine months ended September 30, 2023 and 2022, respectively.

### ***Liquidity and Capital Resources***

As of September 30, 2023, we had current assets of \$1,073,338, including \$457,934 in cash, and current liabilities of \$6,967,713, resulting in a working capital deficit of \$5,894,375.

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



**Cash Flows**

	<b>Nine Months Ended September 30,</b>	
	<b>2023</b>	<b>2022</b>
Net cash provided by (used in):		
Operating activities	\$ (5,644,980)	\$ (4,966,359)
Investing activities	(24,552)	(30,742)
Financing activities	5,575,483	5,371,407
Effect of foreign currency translation on cash flow	125,243	(92,985)
Net change in cash	<u>\$ 31,194</u>	<u>\$ 281,321</u>

**Operating Activities**

We used cash in operating activities totaling \$5,644,980 during the nine months ended September 30, 2023 and used cash in operating activities totaling \$4,966,359 during the nine months ended September 30, 2022. Key drivers of the cash used in operating activities are the net loss of \$8,528,529 and changes to accounts receivable of \$683,060, accrued interest of \$621,806, accrued and deferred personnel compensation of \$457,687, and deferred revenue and customer deposits of \$684,175.

**Investing Activities**

Investing activities during the nine months ended September 30, 2023, consisted of \$6,300 in patent fees compared to \$0 in the nine months ending September 2022 and \$18,252 of equipment purchases compared to \$18,712 in the nine months ended September 30, 2022. In addition, there was \$0 in capitalized software development costs in nine months ended September 30, 2023 compared to \$12,030 in the nine months ended September 30, 2022.

**Financing Activities**

Financing activities during the nine months ended September 30, 2023, consisted of \$5,195,487 additional paid-in capital from a warrant conversion to common stock, compared to \$2,550,552 additional paid in capital from a warrant conversation to common stock and \$2,050,000 additional paid-in capital from a PIPE funding in the nine months ended September 30, 2022. In addition there was \$400,000 proceeds for related party notes payable compared to \$800,000 in the same period in 2022, and \$20,004 in payment on notes payable compared to \$29,145 in the same period in 2022.

**Critical Accounting Policies and Estimates**

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

**Off-Balance Sheet Arrangements**

We have no off-balance sheet arrangements.

**Item 3. Quantitative and Qualitative Disclosures about Market Risk.**

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

**Item 4. Controls and Procedures.****Evaluation of Disclosure Controls and Procedures**

As required by Rule 13a-15(b) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures, as defined in Exchange Act Rule 13a-15(e), as of the end of the period covered by this report. “Disclosure controls and procedures,” as defined in Exchange Act Rule 13a-15(e), are controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. Based on this evaluation, our management, including our Chief Executive Officer and Chief Financial Officer, concluded that as of September 30, 2023 our disclosure controls and procedures were not effective.

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

**Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act, that occurred during the nine months ended September 30, 2023 that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II – OTHER INFORMATION

### Item 1. Legal Proceedings.

The Company had a 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. During the nine months ended September 30, 2023, the Company has settled four TCPA claims for a total settlement loss of \$25,500 and this amount is included within settlement losses on the accompanying unaudited consolidated statements of operations and comprehensive loss.

### Item 1A. Risk Factors.

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

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

During the March 2023, 15 warrant holders exercised their common stock purchase warrant for 3,587,487 shares at the exercise price of \$1.00 per share, resulting in additional capital of \$3,557,487. As an inducement for the holder’s exercise of the warrants, we issued the holders 1,793,745 new warrants to purchase common stock at \$2.00 per share over a three-year period expiring in March 2026.

During August 2023, 18 warrant holders exercised their common stock purchase warrant for 1,906,976 shares at the exercise price of \$.82 per share, resulting in additional capital of \$3,557,487. As an inducement for the holder’s exercise of the warrants, we issued the holders’ 1,793,745 new warrants to purchase common stock at \$.82 per share over a three-year period expiring between August and September 2026.

For the foregoing warrants, the exercise price of the warrant and the number of the shares issuable upon exercise of the warrant are subject to customary adjustments prior to exercise upon the occurrence of certain events affecting all outstanding shares of common stock.

The foregoing securities were issued in reliance on an exemption from registration set forth in Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”) to a limited number of persons who were “accredited investors,” as defined in Rule 501 of Regulation D of the Securities Act, without the use of any general solicitations or advertising to market or otherwise offer the securities for sale. None of the shares, warrants or shares of common stock issued upon exercise of the warrants have been registered under the Securities Act or applicable state securities laws and none may be offered or sold in the United States absent registration under the Securities Act, or an exemption from such registration requirements. Neither this quarterly report on Form 10-Q nor any exhibit attached hereto shall constitute an offer to sell or the solicitation of an offer to buy any securities.

### Item 3. Defaults upon Senior Securities.

None.

### Item 4. Mine Safety Disclosures.

Not applicable.

### Item 5. Other Information

The information set forth below is included herein for purposes of providing the disclosure required under “Item 1.01 Entry Into a Material Definitive Agreement; Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.” of Form 8-K.

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).

In addition, in connection with the execution of the A&R Credit Agreement and the Convertible Note, the Company issued Mr. Akin 140,185 shares of common stock on November 14, 2022.

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 will be filed separately.

### Item 6. Exhibits

Exhibit No.	Description
31.1	<a href="#">Certification by Chief Executive Officer pursuant to Section 302 of Sarbanes Oxley Act of 2002 *</a>
31.2	<a href="#">Certification by Chief Financial Officer pursuant to Section 302 of Sarbanes Oxley Act of 2002 *</a>
32.1	<a href="#">Certification Pursuant to 18 U.S.C. Section 1350 *</a>
10.1	<a href="#">Form of Exercise Notice</a>
10.2	<a href="#">Warrant Offer Letter</a>
10.3	<a href="#">New Warrant</a>
10.4	<a href="#">Securities Purchase Agreement</a>
10.5	<a href="#">Convertible Note</a>
10.6	<a href="#">New Warrant - Convertible</a>
101.INS	Inline XBRL Instance Document *

101.SCH Inline XBRL Taxonomy Schema Document  
101.CAL Inline XBRL Taxonomy Calculation Linkbase Document \*  
101.DEF Inline XBRL Taxonomy Definition Linkbase Document \*  
101.LAB Inline XBRL Taxonomy Label Linkbase Document\*  
101.PRE Inline XBRL Taxonomy Presentation Linkbase Document \*  
104 Cover Page Interactive Data File (embedded within the Inline XBRL and contained in Exhibit 101)

\* Filed electronically herewith

- (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](#)

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized

**Mobivity Holdings Corp.**

Date: November 14, 2023

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

Date: November 14, 2023

By: /s/ Will Sanchez  
Will Sanchez  
Chief Financial Officer  
(Principal Accounting Officer)

## CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

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

I, Thomas B. Akin, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Mobivity Holdings Corp. for the quarter ended September 30, 2023;
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 first fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2023

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

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

I, Will Sanchez, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Mobivity Holdings Corp. for the quarter ended September 30, 2023;
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 first fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2023

By: /s/ Will Sanchez  
Will Sanchez  
Chief Financial Officer

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**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Mobivity Holdings Corp., a Nevada corporation (the “Company”), for the period ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), we, Dennis Becker, Chief Executive Officer of the Company, and Lisa Brennan, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Dated: November 14, 2023

*/s/ Thomas B. Akin*

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

*/s/ Will Sanchez*

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Will Sanchez  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

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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 August 7, 2023 the undersigned shall receive a New Warrant (as defined in the Offer Letter) to purchase two shares of the Company's Common Stock, over a three year period at an exercise price of \$0.82 per share, for every one 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, 2022; and
- The Company's Quarterly Report on Form 10-Q for the period ended March 31, 2023.

(b) The undersigned has been advised that officers and directors of the Company, and their affiliates, intend to exercise approximately \$700,000 worth of 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 \$0.82) is delivered concurrently by check made payable to "Mobivity Holdings Corp." or by wire pursuant to the following 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 two times the 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





**MOBIVITY HOLDINGS CORP.**  
**3133 West Frye Rd Suite 215**  
**Chandler, Arizona 85225**  
**Warrant Offer Letter**  
August 7, 2023

Dear Warrant Holder:

We are writing to you as the holder of warrants (the “**Old Warrants**”) to purchase common shares of Mobivity Holdings Corp. (the “**Company**”). In order to raise capital to continue growing the Company’s business, we are offering each holder of the Old Warrants a limited-time incentive to exercise their Old Warrants by offering the holders an **opportunity to exercise their Old Warrants at a reduced exercise price of \$0.82 per share** and to receive a new warrant (“**New Warrant**”) to purchase two shares of our common stock, \$0.001 par value (“**Common Stock**”), over a three year period at an exercise price of \$0.82 per share, for every one share of our Common Stock that the holder purchases upon the exercise of an **Old Warrant (at the reduced \$0.82 per share exercise price)**, provided that the exercise of the Old Warrants is completed on or before September 6, 2023 (the “**Offer End Date**”).

In connection with this offer, we are delivering to you (i) the Form of New Warrant and (ii) a Form of Exercise Notice pursuant to which you can exercise your Old Warrant in accordance with this offer.

You may exercise your Old Warrants (at the reduced \$0.82 per share exercise price) by signing and delivering the accompanying Form of Exercise Notice, and related warrant exercise payment, by 5:00 p.m. Eastern Time on the Offer End Date. The exercise and payment instructions are set forth in the Form of Exercise Notice. In connection with this limited-time opportunity, we wish to advise you of the following:

- There are no agreements, understandings or arrangements between us and anyone else with regard to the exercise of Old Warrants except as set forth in this Warrant Offer Letter, nor have we engaged any third parties to assist us in soliciting the exercise of the Old Warrants. There can be no assurance of the number of Old Warrants, if any, that will be exercised on the terms set forth herein.

- Any exercise of Old Warrants by you on or prior to the Offer End Date will be made on the terms and conditions set forth in your Old Warrant, except that (a) the exercise price will be amended to be reduced and amended to \$0.82 per share and (b) you will receive, in addition to the shares of Common Stock issuable upon exercise of the Old Warrant, a New Warrant to purchase two shares of our Common Stock for every one share of our Common Stock you purchase upon the exercise of an Old Warrant. All terms and conditions of your Old Warrant shall remain the same.

- Notwithstanding any “cashless exercise” or similar provision in your Old Warrants, the offer made hereby, and your receipt of a New Warrant upon exercise of your Old Warrant, is strictly and expressly conditioned on your payment of cash consideration for the full amount of the aggregate exercise price of your Old Warrant (as amended to \$0.82 per share).

- You are under no obligation to exercise any Old Warrants at this time. If you decide not to exercise your Old Warrants pursuant to this Warrant Offer Letter, your Old Warrant will remain exercisable according to its existing terms, including the existing exercise price per share.

- Any common shares purchased by you upon exercise of your Old Warrant will be issued as restricted securities.

- Certain of our officers and directors hold Old Warrants and are eligible to participate in this offer.

All inquiries should be directed to me via email at [will.sanchez@mobivity.com](mailto:will.sanchez@mobivity.com). Thank you for your continued support of Mobivity. If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Will Sanchez,

Chief Financial Officer

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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: August [●], 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 \$0.82 (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 August [●], 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.

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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.

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(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 1/100<sup>th</sup> 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.

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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.

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(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: \_\_\_\_\_

Will Sanchez  
Chief Financial Officer

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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)

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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: \_\_\_\_\_  
\_\_\_\_\_



## SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this “*Agreement*”), dated as of November 6, 2023 is made by and among Mobivity Holdings Corp., a Nevada corporation (the “*Company*”), and the investors listed on Schedule I hereto (collectively, the “*Investors*”).

## RECITALS

A. The Company and the Investors are executing and delivering this Agreement in reliance upon the exemptions from securities registration afforded by Section 4(2) of the Securities Act and Rule 506 under Regulation D.

B. The Company desires to sell to each Investor, and each Investor desires to purchase from the Company (a) a Convertible Note in an original principal amount equal to the amount set forth on the Schedule I attached hereto, and (b) a Warrant to purchase up to a number of shares of the Company’s Common Stock set forth on Schedule I attached hereto, in each case on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Investors hereby agree as follows:

## ARTICLE I.

## PURCHASE AND SALE OF CONVERTIBLE PROMISSORY NOTES

**Section 1.01 Purchase and Sale of Securities.** The Company agrees to issue and sell to each Investor, and each Investor agrees to purchase from the Company the Note and Warrant for the aggregate purchase price set forth on the signature page to this Agreement (the “*Purchase Price*”). Each Investor will deliver or will cause to be delivered to the Company at or prior to the Closing the Purchase Price by wire transfer of immediately available funds to the Company’s bank account, or such other means as the Investors and Company agree.

**Section 1.02 Payment.** Promptly on or after the Closing Date, the Company will deliver or cause the delivery to each Investor evidence of the issuance of the Securities to be issued and sold, which will take the form of a duly executed Note in substantially the form attached to this Agreement as Exhibit A and a duly executed Warrant in substantially the form attached to this Agreement as Exhibit B.

**Section 1.03 Closing Date.** Subject to the satisfaction or waiver of the conditions set forth in herein, the Closing will take place at 3:01 p.m., Pacific Time, on November [●], 2023, or at another date or time agreed upon by the parties to this Agreement (the “*Closing Date*”). The Closing will occur remotely by exchange of documents and signatures (or their electronic counterparts) on the Closing Date, or at such other time, date or place as the parties mutually agree.

## ARTICLE II.

## REPRESENTATIONS AND WARRANTIES OF INVESTORS

Each Investor represents and warrants to the Company, severally and solely with respect to itself and its purchase hereunder and not with respect to any other Investor, that:

**Section 2.01 Organization and Qualification.** To the extent the Investor is an entity, the Investor is duly incorporated, validly existing and in good standing under the laws of the state of organization, with full power and authority (corporate and other) to own, lease, use and operate its properties, if any, and to carry on its business as and where now owned, leased, used, operated and conducted. To the extent the Investor is an entity, the Investor is duly qualified to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not have a material adverse effect on the business or financial condition of the Investor.

**Section 2.02 Authorization; Enforcement.** To the extent the Investor is an entity, (a) the Investor has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement and its Convertible Note and Warrant, to consummate the transactions contemplated hereby and thereby and to purchase the Securities in accordance with the terms hereof and thereof; (b) the execution, delivery and performance of this Agreement and the Investor’s Convertible Note and Warrant by the Investor and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all required parties and no further consent or authorization of Investor, its board of directors or its shareholders or members is required; (c) this Agreement has been duly executed and delivered by the Investor; and (d) assuming the valid and binding execution of this Agreement and the Securities by the Company and compliance with the terms of this Agreement and the Securities by the Company, each of this Agreement and the Investor’s Securities constitutes a legal, valid and binding obligation of the Investor enforceable against the Investor by the Company in accordance with their respective terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, or moratorium or similar laws affecting the rights of creditors generally and the application of general principles of equity. To the extent the Investor is a natural person, this Agreement has been duly and validly authorized, executed and delivered on behalf of the Investor and is a valid and binding agreement of the Investor, enforceable in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and the application of general principles of equity.

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**Section 2.03 Investment Purpose.** The Investor is purchasing the Securities for its own account and not with a present view toward the public sale or distribution thereof.

**Section 2.04 Limited Markets.** The Investor understands that no public trading market now exists for the Securities and no active trading market exists for the Convertible Securities, and that the Company has made no assurances that any such markets will ever exist or develop.

**Section 2.05 Accredited Investor Status.** The Investor is an “accredited investor” as defined in Rule 501(a) of Regulation D and satisfies the criteria indicated on the signature page hereto.

**Section 2.06 Reliance on Exemptions.** The Investor understands that the Securities are being offered and sold to it in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Investor’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Securities.

**Section 2.07 Information and Sophistication.** The Investor and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company, and materials relating to the offer and sale of the Securities, that have been requested by the Investor or its advisors, if any. The Investor and its advisors, if any, have been afforded the opportunity to ask questions of the Company. The Investor acknowledges and understands that its investment in the Securities involves a significant degree of risk, including the risks reflected in the Company’s Form 10-K for the fiscal year ended December 31, 2022, as the same may be amended or supplemented from time to time, by the Company’s quarterly reports on Form 10-Q and other SEC Documents. The Investor is experienced and knowledgeable in financial and business matters, is capable of evaluating the merits and risks of investing in the Securities, and does not need or desire the assistance of a knowledgeable representative to aid in the evaluation of such risks who the Investor intends to use in connection with a decision as to whether to purchase the Securities.

**Section 2.08 Governmental Review.** The Investor understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Securities or an investment therein.

**Section 2.09 Transfer or Resale.** The Investor understands that:

(a) except as provided in ARTICLE VIII, the Securities have not been and are not being registered under the Securities Act or any applicable state securities laws and, consequently, the Investor may have to bear the risk of owning the Securities for an indefinite period of time because the Securities may not be offered, sold, pledged or otherwise transferred except (i) pursuant to an exemption from registration under the Securities Act or (ii) pursuant to an effective registration statement under the Securities Act, in each case in accordance with all applicable state securities laws and the securities laws from other jurisdictions and in case of a transaction exempt from registration, unless the Company has received an opinion of counsel satisfactory to it that such transaction does not require registration under the Securities Act and such other applicable laws;

(b) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with another exemption under the Securities Act or the rules and regulations of the SEC thereunder; and

(c) neither the Company nor any other person is under any obligation to register the Securities under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

**Section 2.10 Legends.** The Investor understands that until (a) the Securities may be sold by the Investor under Rule 144 or (b) such time as the resale of the Securities has been registered under the Securities Act, the certificates representing the Securities will bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for such Securities):

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THE SECURITIES EVIDENCED HEREBY, AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. SUCH SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE STATE SECURITIES LAWS AND THE SECURITIES LAWS OF OTHER JURISDICTIONS, AND IN THE CASE OF A TRANSACTION EXEMPT FROM REGISTRATION, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO IT THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT AND SUCH OTHER APPLICABLE LAWS.

**Section 2.11 Residency.** The Investor is a resident of the jurisdiction set forth immediately below such Investor's name on the signature pages hereto.

**Section 2.12 No Broker Fees.** The Investor has not engaged any brokers, finders, or agents, and the Investor has not incurred, and will not incur, directly or indirectly, as a result of any action taken by the Investor, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement.

### ARTICLE III.

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Investors that:

**Section 3.01 Organization and Qualification.** The Company is duly incorporated, validly existing and in good standing under the laws of the State of Nevada, with full power and authority (corporate and other) to own, lease, use and operate its properties, if any, and to carry on its business as and where now owned, leased, used, operated and conducted. The Company is duly qualified to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not have a Material Adverse Effect.

**Section 3.02 Authorization; Enforcement.**

(a) The Company has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement and the Convertible Notes and Warrants, to consummate the transactions contemplated hereby and thereby and to issue the Convertible Notes and Warrants in accordance with the terms hereof and thereof.

(b) The execution, delivery and performance of this Agreement and the Convertible Notes and Warrants by the Company and the consummation by it of the transactions contemplated hereby and thereby (including without limitation the issuance of the Convertible Notes and Warrants and the issuance and reservation for issuance of the Conversion Shares in accordance with the Company's Articles of Incorporation, this Agreement and the Convertible Notes and Warrants) have been duly authorized by the Company's board of directors and no further consent or authorization of the Company, its board of directors or its shareholders is required.

(c) This Agreement and the Convertible Notes and Warrants have been duly executed and delivered by the Company.

(d) Assuming the valid and binding execution of this Agreement by the Investor and compliance with the terms of this Agreement and the Convertible Notes and Warrants by such Investor, each of this Agreement and the Convertible Notes and Warrants constitutes a legal, valid and binding obligation of the Company enforceable against the Company by such Investor in accordance with their respective terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, or moratorium or similar laws affecting the rights of creditors generally and the application of general principles of equity.

**Section 3.03 Issuance of the Convertible Notes and Warrants.** The Convertible Notes and Warrants have been duly authorized and, upon issuance in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable and free from all taxes, liens, claims, encumbrances and charges with respect to the issuance thereof (other than liens imposed by an Investor). The Conversion Shares have been duly authorized and reserved for issuance, and, upon issuance in connection with or upon conversion of the Convertible Notes or the exercise of the Warrants in accordance with the terms thereof, will be validly issued, fully paid and non-assessable, and free from all taxes, liens, claims and encumbrances and charges with respect to the issuance thereof (other than liens imposed by an Investor).

**Section 3.04 No Conflicts; No Violation.** The execution, delivery and performance of this Agreement and the Convertible Notes and Warrants by the Company, and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance and reservation for issuance of the Securities and Conversion Shares) do not and will not (i) conflict with or result in a violation of any provision of the Company's Articles of Incorporation or Bylaws, (ii) violate or conflict with, or result in a breach of any provision of, or constitute a default (or an event which with notice or lapse of time or both could become a default) under, or give to others any rights of termination, amendment (including without limitation, the triggering of any anti-dilution provision), acceleration or cancellation of, any agreement, indenture or instrument to which the Company is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including U.S. federal and state securities laws and regulations and regulations of any self-regulatory organizations to which the Company or its securities are subject) applicable to the Company or by which any property or asset of the Company is bound or affected (except, in the case of clauses (ii) and (iii), for such conflicts, breaches, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect).

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**Section 3.05 SEC Documents.** Since January 1, 2023, the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Exchange Act (all of the foregoing filed prior to the date hereof being referred to herein as the “*SEC Documents*”). As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act or the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, other than SEC Documents that have been amended as of the date hereof.

**Section 3.06 Broker Fees.** The Company has not engaged any brokers, finders, or agents, and the Company has not incurred, and neither the Company nor any Investor will incur, directly or indirectly, as a result of any action taken by the Company, any other liability for brokerage or finders’ fees or agents’ commissions or any similar charges in connection with this Agreement.

#### ARTICLE IV.

#### COVENANTS

**Section 4.01 Use of Proceeds.** The Company will use the proceeds from the sale of the Securities for general working capital and corporate purposes.

**Section 4.02 Expenses.** Unless otherwise specified in this Agreement, each party will pay its own fees and expenses, as well as the fees and expenses of its own advisors and consultants, in connection with the entry into this Agreement and the transactions contemplated by this Agreement.

**Section 4.03 Reservation of Shares.** The Company will at all times have authorized, and reserved for the purpose of issuance, a sufficient number of shares of Common Stock to provide for the full conversion of the outstanding Securities and issuance of the Conversion Shares in connection therewith (based on the conversion price of the Securities in effect from time to time).

#### ARTICLE V.

#### DEFAULT

**Section 5.01 Events of Default.** Each of the following events will be an event of default (an “*Event of Default*”) for purposes of this Agreement:

(a) if default is made in the punctual payment of interest on the Convertible Notes, and such default has continued for a period of ten days after written notice thereof to the Company by the holder of any of the Convertible Notes; or

(b) if default is made in the punctual payment of any installment of the principal of the Convertible Notes and such default has continued for a period of five days after written notice thereof to the Company by the holder of any of the Convertible Notes; or

(c) If a trustee, receiver, conservator or other similar official is appointed for the Company or for all or substantially all of the Company’s assets and the order of such appointment is not discharged, vacated or stayed within 60 days after such appointment; or

(d) if any judgment, writ or warrant of attachment or of any similar process in an amount in excess of \$10,000,000 is entered or filed against the Company or against any of the property or assets of the Company and remains unpaid, unvacated, unbonded or unstayed for a period of 60 days; or

(e) if an order for relief is entered in any Federal bankruptcy proceeding in which the Company is the debtor; or if bankruptcy, reorganization, arrangement, insolvency, or liquidation proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company and, if instituted against the Company, are consented to or, if contested by the Company, are not dismissed by the adverse parties or by an order, decree or judgment within 60 days after such institution; or

(f) if default is made in the due and punctual performance or observance of any other material term contained in this Agreement or the Convertible Notes, and such default has continued for a period of 30 days after the earlier of the Company’s knowledge thereof or written notice thereof to the Company by the holder of any Convertible Note.

**Section 5.02 Remedies Upon Events of Default.** For so long as any Convertible Note remains outstanding, upon the occurrence of an Event of Default as herein defined, and so long as such Event of Default continues unremedied, then, each holder of any Convertible Notes will be entitled by notice to declare the principal of and any accrued interest on the Convertible Notes, to be immediately due and payable, and thereupon the Convertible Notes, including both outstanding principal and accrued but unpaid interest will become immediately due and payable; provided, however, that when any Event of Default described in Section 7.01(e) hereof has occurred, the Convertible Notes will immediately become due and payable without presentment, demand or notice of any kind.

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**Section 5.03 Notice of Defaults.** When, to its knowledge, any Event of Default has occurred or exists, the Company agrees to give written notice within ten business days of such Event of Default to the holders of all outstanding Securities. If the holder of any Securities will give any notice or take any other actions in respect of a claimed Event of Default, the Company will forthwith give written notice thereof to all other holders of Securities at the time outstanding, describing such notice or action and the nature of the claimed Event of Default.

**Section 5.04 Remedies Cumulative.** No right, power or remedy conferred upon any holder of Securities will be exclusive, and each such right, power or remedy will be cumulative and in addition to every other right, power or remedy, whether conferred hereby or by any such security or now or hereafter available at law or in equity or by statute or otherwise.

**Section 5.05 Remedies not Waived.** No course of dealing between the Company and any Investor or the holder of any Securities, and no delay in exercising any right, power or remedy conferred hereby or by any such security or now or hereafter existing at law or in equity or by statute or otherwise, will operate as a waiver of or otherwise prejudice any such right, power or remedy; provided, however, that this Section 7.05 will not be construed or applied so as to negate the provisions and intent of any statute that is otherwise applicable.

## ARTICLE VI.

### DEFINITIONS; CONSTRUCTION

**Section 6.01 Defined Terms.** Capitalized terms used herein and not otherwise defined in this agreement have the following meanings:

(a) "Affiliate" has the meaning set forth in Rule 405 promulgated under the Securities Act.

(b) "Business day" shall mean any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of Arizona are authorized or required by law or other governmental action to close.

(c) "Closing" means the closing of the purchase and sale of the Securities under this Agreement.

(d) "Closing Date" has the meaning set forth in Section 1.03.

(e) "Conversion Shares" means the shares of Common Stock issuable upon conversion of the Securities.

(f) "Convertible Note" means the means the Convertible Promissory Notes issuable pursuant to this Agreement, in the form attached hereto as Exhibit A.

(g) "Common Stock" means the common stock, par value \$0.001 per share, of the Company.

(h) "Company" means Mobivity Holdings Corp., a Nevada corporation.

(i) "Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, or any similar successor statute.

(j) "Investors" means the investors whose names are set forth on Schedule I attached to this Agreement, and their permitted transferees.

(k) "Material Adverse Effect" means a material adverse effect on (a) the assets, liabilities, business, properties, financial condition or results of operations of the Company, (b) the ability of the Company to perform its obligations under this Agreement or (c) the Securities.

(l) "Registrable Securities" means the Conversion Shares and any shares of capital stock issued or issuable from time to time (with any adjustments) in exchange for or otherwise with respect to the Securities.

(m) "Regulation D" means Regulation D as promulgated by the SEC under the Securities Act.

(n) "Rule 144" means Rule 144 promulgated under the Securities Act, or any successor rule.

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(o) "Rule 415" means Rule 415 promulgated under the Securities Act, or any successor rule, and applicable rules and regulations thereunder.

(p) "SEC" means the United States Securities and Exchange Commission.

(q) "SEC Documents" has the meaning set forth in Section 3.05.

(r) "Securities" the Convertible Notes, and all notes of the Company issued in exchange or substitution therefor, and the Warrants.

(s) "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute.

(t) "Warrants" shall mean the Warrants to Purchase Common Stock issuable pursuant to this Agreement, in the form attached hereto as Exhibit B.

## ARTICLE VII.

### GOVERNING LAW; MISCELLANEOUS

**Section 7.01 Governing Law; Jurisdiction.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona without regard to the principles of conflict of laws. The parties hereto hereby submit to the exclusive jurisdiction of the United States federal and state courts sitting in the city of Phoenix, Arizona with respect to any dispute arising under this Agreement, the agreements entered into in connection herewith or the transactions contemplated hereby or thereby. The parties also agree that any disputes arising under this Agreement, will be exclusively venued in the United States federal and state courts located in the city of Phoenix, Arizona, except for actions or proceedings regarding the enforcement of awards or judgments.

**Section 7.02 Counterparts; Signatures by Facsimile.** This Agreement may be executed in two or more counterparts, all of which are considered one and the same agreement and will become effective when counterparts have been signed by each party and delivered to the other parties. This Agreement, once executed by a party, may be delivered to the other parties hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

**Section 7.03 Headings.** The headings of this Agreement are for convenience of reference only, are not part of this Agreement and do not affect its interpretation.

**Section 7.04 Severability.** If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision will be deemed modified in order to conform with such statute or rule of law. Any provision hereof that may prove invalid or unenforceable under any law will not affect the validity or enforceability of any other provision hereof.

**Section 7.05 Entire Agreement.** This Agreement, the Convertible Notes and Warrants constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the subject matter hereof.

**Section 7.06 Consents; Waivers and Amendments.** The provisions of this Agreement may only be amended, modified, supplemented or waived upon the prior written consent of the Company and the holders of a majority of the Registrable Securities. Except as otherwise specifically provided herein, in each case in which approval or action of the Investors is required by the terms of this Agreement, such requirement will be satisfied upon receipt of the written consent of the holders of a majority of the Registrable Securities, which consent will bind the holders of all of the outstanding Convertible Notes, Warrants and Registrable Securities; provided, however, that no change or modification to the conversion price (other than in accordance with the adjustment provisions set forth herein and in the Convertible Notes) will be effective as to a holder of Convertible Notes without the prior written consent of such holder.

**Section 7.07 Notices.** Any notices required or permitted to be given under the terms of this Agreement must be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by email and will be effective five days after being placed in the mail, if mailed by regular U.S. mail, or upon receipt, if delivered personally, by courier (including a recognized overnight delivery service) or by email, in each case addressed to a party. The addresses for such communications are:

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If to the Company, then to:

Mobivity Holdings Corp.  
3133 West Frye Road, #215  
Chandler, Arizona 85226  
Attn: Will Sanchez, Chief Financial Officer  
Email: will.sanchez@mobivity.com

If to an Investor: To the address set forth immediately below such Investor's name on the signature pages hereto.

Each party will provide written notice to the other parties of any change in its address.

**Section 7.08 Successors and Assigns.** This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns. The Company may assign this Agreement at any time in connection with a sale or acquisition of the Company, whether by merger, consolidation, sale of all or substantially all of the Company's assets, or similar transaction, without the consent of the Investors; provided, that the successor or acquirer agrees in writing to assume all of the Company's rights and obligations under this Agreement.

**Section 7.09 No Third-Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

**Section 7.10 Survival.** Unless otherwise set forth in this Agreement, the representations and warranties of the Company and the Investors contained in or made pursuant to this Agreement will survive the execution and delivery of this Agreement and the closings under this Agreement and will in no way be affected by any investigation or knowledge of the subject matter thereof made by or on behalf of the Investors or the Company.

**Section 7.11 Further Assurances.** Each party will do and perform, or cause to be done and performed, all such further acts and things, and will execute and deliver all other agreements, certificates, instruments and documents, as another party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

**Section 7.12 No Strict Construction.** The language used in this Agreement is deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

**Section 7.13 Equitable Relief.** Each party recognizes that, if it fails to perform or discharge any of its obligations under this Agreement, any remedy at law may prove to be inadequate relief to the other parties. Each of the parties therefore agrees that the other parties are entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

**Section 7.14 Independent Nature of Investors' Obligations and Rights.** The obligations of each Investor under either its Convertible Note, Warrant or this Agreement are several and not joint with the obligations of any other Investor, and no Investor will be responsible in any way for the performance of the obligations of any other Investor under a Convertible Note, Warrant or this Agreement. Nothing contained herein or in any Convertible Note, Warrant or this Agreement, and no action taken by any Investor pursuant thereto, will be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement. Each Investor will be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it will not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. Each Investor has been represented by its own separate legal counsel in their review and negotiation of their Convertible Note, Warrant or this Agreement. The Company has elected to provide all Investors with the same terms for the convenience of the Company and not because it was required or requested to do so by the Investors.

**Section 7.15 Trusts and Other Entity Investors.** To the extent any holder of Securities is a trust or other entity, the trustee or officers, directors, employees, partners, members or other control persons of such trust or entity will be bound by the terms of this Agreement as it relates to the Securities held by such trust or other entity. Each Investor agrees that it will cause such persons to execute and deliver to the Company an acknowledgement of the obligations set forth in this Agreement to the extent reasonably requested by the Company.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed as of the date first above written.

**Company:**  
Mobivity Holdings Corp.

By: \_\_\_\_\_  
Name: Will Sanchez  
Title: Chief Financial Officer

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed as of the date first above written.

**Investor (Natural Person(s)):**

Signature(s): \_\_\_\_\_  
Name(s): \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Fax: \_\_\_\_\_  
U.S. Taxpayer ID(s): \_\_\_\_\_

**Mark all that are applicable:**

- Investor is an individual with a net worth, or a joint net worth together with his or her spouse, in excess of \$1,000,000.
- Investor is an individual that had an individual income in excess of \$200,000 in each of the prior two years and reasonably expects an income in excess of \$200,000 in the current year or an individual that had with his/her spouse joint income in excess of \$300,000 in each of the prior two years and reasonably expects joint income in excess of \$300,000 in the current year.
- Investor is a director or executive officer of the Company.

*UNITED STATES TAXABLE INVESTORS ONLY*

*Under penalty of perjury, by signature above, each Investor signatory certifies that (a) the Social Security Number(s) or Taxpayer ID Number(s) shown above are the true, correct and complete Social Security Number(s) or Taxpayer ID Number(s) for the Investor and (b) the Investor is not subject to backup withholding because: (i) Investor is exempt from backup withholding; (ii) Investor has not been notified by the Internal Revenue Service (the "IRS") that Investor is subject to backup withholding; or (iii) the IRS has notified Investor that Investor is no longer subject to backup withholding.*

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed as of the date first above written.

**Investor (Entity Name):**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 U.S. Taxpayer ID(s): \_\_\_\_\_

**Mark all that are applicable:**

- Investor is an entity all of whose members are either (a) individuals with a net worth, or a joint net worth together with the individual's spouse, in excess of \$1,000,000, (b) individuals that had an individual income in excess of \$200,000 in each of the prior two years and reasonably expect an income in excess of \$200,000 in the current year or (c) individuals that had with the individual's spouse joint income in excess of \$300,000 in each of the prior two years and reasonably expect joint income in excess of \$300,000 in the current year.
- Investor is a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, an investment company registered under the Investment Company Act of 1940, a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 or a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.
- Investor has total assets in excess of \$5,000,000, was not formed for the specific purpose of acquiring the securities and is one or more of the following (check one or more, as appropriate):
  - an organization described in Section 501(c)(3) of the Internal Revenue Code;
  - a corporation;
  - a Massachusetts or similar business trust; or
  - a partnership.
- Investor is a trust with total assets exceeding \$5,000,000 that was not formed for the specific purpose of acquiring securities and whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the investment in the securities.

*UNITED STATES TAXABLE INVESTORS ONLY*

*Under penalty of perjury, by signature above, each Investor signatory certifies that (a) the Taxpayer ID Number(s) shown above are the true, correct and complete Taxpayer ID Number(s) for the Investor and (b) the Investor is not subject to backup withholding because: (i) Investor is exempt from backup withholding; (ii) Investor has not been notified by the Internal Revenue Service (the "IRS") that Investor is subject to backup withholding; or (iii) the IRS has notified Investor that Investor is no longer subject to backup withholding.***Schedule of Investors**

INVESTOR	AGGREGATE PURCHASE PRICE	PRINCIPAL AMOUNT OF NOTE ISSUED AT CLOSING	DATE OF INITIAL NOTE ISSUE	NUMBER OF WARRANT SHARES
<b>TOTAL</b>			—	

**FORM OF CONVERTIBLE NOTE**

(attached)**Form of Warrant**

(attached)



THE SECURITIES EVIDENCED HEREBY AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. SUCH SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE STATE SECURITIES LAWS AND THE SECURITIES LAWS OF OTHER JURISDICTIONS, AND IN THE CASE OF A TRANSACTION EXEMPT FROM REGISTRATION, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO IT THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT AND SUCH OTHER APPLICABLE LAWS.

MOBIVITY HOLDINGS CORP.  
CONVERTIBLE PROMISSORY NOTE

§[●] November [●], 2023

FOR VALUE RECEIVED, MOBIVITY HOLDINGS CORP., A NEVADA CORPORATION (THE "COMPANY"), PROMISES TO PAY TO THE ORDER OF [●] (THE "INVESTOR"), AT SUCH PLACE AS THE INVESTOR MAY FROM TIME TO TIME IN WRITING DESIGNATE TO THE COMPANY, THE PRINCIPAL SUM OF \$[●], TOGETHER WITH ALL ACCRUED BUT UNPAID INTEREST THEREON AS SET FORTH BELOW.

1. **Loan Agreement.** This Convertible Promissory Note (this "Note") is one of several promissory notes (the "Notes") issued by the Company pursuant to that certain Securities Purchase Agreement between the Company and the investors party thereto dated as of November [●], 2023 (the "Agreement"). All capitalized terms not otherwise defined herein having the meaning set forth in the Agreement. By acceptance of this Note, Investor expressly agrees, for the benefit of the present and future holders of such indebtedness, to be bound by the provisions of this Note and the Agreement.

2. **Payment Terms; Maturity.** Simple interest on the unpaid principal balance of this Note will accrue at the rate of 8.0% per annum. Accrual of interest will commence on the date of this Note, will continue until this Note is fully paid, and will be payable in a single installment at maturity as set forth below. The interest rate will be computed on the basis of the actual number of days elapsed in a 365-day year. If not sooner converted as provided below, the entire unpaid principal balance, together with all accrued but unpaid interest, will be due and payable in cash on November [●], 2026 (the "Maturity Date"). The Maturity Date of this Note and all of the other Notes may be extended by the holders of a majority of the then-outstanding principal amount of the Notes (the "Majority Investors"). All payments of interest and principal will be made in lawful money of the United States of America and will be made pro rata among all investors under the Agreement, without any deduction by way of set-off, counterclaim, or otherwise. All payments will be applied first to interest and thereafter to principal. All payments will be made to the Investor at its address set forth in the Agreement or at such other address as is provided in writing to the Company.

3. **Ranking.** This Note represents an unsecured obligation of the Company. It is subordinated in right of payment to the prior payment in full of any senior indebtedness. Notwithstanding the foregoing, this Note ranks equally with all other Notes with respect to right of payment and priority.

4. **Repayment.** All amounts due under this Note may be repaid or prepaid by the Company in whole or in part at any time without penalty or premium, at the option of the Company. However, the Company will give the Investor five days' prior written notice of any such payment and, at the time of payment, the Company will pay all accrued but unpaid interest on the portion of the principal balance repaid. If the Company raises proceeds through an asset sale or other financing that, pro forma for the payback of this Note, would yield \$2,000,000 of cash to the Company's balance sheet, then the Majority Investors may declare the Notes immediately due and payable.

5. **Conversion.**

(a) *Optional Conversion.* At any time prior to the earliest of (i) the closing date of a Qualified Financing, and (ii) 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 Investor, be converted into shares of the Company's Common Stock at the Conversion Price. The written election of the Investor must specify the amount of outstanding and/or accrued but unpaid interest to be converted and the intended date of such conversion. At any time prior to the earliest of (i) the closing date of a Qualified Financing, and (ii) the closing date of a Corporate Transaction, the Majority Investors may provide written notice to the Company that all of the outstanding principal and/or accrued but unpaid interest under all of the Notes will be converted into shares of the Company's Common Stock at the Conversion Price.

(b) *Mandatory Conversion.* On the closing date of a Qualified Financing, all of the outstanding principal and accrued but unpaid interest on such closing date will be automatically converted (the "Mandatory Conversion") into shares of the Company's Common Stock at the Conversion Price.

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(c) *Corporate Transaction Conversion.* The Company shall notify the Investor at least 10 days prior to the closing of a Corporate Transaction involving the Company. Within five days of receipt of such notice, the Investor may elect either (i) a cash payment equal to the outstanding principal and accrued but unpaid interest under this Note or (ii) convert the Note into shares of the Company's Common Stock at the Conversion Price pursuant to Section 5(a).

(d) *No Fractional Shares.* The number of shares and/or units of Company securities issuable pursuant to this Section 5 will be rounded down to the nearest whole share.

(e) *Definitions.* For purposes of this Note, the following terms shall have the meanings ascribed to them below:

"*Common Stock*" means the Company's common stock, \$0.001 par value.

"*Conversion Price*" shall be equal to the higher of: (i) \$0.50 per share of Common Stock, or (ii) the VWAP.

"*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 Company's assets; (2) the consummation of a merger or consolidation of the Company with or into another entity (except a merger or consolidation in which the holders of capital stock of the Company immediately prior to such merger or consolidation continue to hold a majority of the outstanding voting securities of the capital stock of the Company 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 Company'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 Company (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 Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately prior to such transaction. Notwithstanding the foregoing, the sale of equity securities in a bona fide financing transaction will not be deemed a "Corporate Transaction."

"*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.

"*Qualified Financing*" means the first transaction or series of related transactions in which the Company (i) sells any of its equity securities, (ii) receives a cash infusion related to the negotiation of, or entering into, a strategic partnership, (iii) on or before the maturity of the Convertible Notes and (iv) with gross proceeds to the Company of at least \$4,500,000. (excluding the amount attributable to the conversion of the Convertible Notes).

**6. Actions on Conversion.** At such time as this Note is converted into Company securities, the rights of the Investor under this Note will cease and such person will be treated for all purposes as the record holder of the equity securities issuable upon conversion. As promptly as practicable but no later than the applicable closing and/or conversion date, the Investor (a) will execute such purchase and other agreements executed by the other purchasers of the equity securities and (b) 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 6, the Company may at its election either (i) issue a certificate or certificates representing the equity securities issuable upon conversion, or (ii) not issue any certificate representing the equity securities and instead document the Investor's interest in the equity securities by recording the equity securities with the Company's transfer agent (or another custodian selected by the Company) in book-entry form.

**7. Restriction on Transfer of the Note.** Any sale or transfer of this Note must comply with the requirements contained in the Agreement.

**8. Events of Default.** Upon the occurrence of any one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Note, including any accrued but unpaid interest, may be declared to be or shall become immediately due and payable as provided in the Agreement.

**9. No Rights or Liabilities as Holder of Equity Interests.** This Note does not of itself entitle the Investor to any voting rights or other rights as a holder of equity interests in the Company. In the absence of conversion of this Note, no provisions of this Note, and no enumeration herein of the rights or privileges of the Investor, shall cause the Investor to be a holder of equity interests in the Company for any purpose.

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10. **Amendments and Waivers.** Any term of this Note may be amended, terminated or waived only with the written consent of the Company and the Majority Investors. Any amendment or waiver effected in accordance with this Section shall be binding upon each of the Notes and each of the Investors and each transferee of the Notes and the Company.

11. **Waiver of Notice, Protest and Demand.** The Company hereby waives presentment for payment, notice of nonpayment, protest, notice of protest, and all other notices, filing of suit and diligence in collecting the amounts due under this Note and agrees to not require the Investor to first initiate any suit or exhaust its remedies against any other person or parties in order to enforce payment of this Note.

12. **Titles and Subtitles.** The titles and subtitles used in this Note are used for convenience only and are not to be considered in construing or interpreting this Note.

13. **Governing Law.** This Note shall be governed by, and construed in accordance with, the laws of the State of Arizona, regardless of the laws that might otherwise govern under applicable principles of conflicts of law.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Company has caused this Note to be signed by its duly authorized officer and to be dated as of the date first written above.

MOBIVITY HOLDINGS CORP.

By: \_\_\_\_\_

Will Sanchez

Chief Financial Officer

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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: November [●], 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 \$0.60 (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 November [●], 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.

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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.

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(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 1/100<sup>th</sup> 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.

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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.

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(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: \_\_\_\_\_  
Will Sanchez  
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: \_\_\_\_\_  
\_\_\_\_\_