

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

**FORM 10-K/A
(Amendment No. 1)**

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

For the fiscal year ended December 31, 2023

Or

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

For the transition period from _____ to _____

Commission file number 000-53851

Mobivity Holdings Corp.

(Exact Name of Registrant as Specified in Its Charter)

Nevada
(State or Other Jurisdiction of
Incorporation or Organization)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates as of June 30, 2023 was \$3,322,348, calculated at the price at which the common equity was last sold.

As of April 29, 2024, the registrant had 67,949,709 shares of common stock issued and outstanding.

EXPLANATORY NOTE

Mobivity Holdings Corp. (herein referred to as “we,” “us,” “our,” or the “Company”) is filing this Amendment No. 1 on Form 10-K/A (this “Amendment No. 1”) to amend our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (the “Original Filing”), filed with the U.S. Securities and Exchange Commission (“SEC”) on April 17, 2024 (the “Original Filing Date”), to include the information required by Items 10 through 14 of Part III of Form 10-K. This information was previously omitted from the Original Filing in reliance on General Instruction G(3) to Form 10-K.

Pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), this Amendment No. 1 also contains new certifications by our principal executive officer and principal financial officer as required by Section 302 of the Sarbanes-Oxley Act of 2002. Accordingly, Item 15 of Part IV is amended and restated to include the currently dated certifications as exhibits.

Except as expressly noted in this Amendment No. 1, this Amendment No. 1 does not reflect events that may have occurred subsequent to the Original Filing Date or modify or otherwise update any other disclosures contained in the Original Filing, including, without limitation, the financial statements. Accordingly, this Amendment No. 1 should be read in conjunction with the Original Filing.

FORWARD-LOOKING STATEMENTS

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

**MOBIVITY HOLDINGS CORP.
ANNUAL REPORT ON FORM 10-K
FISCAL YEAR ENDED DECEMBER 31, 2023**

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PART III

Item 10. Directors, Executive Officers and Corporate Governance²

Information about our Executive Officers and Directors

The following table sets forth information concerning our executive officers and directors, including their ages, as of April 29, 2023:

Name	Age	Position
Skye Fossey-Tomaske	45	Principal Financial Officer
Kim Carlson	60	Chief Operating Officer
Thomas Akin	71	Chairman of the Board of Directors and Chairman of Audit Committee
Dennis Becker	50	Director
Philip Guarascio	81	Chairman of Governance and Nominating Committee and Director
Doug Schneider	61	Director
Benjamin Weinberger	45	Chairman of Compensation Committee and Director

Skye Fossey-Tomaske, Principal Financial Officer

On June 21, 2023, Mobivity Holdings Corp. (the “Company”) announced that Skye Fossey-Tomaske was appointed to serve as the Interim Chief Financial Officer of the Company, effective as of June 21, 2023. Ms. Fossey-Tomaske served as Interim CFO from June 2023 until July 2023, and from January 2024 until present. Ms. Fossey-Tomaske, age 45, has served as the Company’s Corporate Controller since May 2021. Prior to joining the Company, Ms. Fossey-Tomaske held the position of Accounting Manager at Hannay Realty Advisors, LP, where she oversaw the accounting department for all of the restaurant holdings from October 2019 until April 2021. Before that, Ms. Fossey-Tomaske served as an Accounting Manager for Community Medical Services from November 2018 to October 2019. During her tenure at Community Medical Services, she successfully established a new accounting department to manage new acquisitions in the eastern United States, implemented a universal accounting system for all new subsidiaries, and enhanced various processes and procedures.

As a result of these and other professional qualifications, we have concluded that Ms. Brennan is qualified to serve as an officer.

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Kim Carlson – Chief Operating Officer

On May 15, 2023, Mobivity Holdings Corp. (the “Company”) announced that Kim Carlson was appointed Chief Operating Officer of the Company, effective May 15, 2023. Ms. Carlson, age 59, joined the Company in September 2022 as the Company’s Chief Revenue Officer. Prior to joining the Company, Ms. Carlson served as the Head of Global Revenue for Aarki, a mobile demand side platform, from June 2018 until its acquisition by mobile games platform Skillz in July of 2021. From May 2015 to May 2018 Ms. Carlson served as Vice President of Revenue for Appnique, an online development company specialized in Facebook Audiences as a Facebook Marketing Partner. From January 2014 until its acquisition by Tremor International in January 2015, Ms. Carlson served as Chief Revenue Officer of Taptica, a global mobile ad-tech company. Ms. Carlson additionally has revenue leadership experience that includes roles at Infospace, Marchex, and InMobi.

As a result of these and other professional qualifications, we have concluded that Ms. Brennan is qualified to serve as an officer.

Thomas Akin – Chairman of the Board of Directors and Chairman of the Audit Committee

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

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

Philip Guarascio - Chairman of Governance and Nominating Committee and Director

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

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

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Doug Schneider - Director

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

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

Dennis Becker - Director

Dennis Becker was appointed our Chief Executive Officer and a Director effective as of our acquisition of Mobivity, Inc. in November 2010. Mr. Becker has also served as President and Chief Executive Officer of Mobivity, Inc. from September 2007 to July 2023. Our board of directors appointed Mr. Becker as Chairman of the Board of Directors effective as of March 31, 2017, and he served as director until July 2023. Mr. Becker was a founder of Frontieric Corporation, a pioneer in providing complex call routing and merchant processing applications, where he was Chief Executive Officer from 2002 to 2005. Mr. Becker was also Chief Executive Officer of Bexel Technologies, which served solutions to large enterprises, from 1999 to 2001. Mr. Becker studied Computer Science at the University of Oregon and served in the United States Air Force.

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

Benjamin Weinberger - Director

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

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

Additional Information about our Board and its Committees

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

Audit Committee

During the year ended December 31, 2023, our audit committee was comprised of Thomas Akin, Doug Schneider and Benjamin Weinberger. Our board of directors has appointed Mr. Akin to serve as chairman of the audit committee effective as of April 1, 2017, and has determined that Mr. Akin is an audit committee financial expert, as defined under the applicable rules of the SEC.

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

Compensation Committee

During the year ended December 31, 2023, our compensation committee was comprised of Benjamin Weinberger, Philip Guarascio and Thomas Akin. Mr. Weinberger currently serves as compensation committee chair.

Governance and Nominating Committee

During the year ended December 31, 2023, our governance and nominating committee was comprised of Philip Guarascio, Benjamin Weinberger and Thomas Akin. Mr. Guarascio currently serves as governance and nominating committee chair.

Code of Ethics

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

Compensation Committee Interlocks and Insider Participation³

No member of our Compensation Committee has served as one of our officers or employees at any time. None of our executive officers serve as a member of the compensation committee of any other company that has an executive officer serving as a member of the board. None of our executive officers serves as a member of the board of directors of any other company that has an executive officer serving as a member of our Compensation Committee during the last year.

Item 11. Executive Compensation⁴

The following table summarizes the total compensation earned by our Chief Executive Officer (principal executive officer) and our other two most highly paid executive officers for the years ended December 31, 2023 and 2022. In reviewing the table, please note that:

- Lisa Brennan has served as our Chief Financial Officer since December 7, 2020.⁵

Summary Compensation Table*

Name and Principal Position	Year	Salary	Bonus	Stock Awards (1)	Option Awards (1)	All Other Compensation	Total
Dennis Becker, Chairman & CEO	2023	\$ 310,000	\$ 90,000	\$ —	\$ —	\$ —	\$ 400,000
	2022	\$ 310,000	\$ 65,000	\$ —	\$ —	\$ —	\$ 375,000
Lisa Brennan, CFO	2023	\$ 225,000	\$ —	\$ —	\$ —	\$ —	\$ 225,000
	2022	\$ 225,000	\$ —	\$ —	\$ —	\$ —	\$ 225,000
Skye Fossey-Tomaske	2023	\$ 147,115	\$ 37,550	\$ —	\$ 21,983	\$ —	\$ 206,648
Will Sanchez, CFO	2023	\$ 124,046	\$ —	\$ —	\$ 396,441	\$ —	\$ 124,046
Kim Carlson, COO	2023	\$ 257,019	\$ 7,115	\$ —	\$ 605,383	\$ —	\$ 869,517

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

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

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

Outstanding Equity Awards at December 31, 2023

Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Equity Incentive Plan Awards; Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price	Option Expiration Date
Dennis Becker, CEO & Chairman	100,000	—	\$ 1.28	1/22/2025
Dennis Becker, CEO & Chairman	1,000,000	—	\$ 0.60	5/15/2027
Dennis Becker, CEO & Chairman	500,000	500,000(1)	\$ 1.04	5/17/2029
Kim Carlson, COO	1,000,000	562,500	\$ 0.98	9/22/2032
Kim Carlson, COO	1,000,000	1,000,000	\$ 0.85	12/7/2030
Skye Fossey-Tomaske, Interim CFO	5,000	1,458	\$ 1.75	08/11/2031
Skye Fossey-Tomaske, Interim CFO	50,000	50,000	\$.65	08/25/2023

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

(1) Represents options that vest on June 28, 2024, subject to continued service on the vesting date .

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

Employment Agreements

We currently have no outstanding employment agreements or arrangements, whether written or unwritten

Non-Employee Director Compensation

2023 Director Compensation Table

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

The Company recorded an expense of \$65,000 per director related to restricted stock units for members of our board of directors for the twelve months ended December 31, 2023.

Item 12. Security Ownership of Certain Beneficial Owners and Management⁶

Securities Authorized for Issuance Under Equity Compensation Plans

The following table sets forth additional information as of December 31, 2023 with respect to the shares of common stock that may be issued upon the exercise of options and other rights under our existing equity compensation plans and arrangements in effect as of December 31, 2023. The information includes the number of shares covered by, and the weighted average exercise price of, outstanding options and the number of shares remaining available for future grant, excluding the shares to be issued upon exercise of outstanding options.

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans not approved by security holders ⁽¹⁾	9,096,380	\$.92	8,988,635
Equity compensation plans approved by security holders	—	—	—
Total	9,096,380	\$.92	8,988,635

(1) Comprised of our 2010 Incentive Stock Option Plan, the 2013 Incentive Stock Option Plan, the 2016 Stock Incentive Plan and the 2022 Equity Incentive Plan. See Note 9 in Notes to Consolidated Financial Statements, "Stock-based Plans and Stock-based Compensation" in this Form 10-K for a description of these plans.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth as of April 29, 2024, certain information regarding the beneficial ownership of our common stock. The table sets forth the beneficial ownership of (i) each person who, to our knowledge, beneficially owns more than 5% of our outstanding shares of Common stock; (ii) each of our directors and executive officers; and (iii) all of our executive officers and directors as a group. The number of shares owned includes all shares beneficially owned by such persons, as calculated in accordance with Rule 13d-3 promulgated under the Exchange Act. The number of shares beneficially owned by a person includes shares of common stock underlying options or warrants held by that person that are currently exercisable or exercisable within 60 days of April 29, 2023. The shares issuable pursuant to the exercise of those options or warrants are deemed outstanding for computing the percentage ownership of the person holding those options and warrants but are not deemed outstanding for the purposes of computing the percentage ownership of any other person. Unless otherwise indicated, the address of each shareholder is c/o the Company, 3133 W. Frye Road, Chandler, AZ 85226.

Name of Beneficial Owner ⁷	Amount And Nature of Beneficial Ownership	Percentage of Class (1)
Dennis Becker ⁽²⁾	224,503	5%
Skye Fossey-Tomaske ⁽³⁾	3,542	—
Kim Carlson	437,500	1%
Doug Schneider ⁽⁴⁾	732,564	1%
Ben Weinberger	177,619	—
Philip Guarascio ⁽⁶⁾	732,564	1%
Thomas Akin ⁽⁷⁾	36,567,513	56%
Executive Officers and Directors as a Group (six persons)	33,128,016	57%
5% or Greater Beneficial Owners		
Bruce Terker (8) 950 West Valley Road, Suite 2900, Wayne, PA 19087	8,648,582	13%
Cornelis F. Wit (9) 2700 N. Military Trail, Suite 210, Boca Raton, FL 33431	3,828,669	6%

(1) Applicable percentage of ownership is based upon 67,949,709 shares of common stock outstanding as of April 29, 2024.

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- (2) Includes 32,500 shares of common stock issuable upon settlement of restricted stock units. Includes 192,003 shares of common stock issuable pursuant to presently exercisable stock options, including options that will vest within 60 days of April 29, 2024.
- (3) Includes no shares of common stock issuable pursuant to presently exercisable stock options, including options that will vest within 60 days of April 29, 2024.
- (4) Includes 658,247 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of April 29, 2024. Includes 74,447 shares of common stock owned of record by The Schneider Family Trust.
- (5) Includes 177,619 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of April 29, 2024.
- (6) Includes 655,567 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of April 29, 2024.
- (7) Includes 9,695,469 shares of common stock owned of record by Talkot Fund, L.P., 541,703 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of April 29, 2024. and 3,085,398 of stock warrants to purchase Common Stock.
- (8) Based on a Schedule 13G/A filed with the SEC on January 1, 2024 by Bruce E. Terker, that he has shared voting power with respect to 8,732,332 shares and shared dispositive power with respect to 8,732,332 shares of our common stock.
- (9) Based on a Schedule 13G/A filed with the SEC on February 16, 2022 by Cornelis F. Wit, that he has sole voting power with respect to 3,828,669 shares and sole dispositive power with respect to 3,828,669 shares of our common stock.

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

Certain Relationships and Related Transactions

Related Party Notes

Secured Promissory Notes

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

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

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

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

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

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

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

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

Unsecured Promissory Note

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

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

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

Warrant Exercises 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' 1,793,745 new warrants to purchase common stock at \$2.00 per share over a three-year period expiring in February 2025. The Company recorded \$577,000 of stock-based expense related to warrants issued during the warrant conversion offer on February 14, 2023. The total estimated value of the warrants using the Black-Scholes Model is based on a volatility rate of 63% and an option fair value of \$0.3216.

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

Related Party Warrant Exercise 2023

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.

Convertible Notes 2023

During fourth quarter 2023 the Company issued eight Convertible Notes payable to Thoms B. Akin, Talkot Fund LP, Moglia Capital LLC, Moglia Family Foundation and Moglia Trust 1, who are related parties for \$2,000,000. As an inducement we issued 3,333,332 warrants to purchase shares of our common stock at \$.60 per share. Simple interest on the unpaid principal balance of this Note will accrue at the rate of 8.0% per annum. Accrual of interest will commence on the date of this Note, will continue until this Note is fully paid, and will be payable in a single installment at maturity three years from the date the Convertible Note was issued.

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

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

Related Party Warrant Exercise 2022

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

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

Related Party Private Placement 2022

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

Indemnification Agreements with Directors and Executive Officers

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

Item 14. Principal Accounting Fees and Services

The following table represents aggregate fees billed to us for the years ended December 31, 2023 and 2022 by M&K CPAs, our principal auditors for such periods.

	2023	2022
Audit Fees	\$ 71,000	\$ 92,500
Audit-Related Fees	39,750	54,500
Tax Fees	8,000	4,000
All Other Fees	—	—
Total Fees	\$ 150,500	\$ 150,500

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Audit-Related Fees. Audit-Related Fees in 2021 consist of costs of review for our quarterly 10-Q filing for three quarters. Audit-Related Fees in 2022 consist of costs of review for our quarterly 10-Q filing for three quarters, 2023 audit fees and 2022 audit fees.

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

All Other Fees. There were no such fees incurred in 2023 or 2022.

Board of Directors' Pre-Approval Policies and Procedures

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

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

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(1) Financial Statements

The following Consolidated Financial Statements of Mobivity Holdings Corp. appear at pages 20 to 45 in the Original Filing:

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

(a)(2) Consolidated Financial Statement Schedules

The schedules have been omitted as the required information is inapplicable or the information is otherwise included in the Original Filing.

(a)(3) Exhibits

See Exhibit Index, which is incorporated herein by reference.

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EXHIBIT INDEX

Exhibit Number	Description
3.1	Restated Articles of Incorporation filed with the Nevada Secretary of State on August 12, 2022 (1)
3.2	Bylaws (2)
3.3	Amendment No. 1 to Bylaws (3)

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

* Filed herewith

** Indicates management compensatory plan, contract or arrangement

- (1) Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed August 15, 2022
- (2) Incorporated by reference to the Registration Statement on Form S-1 filed with the SEC on October 20, 2008
- (3) Incorporated by reference to the Company's Current Report on Form 8-K filed December 2, 2011
- (4) Incorporated by reference to the Company's Current Report on Form 8-K filed January 18, 2011
- (5) Incorporated by reference to the Company's Current Report on Form 8-K filed August 10, 2012
- (6) Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed August 14, 2013
- (7) Incorporated by reference to the Company's Annual Report on Form 10-K filed April 15, 2019
- (8) Incorporated by reference to the Company's Current Report on Form 8-K filed May 24, 2013
- (9) Incorporated by reference to the Company's Quarterly Report on Form 10-K filed March 30, 2022
- (10) Incorporated by reference to the Company's Registration Statement on Form S-8 filed September 22, 2022
- (11) Incorporated by reference to the Company's Quarterly Report on Form 8-K filed November 17, 2022
- (12) Incorporated by reference to the Company's Registration Statement on Form 8-K filed February 6, 2023
- (13) Incorporated by reference to the Company's Registration Statement on Form 8-K filed March 16, 2023
- (14) Incorporated by reference to the Company's Annual Report on Form 10-K filed on April 17, 2024

SIGNATURES

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

DATE: April 29, 2024

MOBIVITY HOLDINGS CORP.

/s/ Skye Fossey-Tomaske

Skye Fossey-Tomaske
Interim Chief Financial Officer

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

MOBIVITY HOLDINGS CORP.

2016 STOCK INCENTIVE PLAN

1. Purpose of Plan.

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

2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.15. "Non-Statutory Stock Option" means a right to purchase Common Stock granted to an Eligible Recipient pursuant to Section 6 of the Plan that does not qualify as an Incentive Stock Option.

2.16. "Option" means an Incentive Stock Option or a Non-Statutory Stock Option.

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

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

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

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

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

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

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

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

3. Plan Administration

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

3.2. Authority of the Committee

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

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

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

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

4. Shares Available for Issuance

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

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

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

5. Participation.

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

6. Options.

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

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

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

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

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

7. Restricted Stock Awards.

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

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

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

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

8. Performance Stock Awards.

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

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

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9. Effect of Termination of Employment or Other Service.

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

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

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

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

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

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

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

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

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

10. Payment of Withholding Taxes.

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

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

11. Change in Control.

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

- (a) the sale, lease, exchange or other transfer, directly or indirectly, of substantially all of the assets of the Company (in one transaction or in a series of related transactions) to any Successor;
- (b) the approval by the stockholders of the Company of any plan or proposal for the liquidation or dissolution of the Company;
- (c) any Successor (as defined in Section 11.2 below), other than a Bona Fide Underwriter (as defined in Section 11.2 below), becomes after the effective date of the Plan the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of (i) 25% or more, but not 50% or more, of the combined voting power of the Company’s outstanding securities ordinarily having the right to vote at elections of directors, unless the transaction resulting in such ownership has been approved in advance by the Continuity Directors (as defined in Section 11.2 below), or (ii) more than 50% of the combined voting power of the Company’s outstanding securities ordinarily having the right to vote at elections of directors (regardless of any approval by the Continuity Directors);

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

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

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

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

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

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

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

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

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

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

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

11.5. Limitation on Change in Control Payments. Notwithstanding anything in Section 11.3 or 11.4 of the Plan to the contrary, if, with respect to a Participant, the acceleration of the exercisability of an Option as provided in Section 11.3 or the payment of cash or shares of Common Stock in exchange for all or part of an Option as provided in Section 11.4 (which acceleration or payment could be deemed a “payment” within the meaning of Section 280G(b)(2) of the Code), together with any other “payments” that such Participant has the right to receive from the Company or any corporation that is a member of an “affiliated group” (as defined in Section 1504(a) of the Code without regard to Section 1504(b) of the Code) of which the Company is a member, would constitute a “parachute payment” (as defined in Section 280G(b)(2) of the Code), then the “payments” to such Participant pursuant to Section 11.3 or 11.4 of the Plan will be reduced to the largest amount as will result in no portion of such “payments” being subject to the excise tax imposed by Section 4999 of the Code; provided, however, that if a Participant is subject to a separate agreement with the Company or a Subsidiary which specifically provides that payments attributable to one or more forms of employee stock incentives or to payments

made in lieu of employee stock incentives will not reduce any other payments under such agreement, even if it would constitute an excess parachute payment, or provides that the Participant will have the discretion to determine which payments will be reduced in order to avoid an excess parachute payment, then the limitations of this Section 11.4 will, to that extent, not apply.

12. Rights of Eligible Recipients and Participants; Transferability.

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

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

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12.3. Restrictions on Transfer.

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

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

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

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

13. Securities Law and Other Restrictions.

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

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14. Plan Amendment, Modification and Termination.

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

15. Effective Date and Duration of the Plan.

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

16. Miscellaneous.

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

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

**Mobivity Holdings Corp.
2022 EQUITY INCENTIVE PLAN**

Restricted Stock Unit Award Agreement

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

Name of Participant: [_____]

Number of Restricted Stock Units: [_____]

Grant Date: [_____]

Vesting Schedule:

Scheduled Vesting Dates

Number of Restricted Stock Units that Vest

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

PARTICIPANT:

Mobivity Holdings Corp.

By:

Title:

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

Terms and Conditions

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

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

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

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

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

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

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

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

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

6. **Settlement of Units.** After any Units vest pursuant to Section 4, the Company shall, as soon as practicable (but no later than the 15th day of the third calendar month following the Vesting Date), cause to be issued and delivered to you (or to your personal representative or your designated beneficiary or estate in the event of your death, as applicable) one Share in payment and settlement of each vested Unit. Delivery of the Shares shall be effected by the issuance of a stock certificate to you, by an appropriate entry in the stock register maintained by the Company’s transfer agent with a notice of issuance provided to you, or by the electronic delivery of the Shares to a brokerage account you designate, and shall be in complete satisfaction and settlement of such vested Units. The Company will pay any original issue or transfer taxes with respect to the issue and transfer of Shares to you pursuant to this Agreement, and all fees and expenses incurred by it in connection therewith. If the Units that vest include a fractional Unit,

the Company shall round the number of vested Units to the nearest whole Unit prior to issuance of Shares as provided herein. Notwithstanding the foregoing, if the ownership or issuance of Shares to you as provided herein is not feasible due to applicable exchange controls, securities or tax laws or other provisions of applicable law, as determined by the Committee in its sole discretion, you (or your permitted transferee) shall receive in lieu of Shares cash in an amount equal to the Fair Market Value (as of the date vesting of the Units occurs) of the Shares otherwise issuable in settlement of the vested Units.

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

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

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

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

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

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

11. Additional Provisions.

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

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

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

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

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

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

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

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

**Mobivity Holdings Corp.
2022 EQUITY INCENTIVE PLAN**

Restricted Stock Unit Award Agreement

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

Name of Participant: [_____]

Number of Restricted Stock Units: [_____]

Grant Date: [_____]

Vesting Schedule:

Scheduled Vesting Dates

Number of Restricted Stock Units that Vest

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

PARTICIPANT:

Mobivity Holdings Corp.

By:

Title:

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

Terms and Conditions

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

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

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

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

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

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

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

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

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

6. **Settlement of Units.** After any Units vest pursuant to Section 4, the Company shall, as soon as practicable (but no later than the 15th day of the third calendar month following the Vesting Date), cause to be issued and delivered to you (or to your personal representative or your designated beneficiary or estate in the event of your death, as applicable) one Share in payment and settlement of each vested Unit. Delivery of the Shares shall be effected by the issuance of a stock certificate to you, by an appropriate entry in the stock register maintained by the Company’s transfer agent with a notice of issuance provided to you, or by the electronic delivery of the Shares to a brokerage account you designate, and shall be subject to the tax withholding provisions of Section 8 and compliance with all applicable legal requirements as provided in Section 17(c) of the Plan, and shall be in complete satisfaction and settlement of such vested Units. The Company will pay any original issue or transfer taxes with respect to the issue and

transfer of Shares to you pursuant to this Agreement, and all fees and expenses incurred by it in connection therewith. If the Units that vest include a fractional Unit, the Company shall round the number of vested Units to the nearest whole Unit prior to issuance of Shares as provided herein. Notwithstanding the foregoing, if the ownership or issuance of Shares to you as provided herein is not feasible due to applicable exchange controls, securities or tax laws or other provisions of applicable law, as determined by the Committee in its sole discretion, you (or your permitted transferee) shall receive in lieu of Shares cash in an amount equal to the Fair Market Value (as of the date vesting of the Units occurs) of the Shares otherwise issuable in settlement of the vested Units, net of any amount required to satisfy withholding tax obligations as provided in Section 8 of this Agreement.

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

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

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

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

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

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

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

11. Additional Provisions.

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

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

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

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

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

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

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

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

Mobivity Holdings Corp

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

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

Name of Participant: **[_____]

No. of Shares Covered: **[_____]

Grant Date: _____, 2022

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

Expiration Date: _____, 20__

Vesting and Exercise Schedule:

Dates

Portion of Shares as to Which
Option Becomes Vested and Exercisable

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

PARTICIPANT:

Mobivity Holdings Corp.

By: _____

Title: _____

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

Option Terms and Conditions

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

2. **Vesting and Exercisability of Option.**

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

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

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

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

3. **Expiration.** This Option will expire and will no longer be exercisable at 5:00 p.m. Central Time on the earliest of:

- (a) The expiration date specified on the cover page of this Agreement;
- (b) Upon your termination of Service for Cause;
- (c) Upon the expiration of any applicable period specified in Section 6(e) of the Plan or Section 2 of this Agreement during which this Option may be exercised after your termination of Service; or
- (d) The date (if any) fixed for termination or cancellation of this Option pursuant to Section 12 of the Plan.

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

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

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

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

Mobivity Holdings Corp

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

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

Name of Participant: **[_____]

No. of Shares Covered: **[_____]

Grant Date: _____, 2022

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

Expiration Date: _____, 20__

Vesting and Exercise Schedule:

Dates

Portion of Shares as to Which
Option Becomes Vested and Exercisable

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

PARTICIPANT:

Mobivity Holdings Corp.

By: _____

Title: _____

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

Option Terms and Conditions

1. **Non-Qualified Stock Option.** This Option is not intended to be an “incentive stock option” within the meaning of Section 422 of the Internal Revenue Code and will be interpreted accordingly.
2. **Vesting and Exercisability of Option.**
 - (a) **Scheduled Vesting.** This Option will vest and become exercisable as to the number of Shares and on the dates specified in the Vesting and Exercise Schedule on the cover page to this Agreement, so long as your Service to the Company does not end. The Vesting and Exercise Schedule is cumulative, meaning that to the extent the Option has not already been exercised and has not expired or been terminated or cancelled, you or the person otherwise entitled to exercise the Option as provided in this Agreement may at any time purchase all or any portion of the Shares subject to the vested portion of the Option.
 - (b) **Accelerated Vesting.** The vesting of outstanding Options will be accelerated or continued under the circumstances provided below:
 - (1) **Change in Control.** [In the event of a Change in Control which occurs within six (6) months following the Grant Date of this Award, 50% of unvested Options shall vest and become exercisable upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider. All unvested Options shall vest and become exercisable in full upon the occurrence of a Change in Control that occurs following six months from your Grant Date while you continue to be a Service Provider.] [All unvested Options shall vest and become exercisable in full upon the occurrence of a Change in Control that occurs while you continue to be a Service Provider.]
 - (2) **Death or Disability.** If your Service terminates prior to the final Scheduled Vesting Date due to your death or Disability, then the Options scheduled to vest as of the next Scheduled Vesting Date shall vest as of such termination date.
3. **Expiration.** This Option will expire and will no longer be exercisable at 5:00 p.m. Central Time on the earliest of:
 - (a) The expiration date specified on the cover page of this Agreement;
 - (b) Upon your termination of Service for Cause;
 - (c) Upon the expiration of any applicable period specified in Section 6(e) of the Plan or Section 2 of this Agreement during which this Option may be exercised after your termination of Service; or
 - (d) The date (if any) fixed for termination or cancellation of this Option pursuant to Section 12 of the Plan.
4. **Service Requirement.** Except as otherwise provided in Section 6(e) of the Plan or Section 2 of this Agreement, this Option may be exercised only while you continue to provide Service to the Company or any Affiliate, and only if you have continuously provided such Service since the Grant Date of this Option.

5. **Exercise of Option.** Subject to Section 4, the vested and exercisable portion of this Option may be exercised in whole or in part at any time during the Option term by delivering a written or electronic notice of exercise to the Company's Chief Financial Officer or to such other party as may be designated by such officer, and by providing for payment of the exercise price of the Shares being acquired and any related withholding taxes. The notice of exercise must be in a form approved by the Company and state the number of Shares to be purchased, the method of payment of the aggregate exercise price and the directions for the delivery of the Shares to be acquired, and must be signed or otherwise authenticated by the person exercising the Option. If you are not the person exercising the Option, the person submitting the notice also must submit appropriate proof of his/her right to exercise the Option.
6. **Payment of Exercise Price.** When you submit your notice of exercise, you must include payment of the exercise price of the Shares being purchased through one or a combination of the following methods:
- (a) Cash (including personal check, cashier's check or money order);
 - (b) By means of a broker-assisted cashless exercise in which you irrevocably instruct your broker to deliver proceeds of a sale of all or a portion of the Shares to be issued pursuant to the exercise to the Company in payment of the exercise price of such Shares; or
 - (c) By delivery to the Company of Shares (by actual delivery or attestation of ownership in a form approved by the Company) already owned by you that are not subject to any security interest and that have an aggregate Fair Market Value on the date of exercise equal to the exercise price of the Shares being purchased; or
 - (d) By authorizing the Company to retain, from the total number of Shares as to which the Option is being exercised, that number of Shares having a Fair Market Value on the date of exercise equal to the exercise price for the total number of Shares as to which the Option is being exercised.

However, if the Committee determines, in any given circumstance, that payment of the exercise price with Shares or by authorizing the Company to retain Shares is undesirable for any reason, you will not be permitted to pay any portion of the exercise price in that manner.

7. **Withholding Taxes.** You may not exercise this Option in whole or in part unless you make arrangements acceptable to the Company for payment of any federal, state, local or foreign withholding taxes that may be due as a result of the exercise of this Option. You hereby authorize the Company (or any Affiliate) to withhold from payroll or other amounts payable to you any sums required to satisfy such withholding tax obligations, and otherwise agree to satisfy such obligations in accordance with the provisions of Section 14 of the Plan. You may satisfy such withholding tax obligations by delivering Shares you already own or by having the Company retain a portion of the Shares being acquired upon exercise of the Option, provided you notify the Company in advance of any exercise of your desire to pay withholding taxes in this manner. Delivery of Shares upon exercise of this Option is subject to the satisfaction of applicable withholding tax obligations.
8. **Delivery of Shares.** As soon as practicable after the Company receives the notice of exercise and payment of the exercise price as provided above, and has determined that all other conditions to exercise, including satisfaction of withholding tax obligations and compliance with applicable laws as provided in Section 17(c) of the Plan, have been satisfied, it shall deliver to the person exercising the Option, in the name of such person, the Shares being purchased, as evidenced by issuance of a stock certificate or certificates, electronic delivery of such Shares to a brokerage account designated by such person, or book-entry registration of such Shares with the Company's transfer agent. The Company shall pay any original issue or transfer taxes with respect to the issue or transfer of the Shares and all fees and expenses incurred by it in connection therewith. All Shares so issued shall be fully paid and nonassessable.
9. **Transfer of Option.** During your lifetime, only you (or your guardian or legal representative in the event of legal incapacity) may exercise this Option except in the case of a transfer described below. You may not assign or transfer this Option except (i) for a transfer upon your death in accordance with your will, by the laws of descent and distribution or pursuant to a beneficiary designation submitted in accordance with Section 6(d) of the Plan, (ii) pursuant to a domestic relations order, or (iii) with the prior written approval of the Company, by gift to a "family member" as the term is defined under General Instruction A(5) to Form S-8 under the Securities Act. The Option held by any such transferee will continue to be subject to the same terms and conditions that were applicable to the Option immediately prior to its transfer and may be exercised by such transferee as and to the extent that the Option has become exercisable and has not terminated in accordance with the provisions of the Plan and this Agreement.

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

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

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 Report on Form 10-K of Mobivity Holdings Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

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

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

Date: April 29, 2024

By: /s/ Thomas B. Akin

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

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

I, Skye Fossey-Tomaske, certify that:

1. I have reviewed this Report on Form 10-K of Mobivity Holdings Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 29, 2024

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