

# **MOBIVITY HOLDINGS CORP.**

## AUDIT COMMITTEE CHARTER

**The Following Charter was adopted by the Board of Directors of Mobivity Holdings Corporation Effective as of December 1, 2011**

### **I. Purpose.**

The purpose of the Audit Committee (the “Committee”) of the Board of Directors (the “Board”) of Mobivity Holdings Corporation (the “Company”) is to provide assistance to the directors in fulfilling their oversight responsibility to the shareholders, potential shareholders, the investment community and others relating to the integrity of the Company’s financial statements; the financial reporting process; the systems of internal accounting and financial controls; the performance of the Company’s independent auditors; the independent auditor’s qualifications and independence; and the Company’s compliance with ethics policies and legal and regulatory requirements.

The Committee is charged with ensuring that free and open communication is maintained among the committee, independent auditors, and the management of the Company. In its oversight role, the Committee is empowered to investigate any matter brought to its attention with full access to all books, records, facilities, and personnel of the Company and the authority to engage and determine funding for independent counsel and other advisers as it determines necessary to carry out its duties.

The Committee shall have the authority to undertake the specific duties and responsibilities described below and the authority to undertake such other duties as are assigned by law, the Company’s articles of incorporation or bylaws or by the Board.

### **II. Structure.**

- A. **Membership** — The Committee shall be comprised of at least one director as determined by the Board, none of whom shall be an employee of the Company. If the Committee shall be comprised of two or more directors, then at least one of whom shall (1) qualify as independent of management and the Company in accordance with the rules under the NASDAQ listing requirements (Rule 5605(a)(2) and the Security and Exchange Commission definitions of independence, (2) not accept any consulting, advisory or other compensatory fee from the Company other than the compensation

received as a director for Board or Committee service, (3) not be an affiliated person of the company, and (4) not own or control more than 20% of the voting securities.

All Committee members shall be financially literate, and be able to read and understand financial statements, at the time that they are appointed to the Committee.

The Committee shall have at least one member who meets the Securities and Exchange Commission and NASDAQ stock market definitions of a “financial expert”.

The members of the Committee shall be appointed by the Board. Unless a Chairperson of the Committee is designated by the Board, the Committee may designate a Chairperson by a majority vote of the full Committee membership.

B. **Rules of Procedure** — The Committee may determine its own rules of procedure with respect to the place, time and frequency of its meetings, providing that the Committee meet a minimum of four times a year to review quarterly filings with the Securities and Exchange Commission. The Committee will also meet at the call of its Chairman as appropriate to accomplish the purposes of the Committee. Notice of meetings of the Committee shall be given as provided in the bylaws of the Company.

C. **Attendance at Meetings** — When deemed appropriate by the Committee, meetings of the Committee may be attended by the Company’s tax and accounting departments and by such other members of the management of the Company as the Committee deems appropriate. The Chairman of the Board, the Chief Executive Officer and the Chief Financial Officer may attend any meeting of the Committee, except for portions of the meetings where his, her or their presence would be inappropriate, as determined by the Chairperson. The Committee may also exclude from its meetings any persons it deems appropriate in order to carry out its responsibilities.

In discharging its responsibilities, the Committee shall have sole authority to, as it deems appropriate, select, retain and/or replace, as needed, outside legal counsel or other outside consultants to provide independent advice to the Committee. In that connection, in the event the Committee retains a consultant, the Committee shall have the sole authority to approve such consultant’s fees, to be paid by the Company, and other retention terms.

D. **Quorum** — A majority of the members of the Committee will constitute a quorum for the transaction of business. The action of a majority of the Committee members present at any meeting in which a quorum is present shall be the action of the Committee.

E. **Minutes and Reports** — The Committee shall maintain written minutes or other records of its meetings and activities. Minutes of each meeting of the Committee shall be distributed to each member of the Committee and other members of the Board. The Secretary of the Company shall retain the original signed minutes for filing with the corporate records of the Company.

The Chairperson shall report to the Board following meetings of the Committee and as otherwise requested by the Chairman of the Board.

### III. Specified Duties.

The primary responsibility of the Committee is to oversee the Company's financial reporting process on behalf of the Board and report the results of their activities to the Board. This includes assessing the overall "tone" relating to financial reporting, the internal control structure and corporate ethics.

The Committee shall not have the duty to plan or conduct audits or to determine that the Company's financial statements are complete and accurate and are in accordance with United States generally accepted accounting principles. The Company's management is responsible for the preparation, presentation, and integrity of the Company's financial statements and for the appropriateness of the accounting principles and reporting policies that are used by the Company. The independent auditors are responsible for auditing the Company's financial statements and for reviewing the Company's unaudited interim financial statements. The Committee is to ensure that the independent auditors understand that they are ultimately accountable to the Board and the Committee, and the Committee is responsible to oversee the work of the independent auditors.

Each member of the Committee shall be entitled to rely on (i) the integrity of those persons and organizations within and outside the Company from which it receives information and (ii) the accuracy of the financial and other information provided to the Committee by such persons and organizations absent actual knowledge to the contrary (which shall be promptly reported to the Company's Board). In addition, the evaluation of the Company's financial statements by the Committee is not of the same scope as, and does not involve the extent of details as, audits performed by the independent auditor, nor does the Committee's evaluation substitute for the responsibilities of the Company's management for preparing, or the independent auditor for auditing, the financial statements.

A. **Duties** — To fulfill its responsibilities, the Committee shall be responsible for:

- (1) Serving as channel of communication between the independent auditors and the Board.
- (2) With respect to the independent auditors:
  - i. Reviewing annually the qualifications of the independent auditors including their internal quality control procedures, peer review report and any other information that the Committee may deem appropriate.
  - ii. Annually nominating the independent auditors in the proxy statement.
  - iii. Ensuring rotation of lead and review partners of the independent auditors every five years.
  - iv. Determining the compensation paid to the independent auditors.

- v. Pre-approving of all permissible non-audit services (defined as any professional services provided to an issuer by an independent auditor other than those provided to an issuer in connection with an audit or a review of the financial statements or comfort letters in connection with a securities offering) provided by the independent auditors (may be delegated to a member of the Committee, however any pre-approvals must be presented to the Committee at the next meeting).
  - vi. Ensuring that the independent auditors do not engage in specific non-audit services (examples of which are bookkeeping services, internal audit services, financial system implementation and design, appraisal or valuation services, actuarial services, management functions, and investment banking services) proscribed by law or regulation.
  - vii. Ensuring that the independent auditors file a formal written statement delineating all relationships between the auditor and the Company, consistent with Independence Standards Board Standard No. 1 and address any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking or recommending that the full Board take appropriate action to oversee the independence of the independent auditor.
  - viii. Discussing with the independent auditors the overall scope and plans for the annual audit and quarterly review procedures.
  - ix. Reviewing with management and the independent auditors, after each annual audit, the audit report, the management letter relating to the audit report, the internal control procedures of the Company.
  - x. Providing time for the independent auditors to meet privately with the Committee to review any audit problems or difficulties, or any disagreements with management of the Company, an accounting adjustments that were noted or proposed by the auditors but not recorded, and any communications that the auditors may have had with their National office.
  - xi. Obtaining assurance from the independent auditor that Section 10A of the Securities Exchange Act of 1934 has not been implicated.
- (3) Reviewing and approving all related party transactions.
- (4) Establishing hiring policies for employees or former employees of the independent auditors that meet the Securities and Exchange Commission and applicable listing requirement standards.
- (5) Discussing with Company management and the independent auditors the adequacy and effectiveness of the accounting and financial controls.
- (6) Gaining an understanding of the major accounting principles and significant reporting judgements used in preparation of the financial statements, including any changes to major accounting principles.
- (7) Reviewing any analyses prepared by management or the independent auditor setting forth significant financial reporting issues and judgements made in connection with the preparation of the financial statements, including analyses of the effects of using alternative methods under United States generally accepted accounting principles.

- (8) Reviewing the accounting, legal, and regulatory matters that may have a material effect on the Company's financial statements and regulatory compliance policies and programs.
- (9) Reviewing the interim financial statements with the Company Chief Executive Officer, Chief Financial Officer, and other appropriate members of management and the independent auditor prior to filing the Company Quarterly Report on Form 10-Q, and shall review with the Chief Executive Officer and Chief Financial Officer the content of any required certification related to the filing of the Form 10-Q. Also the Committee shall discuss the results of the quarterly review and any other matters required to be communicated to the Committee by the undefended auditors under generally accepted auditing standards.
- (10) Reviewing the year-end financial statements with the Company Chief Executive Officer, Chief Financial Officer, and other appropriate members of management and the independent auditor prior to filing the Company Annual Report on Form 10-K, and shall review with the Chief Executive Officer and Chief Financial Officer the content of any required certification related to the filing of the Form 10-K, including their judgement about the quality, not just the acceptability, of accounting principles, the reasonableness of significant judgements, and the clarity of the disclosures in the financial statements. Also the Committee shall discuss the results of the annual audit and any other matters required to be communicated to the Committee by the independent auditors under generally accepted auditing standards.
- (11) Preparing the "Audit Committee Report" required by the rules of the Securities and Exchange Commissions for inclusion in the Company's annual proxy statement.
- (12) Reviewing and discussing the quarterly earnings press release as well as financial information and earning guidance provided to analysts and rating agencies.
- (13) Establishing and maintaining a "hotline" for the receipt, retention, and treatment of complaints received by the Company regarding accounting, internal controls, or auditing matters; and ensure that such complaints are able to be submitted anonymously and confidentially.
- (14) Remaining completely accessible to the Chief Executive Officer,

## **IV. Resolutions.**

All proposed resolutions shall be voted upon at the meetings or adopted by unanimous written consent.

## **V. Evaluation of Performance of the Committee**

The Committee shall evaluate its own performance on an annual basis, including its compliance with this charter, and provide any written material with respect to such evaluation to the Board, including any recommendations for changes in procedures or

policies governing the Committee. The Committee shall conduct such evaluation and review in such manner as it deems appropriate.

The Committee shall review and reassess the Committee's charter at least annually and submit the charter for annual approval of the Board.

## **VI. Disclosure of Charter.**

This Charter will be made available to any stockholder who otherwise requests a copy. The Company's Annual Report to Stockholders shall state the foregoing or include the charter in the proxy statement.

## **VII. Additional Authority.**

The Committee shall have the authority, at its discretion, to call upon the Office of the Chairman to provide internal assistance from officers and other employees of the Company and its subsidiaries as may be appropriate to fulfill its duties and responsibilities.

*December 1, 2011*