

Memorandum of Understanding (MOU)

MEMORANDUM OF UNDERSTANDING

Between

Skinny Labs, Inc. DBA Spin

and

City of Alexandria, Virginia

This Memorandum of Understanding (“MOU”) is entered into by and between the City of Alexandria, Virginia (the “City”) and Skinny Labs, Inc. DBA Spin (“Operator”). Throughout this MOU, Operator and City may each be referred to as a “Party,” and may be referred to jointly as the “Parties.” This MOU governs the terms, responsibilities, and performance measures between Operator and the City regarding Operator’s provision of shared mobility devices (SMDs) on property within City as part of a City-wide pilot program (the “Demonstration Project”).

RECITALS

WHEREAS, the purpose of this MOU is to permit Operator to operate under the Demonstration Project and ensure that Operator’s SMDs are used and parked appropriately without impeding pedestrian access, and/or obstructing access to fire hydrants and valves, street furniture, bus stops, driveways, crosswalks, intersections, traffic operations, outside dining or retail, building access, or any other public use of right-of-way in City of Alexandria; and

WHEREAS, the City owns, controls, and maintains the public space on which Operator shall park its SMDs; and

WHEREAS, Virginia Code §15.2-2001 enables the City to regulate its right-of-way; and

WHEREAS, Virginia Code §46.2-1315 enables the City to establish a Demonstration Project and require persons offering SMDs for hire to be permitted; and

WHEREAS, SMDs shall defined as “micromobility devices” as defined in Section 10-1-1 of the City Code; and

WHEREAS, the City’s Department of Transportation and Environmental Services (“T&ES”) and the Alexandria Police Department shall be the primary City entities that shall enforce the conditions set forth in this MOU; and

WHEREAS, Operator’s SMDs are designed such that users can park them in the public space, making the Operator’s devices available to other users; and

WHEREAS, Operator desires to operate under the Demonstration Project in the City of Alexandria; and

WHEREAS, the City desires to facilitate the Demonstration Project to assess the viability of SMD operations within the City and to understand the parameters that will allow SMDs to operate effectively and to avoid any public nuisance in the City of Alexandria.

NOW, THEREFORE, based upon the above recitals, Operator hereby agrees to the terms, responsibilities, and performance measures of this MOU as follows:

Article I. Responsibilities of City of Alexandria

The City, by and through T&ES, shall, with good faith and in an effort to achieve the City's policy goals, cooperate and communicate with Operator and the public to work towards a successful, safe, and sustainable regulatory environment for SMDs. All obligations of the City under this MOU shall be subject to and contingent upon the appropriation of funds.

- A. The City shall notify enforcement agencies not to ticket or impound Operator's SMDs if they are parked according to performance measures of this MOU, the stipulations of the required Permit, and all applicable laws.
- B. The City may, as needed, establish and update parking requirements applicable to SMDs including identification through signage, striping, or other means of areas that should serve as preferred parking locations for these devices.
- C. The City shall provide to Operator a City point of contact (POC) for the Demonstration Project.

Article II. Responsibilities of Operator

Performance Requirements: Operator shall, in good faith, through its City POC, cooperate and communicate with the City and the public to work towards a successful, safe, and sustainable Demonstration Project, conforming to all Federal, state and local laws, permit requirements, and the performance responsibilities outlined below:

- 1. Authorization to Operate
 - a. Prior to operating in the City right-of-way, Operator shall:
 - 1) execute a copy of this MOU;
 - 2) complete and submit the required Permit Application to City of Alexandria;
 - 3) provide an operations plan to the City POC that outlines general operations including: i) deployment methods; ii) removal or relocation procedures for emergencies, special events, or other situations affecting the normal operation of the right-of-way; iii) maintenance and inspection schedules; iv) origin of SMDs and their components' manufacturing; v) disposal and recycle methods for SMDs and their components; vi) information on the life span of each model of SMD deployed by the Operator; vii) training of staff on how to manage operations; and viii) frequency, methodology, and mechanism for charging of SMDs; and
 - 4) pay the required fee of \$10,000 plus \$75 per device to cover the anticipated costs to City of administering the Demonstration Project.

- b. The Operator shall provide a method for the City to perform necessary testing and relocation of SMDs without incurring fees during the Demonstration Project.
- c. Operators may operate multiple types of SMDs under the same MOU and Permit. Operators must pay the device fee for each SMD but are not required to pay an additional permit fee or surety bond.

2. Service Management and City Communication

- a. Upon executing this MOU, and as part of its permit application, Operator shall provide to the City a local General Manager who shall serve as a point of contact (POC). The POC shall have responsibility for, and control over, the services provided in this MOU for the duration of the Demonstration Project. If Operator changes their POC, they must immediately notify City of such change.
- b. Operator's representatives shall schedule a meeting with the City's POC within three days (or as soon thereafter as may be reasonably practicable) of any request by the City to review service status and issues. In addition to *ad hoc* meetings, Operator shall meet with the City POC at least one week before launch, and in person or by phone monthly thereafter throughout the duration of the Demonstration Project.
- c. Upon the request of the City POC due to emergency, severe weather, construction, parade, public gathering, street cleaning, or other situation affecting the normal operation of the right-of-way including sidewalks and trails, Operator shall collect and secure all of, or a portion of, Operator's owned or controlled SMDs to a location outside of the public right-of-way or to a location that does not otherwise impede City's access and response to the situation for the duration of the situation.
- d. In the case of a critical issue or emergency situation designated by the City POC, Operator shall be available within the Response Time to respond to emergency needs and to coordinate with the City. City has the right to take appropriate actions to respond to an emergency if the situation poses an imminent risk to public health and safety or property damage.

For the purposes of this MOU, the "Response Time" shall mean, based on the time of report:

- 1) When reported between 6 AM and 8 AM – 2 hours from the time of report
- 2) When reported between 8 AM and 9 PM – 1 hour from the time of report
- 3) When reported between 9 PM and 11 PM – 2 hours from the time of report
- 4) When reported between 11 PM and 6 AM – Prior to 8 AM

- e. The Operator's POC shall respond within five business days regarding non-emergency issues or questions raised by City in meetings, through telephone inquiries, or other correspondence.
- f. Operator shall be solely responsible for providing information to its customers on proper SMD parking and safe riding prior to the launch of the Demonstration Project, and throughout its duration. At a minimum, this should include, but is not limited to:
 - 1) Messaging in the application on proper parking and areas that SMDs are not permitted to be parked to be displayed when a user creates an account and when unlocking a device or ending a trip;
 - 2) Messaging in the application about areas where riding an SMD is prohibited, including sidewalks and no-ride areas as designated by signage;
 - 3) Messaging in the application about safe riding;
 - 4) Messaging on the device about proper parking and locations;
 - 5) Designation in the application on the map of any public areas where the City has determined parking or riding is not allowed; and
 - 6) Designation in the application on the map of all locations of parking corrals.
- g. The Operator shall submit a copy of their Terms and Conditions or any other user agreement that they may have with their customers.
- h. Operator shall report to the City POC within 24 hours, any issues which could affect public safety, including but not limited to reports of criminal activity involving SMDs, reports on any crash with a fatality or hospitalized injury involving Permit Holder's SMDs, any contact with the Alexandria Police Department, any contact with the Fire and EMS Department, or defects in any equipment including but not limited to fires, tampering, damaged/leaking batteries, electrical issues, and charging issues.
- i. The Operator shall notify the City of any changes to user fees at least three days prior to the change taking effect.

3. Safety

- a. Bicycles shall meet the federal standards under the Code of Federal Regulations (CFR) Title 16, Chapter II, Subchapter C, Part 1512 – Requirements for Bicycles.¹
- b. Bicycles and Electric Scooters shall meet the Code of Virginia Section 46.2-1015 requiring both headlight and taillight, or reflectors as applicable.²
- c. Any electric Bicycles used in systems issued a permit under this Demonstration Project shall meet the Consumer Product Safety Commission definition of *low-speed electric bicycle*; and shall be subject to the same requirements as ordinary bicycles.³ This means that electric bicycles shall have fully operable pedals, an electric motor of less than 750 watts, and a top motor-powered speed of less than 20 miles per hour when operated by a rider weighing 170 pounds. Additionally, the City reserves the right to terminate any permit issued under this Demonstration Project if the battery or motor on an electric bicycle is determined by the City to be unsafe for public use.
- d. Any electric scooters used in systems issued a permit under this Demonstration Project shall meet section 46.2-100 of the Code of Virginia definition of *motorized scooter* in that it is powered by an electric motor.⁴ The City reserves the right to terminate any permit issued under this Demonstration Project if the battery or motor on an electric scooter is determined by the City to be unsafe for public use. In addition, electric scooters deployed under this MOU must be configured to be limited to a maximum speed of 15 mph within the City.
- e. All SMDs shall have standing lights that flash or illuminate for at least 90 seconds after the SMD comes to a complete stop.
- f. All SMD shall have brakes and a bell.
- g. All SMDs should provide speedometers.
- h. Operator shall provide visible safety language on bicycles and electric scooters. Additionally, SMDs should use Braille, embossed lettering, QR codes, or some other method to provide information about the device and a phone number to call for persons with disabilities.
- i. Operator shall not deploy any device or device component before receiving approval by the City POC. To obtain approval, Operator shall

¹ <https://www.gpo.gov/fdsys/pkg/CFR-1998-title16-vol2/xml/CFR-1998-title16-vol2-part1512.xml>

² <https://law.lis.virginia.gov/vacode/title46.2/chapter8/section46.2-1015>

³ <https://www.gpo.gov/fdsys/pkg/FR-2003-02-12/pdf/03-3423.pdf>

⁴ <https://law.lis.virginia.gov/vacode/title46.2/chapter8/section46.2-100>

furnish design specifications, any applicable certifications of compliance with safety standards, and illustrative images of the device or device components. Upon City request, Operator shall provide an opportunity for City POC to physically inspect and test-ride the same model proposed for deployment.

- j. Operator shall ensure each SMD deployed and used is fully operable, free of defects, conforms to relevant safety standards, and is well-maintained and clean.
- k. If an Operator SMD is reported in need of maintenance and/or cleaning in violation of the terms and performance measures in this MOU and any laws, Operator shall immediately prevent further use of the device, and within one day of notification, shall remove it from City right-of-way.
- l. If an Operator SMD is reported in a place that is irretrievable by the general public, such as a body of water or restricted or difficult to access areas, the Operator shall retrieve the device within two days of notification or notify the City POC of intended time of removal.
- m. Operator shall inform its customers of locations where SMDs are prohibited from operating on sidewalks as specified in [Section 10-7-4](#) of the City Code.⁵

4. Operations

- a. Operator is required to apply for a permit for a minimum of 75 devices and may apply for a permit for a maximum of 200 devices per permit per company per type of device during Demonstration Program without written permission of the City Manager. If an Operator deploys multiple types of SMDs, the maximum and minimum amounts are per type of device.
- b. An Operator may request additional devices be allocated at the discretion of the City Manager based on criteria including:
 - 1) Usage that demonstrates the maximum of 200 devices are being consistently used;
 - 2) Deployment near public transportation sources;
 - 3) Efforts to support equitable distribution of access to devices throughout the City; and
 - 4) Special events.

⁵

https://library.municode.com/va/alexandria/codes/code_of_ordinances?nodeId=PTIITHCOGEOR_TIT10MOVETR_CH7BI_S10-7-4NADBIRODURI

In the event additional devices are allocated to the Operator, the additional device fee may be assessed prior to authorization to deploy the additional devices.

- c. The permit may be revoked if the Operator has not deployed devices within 90 days of being issued a permit.
- d. Operator is responsible for maintaining their fleet size deployed within City of Alexandria at or below the maximum permitted fleet size. There is no minimum fleet size required to be deployed.
- e. Operator shall have a staffed operations center in the Washington, D.C. region.
- f. Operator shall have a customer service phone number for reporting safety concerns, complaints, and questions that is live 24 hours a day. This phone number and its website shall be clearly visibly posted on every SMD that is in service within the City of Alexandria.
- g. Operator shall provide their preferred contact information for SMD parking issues to the City of Alexandria Police Department at 703.746.4444.
- h. Operator shall affix its logo and unique identifying number for the device to each SMD in the City so that it is clearly visible and shall not allow other logos or advertisements to appear on any of its SMDs.
- i. Operator shall regularly monitor the deployment and dispersion of its SMDs to maintain service throughout City of Alexandria. In an effort to ensure access to these devices is equitably distributed throughout the City:
 - 1) a minimum of 15% of all deployed devices must be deployed west of Quaker Lane and east of I-395;
 - 2) a minimum of 10% of all deployed devices must be deployed west of I-395; and
 - 3) a minimum of 5% of all deployed devices must be deployed in Arlandria, which is generally defined as the area bounded by Commonwealth Avenue, Four Mile Run, and West Glebe Road.

These requirements may be increased by the City Manager based on usage at any time during the Demonstration Project and Operator will be required to comply within five days of notification by the City POC.

- j. Operator must notify SMD users of City and state regulations applicable to operating SMDs in the City. These notifications must at minimum be received through the mobile application and website for the service.

Where possible and appropriate, this information should be posted on the device.

- k. Operator shall promptly respond directly to City of Alexandria residents and all users reporting problems, issues, or requesting information regarding services.
- l. If no-ride areas are established by the City, Operator shall geofence these areas and limit the maximum speed to three mph within five days of being notified by the City POC.
- m. Operator shall develop and implement technology that prevents riding in prohibited areas by limiting the speeds in no-ride areas.
- n. Operator should develop and offer a cash-based payment program and low-income discount program to expand access to these devices to more people.
- o. Operator should participate in City engagement and outreach efforts related to this Demonstration Project.

5. Parking

- a. Operator shall ensure that SMDs are parked in accordance with the terms and performance measures outlined in this MOU, permit requirements, and in compliance with all state and local laws.
- b. Operator shall work to ensure that SMDs are parked in a manner that does not impede pedestrian access; does not obstruct access to fire hydrants and valves, street furniture, crosswalks, driveways or private property; does not damage landscaping, street trees or other aesthetic features; and does not interfere with traffic or bus stop operations or operation and use of Capital Bikeshare stations. Operator shall conduct outreach and education to its users on proper parking practices and shall continue developing and implementing technical solutions to ensure good parking behavior.
- c. The Operator shall inform its customers of the requirements of Section 10-7-10 of the Alexandria City Code and instruct customers to park SMDs only in a manner that does not unreasonably impede pedestrian or vehicular traffic on a public roadway, shared-use path or sidewalk or at areas that may be designated by the City for SMD parking,⁶ in order to minimize obstruction to pedestrian and vehicular traffic.

- 1) SMDs shall not be parked with any part of the device extending over the face of curb.

⁶https://library.municode.com/va/alexandria/codes/code_of_ordinances?nodeId=PTIITHCOGEOR_TIT10MOVETR_CH7BI_S10-7-10PA

2) SMDs shall be upright when parked.

- d. Any SMD parked on private, federal, or military property is subject to the requirements of that property owner and may be towed at any time at Operator's expense.
- e. Within two hours of reporting by the City or others, Operator shall remove SMDs parked in violation of the parking requirements outlined above, or otherwise in conflict with applicable laws and regulations, or in violation with other SMD or bicycle parking standards to be developed and periodically updated by the City.
- f. SMDs are not permitted to park in one location in the public right-of-way longer than seven consecutive days without moving.
- g. Failure to adhere to these parking performance measures may result in the City removing the SMD and storing it in a City facility. Operator shall be required to pick up SMDs from such a facility and shall pay all costs associated with removal and storage of the devices, in addition to a \$150 fee or other penalties as appropriate under the law. Subject to applicable laws and regulations, the City shall consider Operator's SMDs abandoned and dispose of them as the City deems fit in the event of that Operator fails to retrieve the device within 30 days of being notified of the removal and storage.
- h. Operator shall deploy devices in a corral if one exists on the block face of a staging location, assuming there is adequate room for additional devices.
- i. Operator shall add additional no-park zones and corrals to their application to be visible on the map when a user starts or ends a trip within five days of being notified by the City POC of the additions.
- j. Operator should develop incentives for users to park in corrals if available and incentives or fines to encourage proper parking.

6. Data

- a. Without prejudice to Operator's rights to and interest in its commercially privileged and sensitive information, Operator shall provide to the City POC the following data, unless sufficiently provided by other data format including GBFS or MDS (as determined by the City POC) in a Monthly Report by the 15th of each month for the previous month's activity:
 - i. Total active customers riding in the City by rider zip code
 - ii. Trips starting or trips ending in the City during the month, and trips starting or trips ending in the City since launch (raw trip data) (trips starting and ending in different jurisdictions should be noted)

- iii. Average trip duration in minutes (if this is calculable from provided raw trip data, there is no need to provide separately)
 - iv. Average and total distance of trips (if this is calculable from provided raw trip data, there is no need to provide separately)
 - v. Daily SMDs in service in the City
 - vi. A map of trip route data for all trips starting, ending, or passing through Alexandria (especially to understand the equity implications of coverage of these services), by month
 - vii. Crashes – giving time, date, precise location, and number of parties impacted
 - viii. Injuries – giving time, date, precise location, and cause (if known)
 - ix. Number and precise location of SMDs that were towed after seven (7) consecutive days in one location
 - x. Number of decommissioned devices, number of batteries that are disposed of or recycled, and average lifespan of devices (number of days operated) using a method approved by the City for each Operator’s devices for the previous month.
 - xi. Complaints received – giving the reason with date and location, if available/appropriate
 - 1. Incorrectly parked SMD reports – giving time, date, and precise location
 - A. Impeding pedestrian and/or access provided pursuant to the Americans with Disabilities Act
 - B. On private property
 - 2. Unsafe riding reports
 - A. Speeding
 - B. Violating traffic laws (including, but not limited to failure to stop at stop sign or light, more than one person riding on a device,)
 - 3. Broken or unusable devices
 - 4. Other complaints or compliments
 - xii. Other feedback received – by date, time, and precise location, if applicable
- b. If Operator collects de-identified demographic data from their customers, including age cohort, gender, and general trip purpose, such data shall be provided by Operator to the City, upon request.
- c. Operator shall provide a publicly accessible application program interface, clearly posted on the company’s website that shows, at minimum, the current location of any SMDs available for rental at all times.
- d. A smart phone-based application used to rent SMDs does not qualify as a publicly accessible application program interface.
- e. Operator shall use the General Bikeshare Feed Specification (GBFS) as documented at <https://github.com/NABSA/gbfs/> for its devices. Operator shall inform the City of the location of the gbfs.json file on the Internet.

The gbfs.json file contains the necessary information to find other files related to the GBFS data. If a token or authentication is required to view that file, the location to apply for the token must also be submitted to the City.

- f. The City requires that Operator publish in a location accessible by City staff six of the GBFS v1.1 draft files. Below are the required files that must be published:

gbfs.json	Auto-discovery file that links to all of the other files published by the system. <i>This file is optional in the GBFS, but required by the City.</i>
system_information.json	Describes the system including system operator, system location, year implemented, URLs, contact info, and time zone.
station_information.json	Mostly static list of all stations, their capacities and locations. <i>(Note: This file may contain no information in a dockless system but is required by the City in order to maintain compliance with the GBFS standard.)</i>
free_bike_status.json	Describes bicycles that are available in non-station-based systems. <i>This file is optional in the GBFS, but required by the City.</i>
geofencing_zone_information.json	Mostly static list of all geofencing zones, their capacities, locations and areas. <i>This file is optional in the GBFS, but required by the City.</i>
geofencing_zone_status.json	Defines geofencing zones available in the system and their link to physical stations if any. <i>This file is optional in the GBFS, but required by the City.</i> Elements within the num_bikes_available_type array are required by the City and should be set to 0 if not applicable.
system_regions.json	Describes the regions the system is broken up into. <i>This file is optional in the GBFS, but required by the City.</i>
vehicle_type.json	The field “vehicle_type” shall be added to the public API to describe the vehicle type. This may be either “bicycle,” “e-bike,” “scooter,” or another type of permitted vehicle that must be specified.

- g. Operator shall also use the Mobility Data Specification (MDS) as documented at <https://github.com/CityOfLosAngeles/mobility-data-specification> for its devices. Operator shall share required information

with a third-party data aggregator that is under contract with the City. If a token or authentication is required to view that file, the location to apply for the token must also be submitted to the City.

- h. If a new data specification, format, or reporting method is developed during the Demonstration Project and i) adopted for use by the Operator, and ii) the City has identified a need for this data, Operator shall provide the requested data upon request by the City.
- i. Upon request by the City, Operator shall allow the City to share GBFS, aggregated MDS, and other aggregated data available to the City with other jurisdictions. If required by the Operator, a Data Sharing Agreement must be in place between the Operator and the other jurisdiction before data can be shared. Additionally, upon approval from other jurisdictions, Operator shall share or allow the other jurisdiction to share similar data from those jurisdictions with the City. If required by the Operator, a Data Sharing Agreement must be in place between the Operator and the City before data can be shared with the City.

7. Penalties and Fines

Operator shall be financially responsible for any/all penalties, fines, and other costs to City of Alexandria as a result of illegally parked SMDs, including but not limited to, parking tickets or other enforcement actions against Operator.

8. Surety Bond

Operator shall maintain a \$10,000 surety bond which the City may use to pay costs related to removing and storing devices that do not comply with these permit requirements, if such costs are not born by Operator.

9. Advertising

Operator shall not advertise or publish City's participation in or endorsement of the Operator on its SMDs or promotional material without the written consent of City of Alexandria.

Operator shall not utilize its SMDs for the sale or display of third-party advertising.

10. Remedies

If Operator violates its obligations under this MOU and such violation is not corrected within seven days following written notice by the City, the City may immediately terminate Operator's participation under the Demonstration Project, this MOU, and/or suspend or revoke Operator's permit.

11. No Right, Title or Interest

Operator expressly acknowledges that this MOU does not constitute any conveyance, title, or interest in real property, in whole or in part.

Article III. Duration

1. This MOU shall become effective upon the City's signature and shall remain in effect until December 31, 2020. This MOU, Demonstration Project, and relevant permits may be extended past this date by the City Manager if necessary to accommodate a process for a potential permanent SMD licensing and regulation process or program.
2. The City reserves the right to present amendments to the MOU during the term of this MOU. This MOU may be modified only by mutual consent of authorized representatives from both parties, in writing.
3. Upon expiration of the Permit, Operator shall remove all of its SMDs from the City right-of-way.

Article IV. Service Area

This MOU, in conjunction with a completed and approved Permit Application, authorizes Operator to operate within any portion of City of Alexandria in compliance with the terms of this MOU and all relevant city, state, and federal laws.

Article V. Insurance and Indemnification

1. Insurance.

Before providing any SMDs associated with this MOU or any extension of this MOU, Operator must provide to the City POC a Certificate of Insurance indicating that Operator has in force at a minimum the coverage below. Operator must maintain this coverage until the completion of the MOU or as otherwise stated in the MOU and/or permit documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractor, and products liability. The general aggregate limit must apply to this MOU. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Additional Insured – The City and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.

- e. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the MOU Term, Operator must notify the City Point of Contact immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this MOU. Not having the required insurance throughout the MOU Term is grounds for termination of this MOU.
 - f. Claims-Made Coverage - Any “claims made” policy must remain in force, or Operator must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
 - g. Contract Identification - All insurance certificates must state this MOU's number and/or title. Operator must disclose to the City the amount of any deductible or self-insurance component of any of the required policies. With the City's approval, Operator may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that Operator can demonstrate sufficient financial capacity. To do so, Operator must provide the City with its most recent actuarial report and a copy of its self-insurance resolution. The City may request additional information to determine if Operator has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the City. The City's acceptance or approval of any insurance will not relieve Operator from any liability or obligation imposed by this MOU or permit documents. Operator is responsible for the for all materials, tools, equipment, appliances and property used in connection with this MOU. Operator assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with any activities associated with this MOU and for all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under this MOU or in connection in any way whatsoever with the activities performed pursuant to this MOU. Operator's insurance shall be the primary non-contributory insurance for any work performed or activities or services provided for under this MOU.
 - h. Operator is as fully responsible to the City for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom Operator employs directly.
2. Indemnification.
Operator covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify The City and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the “City Indemnitees”) from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Operator's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the MOU, except to

the extent such claims are based on or result from City Indemnitees' negligence or willful misconduct. The City agrees to notify Operator promptly following receipt or notice of any indemnifiable claim; Operator shall have sole control of any defense of such claim; and the City shall not consent to the entry of a judgment or enter into any settlement related to such claim without the prior written consent of Operator. This duty to save, defend, hold harmless and indemnify shall survive the termination of this MOU. If Operator fails or refuses to fulfill its obligations contained in this section, the Operator must reimburse the City for any and all resulting payments and expenses, including reasonable attorneys' fees. Operator must pay such expenses upon demand by the City.

Article VI. FOIA

The Operator acknowledges that documents submitted to the City by Operator—both during the term of this MOU and/or as part of any proposal, quote, or presentation made by Operator to the City—constitute public records that may be subject to public disclosure and/or production under the Virginia Freedom of Information Act (VFOIA). Any information contained in any document or record, which Operator considers confidential or of a proprietary nature must be noted at the time of submission. If the City receives a public disclosure request, whether informally or formally, from any person or entity, for such information or documents, the City agrees to immediately notify Operator. The City also agrees to work with Operator to determine whether any information and/or documents may be protected from disclosure or production under VFOIA; and will act reasonably in this regard. Nothing contained in this MOU shall affect the City's rights and obligations with respect to disclosure or production of records in accordance with VFOIA or other applicable law.

Article VII. Termination

Either party may terminate this MOU (and in doing so, the associated Permit) with 10-days' notice to the other party. Upon termination, Operator shall remove all of the SMDs under its ownership or control within five (5) business days of the date of termination and shall cease all operations within the service area once the devices have been removed. City of Alexandria shall consider any of Operator's SMDs not removed as abandoned property and shall dispose of them as it deems fit.

December 20, 2019

IN WITNESS WHEREOF, the Parties hereto have caused this MEMORANDUM OF UNDERSTANDING to be executed as of the date first above written by their duly authorized representatives.


City of Alexandria, Virginia

Title: Emily Baker, Deputy City Manager

Signature: 

Skinny Labs, Inc. DBA Spin

Title: Director of Government Partnerships, East Coast

Signature: 
William D. Burns

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY