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Uber submits this document as input to the Department of Transport (DOT) process for drafting amendments to the National Land Transport Act of 2009 (NLTA).

This document sets out proposed amendments that would update the NLTA to (i) recognize any public transportation service provider utilizing the type of technology services available on platforms like Uber as a “Transport Network Operator” (TNO); (ii) establish a new category of “TNO operating licence” that would be issued by the provinces (or the National Public Transport Regulator or municipality, as the case may be) to TNOs and entitle a TNO to operate nationwide; and (iii) ensure that prospective TNOs face low barriers to entry and that the new TNO operating licence category therefore serves to increase the number of economic opportunities available in the formal transportation sector.

Such amendments would allow these operators to continue to deliver and build upon the unique safety, economic, and mobility benefits that recent technological innovation is already bringing to more and more urban residents across South Africa. Governments in North America, Latin America, and Asia have already embraced this approach and governments in Europe are currently working on similar legislation. South Africa should set the pace on the African continent and send a clear message that the country welcomes innovative, job-creating technology.

Uber welcomes the opportunity to discuss our proposed amendments to find a mutually agreeable way forward that enables services like ours to be available to all South Africans.

## **Establishing a separate NLTA operating licence category: “TNO Operating Licence”**

First, we recommend that the definition of the new operating licence category be as follows:

*Definitions: “Transportation Network Operator” or “TNO” means a person possessing a TNO operating licence issued in accordance with section 71bis, that provides transportation services to passenger(s) between point(s) chosen by the passenger(s) and pre-arranged with a TNO through the use of a proprietary digital network or software application service.*

This new definition is intended to highlight three fundamental characteristics of a TNO possessing this new category of TNO operating licence: (i) passengers pre-arrange rides with TNOs; (ii) TNOs receive leads for pre-arranged rides through a proprietary digital network or software application service; and (iii) the TNO provides the transportation service.

Second, we recommend that the NTLA be further amended to include a new section that establishes the TNO operating licence category and more specifically describes the issuance process of a TNO operating licence. The provisions below set forth several characteristics that we believe are important for TNOs to operate successfully in South Africa. These provisions are not exhaustive, however, and it may be appropriate to add other features to this proposed section as the legislative process moves forward. We would be happy to work with the DOT to further develop this new section on TNO operating licences and address any questions or concerns that the DOT may have.

Section 71bis:

### **TNO Operating Licence**

- o (1) *A person holding a TNO operating licence, issued by the municipality (or planning authority) shall be considered a TNO authorized to undertake transport services in any part of the country without any route restrictions;*
- o (2) *A person acting as a TNO shall only provide transport services that are pre-arranged digitally through a proprietary digital network, software application service, or similar technology providing lead generation services, and may not solicit or accept street hails;*
- o (3) *Payment and lead generation services for such pre-arranged transport services performed by a TNO shall be executed digitally through a proprietary digital network, software application service, or similar technology;*
- o (4) *The fare calculation method, applicable rates charged, and the option to receive an estimated fare shall be disclosed to passengers by the TNO through a proprietary digital network, software application service, or similar technology;*
- o (5) *Persons applying for a TNO operating licence shall not be subject to existing National Land Transport Regulations, section 39, and section 59 of this Act;*
- o (6) *Applications shall be granted following review by the municipality (or planning authority) after considering -*
  - (a) *whether the vehicle or type of vehicle by means of which the service is to be operated, is suitable for that purpose;*
  - (b) *whether the applicant has any previous conviction for an offence relevant to the operation of transport services; and*

- (c) *the ability of the applicant to operate the service for which the operating licence is sought, in a manner satisfactory to the municipality (or planning authority);*
- o (7) *Where the applicant and the vehicle in question complies with section 71bis(6), the operator is entitled to an operating licence automatically, to be applied for with, and issued by, the municipality (or planning authority) in the prescribed manner.*

In order to bridge the gap between the time of enactment of amendments and the time such amendments are effective by law and in practice, drivers can have a dual licence with any other category of licence as is currently contemplated under section 50(2) of the Act.

### **Key aspects of proposed TNO operating licence provisions**

The above proposed provisions are intended to distinguish the new TNO operating licence from existing NLTA operating licence categories, such as metered taxi and charter service. These provisions also enshrine requirements that further the public interest and position TNOs as a complement to existing traditional public transportation service providers:

- o *Nationwide Licensing:* New technology such as the Uber platform used by TNO operating licence holders means that passengers and TNOs are connected through GPS. This obviates the requirement for TNOs to have specific city layout knowledge. Furthermore, the ability for vehicles to move between cities allows for highly efficient supply-demand management, as vehicles can move from province to province across South Africa to meet demand peaks in the busiest locations at any point in time. For example, a driver in Johannesburg can move to Cape Town during the seasonal summer holidays to meet an increase in demand in that part of the country. This would mean that prices for passengers are kept lower during peak periods as more supply becomes available in busier cities to meet the increased demand. At the same time, TNOs would have the opportunity to increase their earning potential throughout the year, while supply/demand peaks and valleys would be brought into a greater state of equilibrium across South Africa.

For these reasons, we believe it is important that, regardless of which level of government issues a TNO operating licence, the licence holder should be able to “undertake transport services in any part of the country.”

- o *Prohibition on Route Restrictions:* Allowing any route restrictions to be imposed on TNOs would hurt drivers, riders, and the broader urban population. Whereas Uber’s platform uses GPS to automatically connect a driver with the nearest rider who wants to pay for that driver’s services, route restrictions result in a large number of dead kilometers, with cars circulating empty, unable to accept requests from riders simply because they need to reach destinations that happen to fall outside the driver’s designated route. Route restrictions would therefore deny drivers the opportunity to earn the increased incomes that are now possible due to highly efficient technology-enabled platforms such as Uber.

Route restrictions hurt riders. Riders face lengthy wait times – or even the inability to find a ride at all – simply because their intended destination does not fall within the restricted route of a nearby and available driver. Just as important, once riders do find a driver that happens to service a route covering their intended destination, they then pay an inflated price for the ride because the driver must recoup the time and fuel previously wasted in dead kilometers. This inflated price is, of course, regressive. Its burden falls heaviest on the least wealthy, hurting their ability to engage more fully in the economic and social life of their cities.

Route restrictions hurt the broader urban population. Cars circulating empty because they are prevented from picking up certain passengers add to congestion and harmful vehicle emissions. Route restrictions thus hurt not only drivers and riders, but also cities' broader economy and environment.

Finally, it would be difficult for technology platforms such as Uber to effectively serve TNO operating license holders if there were specific route requirements (as indicated in section 66) or if TNOs are forced to serve a restricted radius for pickups.

For all the above reasons, we believe it is important that TNOs are "authorized to undertake transport services in any part of the country without any route restrictions."

- o *Digitally Pre-Arranged Trips Only:* Limiting TNOs to digitally pre-arranged trips ensures that other operating licence categories continue to enjoy a complete monopoly on traditional methods by which their services are requested, including telephone dispatch, street hails, and rank pickups. This means that other operating licence categories have sole access to a protected market with built-in demand growth that will rise in lockstep with burgeoning urban populations.

In addition, competitive taxi companies are already benefiting by embracing the type of app-based technological innovation that platforms like Uber have developed and popularised. Most important, however, Uber encourages more and more people to approach mobility in terms of a discrete service they can purchase when and where they need it – and to unmoor themselves from wasteful private car ownership. This means that the overall demand for for-hire point-to-point transportation is set to only grow.

For these reasons, we believe it is important to require that TNOs "shall only provide transport services that are pre-arranged digitally ... and may not solicit or accept street hails."

- o *Promote Security Through Cashless Payments:* A provision that promotes security for both riders and drivers through prohibiting cash payments ensures that TNOs are safer because the need to carry large amounts of cash is significantly reduced. This also further distinguishes the TNO operating licence category from other operating licence categories that exclusively accept cash as a form of payment and again ensures that TNOs do not have an advantage over existing traditional public service transportation providers.

For these reasons, we believe it is important that it be required that TNO "payment ... shall be executed digitally."

### **Critical policy pitfalls to avoid**

The above proposed provisions make no mention of either a cap on the number of vehicles that may operate under the TNO operating licence category or any restrictions on pricing. Both of these must be avoided due to the outsized negative impact they would have on the public interest:

- o *No Cap on Number of TNOs:* Any amendment establishing and regulating a new TNO operating license category must not contain provisions that cap the number of vehicles that may operate under the category. Any limit on the number of persons that can operate as a TNO artificially and arbitrarily restricts supply. As the OECD has found, supply restrictions reduce availability and limit mode of transport, increase waiting

times, result in higher prices (disproportionately affecting low income consumers), and have adverse impacts upon safety since illegal and unregulated operators pick up excess demand at peak times.

Without the crucial ability to increase supply to meet demand, TNOs cannot perform their core functions of reducing wait times, improving service, and increasing reliability and safety. If commuters are to feel comfortable leaving their car at home (with all the benefits that has for congestion and city planning), they must feel confident that there enough TNOs on the road to provide a sufficient supply to reliably provide commuters a ride back home. If we expect partygoers to request a ride instead of driving drunk, TNOs must be able to increase supply so that a car turns up immediately and the drinker is not tempted to drive instead of wait. If low-income communities and those who live farther from the central business district are to share in the benefits of technology-enabled TNOs, legislation must avoid any cap that artificially restricts supply and so raises prices.

What all these examples show is that capping the number of vehicles that may operate under the TNO category would undermine the very reason entire populations would choose to engage drivers' for their services – capping the number of vehicles available will *decrease* demand among these otherwise eager paying customers. Furthermore, as the OECD has found, there is no evidence that driver incomes are higher in markets with restricted supply when drivers rent their operating licenses, as they do in South Africa.<sup>2</sup>

- o *No Restrictions on Pricing:* Uber urges that any amendment establishing and regulating a new TNO operating licence category should not contain provisions that impose fixed prices, such as maximum and minimum fares or set charges per kilometer traveled. Any such provisions would eliminate many of the key advantages of introducing a TNO operating licence category.

Fixed price ceilings will saddle TNOs with the same structural problems that plague traditional taxi and for-hire providers. When demand for rides increases and prices do not rise to bring more drivers onto the road, riders are faced with longer wait times and, worst of all, the prospect of no ride at all. Uber's technology platform, which uses a unique algorithm, senses when more riders want rides than drivers are available and then adjusts the price of a ride so that additional drivers have an incentive to become active. Those additional drivers help lower wait times for riders and get the riders to where they need to go. Altogether, this means more transportation options for more people in more places at more times.

Setting price ceilings also removes the incentive for drivers to differentiate themselves by investing in a clean and well-maintained car - and so closes off to them an entire market of riders who, faced with comparatively lower quality traditional taxis or for-hire vehicles, choose instead to drive their private car. Artificial price ceilings also force drivers to charge their average riders an extra premium to offset the loss on the otherwise more profitable rides that are capped. At the other end of the spectrum, fixed price floors hurt low-income riders by preventing innovative and competitive transportation providers from offering lower fares.

Advocates of fixed prices sometimes claim they are necessary in order to enforce transparency. New technology, already solves this problem: riders can receive a fare estimate from drivers before they begin the ride; vulnerable communities such as tourists and the elderly can follow the route taken on a map to ensure they are not taken on a circuitous route; and passengers do not have to worry about an in-car meter that can be tampered with or not even used in some cases.

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<sup>1</sup> OECD, "Taxi Services: Competition and Regulation," 2007, available at: <http://www.oecd.org/regreform/sectors/41472612.pdf>.

<sup>2</sup> Ibid., p. 8.

## **Conclusion**

We look forward to working with the DOT in an open and transparent manner to develop world-class regulations that harness the full potential of recent technological innovations to address the needs of riders and drivers across South Africa.