

LEGAL NOTICE No.

**THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT
(No. 33 of 2012)**

IN EXERCISE of the powers conferred by section 54 of the National Transport and Safety Authority Act, the Cabinet Secretary for Transport , Infrastructure, Housing, Urban Development and Public Works in consultation with the Board makes the following Regulations: –

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF DIGITAL HAILING OPERATORS) REGULATIONS, 2019

Citation.

1. These Regulations may be cited as the National Transport and Safety Authority (Operation of Digital Hailing Operators) Regulations, 2019.

2. In these Regulations, unless the context otherwise requires–

"act" means the National Transport and Safety Authority Act, 2012;

"appeals board" means the Transport Licensing Appeal Board established under section 39 of the Act;

"appropriate fee" in respect of any matter, means the fee specified in regard to that matter in the First Schedule

"authority" means the National Transport and Safety Authority established under section 3 of the Act;

"cabinet secretary" has the meaning assigned to it under the Act;

"digital hailing service" means a mobile system or an online enabled application or a digital platform or software or a website, or any other system offered, used or operated by a digital hailing service operator and that is used by persons to pre-arrange the transportation of passengers for compensation;

"digital hailing service driver" means a person authorized by a digital hailing service operator to operate a transportation network automobile to provide pre-arranged

transportation of passengers for compensation through the use of a transportation network;

"digital hailing service operator" means any person who offers, operates, or facilitates transportation services for compensation through a digital hailing service;

"digital hailing service taxi" means a motor vehicle with a manufacturer's seating capacity originally designed for a maximum of seven passengers excluding the driver, used to provide pre-arranged transportation of passengers for compensation through the use of a transportation network;

"licence" means a licence issued by the Authority under the Act for the operation of a digital hailing service;

"licensee" means a person to whom a license is issued under the Act;

"owner" means the registered owner of the digital hailing service vehicle;

Application of the Regulations

3. These Regulations shall apply to all digital hailing service operators, owner and digital hailing service drivers.

PART 1 – LICENSING OF DIGITAL HAILING SERVICE OPERATORS

Digital hailing service operator to be licensed.

4. (1) A person shall not operate a digital hailing service without a valid operator license issued by the Authority.

(2) A vehicle shall not operate under a digital hailing service unless that vehicle is licensed as a digital hailing service vehicle.

(3) A driver shall not operate as a driver of a digital hailing service unless that driver is licensed as a digital hailing service driver.

Requirements to be licensed as a digital hailing service operator.

6. (1) A person desirous of being licensed as a digital hailing service operator shall meet the following minimum conditions:-

(a) be a body corporate with a certificate of compliance by the Registrar of Companies or cooperative societies with a permanent office in Kenya.

(b) have a valid and binding agreement between the operator and the registered owner of the vehicles they are operating which shall at the very minimum contain the following:-

- (i) the duties and responsibilities of the digital hailing service operator to the registered owners;
- (ii) the duties and responsibilities of the registered owners to the digital hailing service operator;
- (iii) the duties and responsibilities of the digital hailing service operator to the drivers;
- (iv) the duties and responsibilities of the registered owners to the drivers;
- (v) procedure and conditions for termination of the relationship; and
- (vi) the validity period of the agreement;

A copy of the above agreement shall be attached to the application.

(c) comply with labour laws and regulations including in respect to statutory deductions, health and safety of the workplace, Work Injuries Benefits Act, No. 13 of 2007, insurance, statutory leave days and written contracts of employment for digital hailing service operator staff;

Documents to be submitted with the application.

7. A person applying for a licence shall submit to the Authority a duly completed application form prescribed accompanied with the following documents:-

- a) certified copy of the certificate of registration as a company under the Companies Act, or a cooperative society under the Cooperative Societies Act;
- b) certified copies of valid and binding agreements between the digital hailing service operator and each of the registered owners of the vehicles in their fleet.
- c) list of all vehicles in the digital hailing operators service s fleet;
- d) a current list of its directors by Registrar of Companies;
- e) certified copies of a lease or certificate of ownership of the head office from which it is operating or intends to operate;
- f) copy of Personal Identification Number and /or a tax compliance certificate issued by the Kenya Revenue Authority;

- g) a list of the staff for digital hailing service operators it has in its employment, code of conduct for the employees and agents;
- h) the contracts of the drivers of the vehicles in respect to which the application for the licences is being made;
- i) a valid certificate of roadworthiness issued by the Authority of each vehicle in respect to which an application is being made;
- j) copies of valid vehicle insurance cover for each of the vehicles in the fleet.
- k) a full scale color illustration of the proposed digital hailing service identifier or decal that the operator will issue and use on the vehicles under their platform. The identifier or decal must be reflective, illuminative or otherwise visible at night or in low-light environment and should be clearly visible from a minimum distance of 20 feet;
- l) A data security policy that ensures protection of the driver's and passenger's personal information; and
- m) letter of recommendation from the relevant county government transport committee.

Consideration of Application.

8(1) The Authority in making a determination as to whether to grant or decline a digital hailing service operator license shall take the following factors into consideration:-

- (a) whether the applicant has complied with all the requirements to be licensed as a digital hailing service operator
- (b) public interest including the interest of persons requiring the transport and the interests of those providing transport.
- (c) recommendation from the relevant county transport and safety committee.

(2) Where the Authority is satisfied with the requirements , the applicant shall be granted the license upon payment of the prescribe fee under First schedule.

General duties and responsibilities of a digital hailing service operator.

9.(1) A digital hailing service operator shall have the following general duties and responsibilities in addition to those set out in the agreement between the a digital

hailing service operator and registered owner(s):-

(a) ensure that all the vehicles in its fleet have a valid license as digital hailing service vehicle.

(b) report any accident that results in any fatality to the Authority within 24 hours in the prescribed form contained in the Second Schedule.

(c) ensure that the driver has a valid digital hailing service license, valid driving license and PSV badge and wears an identification badge while at work;

(d) ensure that any vehicle whose digital hailing service vehicle license is suspended or revoked by the Authority cannot access the digital hailing platform during the period of suspension or revocation.

(e) ensure that any driver whose digital hailing service driver license is suspended or revoked by the Authority cannot access the digital hailing platform during the period of suspension or revocation

(f) ensure that all vehicles under its digital hailing service platform have valid public service vehicle insurance covers.

(g) provide the Authority with any information or documentation requested for within 48 hours of the request being received.

(h) ensure that disciplinary action is taken following the submission of complaints from the public and Authority and report submitted to the Authority within seven days of complaint being raised.

(i) ensure that all vehicles in their platform have valid inspection certificates.

(j) provide the vehicles on their platform with a digital hailing service identifier to be affixed on the back of the vehicle.

(k) ensure, so far as is reasonably practicable, the health and safety of drivers and other persons while they are engaged in providing the service and of passengers or other persons in connection with the provision of the service.

Without limiting subsection (k), the provider of a passenger service must:

(a) eliminate risks to safety, so far as is reasonably practicable, and

(b) if it is not reasonably practicable to eliminate risks to safety, minimise those risks so far as is reasonably practicable.

(l) employ at all times a zero tolerance policy for drunk driving.

Validity and Renewal.

10.(1) Subject to these Regulations, a digital hailing service operator license shall be for a period of one year from the date of issue or renewal thereof as the case may be.

(2) The Authority before renewing a digital hailing service operator license shall conduct an audit examination of the digital hailing service operator to confirm the level of compliance with these Regulations and shall only renew a digital hailing service operator's license who has fully complied with these Regulations.

(3) The applicant shall be required to provide the following documents:-i) certified copies of the driving licence, PSV badge, identity card, and certificate of good conduct of each person who shall drive the vehicles in respect to which the application for the licences is being made

Suspension, Revocation, Limitation or Variation of a Transport Operator License.

11. (1) The Authority may suspend, revoke, limit or vary any of the terms or conditions a digital hailing service operator license due to the following grounds:-

(a) failure to comply with any of the general terms and conditions of the digital hailing service operator license.

(b) failure to comply with any of the provisions of these Regulations.

(2) Before suspending or revoking the license of a digital hailing service operator, the Authority shall:-

(a) notify the digital hailing service operator in writing of the intention to suspend or revoke the license of the operator and the reasons thereof.

(b) afford the digital hailing service operator an opportunity to present his case.

(c) give the digital hailing service operator written reasons for its decision.

Requirements to be licensed as a digital hailing service taxi.

12(1) Applications for a digital hailing service taxi license shall be made by the registered owner.

(2) A person applying to for a digital hailing service vehicle license shall submit to the Authority a duly completed application form accompanied with the prescribed fee and

the following documents:-

- (a) certified copies of the certificate of ownership of vehicle;
- (b) a valid certificate of roadworthiness issued by the Authority; and
- (c) copies of valid vehicle insurance cover for the vehicles.

(3)(i) It shall be a condition of a digital hailing service vehicle that there must be displayed a digital hailing service identifier or decal on the front and back of the vehicle.

(ii) A vehicle who ceases to be authorized to provide services for any reason shall return the digital hailing service identifier or decal to the respective operator within five business days.

(4) No vehicle whose age is more than eleven years from the date of manufacture shall be licensed as a digital hailing service vehicle.

(5) Each digital hailing service vehicle shall:

- (a) be kept in safe condition;
- (b) be kept clean and in good appearance;
- (c) be equipped with the following equipment:-
 - (i) a hands-free accessory for mobile devices,
 - (ii) a standard first aid kit,
 - (iii) fire extinguisher;
 - (iv) life saver kit.

(6) copy of KRA PIN certificate and valid tax compliance certificate

Requirements to be licensed as a digital hailing service driver.

13.(1) A person applying for a digital hailing service driver license shall submit to the Authority a duly completed application form accompanied with the prescribed fee and the following documents:-

- (a) valid driving license with public service driver endorsement;
- (b) a valid certificate of good conduct;
- (c) medical test in the prescribed format.

(2) It shall be a condition of their licence that digital hailing service drivers are prohibited from picking up passengers at cabstands, soliciting rides, and responding to street-hails.

(3) A driver shall not offer or provide services for more than eight consecutive hours in a twenty four hour period; and

(4) copy of PIN certificate and Tax Compliance Certificate.

Duties and conduct of drivers.

14(1). The driver of a digital hailing service must, while the vehicle is being used for that purpose:

- (a) take reasonable care for his or her own health or safety, and
- (b) take reasonable care that his or her own acts or omissions do not adversely affect the health and safety of other persons, and
- (c) comply, so far as the driver is reasonably able, with any reasonable instruction that is given by the digital service operator to allow the person to comply with this Regulations, and
- (d) co-operate with any reasonable policy or procedure of the digital service operator relating to health or safety in connection with the provision of a passenger service that has been notified to drivers.

(2) No driver shall:-

- (a) operate or drive while having consumed any intoxicating liquor.
- (b) operate or drive if impaired by any legally prescribed or over-the-counter drugs or medications.
- (c) smoke any substance, or use any device that produces a smoke-like vapor while operating carrying a passenger.
- (d) drive passengers to their destination by any other than the safest and most efficient route, unless requested to do so by the passenger;
- (e) operate or drive any vehicle while using a mobile communications device without a hands-free accessory.
- (f) be physically or verbally abusive to any passenger.
- (g) use non-verbal profane language
- (h) refuse to transport to a requested destination any passenger of proper demeanor whose request for service the driver has accepted on the digital hailing service platform.

For purposes of clarity, a driver may refuse to transport a passenger when:-

- (i) The passenger is acting in a disorderly or threatening manner.
 - (ii) The passenger is otherwise acting in a way that would cause a reasonable person to be concerned for the health and safety of the driver or others.
 - (iii) The passenger refuses to state a specific destination upon entering the vehicle.
- (3) A driver may not assign, transfer to, or allow usage of their digital hailing service driver account by any other person, including another licensed digital hailing service driver, for any purpose, including providing rides to passengers. A digital hailing service driver has an affirmative duty to safeguard unauthorized access or use by another of their digital hailing service driver account.
- (4) A driver has an affirmative duty to take reasonable and diligent steps to return any lost articles recovered in a vehicle to the rightful owner. At a minimum, the driver must notify the passenger or operator when items are left in the vehicle by passengers.

Operations of digital hailing service operators.

15.(1) All operators shall be required to provide passengers with the following information before a trip commences:-

- (a) vehicle make and model;
 - (b) vehicle registration number;
 - (b) the driver's full names;
 - (c) the driver's photo.
 - (d) the estimate fare rates in a clear and transparent way on the digital hailing platform prior to a passenger accepting a ride when a passenger has provided their pick up and drop off points.
- (2) All operators shall provide a print or electronic receipt to the passenger at the conclusion of every trip. The receipt provided must include information on:
- (a) all rates, fees and/or surcharges charged for the trip;
 - (b) total amount paid;
 - (c) date and time of trip;
 - (d) location at which the passenger was picked up and location to which the passenger was driven;
 - (e) driver names and vehicle registration number;

- (f) total time and distance of trip
- (3) (i) All operators shall ensure the security, protection and privacy of driver and passenger personal information and not disclose this information to unauthorized third parties.
- (ii) An operator shall notify a driver or passenger of its use of personal information. Notification shall be unambiguous and may be through the platform or website. After notification, an operator shall obtain the consent of a driver or rider prior to its use of personal information. Notification and consent may not be obtained by a driver or passenger accepting an operator's terms of service within its platform.
- (4) All operators shall maintain customer service support with posted contact information, including a local toll-free phone number and local address, and the ability to leave messages twenty four hours per day and seven days per week via telephone or email. Response to messages shall be made within 24 hours.
- (5) Maintain an office that is open and staffed from 8.00 a.m. until 5.00 p.m. on all business days.
- (6) Provides a system by which passengers can retrieve lost items.
- (7) Ensure that the operator and its drivers do not discriminate against passengers or potential passengers with special needs, disabilities or visual impairments, which shall include but not be limited to ensuring that there are no additional charges or increased fares and that wheelchairs and service animals are accommodated.
- (8) An operator shall configure their platform to ensure that, after eight hours of providing services in a 24-hour period, the driver shall log out of the platform for not less than four consecutive hours.
- (9) No other person not being the driver or a passenger shall be permitted to be in the vehicle except with the express consent of the passenger(s).

Record Maintenance and Retention.

- 16(1) An operator shall maintain true and correct records in electronic format, provided that copies can be reproduced in their original format.
- (2) An operator shall maintain the following data for each Pre-arranged Ride for a period of three years:

- a. Driver's Vehicle license plate number;
- b. Identity of Driver;
- c. Identity of Rider;
- d. Date and time of Ride;
- e. Origination address;
- f. Destination address;
- g. Date, time, and location of drop-off; and
- h. Method of payment;

(3) Records pertaining to the price of Rides

(4) The digital hailing service operator shall make the records available to any law enforcement agency to assist in the investigation of any crime within 24 hours of the written request.

Reporting.

17(1) An operator must have in place a process to notify and report to the Authority the name, driver's license number and vehicle registration number of an affiliated digital hailing service driver deactivated from the operator's platform for conduct that gave rise to a public safety concern, including any of the following reasons:-

- (a) Criminal complaint or arrest;
- (b) Criminal investigation;
- (c) Allegation or complaint of sexual misconduct;
- (d) Allegation or complaint of traffic accident;
- (e) Conviction of drunk driving.
- (f) Allegation or complaint of assault or battery
- (g) Allegation or complaint of physical or verbal abuse.

(2) The operator must notify the Authority within forty-eight (48) hours of deactivating a driver for the reasons specified in this Rule. Operators must identify their notification method in the process plan that they submit to the Authority.

Limitations on commission.

18(1) No digital hailing service operator shall charge a commission of more than fifteen

percent per trip.

(2) Digital hailing service operators are prohibited from levying or charging other charges, levies or fees over and above the commission.

Appeals

19. A person aggrieved by the decision of the Authority taken under these Regulations may within fourteen days of receiving the decision appeal to the Appeals Board.

Offences and penalties.

20. (1) A person who contravenes any provision of these Regulations commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or both.

(2) The Authority may in addition to any other penalty prescribed under these Regulations may suspend or revoke any license issued under this Regulation.

Dated the day of 2019

Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works

FIRST SCHEDULE

LICENSE CATEGORY	APPLICATION AND RENEWAL FEES KSHS
(a) Application fee for Digital Hailing Service Operator License	500,000
(b) Annual renewal fee of Digital Hailing Service Operator License	300,000
(c) Application for digital hailing service vehicle licence	3,500
(d) Annual renewal fee of digital hailing service vehicle licence	3,500
(e) Application and renewal fee for digital hailing service driver badge	1,000

