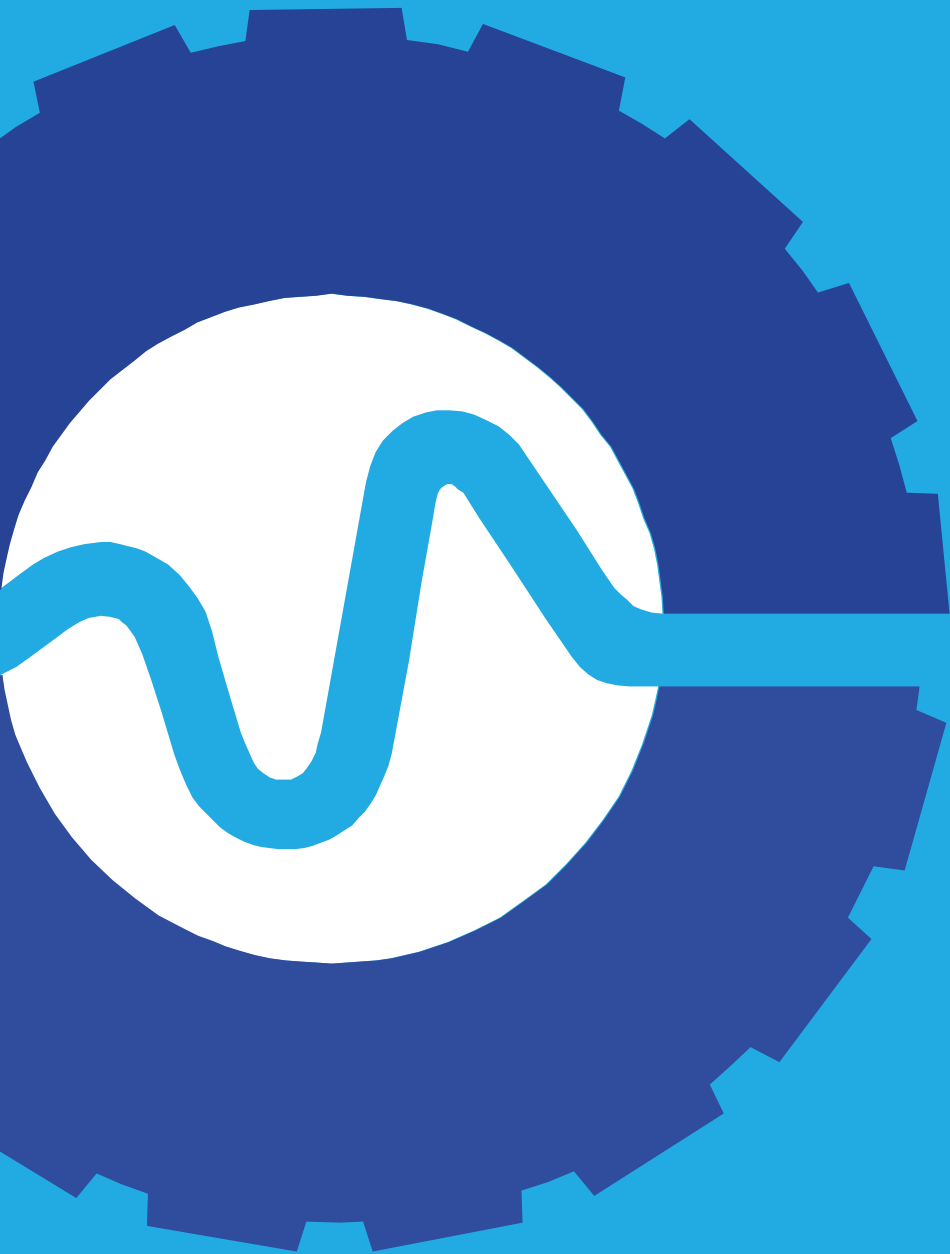




# Fleet Operator Recognition Scheme Terms and Conditions



**FORS Terms and Conditions**

**Version 3.2**

**27 January 2015**

## Introduction

The Fleet Operator Recognition Scheme (FORS) is an industry-led accreditation scheme that aims to promote road freight as a safe and sustainable mode of transportation in a way that supports economic growth and environmental targets whilst helping to improve our quality of life.

FORS is a voluntary scheme that encourages sustainable best practice for fleet operators. At its core, FORS promotes safe working practices, legal compliance and a corporate social responsibility to improve the performance of fleet operators.

## FORS Terms and Conditions

FORS accreditation is governed by these Terms and Conditions and any person, organisation, company or business that applies for accreditation and becomes a FORS Accredited Company, is deemed to have read and accepted these Terms and Conditions.

### 1. Definitions and Interpretation

In these Terms and Conditions:

1.1 Unless the context indicates otherwise the following expressions will have the following meanings:

**“Business Day”** means any day excluding Saturdays, Sundays or public or bank holidays in England;

**“Confidential Information”** means all information (whether written or verbal) that, by its nature, may reasonably be regarded as confidential to you or the FORS Provider whether commercial, financial, technical or otherwise, including information which relates to your or any of the FORS Provider’s business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel;

**“DVSA OCRS”** means the Driver and Vehicle Standards Agency (DVSA) scoring scheme run in red, amber, green and grey showing the compliance level against DVSA standards. GREEN, for operators considered low risk, AMBER, for operators considered medium risk and RED for operators considered high risk. The threshold levels for each band can be different for the roadworthiness score and the traffic score. An operator can also have no score for either or both categories of measurement and will fall into a GREY band;

**“FORS Accredited Company”** means a company which has gained FORS accreditation in accordance with condition 2.5;

**“FORS Benefits”** means the benefits available to FORS Accredited Companies at each level of accreditation as updated from time to time;

**“FORS Certification Body”** means a trade body or representative organisation appointed by the FORS Provider from time to time to undertake the FORS audits;

**“FORS Community Partnership”** means those entities who are from time to time appointed by the FORS Provider to provide services relating to scheme governance, development and growth, training and auditing, details of whom are listed on the FORS website;

**“FORS Partner”** means each organisation or body that has agreed to support FORS through its procurement practices, its public policies and, where appropriate, its own fleets;

**“FORS Provider”** means AECOM Ltd (registered number 01846493) being the company appointed by TfL to manage and operate FORS;

**“FORS Provider Marks”** means any registered or unregistered trade marks, service marks, trade names, logos or brand of FORS (whether owned by the FORS Provider or the TfL Group and whether in current or previously utilised form) and any applications for the grant of such rights;

**“FORS Provider Materials”** means any and all (whether in current or previously utilised form) information, documentation, drawings, works, computer software, products and materials supplied by or on behalf of the FORS Provider to you, including without limitation, any and all newsletters, presentations, websites and presentation materials;

**“FORS Standard”** means the document detailing the criteria a FORS Accredited Company must meet to be accredited for Bronze (entry-level), Silver or Gold level as updated from time to time and which can be viewed at [www.fors-online.org.uk](http://www.fors-online.org.uk);

**“Intellectual Property Rights”** means any patent, know-how, trade mark or name, service mark, logo, design right (in each case whether registered or unregistered), copyright, rights in passing off, database rights, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

**“Operating Centre”** means the base, or location at which your vehicle(s) are normally kept;

**“Road Freight”** means the physical carriage of goods for commercial purpose by road using vans and trucks. This includes the provision of services and utilities and the movement of waste;

**“Road Passenger Vehicle”** means a vehicle designed for the carriage of passengers including buses, coaches, minibuses and fleet cars;

**“TfL”** means Transport for London, a statutory corporation established under the Greater London Authority Act 1999; and

**“TfL Group”** means TfL and all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together with Cross London Rail Links Limited and reference to any “member of the TfL Group” will refer to TfL or any such subsidiary.

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 headings are included in these Terms and Conditions for ease of reference only and do not affect the interpretation or construction of these Terms and Conditions;
- 1.4 any reference to “writing” or cognate expressions includes references to any communication effected by facsimile, e-mail or any comparable means;
- 1.5 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.6 the words “including”, “includes” and “included” will be construed without limitation.
- 1.7 a reference to any statute, enactment, order, regulation or other similar instrument will be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and will include all statutory instruments or orders made pursuant to it, whether replaced before or after the date of these Terms and Conditions.

## **2. Application Process**

### **2.1 Application Form**

If you would like to apply to become a FORS Accredited Company you must first register, by completing the FORS application form. It can be accessed on-line at [www.fors-online.org.uk](http://www.fors-online.org.uk) or a hard copy can be requested via email from: [enquiries@fors-online.org.uk](mailto:enquiries@fors-online.org.uk). At registration and on each anniversary you will need to pay the relevant annual subscription fee, details of which are available on [www.fors-online.org.uk](http://www.fors-online.org.uk).

Once you have completed and submitted the FORS application form, you will be bound by these Terms and Conditions.

### **2.2 Who Can Apply**

Any person who operates or intends to operate, one or more commercial Road Freight vehicle(s) and/or Road Passenger Vehicle(s) is entitled to apply to become a FORS Accredited Company.

If, after registering, no progress to accreditation has been made after 90 calendar days, your registration will be downgraded to dormant user. Dormant user means you are no longer a FORS registered operator and will no longer be listed on the website. If your registration is made dormant, your annual subscription fee will not be refundable and you will need to pay the annual subscription fee again if you register to apply to become a FORS Accredited Company at a future date.

### 2.3 FORS Audit

Within 90 calendar days of registration you shall request a FORS audit, by email to the FORS Certification Body. The FORS audit will check and verify your operation against the FORS Standard. The audit will take the form of an on-site visit from an auditor from a FORS Certification Body.

The FORS auditor will arrange a time and date for the audit to take place and the relevant fee for the audit will be charged. You agree to comply with all reasonable requests of the FORS auditor. This will include the provision of evidence enabling the auditor to verify that you have implemented a management system, together with applicable policies, processes and procedures and undertaken risk assessments and can demonstrate that you manage risks to your operations.

You will also be expected to (a) demonstrate that you have the mechanisms to monitor the following basic measures that impact your operations and (b) collect data and initiate actions to minimise the impacts of the following areas:

- + Fuel Use
- + Penalty Charge Notices
- + Vehicle Incidents
- + Other Infringements

Full details of these measures and the entry-level criteria can be found in the FORS Standard.

Where you employ the same operating policies and procedures across more than one Operating Centre and this can be confirmed by senior management in writing, you should advise which type of accreditation you wish to pursue:

Single Operating Centre Accreditation (SOCA) is available to a company wishing to have a single Operating Centre accredited, or individual Operating Centres accredited where the company has multiple Operating Centres but which do not have the same policies and procedures at each Operating Centre;

Multi-Operating Centre Accreditation (MOCA) is available to any company with multiple Operating Centres which have the same policies and procedures throughout. In order to obtain MOCA the following audits will be required on an annual basis:

+ Between one and three Operating Centres - one successful audit is required to be completed at each Operating Centre;

+ Between four and fifteen Operating Centres, three successful audits are required to be completed at different Operating Centres; and

+ More than fifteen Operating Centres, twenty per cent (rounded up to the nearest whole number), will require a successful audit.

If you are a national fleet operator with sixteen or more Operating Centres who conduct internal audits which align with the FORS standard, Whole Fleet Accreditation (WFA) can be applied for. WFA accreditation is awarded to companies who can demonstrate widespread applicability of the FORS Standard to their Operating Centres, through an established internal transport management quality audit process.

WFA requires companies to:

- a) Demonstrate the operation meets the FORS Standard;
- b) Confirm which divisions / sectors / regions are in scope of the accreditation and complete the declaration of intent set out in Appendix 1 of the FORS Standard
- c) Confirm that they have a credible audit programme which is in place and delivered uniformly across your business;
- d) Pass a witnessed audit with a senior FORS auditor at one Operating Centre. Whole Fleet Accreditation (WFA) can only be applied for via [enquiries@fors-online.org.uk](mailto:enquiries@fors-online.org.uk) and is subject to the agreement of the FORS Certification Body.

The FORS MOCA and WFA accreditation may be at risk should one Operating Centre in scope of accreditation breach the requirements of the FORS Standard. The FORS Provider retains the right to remove MOCA and WFA if deemed necessary due to the actions of any Operating Centres.

## 2.4 Payments for Audits

Details of the total audit fee for the scope of accreditation whether for:

- a) SOCA, MOCA or WFA (as set out in condition 2.3); or
- b) follow up audits (as set out in condition 2.5), or
- c) for enhanced audits (as set out in condition 15.3),

will be confirmed by the FORS Provider and will be paid at the time that the audits are booked, unless otherwise agreed with the FORS Provider.

## 2.5 Eligibility for Accreditation

The FORS Provider will reject an application to become a FORS Accredited Company for operations that fail to meet the entry-level criteria and legal compliance, good practice and health and safety standards outlined within the FORS Standard.

If the FORS Provider does not reasonably consider that your operation has met the entry-level criteria, the FORS Provider will notify you and confirm the reasons why your operation does not meet the entry-level criteria. Additionally, the FORS Provider will provide your operation with an action plan to enable you to achieve the entry-level accreditation criteria. If you do not agree with the FORS Provider's findings, you will have 20 Business Days from the date of the FORS Provider's notice to raise your concerns in writing with the FORS Provider before the FORS Provider issues its formal decision.

## 2.6 Accreditation Award

If you successfully pass the audit by demonstrating that you comply with entry-level 'bronze' accreditation criteria, as set out in the FORS Standard, you will become a FORS Accredited Company.

If you do not pass the audit, you will be issued with an action plan to help you achieve the required standard. You are then required to implement the guidance in the action plan in accordance with its terms and timescales. Once you have completed the action plan requirements, a follow-up audit will take place in accordance with condition 2.3. A follow-up audit will focus on the correction of any points outlined in the action plan.

If you fail to attain the bronze entry level accreditation and no progression is made, as set out in the FORS Standard, within 90 calendar days from registering you will become a dormant user. Dormant user means you are no longer a FORS registered operator and will no longer be listed on the website. You can apply again to be registered by following the procedure set out in condition 2.1.

# 3. Accreditation Scheme

## 3.1 Accreditation Levels

There are three levels of FORS accreditation: bronze, silver and gold. All FORS Accredited Companies will join FORS at the entry-level of 'bronze' and will have the opportunity to progress to the higher 'silver' and 'gold' levels, subject to achieving the criteria for the next level of accreditation set out in the FORS Standard.

At all levels of FORS accreditation, your operation must demonstrate that it is maintaining and has maintained the required standards set out in the FORS Standard.

## 3.2 Progression

In order to progress to the next level of FORS accreditation, you will need to participate in performance monitoring and management to demonstrate that you



fulfill the criteria for the next level of FORS accreditation. You will need to provide basic performance data about your operations to the FORS Provider for the purpose of benchmarking and will need to implement appropriate systems to capture such data to enable your progression through FORS. All data supplied to the FORS Provider for the purpose of any benchmarking will be treated in accordance with condition 8 and 9.

### 3.3 Accreditation Benefits

Once you become a FORS Accredited Company, you will be entitled to receive the FORS Benefits offered by the FORS Standard. Each level of FORS accreditation offers its own set of unique benefits. Certain benefits may be subject to European Union State Aid Rules and any limitations or special application of these rules will be covered within the requirements associated with those benefits

### 3.4 General Obligations

You shall ensure that you and your employees, at all times, act in accordance with these Terms and Conditions and shall:

- 3.4.1 comply with the requirements of the FORS Standard for your level of accreditation;
- 3.4.2 behave in an orderly manner and act with the utmost good faith towards the FORS Provider and the FORS Community Partnership and co-operate fully with the FORS Provider's personnel and contractors; and
- 3.4.3 not commit any act or omission, or make any statement or otherwise behave in any manner, which may result in any harm or damage to the reputation or the operation of FORS.

You will collect and maintain information regarding (a) fuel usage and mileage, (b) the number of Penalty Charge Notices and other infringements your operation has received and (c) Vehicle Incidents (insurance and accident costs).

You will notify the FORS Provider in writing as soon as reasonably practicable, and in any event within 5 Business Days, if you or your employees have been found guilty and convicted of committing an offence under the Road Traffic Act 1988, Health & Safety at Work Act 1974 or are in serious breach of the Driver Vehicle Standards Agency (DVSA) OCRS standard that impact on your Operating Licence and particularly if a PG9

Prohibition Notice has been served by the Police or DVSA. Failure to comply with this requirement may result in your FORS accredited status being suspended or terminated in accordance with conditions 14 and 15.

In the event of downgrade, suspension, withdrawal or termination you will not be entitled to the refund of any fees paid pursuant to registration, annual subscription, audits or any other FORS service.

### 3.5 Changes to FORS

The FORS Provider reserves the right to change FORS at any time upon written notice to you, including amendments to these Terms and Conditions, the FORS Standard and the withdrawal and/or replacement of the FORS Benefits. Where practicable, the FORS Provider will endeavour to provide you with at least 30 calendar days notice before such changes are implemented. If you are not happy with any changes to FORS, then you will be entitled to withdraw from FORS upon written notice to FORS and the provisions of condition 15 will apply.

### 3.6 Changes to Company Details

You are responsible for promptly informing the FORS Provider, and in any event within 5 Business Days, of any changes to the details of your operation in terms of structure, personnel, operating licence, number and size of vehicles and depots. All notifications of changes to your details should be notified by email to the address stated in condition 2.1 or such other address as may be notified to you from time to time.

## 4. Improper Conduct

You will not, and will ensure that your employees, agents and sub-contractors do not, give, offer, promise, or authorize, directly or indirectly, anything of value to any employee, officer or agent of the FORS Provider or any member of the FORS Community Partnership with the intention of inducing them to perform a relevant function or activity improperly or to reward that person or entity for so doing nor favour any employee, officer or agent of the FORS Provider or any member of the FORS Community Partnership with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the FORS Provider or any member of the FORS Community Partnership other than as a representative of the FORS Provider, without the FORS Provider's prior written approval.

## 5. Not used

## 6. Records, Audit and Inspection

- 6.1 You will maintain a complete and accurate set of records pertaining to all activities relating to FORS, including your application, the results of any formal company audit, information required pursuant to these Terms and Conditions, and evidence of your compliance with the FORS Standard and your obligations under these Terms and Conditions ("Records").
- 6.2 You will retain all Records during the period of your accreditation and for a period of not less than six years (or such longer period as may be required by law) following termination or withdrawal of your accreditation ("Retention Period").
- 6.3 The FORS Provider or any person nominated by the FORS Provider has the right to audit any and all Records at any time during the Retention Period on giving

to you what the FORS Provider considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of your compliance with these Terms and Conditions. You will give all reasonable assistance to the FORS Provider or its nominee in conducting such inspection, including making available documents for review and staff for interview.

## **7. Intellectual Property Rights**

- 7.1 As between you and the FORS Provider, all Intellectual Property Rights in the FORS Provider Material will remain the property of the FORS Provider, or if applicable, any third party proprietor. Only when you become a FORS Accredited Company will you be permitted to copy, reproduce or distribute the FORS Provider Materials internally within your operation. No-one, including FORS Accredited Companies, is permitted to copy, reproduce or distribute the FORS Provider Materials for external use or for the benefit of any third party, including any associated company, without the prior written consent of the FORS Provider.
- 7.2 A specific 'FORS logo' has been developed to promote FORS. The FORS Provider grants to each FORS Accredited Company a non-exclusive, non-transferable, revocable licence to use the Intellectual Property Rights owned (or capable of being so licensed) by the FORS Provider in the 'FORS logo' in accordance with the branding guidelines issued from time to time solely for the purpose of indicating a FORS Accredited Company's accreditation of FORS.
- 7.3 Subject to condition 7.2, you will have no right to use any trade marks, trade names, logos or other Intellectual Property Rights of the FORS Provider, the FORS Partners or the TfL Group without the prior written consent of the FORS Provider and you will not:
- 7.3.1 use any trade marks, trade names or logos so resembling the FORS Provider Marks as to be likely to cause confusion with the FORS Provider Marks; or
  - 7.3.2 cause or permit anything to be done which might damage or endanger the validity or distinctiveness of, or the goodwill in, the FORS Provider Marks or other Intellectual Property Rights of the FORS Provider; or
  - 7.3.3 represent, directly or indirectly, that any of your products or services have been endorsed or approved by the FORS Provider or any FORS Partner; or
  - 7.3.4 use in advertising, publicity or any other communication, whether written, electronic or any other means any FORS Provider Mark or other Intellectual Property Rights of the FORS Provider or the name, brand or logo of the FORS Provider or FORS Partner, without the prior written consent of the FORS Provider.
- 7.4 You will promptly notify the FORS Provider upon becoming aware of any infringement or alleged infringement or potential infringement of the 'FORS logo'. The FORS Provider will have the exclusive right to determine whether or not any litigation will be instituted or other action taken in connection with any

infringement or suspected infringement. For the avoidance of doubt you will not institute any litigation or other action relative to any such infringement or imitation. You will provide all reasonable assistance to the FORS Provider to protect the 'FORS logo' and will assist in resolving any questions concerning the 'FORS logo'.

- 7.5 You acknowledge that any breach of this condition 7 could result in the FORS Provider incurring damages and losses and you will indemnify and keep indemnified the FORS Provider for any such damages or losses arising from a breach of condition 7.
- 7.6 This condition 7 will continue to apply after termination or withdrawal of your accreditation to FORS howsoever arising and without limit in time.

## **8. Provision and Use of Data**

- 8.1 In order to properly administer FORS and to benchmark your operation against the criteria for each level of accreditation, you will be required to share certain data (including any relevant personal data) with the FORS Provider at all levels of FORS accreditation as set out in the FORS Standard.
- 8.2 The FORS Provider is authorised to:
  - 8.2.1 share your data with the FORS Community Partnership, its associated partners, DVSA, the Metropolitan Police Service, and the City of London Police solely for the purposes of delivering the FORS scheme and, on a case by case basis, the prevention and detection of crime.
  - 8.2.2 utilise data provided by FORS Accredited Companies for the purposes of delivering the FORS scheme.
  - 8.2.3 use your data for the purpose of benchmarking your performance against industry averages and assisting businesses procuring Road Freight services to ascertain whether a FORS Accredited Company has complied with its legal obligations and/or has taken steps to reduce any detrimental environmental and social impacts that their activities may have.
- 8.3 You and the FORS Provider:
  - 8.3.1 will each take reasonable precautions (having regard to the nature of their other respective obligations under these Terms and Conditions) to preserve the integrity of any data supplied to the other pursuant to FORS;
  - 8.3.2 each acknowledge the other's ownership of Intellectual Property Rights which may subsist in the other's data. You and the FORS Provider agree not to delete or remove any copyright notices contained within or relating to the other's data; and
  - 8.3.3 will each comply with the provisions of the Data Protection Act 1998 in respect of any personal data or sensitive personal data processed in connection with FORS.

## **9. Confidentiality and Announcements**

- 9.1 Each party will keep confidential any and all Confidential Information that it may acquire in relation to the other party.
- 9.2 Save as otherwise set out in these Terms and Conditions, neither party will use the other party's Confidential Information for any purpose other than to exercise its rights or perform its obligations under these Terms and Conditions. Each party will ensure that its officers and employees comply with the provisions of condition 9.1.
- 9.3 The obligations on a party set out in condition 9.1 will not apply to any Confidential Information which:
- 9.3.1 either of the parties can demonstrate is in the public domain (other than as a result of a breach of this condition 9); or
- 9.3.2 a party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- 9.4 The provisions of this condition 9 will survive any termination or withdrawal of your accreditation for a period of five years from such termination or withdrawal.

## **10. Not used**

## **11. Liability**

- 11.1 Subject to conditions 11.2 and 11.3, you acknowledge that the liability of the FORS Provider in connection with FORS, the FORS Benefits and these Terms and Conditions or you applying to become, or from being, a FORS Accredited Company whether in contract, tort (including negligence and/or delict), breach of statutory duty or otherwise shall not exceed an amount, in aggregate, equal to the registration fees and audit fees that are paid by you in the calendar year in which the claim arises.
- 11.2 You further acknowledge that the FORS Provider will not be liable to you for pure economic loss, loss of profits, loss of business, depletion of goodwill or indirect or consequential loss, howsoever caused arising out of or in connection with FORS, the FORS Benefits and these Terms and Conditions or you applying to become, or from being, a FORS Accredited Company.
- 11.3 Nothing in these Terms and Conditions will exclude or limit the FORS Provider's liability for personal injury or death resulting from the FORS Provider's negligence or for any matter for which it would be illegal for the FORS Provider to exclude or limit or to attempt to exclude or limit its liability for.

## **12. Disclaimer**

- 12.1 Any information whether verbal or written, including information contained in newsletters, presentations or materials, provided to you in connection with FORS (including the application and audit process) is for guidance purposes only and should not be relied upon as it does not constitute formal legal or professional advice. The FORS Provider excludes to the fullest extent lawfully permitted all liability whatsoever for any loss or damage howsoever caused arising out or in connection with the use of and/or reliance on any information given to you.
- 12.2 Any investment or expenditure that you incur in connection with FORS is undertaken entirely at your own risk and the FORS Provider will have no liability to you in respect thereof.

## **13. Withdrawal from FORS**

- 13.1 Your FORS accreditation will be withdrawn if you fail to pass a re-approval audit after 90 calendar days from your accreditation expiry date.
- 13.2 Operators are able to voluntary withdraw from the scheme at any time, but this must be submitted in writing to the FORS Provider.
- 13.3 If your FORS accreditation is withdrawn or you withdraw from FORS, and you wish to become a FORS Accredited Company, you must:
- 13.3.1 re-register to become a FORS registered company via [www.fors-online.org.uk](http://www.fors-online.org.uk) as set out in condition 2.1; and
- 13.3.2 pass a FORS audit as set out in condition 2.3.
- 13.4 If your FORS accreditation is withdrawn or you withdraw from FORS, you will not be entitled to the refund of any fees paid pursuant to registration, annual subscription, audits or any other FORS service.

## **14. Suspension and Termination**

- 14.1 Upon written notice, the FORS Provider may in its sole discretion elect to, either suspend terminate or downgrade your FORS accreditation, if you:
- 14.1.1 fail to maintain compliance with the criteria for your level of accreditation in accordance with the FORS Standard; or
- 14.1.2 commit any act or omission, or make any statement or otherwise behave in any manner, which may result in any harm or damage to the reputation or the operation of FORS;
- 14.1.3 are continuously in the red category of DVSA OCRS for longer than 3 months; or
- 14.1.4 fail to inform the FORS Provider of any changes in your circumstances.



14.2 Upon written notice, the FORS Provider may at its discretion, terminate your FORS accreditation if you:

14.2.1 commit any material or persistent breach of these Terms and Conditions and in the case of such a breach that is capable of remedy fail to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the FORS Provider) from the date of written notice to you giving details of the breach and requiring it to be remedied; or

14.2.2 go bankrupt or insolvent or summon a meeting of your creditors, suffer a proposal for or become subject to any voluntary arrangement, have a receiver, manager or administrative receiver appointed over any of your assets, undertakings or income, have passed a resolution for or are subject to a petition presented to any Court for your winding-up, have a provisional liquidator appointed, are unable to pay your debts within the meaning of the Insolvency Act 1986, cease or threaten to cease to trade, have an administrator appointed in respect of you or are the subject of an application for administration filed at any court, or are the subject of a notice to strike off the register at Companies House; or

14.2.3 provide false information during a FORS audit.

14.3 Without prejudice to any of the FORS Provider's other rights or remedies (whether under these Terms and Conditions or otherwise), if you are in breach of any of these Terms and Conditions, you will, if required to do so by the FORS Provider, promptly remedy the breach at your own expense to ensure compliance with these Terms and Conditions.

## **15. Consequences of Withdrawal, Suspension or Termination**

15.1 If, the FORS Provider at its sole discretion elects to suspend or downgrade your FORS accreditation pursuant to condition 14.1 you will be informed of this in writing, along with the duration of the suspension. You will be required during the suspension period to:

15.1.1 agree an action plan, to be approved by the FORS Provider, in order to rectify the breach; and

15.1.2 cooperate with the FORS Provider at all times.

15.2 During the suspension or downgrade period, you will:

15.2.1 not be entitled to the FORS Benefits;

Rights of the FORS Provider and will promptly remove the FORS logo from any vehicle, materials, documentation or other media and will provide the FORS Provider with written confirmation that it has been so removed.

15.3 Within the suspension or downgrade period you will be required to pay for and pass an enhanced audit, which will be at your expense (as set out in condition 2.4). An enhanced audit is a FORS bronze audit plus a detailed

review of the actions in place to mitigate the reasons that the suspension or downgrade was incurred.

- 15.4 If an action plan is not agreed within the suspension or downgrade period, or you fail to pass the enhanced audit, the FORS provider may at its sole discretion, terminate your FORS accredited status.
- 15.5 On the expiry of the suspension or downgrade period and the successful completion of the enhanced audit, your FORS suspension or downgrade will be lifted and your FORS accredited status will be reinstated. If you are a silver or gold FORS Accredited Company, then your accreditation date will be aligned with your previous expiry date.
- 15.6 Upon termination, however caused, you will be prevented from re-registering and becoming a FORS Accredited Company for 6 months from the date of termination and you will not be entitled to the refund of any fees paid pursuant to registration, annual subscription, audits or any other FORS service. If, on expiry of the 6 month period, you wish to become a FORS accredited Company, will be required to:
  - 15.6.1 re register to become a FORS Accredited Company at [www.fors-online.org.uk](http://www.fors-online.org.uk) as set out in condition 2.1; and
  - 15.6.2 provide written confirmation, signed by your Managing Director, of the measures and procedures that have put in place to ensure the cause of your termination does not reoccur; and
  - 15.6.3 pass an enhanced audit, instead of the standard FORS audit; and
  - 15.6.4 agree an action plan, to be approved by the FORS Provider.
- 15.7 Upon withdrawal or suspension from FORS or termination of your FORS accredited status, howsoever arising:
  - 15.7.1 you will no longer be entitled to, and will immediately cease to use:
    - (a) the FORS Benefits granted under these Terms and Conditions; and
    - (b) the FORS logo and any other Intellectual Property Rights of the Provider and will promptly remove the FORS logo from any vehicle and will provide written confirmation that it has been so removed;
  - 15.7.2 you will promptly deliver up to the FORS Provider all property supplied by or on behalf of the FORS Provider and all materials incorporating any Confidential Information and/or Intellectual Property Rights of the FORS Provider or any FORS Partner; and
  - 15.7.3 both parties will immediately cease to use or exploit their previous connections with each other directly or indirectly.
- 15.8 15.9 Withdrawal from FORS, suspension, downgrade or termination of your



FORS accreditation status will not prejudice or affect any right, power or remedy which has accrued or will accrue to either party prior to or after such withdrawal, suspension, downgrade or termination. The provisions in these Terms and Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## **16. Force Majeure**

16.1 Neither party will be deemed to be in breach of these Terms and Conditions, the FORS Standard or the FORS Benefits or otherwise liable to the other party in any manner whatsoever, for any failure or delay in performing its obligations under these Terms and Conditions, the FORS Standard or the FORS Benefits to the extent that such failure or delay is due to any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of that party, including without limitation, riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, storm, flood, abnormal weather conditions or other natural catastrophe, malicious damage, compliance with any law or governmental order, default of suppliers or strikes, lock-outs or other industrial disputes.

## **17. Rights of Third Parties**

17.1 Save that any member of the TfL Group has the right to enforce these Terms and Conditions in accordance with the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act"), the parties do not intend that any of these Terms and Conditions will be enforceable by virtue of the Third Party Act by any person not a party to it.

17.2 Notwithstanding condition 17.1, the parties are entitled to vary or rescind these Terms and Conditions without the consent of the TfL Group.

## **18. Assignment and Novation**

18.1 If the FORS Provider wishes to transfer the operation of FORS (in whole or in part) to another person, the FORS Provider will notify you of such transfer. Within ten Business Days of a written request from the FORS Provider, you will give effect to any such transfer of all or part of its rights and obligations under FORS to one or more persons nominated by the FORS Provider.

18.2 Application for, and accreditation of, FORS is personal to you and you will not assign the benefit or delegate the burden of your application or accreditation or otherwise transfer any right or obligation to any other person under these Terms and Conditions without the prior written consent of the FORS Provider.

## **19. Non-Waiver of Rights**

19.1 No waiver of any of the provisions of these Terms and Conditions is effective unless it is expressly stated to be a waiver and communicated to the other

party in writing in accordance with the provisions of condition 21. The single or partial exercise of any right, power or remedy under these Terms and Conditions will not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

## **20. Illegality and Severability**

20.1 If any provision of these Terms and Conditions (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed from these Terms and Conditions and the remaining provisions will continue in full force and effect as if these Terms and Conditions had been executed without the invalid, illegal or unenforceable provision.

## **21. Notices**

21.1 Any notice, demand or communication in connection with these Terms and Conditions will be in writing and may be delivered by hand, pre-paid post, facsimile or e-mail addressed to the recipient at the address notified to the other party in writing in accordance with this condition as an address to which notices, invoices and other documents may be sent.

21.2 The notice, demand or communication will be deemed to have been duly served:

21.2.1 if delivered by hand, at the time of delivery; or

21.2.2 if delivered by pre-paid post, two Business Days after being posted or in the case of Airmail ten Business Days after being posted; or

21.2.3 if delivered by facsimile or e-mail, at the time of transmission/sending, provided that a confirming copy is sent by first class post to the other party within one Business Day of transmission/sending.

## **22. Entire Agreement**

22.1 Subject to condition 22.2, the Terms and Conditions, including all documents referred to herein, contain all of the terms which the parties have agreed and supersede all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of these Terms and Conditions. Neither party has been induced to accept these Terms and Conditions by a statement which they do not contain.

22.2 Nothing in this condition 22 excludes any liability which one party would otherwise have in respect of any statement it has made fraudulently to the other party.

## **23. Relationship of the Parties**

23.1 Nothing in these Terms and Conditions constitutes, or will be deemed to

constitute, a partnership or joint venture between the parties nor, except as expressly provided, will either party be deemed to be, or hold itself out as being, the agent of the other.

23.2 Subject to any express provisions to the contrary in these Terms and Conditions, you have no right or authority to and will not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the FORS Provider or bind the FORS Provider in any way.

## **24. Dispute Resolution**

24.1 In the event of any dispute or difference arising out of or in connection with these Terms and Conditions or FORS (“Dispute”), the FORS Provider and your representative will use all reasonable endeavours to negotiate in good faith and settle such Dispute in accordance with this condition 24.

24.2 If the Dispute is not settled through discussion between the FORS Provider and your representative within a period of 7 Business Days of the date on which the Dispute arose, the parties may refer the Dispute in writing to a director or chief executive (or equivalent) (“Senior Personnel”) of each of the parties for resolution.

24.3 If the Dispute is not settled by the Senior Personnel of the parties within a period of 14 Business Days of the date on which the Dispute is referred to them under condition 24.2, either party may commence legal proceedings in accordance with condition 25.

24.4 Neither party will be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this condition 24 and condition 24 will not apply in respect of any circumstances where such remedies are sought.

## **25. Governing Law and Jurisdiction**

The validity, construction and performance of these Terms and Conditions will be governed by English law and, without prejudice to condition 24, the parties agree to submit to the exclusive jurisdiction of the courts of England.

If you require more information about the Fleet Operator Recognition Scheme please email [enquiries@fors-online.org.uk](mailto:enquiries@fors-online.org.uk)

