



# Fleet Operator Recognition Scheme Terms and Conditions

## Version 5

6 December 2018

These updated FORS Terms and Conditions are issued to accompany the following documents:

- FORS Standard (version 5)
- FORS Rules and Procedures
- FORS Compliance and Enforcement Guidance for Operators

Your FORS membership and accreditation are governed by these Terms and Conditions. Please read them carefully. Your attention is brought in particular to the following changes:

Summary of changes to this document between version 4.1.iii 21 May 2018 and version 5 December 2018

Item	Version 4.1.iii	Version 5	Summary of change
2.1	-	Membership fee	Membership fee introduced for dormant organisations wishing to be reinstated more than once within their 12 months membership period
2.4	Whole Fleet Accreditation (WFA)	Internal Audit Fleet Accreditation (IAFA)	Change of terminology
2.4	Routes to FORS accreditation	Routes to FORS accreditation	Now refers to FORS Rules and Procedures for more details
2.6	Eligibility for accreditation	Accreditation award	Eligibility for accreditation details merged and incorporated into accreditation award condition
2.7	-	Audit appeal	New audit appeal condition
3.2	Progression	Progression	New detail about fitment of required vehicle safety equipment added
3.2.4	General obligations	General obligations	Now refers to offence under any other legislation as listed in the FORS Compliance and Enforcement Guidance for Operators
3.6	Changes to company details	Changes to company details	Now refers to the FORS Rules and Procedures for more details
8.2	Provision and use of data	Provision and use of data	Includes TfL and Environment Agency
15.3	Consequences of downgrading, suspension or termination	Consequences of downgrading, suspension or termination	Rewritten to incorporate second enhanced audit within the 6 month probation period
15.6	Consequences of downgrading, suspension or termination	Consequences of downgrading, suspension or termination	Rewritten to incorporate successful completion of two enhanced audits in order to reinstate the FORS accredited status after a suspension or downgrade period

## Version 5

### 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;

**“Data Protection Legislation”** means:

(a) any legislation in force from time to time in the United Kingdom which implements the European Community’s Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

(b) from 25 May 2018 only, the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data (the “General Data Protection Regulation”);

(c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data; and

(d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation;

**“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 an organisation appointed by the FORS provider from time to time to undertake the FORS audits;

**“FORS Champion”** 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 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 Privacy Statement”** means the document of that name which is located at [www.fors-online.org.uk/cms/privacy-statement](http://www.fors-online.org.uk/cms/privacy-statement) and which sets out the minimum guidelines adopted by the FORS provider for the collection, use, sharing, protection and other processing of personal data for the purposes of compliance with Data Protection Legislation;

**“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 site or depot where commercial vehicles operate from, where there is infrastructure that supports daily management, control and day to day operational deployment of a fleet. Note that the definition of FORS operating centre is not the same as the definition according to Operator Licensing;

**“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 online 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 membership fee, details of which are available on [www.fors-online.org.uk](http://www.fors-online.org.uk).

If you fail to progress to Bronze within 90 calendar days of your registration, you will be made dormant. Dormant means you are no longer a FORS member. If you wish to continue with FORS, you will need to request to be reinstated. If you are still within your 12 months membership period, your original membership payment will cover your membership to the original membership end date. However, any subsequent re-registrations within that 12 months period will be charged a new membership fee.

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 as detailed in the FORS Rules and Procedures.

## **2.3 Progression from registration to accreditation**

If, after registering, no progress to accreditation has been made after 90 calendar days, your registration will be downgraded to Dormant. Dormant means that your organisation is no longer a FORS member. Your organisation 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.

## **2.4 FORS Bronze audit**

Within 90 calendar days of registration you shall request a FORS audit via your 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 certification body will arrange a time and date for the audit to take place. The relevant fee for the audit will be charged.

You agree to comply with all reasonable requests relating to the audit. 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 basic measures that impact your operations and (b) collect data and initiate actions to comply with the FORS Standard.

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

Where an audit is failed, to achieve FORS accreditation, you must book and undertake a follow-up audit which must be passed within 30 calendar days from initial notification of audit result.

Further clarifications regarding continued Bronze accreditation can be found in the [FORS Rules and Procedures](#).

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. Routes to FORS accreditation are:

- Single Operating Centre Accreditation (SOCA)
- Multi-Operating Centre Accreditation (MOCA)
- Internal Audit Fleet Accreditation (IAFA)

Full details of the type of accreditation can be found in the FORS Rules and Procedures.

The FORS MOCA and IAFA 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 IAFA if deemed necessary due to the actions of any operating centres.

## **2.5 Payments for audits**

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

- a) SOCA, MOCA or IAFA (as set out in condition 2.3); or
- b) follow up audits (as set out in condition 2.4), or;
- c) enhanced audits (as set out in condition 15.3), or;
- d) for follow up 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.

## **2.6 Accreditation award**

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 in the FORS Standard.

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 2.4. 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 you will be downgraded according to condition 2.3. You can apply again to be registered by following the procedure set out in condition 2.1.

FORS logo cannot be printed and used on vehicles until your organisation is accredited.

## **2.7 Audit appeal**

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. 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 action plan findings, you will have five business days from the time of notification to raise your concerns in writing with the FORS provider, who will consider your audit appeal. Further information regarding the appeal process can be found at FORS Compliance and Enforcement Guidance for Operators.

## **3. Accreditation**

### **3.1 Accreditation levels**

There are three levels of FORS accreditation: Bronze, Silver and Gold. All 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 requirements set out in the FORS Standard.

### **3.2 Progression**

In order to progress to the next level of FORS accreditation, you will need to provide evidence for every operating centre in scope of accreditation demonstrating that they meet the specific requirements for the next level of accreditation. This includes providing performance data about your operations and evidence that the required vehicle safety equipment has been fitted, along with meeting additional driver training requirements. For the purpose of performance monitoring, you will need to implement appropriate systems to capture such data to enable your progression through FORS. All data supplied for the purpose of any benchmarking will be treated in accordance with Conditions 8 and 9.

### **3.3 Accreditation benefits**

Once you become a FORS member, you will be entitled to receive the FORS 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**

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

3.4.1.1 comply with the requirements of the FORS Standard for your level of accreditation;

3.4.1.2 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;

3.4.1.3 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;

3.4.1.4 pay all the invoices on time and full. Failure to do so will mean that the FORS provider has the right to withdraw FORS accreditation from the FORS accredited company.

3.4.2 You will notify the FORS provider in writing as soon as reasonably practicable, and in any event within five business days, if you or your employees have been found guilty and convicted of committing an offence under the Road Traffic Act 1988 or the Health and Safety at Work Act 1974, or any other legislation as listed in the [FORS Compliance and Enforcement Guidance for Operators](#).

3.4.3 You will notify the FORS provider in writing as soon as reasonably practicable, and in any event within five business days, if your company or employees are called to attend a Traffic Commissioner Public Inquiry for the following reasons:

- GV - S26 - Consideration of disciplinary action under Section 26 of the Goods Vehicles (Licensing of Operators) Act 1995
- GV - S27 - Consideration of disciplinary action under Section 27 of the Goods Vehicles (Licensing of Operators) Act 1995
- GV - S28 - Consideration of disciplinary action under Section 28 of the Goods Vehicles(Licensing of Operators) Act 1995
- GV - Sch.3 - Consideration of Transport Managers Repute under Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995

3.4.4 You will notify the FORS provider in writing as soon as reasonably practicable, and in any event within five business days, of the outcome of any Traffic Commissioner Public Inquiry that your company or employees are called to attend. This applies to public inquiries held for disciplinary reasons and transport manager repute as described in 3.4.3. This information must include any written decision provided by the Traffic Commissioner in relation to the public inquiry.

3.4.5 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. Complaints received about FORS accredited companies however received will be reviewed by the FORS provider and as required notified to the company setting out the detail of the complaint, the response requirement and the potential consequence of escalation or action.

### **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, the FORS Rules and Procedures, the FORS Compliance and Enforcement Guidance, 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 informing the FORS provider, and in any event within five business days, of any changes to the details of your operation in terms of structure, personnel, operating licence, number and size of vehicles and operating centres, as outlined in the FORS Rules and Procedures.

All notifications of changes to your details should be by email to [enquiries@fors-online.org.uk](mailto:enquiries@fors-online.org.uk)

## **4. Improper conduct**

You will not, and will ensure that your employees, agents and sub-contractors do not, give, offer, promise, or authorise, 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. None, 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 Champions 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 Champion; 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 Champion, 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 with the FORS provider at all levels of FORS accreditation as set out in the FORS Standard.
- 8.2 The FORS provider solely for the purposes of delivering FORS, is authorised to use and share personal data as set out in the FORS Privacy Statement.

The FORS provider, solely for the purposes of delivering FORS, is authorised to use and share your other data (non - personal data) for the following:

(1) share your data with the following organisations:

- TfL
- FORS Community Partnership
- FORS publication partners and mailing houses
- FORS workshop, conference, training course, webinar and other event sponsors
- FORS certification bodies
- FORS Champions

- FORS Affinity Partners
- DVSA
- Environment Agency
- the police (on a case by case basis for prevention and detection of crime)

(2) use your data for the purpose of benchmarking your performance against industry; and

(3) use and release limited elements of your data and your FORS membership status (including any suspension or termination) into the public domain to assist businesses procuring and receiving road freight services to ascertain whether a FORS accredited company has complied with its legal and contractual 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 Legislation in respect of personal data or sensitive personal data (if any) 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; or

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.

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, however 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.

11.2 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 of 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**

Your FORS accreditation will cease if you fail to pass a re-approval audit prior to your accreditation expiry date.

13.1 This means you will be downgraded to Dormant. Dormant means that your organisation is no longer a FORS member. Your organisation will no longer be listed on the FORS website.

13.2 Operators are able to voluntarily withdraw from the scheme at any time, but this must be submitted in writing to [enquiries@fors-online.org.uk](mailto:enquiries@fors-online.org.uk).

13.3 If your organisation is downgraded to Dormant, or you withdraw from FORS, and you wish to become a FORS accredited company again, 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 2.4.

13.4 If your organisation is downgraded to Dormant 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. Downgrading, suspension and termination**

14.1 Upon written notice, the FORS provider may at its sole discretion elect to either suspend, terminate or downgrade your FORS accreditation, if you:

14.1.1 provide false information during a FORS audit;

14.1.2 fail to maintain compliance with the criteria for your level of accreditation in accordance with the FORS Standard;

14.1.3 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;

14.1.4 fail to inform the FORS provider of any changes in your circumstances;

14.1.5 fail to pay any FORS related invoice in time and in full; or

14.1.6 are subject to any sanctions of the FORS Compliance and Enforcement Guidance for Operators

14.1.7 fail the probationary period in regards to a compliance issue as detailed in the FORS Compliance and Enforcement Guidance for Operators

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

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 downgrading, 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 a six month probation plan, to be approved by the FORS provider, in order to rectify the breach; and

15.1.2 pass two enhanced audits if suspended, which will be at your expenses (as set out in condition 2.5); and

15.1.3 successfully complete the probationary period associated with your suspension; and

15.1.4 cooperate with the FORS provider at all times.

15.2 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.

15.3 During the suspension or downgrade period, you will:

15.3.1 not be entitled to the FORS benefits;

15.3.2 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.

15.4 If a probation plan is not agreed within the suspension or downgrade period, or when rejoining the scheme following termination, the FORS provider may at its sole discretion, terminate your FORS accredited status.

15.5 If you fail to pass any enhanced audit and the subsequent follow up enhanced audit, the FORS provider will terminate your FORS accredited status.

- 15.6 On the expiry of the suspension or downgrade period and the successful completion of the probationary period and two enhanced audits, your FORS suspension or downgrade will be lifted and your FORS accredited status will be reinstated to your original Bronze approval date, meaning your expiry date will be the same as before your suspension or downgrade. If you are a Silver or Gold FORS accredited company, then your accreditation date will be aligned with your previous Silver and Gold (if applicable) expiry date.
- 15.7 Upon termination, however caused, you will be prevented from re-registering and becoming a FORS accredited company for six 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 six month period, you wish to become a FORS accredited company, you will be required to:
- 15.7.1 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 (you will be issued with a new FORS ID); and
  - 15.7.2 provide written confirmation, signed by your managing director, of the measures and procedures that have been put in place to ensure the cause of your termination does not reoccur; and
  - 15.7.3 agree a 12 month probation plan, to be approved by the FORS provider in order to rectify the breach; and
  - 15.7.4 pay for and pass an enhanced audit, which will be at your expense (as set out in condition 2.5) to return to FORS accredited status, and, within the 12 month probation period, be subject to and pass three further enhanced audits;
- 15.8 Upon withdrawal or suspension from FORS or termination of your FORS accredited status, howsoever arising:
- 15.8.1 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; and
  - 15.8.2 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 Champion; and
  - 15.8.3 both parties will immediately cease to use or exploit their previous connections with each other directly or indirectly.

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 10 business days of a written request from the FORS provider, you will to 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 10 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 seven 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).

