TERMS AND CONDITIONS

1. These are the Terms and Conditions of Forrest Medico-Legal Services Community Interest Company as determined and revised by the Directors and agreed by the Members from time to time.

2. **EXPLANATION OF TERMS**

   - '**FMLS'** - Forrest Medico-Legal Services.
   - The **'referrer'** - The referrer will be the organisation and/or instructed legal representative and/or individual to whom the Enquiry Form is addressed unless otherwise agreed in advance in writing.
   - The **'client'** - the client of the referrer.
   - '**LAA'** - the Legal Aid Agency and its predecessor/successor bodies.
   - **'Privately funded'** means that the subject of the report ('the client') is ineligible for or has freely chosen not to access public funds and he or she and/or those supporting him or her are able to meet the reasonable fees of FMLS. (See 17a below regarding VAT in such cases.)
   - **'Pro bono'** [pro bono publico – '*for the public good*'] applies where the client is ineligible for public funds and is destitute or without sufficient funds and/or does not have access to persons who would otherwise support him or her to meet our reasonable fees.
   - **'Enquiry/Referral Form'** the document must be completed when making an initial enquiry such as requesting a quotation or estimate or enquiring as to availability etc.
   - **'Documents Form'** - this form must be completed before instructions can be accepted. It gives details of the client, documents provided, instructions and arrangements.
   - **'GMC'** – the General Medical Council.

3. These Terms and Conditions govern contractual matters between FMLS and the referrer. (See 20 below - Acceptance and Compliance with Terms and Conditions.)

4. From time-to-time further information will be uploaded to the FMLS website pages 'Making Best Use of Us' pages and elsewhere on the website: http://forrestmls.org/medical-expertise/

5. These terms and conditions will apply to all instructed work whether paid from public funds, privately funded or *pro bono* unless terms and conditions specific to the case apply (see below at 7).

6. An estimated cost of each report will be made in writing following receipt of a duly completed Enquiry/Referral Form.

7. FMLS reserve the right to vary the estimated cost of any report upon receipt of a duly completed Documents Form and accompanying papers. (See Fees & Funding below.)

8. **FEES AND FUNDING - public funds, privately funded, *pro bono*** (See 17 below for PAYMENT OF FEES)

   a) Publicly funded work will be quoted at not more than the hourly rates established by the LAA for the relevant area of work and expertise from time to time published and unpublished.

   b) Quotes for publicly funded work will be provided on an initial estimate of the work involved following discussion between the referrer and the Administrator. If the referrer anticipates that the work involved is likely to be onerous then this should be indicated to the

Administrator in the Enquiry Form. Thus the quote assumes an average time spent by the expert reading the papers (this preparatory work is required by the expert's duty to the court). An average bundle is assumed to be not more than 200 pages. To avoid delay referrers should advise the Administrator, in advance of the quote, if the bundle to be read is larger than average. Quotes will be adjusted to reflect bundles of papers which are larger than average.

c) For the avoidance of doubt these Terms and Conditions form the basis of a bilateral contract between FMLS and the referrer. The LAA is not a party to this contract. However, FMLS note that in the course of performing LAA contract work each provider awarded a 2024 Standard Civil Contract is responsible for fulfilling their contractual obligations, including the requirement to pay all experts (i.e., an “Approved Third Party”) “within 30 days of receipt of a valid invoice” (as per clause 3.3(b) of the Standard Terms of the 2024 Standard Civil Contract). Accordingly, FMLS requires that any valid invoice be paid within the specified 30 days. In accepting these terms and conditions, referrers accept that FMLS reserve the discretionary right to refer any referring LAA provider to the LAA in circumstances where FMLS invoices are not paid within the required 30 days.

d) FMLS has capacity to take ‘privately funded’ work on a ‘reasonable fee’ basis. Such reasonable fees for ‘privately funded’ cases will be established on a case-by-case basis following discussion between the FMLS administrator and the referrer. An estimate will then be provided (see 5 and 6 above).

e) FMLS has some limited capacity for work to be undertaken ‘*pro bono*’. *Pro bono* cases are accepted on the basis of out-of-pocket expenses. Decisions to take a case *pro bono* are made on a case-by-case basis and by prior agreement with FMLS, in writing, only. It may be necessary to charge reasonable modest expenses for *pro bono* cases. An estimate for such expenses will be provided prior to the evaluation.

f) In the event that the client (or those supporting him or her) of those accessing pro bono services at FMLS are subsequently in funds at any stage, a donation to a charity of our choice would be appreciated.

9. TIMESCALES

a) Contingent on receipt of all necessary papers described in the Document Form, and there being no serious difficulties with history or examination, FMLS will use its best endeavours to ensure that a draft report will be delivered not more than forty working days commencing from first working the day after the final clinical evaluation.

b) Clinical evaluations cannot take place until funding for the report has been agreed between the FMLS Administrator and the referrer and the FMLS Administrator has received all relevant and necessary papers.

c) In urgent cases (by prior arrangement in writing), a report may be provided in less time than set out in 9a above.

10. NOMINATED DOCTORS

a) FMLS seeks to provide its medico-legal reports in a timely manner (see 9a above) and to maximise the availability of our doctors.

b) In order to ensure these aims FMLS may nominate a doctor (and provide his/her CV) upon

initial instructions, but may substitute another doctor (with equivalent skills and expertise) in the event that the first-named doctor is not available for the earliest available appointment.

c) In the event that the doctor undertaking the clinical evaluation is not the first nominated doctor this will be made clear at the earliest opportunity (and the doctor's CV provided).

11. PAPERLESS OFFICE

a) FMLS aims to operate paperless systems. Accordingly, all correspondence will be by electronic means such as email, except by prior arrangement. (See 15 c) below.)

b) Except by prior written agreement, unsolicited hard copies of papers will be returned to the sender unread or may be held pending receipt of a reasonable charge to cover return postage.

c) Medico-legal reports and ancillary correspondence will be delivered by email or other appropriate electronic means unless by prior arrangement in writing.

d) Reports will be signed by applying an electronic signature, unless by prior arrangement in writing.

12. CLINICAL EVALUATION IN THE COMMUNITY

a) Any clinical evaluation can be a complex and lengthy process. Even where English is a second language and adequate for many purposes, an interpreter is often required. A professional interpreter should be provided wherever necessary. Friends and family members are rarely appropriate as interpreters and approval to use such a person as the interpreter must be agreed by the Forrest Administrator in advance before providing such a person to interpret. Under no circumstances must children ever be used as interpreters. FMLS reserves the right to cancel appointments where:
   - an interpreter does not attend or where it ought reasonably to have been recognised that an interpreter should have been engaged or
   - where a friend or relative is used as an interpreter without prior notification.

   (See 'Cancellation Fees' at 18 below.)

b) Ensuring Communication on the Day
   i. In order to ensure communication on the day of the clinical evaluation FMLS must be notified of the mobile phone numbers of your client and the interpreter at least 24 hours beforehand.
   ii. The referrer's client and the interpreter should also be provided with the FMLS expert's mobile phone number at the time that the client is provided with the expert's phone number.
   iii. FMLS requires that the interpreter and the client should be given each other's mobile phone numbers, together with the FMLS expert's mobile phone number.
   iv. FMLS recommend that the interpreter and the client be reminded that their phones should be fully charged and switched on.

c) The address and directions will be provided to the rooms being used for the assessment. Please note: FMLS use a number of different rooms in a variety of locations. It should not be assumed that a room used in the past will be the location for the current clinical evaluation. The referrer should pass a copy of the address and directions to both the client and interpreter in a timely manner.

d) The client should be advised that the clinical evaluation of an adult is not a suitable place for a child. Should the client need to bring a child with them, they must also bring a carer for the child. Carers, children, and other third parties (see e) below and 14 below) will not usually be admitted into the room in which the clinical evaluation is taking place, and your client should be aware that not all of the facilities used have a waiting area, they may have to wait in a local café, library, or similar.

e) Any accompanying friend or relative (except those acting as a chaperone or an 'appropriate adult' where the patient is a minor see 14 below) will also be directed to wait for your client in the waiting room or agreed alternative venue (see 12d above).

f) If a return journey on public transport is being booked for the client, please ensure that the time of the booking allows at least two and a half hours for the clinical evaluation, allowing for possible late arrival due to transport or other difficulties.

g) If travelling by car, please advise the client and interpreter that parking may be expensive or difficult near the clinical evaluation facility.

h) Late arrival may result in the clinician being unable to see your client. FMLS reserves the right to apply a cancellation fee on a case-by-case basis. (See18 Cancellation and Non-Attendance below.)

i) Remote evaluations – where these are necessary the referrer must ensure that their client can attend such an appointment and that adequate connectivity is available. The referrer should explain to their client that, to ensure confidentiality, the client should be in a private space before the evaluation begins.

13. CLINICAL EVALUATION IN IMMIGRATION REMOVAL CENTRES (IRCS) AND PRISONS

a) Unless agreed in advance and confirmed in writing, all clinical evaluations in IRCs and prisons must be arranged to take place in the Healthcare Suite.

b) Written confirmation of the booking from the Healthcare Suite should be forwarded to both the doctor and Administrator as soon as possible and not later than 48 hours (excluding weekends and bank holidays) before the appointment.

c) If the client is detained in an IRC the doctor will require his/her mobile phone number and that of the interpreter (if needed). This allows the FMLS expert to communicate directly with the client in the event that he/she or the expert is unavoidably delayed.

d) FMLS may require that the organisation of a visit to an IRC or prison be undertaken by the FMLS Administrator to avoid confusion.

e) FMLS requires the referrer to make all reasonable efforts to obtain and provide IRC and/or prison medical records prior to the date of the clinical evaluation. (See Associated Documents below.)

14. PERSONS ATTENDING CLINICAL EVALUATIONS

a) Ordinarily attendances at clinical evaluation appointments will be limited to the client, the FMLS expert, and the interpreter where necessary. (See 12 above.)

b) Chaperones will be permitted with the consent of the client and at the discretion of the

FMLS expert. Other third parties will not ordinarily be permitted to attend clinical evaluations.

c) Notwithstanding the above, for training purposes, a second clinician of either gender may be in attendance at any clinical evaluation. FMLS therefore requests that the referrer seeks and forwards to both the clinician and the administrator the client's consent for another clinician to be in attendance in the standard form provided.

15. **INSTRUCTIONS AND ASSOCIATED DOCUMENTS**

a) Please note that without strict adherence to the following requirements regarding documents (other than by prior agreement in writing) the FMLS expert may not be able to see your client.

b) The courts require all experts to have read and considered all relevant documents and will criticise experts who appear to have failed to do so. The case of *HA (expert evidence, mental health) Ghana* [2022] UKUT 111 (IAC) is particularly relevant in this respect. It should be appreciated, therefore, that any failure to produce all relevant documents puts the reception of any particular report and the reputation of any expert at risk. See 'Cancellation Fees' at 18 below.

c) For the avoidance of doubt FMLS will not bear the cost of obtaining such records.

d) Where documents are not provided without reasonable explanation then this will be brought to the attention of the Tribunal in the body of the report.

e) Medico-Legal Reports are prepared in accordance with the Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal (1 November 2024). All such reports will be prepared in accordance with "9. Expert Evidence" of the Practice Direction in so far as that is possible. Where it is necessary to depart from the Practice Direction (for example as to the length of the report – see 9.2) this will be made clear in the body of the report.

f) All documents must be sent by email in pdf or word format only. (See 11 a) above.) Medical notes should be provided in text pdf format and not as images (e.g., tiff or jpeg) format. Photographs should be in jpeg format. (Details of the preferred format for photographs should be sought from the FMLS Administrator. Further information regarding photographs may be found on the FMLS website. http://forrestmls.org/documenting-photographic-evidence-of-torture/)

g) Each document must be scanned separately.

h) Each scanned document should be re-named. The new title should identify <u>the document and include the client's name</u> – e.g. 'Witness Statement Mrs. X.'

i) All papers and instructions must be received no later than two (and ideally three) weeks before the appointment save by prior written agreement. Failure to comply may result in deferral or cancellation of the appointment. See 'Cancellation Fees' at 18 below.

j) Instructions must include a contact number for the legal representative/caseworker having conduct of the case, or a colleague who will be in a position to act on her/his behalf on the day of clinical evaluation. In the absence of a contact number, any difficulties resulting in the appointment not taking place may be treated as a cancellation. See 'Cancellation Fees'

at 18 below.

k) Failure to comply with these instructions (unless previously agreed) may result in the cancellation of the client's appointment. See 'Cancellation Fees' at 18 below.

16. CLARIFICATIONS & FURTHER REPORTS

a) Reasonable and timely requests for clarification of reports will not usually require a further estimate of fees and/or further invoice and are included in the fees initially quoted. (See 6 and 8b above.)

b) However, requests for revisions which require the re-assessment of the subject of the report, in circumstances where the original instructions ought reasonably to have highlighted the point or where the point arises post assessment, time taken to consider and make necessary revisions will be charged at the hourly rate originally quoted. An estimate for the work involved will be provided before commencement.

c) Requests for clarification/revision should be submitted within two weeks of receipt of our report. Requests received more than two weeks after receipt of our report may be declined at the discretion of the doctor, or any additional time applied to the work charged at the hourly rate originally quoted. An estimate for the work involved will be provided before commencement.

d) Requests for clarification will be considered in the context of the relevant courts' practice directions on the duties of an expert. It is reasonable to expect that a witness statement should be provided in all cases where clarification is requested. Requests for clarifications are considered in light of previous information provided and are never accepted unconditionally.

e) Where matters come to light after the preparation of the original report which may cause the expert to comment on considerations and opinions in the original report than an 'Addendum' medico-legal report should be requested.

f) A clinical response to a Home Office Decision Letter, Determination and Reasons or court judgment is made by way of an Addendum medico-legal report.

g) Where there is a real possibility that the health condition (mental or physical) has changed over time and, for example, the interval between the preparation of the original report and its substantive consideration by the Home Office or the courts is substantial then an Addendum to the original medico-legal report may be requested.

h) Where a psychiatric report is required in addition to the original medico-legal report or a report documenting physical issues is required in addition to the original psychiatric report then such reports are 'Supplementary' to the original report.

i) Where the issue at hand to be considered in an Addendum or a Supplementary medico-legal report involves the client's responses to treatment over time then all medical notes should be provided with instructions. (NB the treating clinician may be better placed to comment on the client's responses to treatment. The Administrator should be advised if the treating clinician is unwilling or unable to provide a report.)

17. PAYMENT OF FEES

a) Fees quoted are inclusive of VAT; however, on invoicing this will be added and shown separately on the invoice. A VAT invoice will be sent to cover payment. In the event that the referrer considers that services are supplied to the client and not to the referrer and the client is ordinarily resident outside the EU (for VAT purposes) VAT will not be added. Such circumstances must be made known to the FMLS Administrator in advance. For the avoidance of doubt the onus of raising these issues rests with the referrer and not FMLS.

b) FMLS accepts payment by electronic means. All payments against invoices, whether by Bankers' Automated Clearing Services (BACS) transfer or other means, must clearly identify the report against which the payment is made and the FMLS invoice number by way of an e-mail confirming the date and time of transfer of funds. The Administrator will confirm receipt of funds by reply to the e-mail confirming payment.

c) Further to section 8(c) of these Terms and Conditions, the terms of payment herein are 30 days upon delivery of the invoice, notwithstanding any requests for clarification/revision (see 16 above), unless and only when other terms have been agreed in writing and in advance of preparation of the report.

d) FMLS recognises that, given the complexity of payment arrangements for publicly funded work, the estimated time between submission of final report (and invoice), and payment, may vary, but any arrangements beyond the period set out at 17 (c) above, should be agreed in advance.

e) Please note: as appropriate (and as per LAA guidelines), the referring solicitor/firm should be aware of the availability of applications to the LAA for an interim payment/staged billing to cover FMLS fee as per 8.141 of the 2024 Standard Civil Contract Specification for Immigration and Asylum matters which states "Claiming interim payments for disbursements" can be made "if at least 3 months have elapsed since the start of the Matter … ." Failure to do so will not exempt the referrer from the ordinary terms of payment set out at section 17(c) and taking into account section 8(c) above.

f) FMLS does not have any facility to extend substantial credit beyond the terms stated above in 17(c). Unpaid invoices may result in FMLS declining further instructions until debts are cleared.

g) FMLS reserves the right to take any and all steps as necessary (including the issue of Letters before Action and subsequent issue of Court proceedings) to ensure that fees are paid in a timely manner. Instructing parties are asked to advise FMLS promptly and in writing of any difficulties encountered.

h) Interest on unpaid invoices outstanding after 30 days (see 17(c) above) will be included in any Letter before Action and will be charged at the rates set from time to time by the Bank of England and HMCTS upon written notice of the same.

i) Any and all reasonable administrative fees, interest, and court fees may be added to the original debt and must be paid in full before the debt is considered cleared.

18. **CANCELLATION AND NON-ATTENDANCE**

a) The right is reserved by FMLS to apply a cancellation / non-attendance fee on a case-by-case basis. (See12a) and h) above.)

b) This fee may include, but may not be limited to, the costs involved in perusing the papers,

carrying out an assessment, and any preliminary drafting of the report up to the point at which the cancellation was made.

c) FMLS will set such fees in line with current LAA guidance.

d) In cases not funded by the LAA, FMLS reserves the right to seek (at minimum) to recover its out-of-pocket expenses.

19. **FEEDBACK & OUTCOMES**

a) Subject to the client's informed consent (which the FMLS expert will seek in writing on the day and provide to the referrer), a copy of the final decision (Home Office Decision Letter, Determination and Reasons, Court Judgment etc.) should be supplied to us (via email as .pdf or word documents) as soon as it becomes available.

b) FMLS requires these documents for the purpose of quality control, monitoring and evaluation, and in order that the expert can comply with the requirements of the GMC that all doctors undergoing revalidation should audit the results of their work.

c) Failure to provide the feedback described at 19a) above (where the client's consent is in place) may result in FMLS exercising its discretion on behalf of its experts to decline any new instructions from the referrer.

d) In any event (notwithstanding 19a), b) and c) above) should the FMLS expert or his or her report be called into question, FMLS must be notified as soon as possible. Good medical practice, GMC rules, and the maintenance of valid medical insurance all require medical practitioners to be aware of and act promptly upon any and all adverse criticism.

e) FMLS reserves the right to respond to adverse criticism which threatens its good standing, independent of instructions. However, FMLS prefers to be formally instructed in such matters. Should a fee be charged for the response (see 15 above), it will be in line with LAA rates, or the rates quoted for privately funded clients, unless the report was supplied on a pro bono basis, in which case, there will be no fee (subject to out-of-pocket expenses being recovered).

20. **THE DOCTOR-PATIENT RELATIONSHIP**

a) Referrers should bear in mind that while a medical practitioner preparing a medico-legal report does not undertake the role of the 'treating physician', nevertheless a 'doctor-patient' relationship is created through the interactions of the doctor with the patient (i.e., the client). This relationship imposes professional duties upon that doctor (as regulated by the GMC), in so far as those duties do not conflict with the doctor's primary duty to the court.

b) Among other matters the authors of medico-legal reports must have regard to issues such as patient safety and well-being and must take prompt action if there are any medical concerns around the patient's safety. Referrers should also be aware that failure by medical experts to take such action may render them liable to adverse regulatory interest by, for example, the GMC.

c) Such action may include writing to the patient's GP or, in the case of a detained patient, liaising with the IRC's healthcare team regarding matters such as 'safe medical discharge' from the IRC upon release.

d) It may also be necessary to liaise with the new GP practice for former detainees.

e) The full co-operation of the referrer in facilitating any action which furthers their client's safety and well-being is therefore requested.

21. **ACCEPTANCE AND COMPLIANCE WITH TERMS AND CONDITIONS**

a) Upon delivery of these terms and conditions, the referrer's provision to FMLS of duly completed Enquiry and Documentation Forms and all instructions in furtherance of our report will be treated as acceptance in full of FMLS' terms and conditions and that the referrer agrees to comply with them.

b) The referrer should then sign and date the terms and conditions and return them to FMLS. However, for the avoidance of doubt, a signature and date is not required by FMLS to treat these terms and conditions as accepted in full.

…… …….
(Name of acting solicitor/caseworker - the referrer) Date

…….
of (solicitor's firm)

…….
Signature