

PLEASE READ THESE LICENCE TERMS CAREFULLY

This licence agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and FIFE HEALTH BOARD, a statutory body constituted pursuant to the National Health Service (Scotland) Act 1978 (as amended) and having its headquarters at Hayfield House, Hayfield Road, Kirkcaldy KY2 5AH (and its statutory successors) (**Licensor, us or we**) in respect of the Licensed Product(s) (as defined below). We are willing to grant you a licence to use any one or more of the Licensed Products, subject to you agreeing to the terms and conditions set out in this Licence.

Where:

- (a) you are an NHS Licensee (as defined below), the provisions of Clauses 1 to 10 shall apply; and
- (b) you are a Non-NHS Licensee (as defined below), the provisions of Clauses 1 to 8 and 11 to 12 shall apply.

AGREED TERMS FOR ALL LICENSEES (BOTH NHS LICENSEES AND NON-NHS LICENSEES)

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Licence, the following expressions shall have the meanings set opposite them:

“Adult F-NDQ”	the assessment tool designed by the Developer for use by a range of clinicians to assess adults who are either suspected of having a neurodevelopmental disorder, or where there is uncertainty as to whether further assessment for a neurodevelopmental disorder is indicated;
“Child F-NDQ”	the assessment tool designed by the Developer for use by a range of clinicians to assess children who are either suspected of having a neurodevelopmental disorder, or where there is uncertainty as to whether further assessment for a neurodevelopmental disorder is indicated;
“Developer”	Dr Joshua Muggleton, a Clinical Psychologist with the Learning Disability Psychology Service for Children and Adults, part of the Clinical Psychology Department of the Licensor;
“Effective Date”	the date on which this Licence is agreed by and on behalf of the Licensee;
“Guidance Documents”	any and all guidance and information documents relating to the Licensed Products;

“IPR”	any and all patents, registered and unregistered trade marks, trade and business names, domain names, registered designs, unregistered design rights and other rights in designs utility models, applications for and the right to make applications for any of such rights, know-how, confidential information, including rights in any get-up or trade dress, copyright (including rights in computer software) and rights in databases, subsisting anywhere in the world;
“Licensed Products”	(i) the Adult F-NDQ; (ii) the Child F-NDQ; (iii) the Translated F-NDQs; and (iv) the Guidance Documents, that may be accessed and downloaded from the Website, and “Licensed Product” shall be construed accordingly;
“New Version”	a further, updated and stable version of any of the Licensed Products developed by or on behalf of the Licensor;
“NHS Licensee”	any Licensee that is an NHS entity in any part of the United Kingdom;
“Non-NHS Licensee”	any Licensee that is not an NHS Licensee;
“Permitted Purposes”	(i) clinical assessment and diagnosis; (ii) research; and/or (iii) education and training;
“Translated F-NDQs”	any and all versions of the Adult F-NDQ and/or the Child F-NDQ that have been translated from the original English language versions thereof into another language; and
“Website”	the website at https://moodcafe.co.uk/f-ndq/ .

2. LICENCE

2.1 By agreeing to the terms of this Licence, and subject to Clause 2.3 below, the Licensor hereby grants to the Licensee a non-exclusive, non-transferable, royalty-free licence to download and use any one or more of the Licensed Products for any one or more of the Permitted Purposes.

2.2 Other than the licence granted pursuant to Clause 2.1 above, the Licensee shall not

acquire any right, title or interest in or to any of the Licensed Products.

- 2.3 The Licensee may not grant a sub-licence to any of the Licensed Products to any third party, nor authorise in any other way the use by any third party of any of the Licensed Products, without the prior written agreement of the Licensor.
- 2.4 The Licensee undertakes that it shall not:
 - 2.4.1 use any of the Licensed Products for any purpose other than the Permitted Purposes;
 - 2.4.2 claim ownership in any of the IPR in and to any of the Licensed Products;
 - 2.4.3 remove, alter or obscure the copyright and/or other ownership notices contained in any of the Licensed Products;
 - 2.4.4 re-brand or rename any of the Licensed Products; or
 - 2.4.5 modify, alter, supplement or create derivatives of any of the Licensed Products, without the prior written consent of the Licensor.
- 2.5 The Licensee undertakes that it shall, if and when issuing any public communications concerning its use of any of the Licensed Products, acknowledge the Licensor and the Developer using the statement “The F-NDQ, the copyright in which is owned by NHS Fife, was developed by Dr Joshua Muggleton, a Clinical Psychologist with NHS Fife”, and the Licensee shall ensure that, if the public communication is issued in a language that is not English, this statement is translated into the relevant language and included in the relevant public communication.

3. USE OF THE F-NDQ

- 3.1 The Licensee acknowledges and accepts that the Licensee remains fully responsible, at all times, for:
 - 3.1.1 any and all use by the Licensee and its staff of any of the Licensed Products;
 - 3.1.2 any information gathered as a result of the use by the Licensee and its staff of any of the Licensed Products; and
 - 3.1.3 any clinical decisions made as a result of such use as referred to in Clause 3.1.1 and/or such information as referred to in Clause 3.1.2.
- 3.2 The Licensee acknowledges and accepts that the Licensed Products, are intended for use only:
 - 3.2.1 under the supervision of an experienced physician or other licensed health practitioner;
 - 3.2.2 in conjunction with the Guidance Documents; and
 - 3.2.3 as part of a larger clinical assessment of any patient, which assessment should be undertaken by or under the supervision of an experienced physician or other licensed health practitioner,

and the Licensee shall ensure that the Licensed Products shall be used accordingly.

3.3 The Licensee acknowledges and accepts that:

3.3.1 the Licensed Products are not intended to replace sound professional judgment in individual situations; and

3.3.2 the Licensee remains responsible, at all times, for keeping up-to-date with best practice and standards of care and ensuring that the Licensee's staff follow such best practice and standards of care.

4. PROTECTION OF IPR

4.1 The Licensee shall immediately notify the Licensor in writing giving full particulars if any of the following matters come to its attention:

4.1.1 any actual, suspected or threatened infringement of the IPR in and to any of the Licensed Products;

4.1.2 any claim made or threatened that any of the Licensed Products infringes the rights of any third party; or

4.1.3 any other form of attack or claim to which the IPR in and to any of the Licensed Products may be subject.

4.2 In respect of any of the matters listed in Clause 4.1 above:

4.2.1 the Licensor shall, at its absolute discretion, decide what action to take, if any;

4.2.2 the Licensor shall have exclusive control over, and conduct of, all claims and proceedings;

4.2.3 the Licensee shall not make any admissions other than to the Licensor and shall provide the Licensor with all assistance that the Licensor may reasonably require in the conduct of any claims or proceedings; and

4.2.4 the Licensor shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for the Licensor's own account.

5. NEW VERSIONS

5.1 The Licensee acknowledges and accepts that the Licensor is not obliged to produce any New Versions.

5.2 If the Licensor does develop a New Version, the Licensor will post a statement on the Website to advise that a New Version is available, and the Licensee will be able to download and use such New Version subject to agreeing the relevant terms and conditions of licence.

6. RECORDS AND FEEDBACK

6.1 The Licensee will keep accurate and up-to-date records of where and how it uses the Licensed Products, such that the Licensee can evidence that it has, at all times, adhered to the terms of this Licence.

6.2 The Licensor reserves the right to audit the Licensee's use of the Licensed Products to ensure that such use is and has, at all times, been in accordance with the terms of this Licence.

6.3 The Licensee acknowledges that the Licensor would be interested in receiving feedback from the Licensee and its staff regarding their experience of using any of the Licensed Products in order that the Licensor can assess whether modifications should be made to any of the Licensed Products, which modifications may lead to the release of a New Version.

7. TERMINATION

7.1 Without affecting any other right or remedy available to it, the Licensor may terminate this Licence with immediate effect by giving written notice to the Licensee if the Licensee commits a material breach of any term of this Licence which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so. The Licensee acknowledges and agrees that a breach by it of any and/or all of Clauses 2.3, 2.4, 2.5 and 3.2 shall constitute a material breach of this Licence.

7.2 The Licensor shall have the right to terminate this Licence at any time, without cause, by giving four (4) weeks' notice in writing to the Licensee.

7.3 On termination of this Licence, all licences granted hereunder shall terminate immediately.

7.4 On termination of this Licence, all terms and conditions set out in this Licence shall cease to have effect, except that any term and condition that expressly or by implication is intended to come into or continue in force on or after termination of this Licence shall remain in full force and effect.

8. GOVERNING LAW

8.1 The Agreement shall be governed and construed in accordance with the laws of Scotland.

ADDITIONAL AGREED TERMS FOR NHS LICENEES ONLY

9. DISCLAIMER

9.1 To the fullest extent permitted by law, neither the Licensor nor the Developer shall be liable to the Licensee for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other) arising from the Licensee's exercise of the rights granted to it under this Licence .

9.2 Neither the Licensor nor the Developer accepts any responsibility for any decisions made by the Licensee or its staff as a result of its or their use of any of the Licensed Products.

9.3 The Licensed Products are provided to the Licensee "as-is" without any warranty of any kind. All express or implied warranties, including but not limited to the warranties of title and non-infringement are excluded to the fullest extent permitted by law.

10. NHS CONTRACT

10.1 This Licence shall be constituted as a National Health Service Contract in terms of Section 17A of the National Health Service (Scotland) Act 1978 and/or Section 9 of the

National Health Service Act 2006, as appropriate, and, accordingly, shall not be regarded for any purpose as giving rise to contractual rights and/or liabilities.

ADDITIONAL AGREED TERMS FOR NON-NHS LICENSEES ONLY

11. LIABILITY AND DISCLAIMER

- 11.1 To the fullest extent permitted by law, neither the Licensor nor the Developer shall be liable to the Licensee for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other) arising from the Licensee's exercise of the rights granted to it under this Licence.
- 11.2 Neither the Licensor nor the Developer accepts any responsibility or liability for any decisions made by the Licensee or its staff as a result of its or their use of any of the Licensed Products.
- 11.3 The Licensee shall indemnify the Licensor against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Licensor arising out of or in connection with:
- 11.3.1 the Licensee's exercise of the rights granted to it under this Licence;
 - 11.3.2 any breach by the Licensee of any term of this Licence; and
 - 11.3.3 the enforcement of this Licence.
- 11.4 The indemnity set out in Clause 11.3 above shall apply whether or not the Licensor has been negligent or at fault.
- 11.5 The Licensed Products are provided to the Licensee "as-is" without any warranty of any kind. All express or implied warranties, including but not limited to the warranties of title and non-infringement are excluded to the fullest extent permitted by law.

12. GENERAL

- 12.1 This sets out the entire agreement between the parties with respect to the subject matter hereof and supersedes any previous understandings or arrangements whatsoever between the parties in respect of the subject matter hereof.
- 12.2 No variation of this Licence shall be binding unless agreed in writing between the parties.
- 12.3 A notice required or permitted to be given by either party to the other under this Licence shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.4 No waiver by the Licensor of any breach of this Licence by the Licensee shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.5 Unless expressly stated otherwise in this Licence, nothing in this Licence shall confer or purport to confer on any third party the right to enforce any terms of this Licence

pursuant to the Contract (Third Parties Rights) (Scotland) Act 2017.

12.6 Nothing in this Licence is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

12.7 The Licensee shall not assign, sub-contract or otherwise dispose of this Licence or any part thereof, or attempt to do any of the same, without the prior written consent of the Licensor.

BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS LICENCE, WHICH WILL BIND YOU, AND YOU WILL THEN BE ABLE TO ACCESS AND DOWNLOAD THE LICENSED PRODUCTS.

IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, YOU WILL NOT BE ABLE TO ACCESS AND DOWNLOAD THE LICENSED PRODUCTS.

["ACCEPT" BUTTON]