



## Click Studios Software End User License Agreement

**Effective Date: December 02, 2022**

This Click Studios End User Software Licenses Agreement (the **"Agreement"**) is between you and Click Studios (SA) Pty Ltd (ABN 68 552 128 552) (**"Click Studios"**). If you are agreeing to this Agreement not as an individual but on behalf of a company, government, or other entity for which you are acting then **"Customer"** or **"you"** means your entity and you are binding such company, government or entity to this Agreement. Click Studios may modify this Agreement from time to time, subject to the terms in section 17 of this Agreement.

The **"Effective Date"** of this Agreement is the date which is the earlier of (a) your initial access to or use of the Software (as defined below), or (b) the date of the first Order.

**By clicking on the "I agree" (or similar button) that is presented to you at the time of your Order, or by using or accessing the Software, you indicate your assent to be bound by this Agreement. If you do not agree to this Agreement, do not use or access the Software.**

This Agreement is made and effective,

**BETWEEN:**                      **Click Studios**

**AND:**                              **[You]**

### Scope of Agreement

This Agreement governs your initial Order or purchase of Click Studios Software, Annual Support and Upgrade Protection and any additional Subscriptions, as well as any future purchases made by you that reference this Agreement.

### 1. Definitions

**"Computer"** means a computer device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.

**"Enterprise Trial"** has the meaning set out in section 8 of this Agreement.

**"Internal Network"** means a private, proprietary network resource accessible only by employees and individual contractors (i.e., temporary employees) of a specific corporation or similar business entity. Internal Network does not include portions of the Internet or any other network community open to the public, such as membership or subscription driven groups, associations and similar organizations.

**"Nominated Contacts"** means your nominated contact names and email addresses. You may specify up to four (4) sets of contacts by supplying the First Name, Surname and email address for each contact. These contacts receive all license keys, important information and automated renewal notifications. **It is your responsibility to ensure your Nominated Contacts are accurate, current and complete.**

**"Order"** means any order for Software or for an Enterprise Trial made by or on behalf of the Customer.

**"Passwordstate Instance"** means one (1) unique production installation of the Software as defined by the license key's Registration Name and Registration Key. This applies to Client Access and Enterprise Licenses.

**"Permitted Number"** means the number shown at License Count in your latest license key email and as shown in your Passwordstate Instance Licensing screen as the License Count associated with Client Access Licenses. If you are entitled to use Enterprise Licensing the Permitted Number is unlimited.

**"License Set"** is a unique Registration Name plus unique Registration Key combination that entitles you to the corresponding Permitted Number of Client Access Licenses that were purchased. The term is typically used when dealing with multiple License Sets purchased by a customer.

**"Software"** means (a) all of the information with which this Agreement is provided, including but not limited to (i) Click Studios or Click Studios supplied third-party software files and other computer information; (ii) related explanatory written materials and files ("**Documentation**"); and (iii) any modified versions and copies of, and upgrades, updates and additions to, such information, provided to you by Click Studios at any time, to the extent not provided under a separate agreement (collectively, "**Updates**").

**"Third-Party Products"** means any software product or service not supplied by Click Studios. This includes but is not limited to database, computer operating systems, web server software, network device, load balancer and reverse proxy software.

## 2. Terms and Conditions Precedence

Click Studios does not accept and will not sign any document that changes the terms and conditions within this Agreement. No provision of any purchase order or other business form employed by you will supersede, supplement or take precedence over the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect. If you do not agree to this Agreement, you must not use or access the Software.

## 3. Software Usage

### 3.1 MSP Licensing

This Agreement does not apply to Click Studios Managed Service Provider ("**MSP**") version of Passwordstate, the use of which requires a separate agreement with Click Studios.

### 3.2 Perpetual License

Subject to the terms and conditions of this Agreement, Click Studios hereby grants to you a perpetual, non-exclusive, non-sublicensable and non-transferable license to install and use the Software and Documentation ("**License**"). Such License remains in force until you stop using the Software or until Click Studios terminates the License because of your failure to comply with this Agreement or any other applicable terms and conditions.

### 3.3 Features bound to Annual Support and Upgrade Protection

Click Studios has additional controls relating to the use of some features in Passwordstate. Certain features included in the Software are bound to your Annual Support and Upgrade Protection coverage. While your Passwordstate Instance is actively covered by Annual Support and Upgrade Protection all licensed and subscribed features are enabled. Without active Annual Support and Upgrade Protection some functionality is disabled and each of our Products is limited to:

**Passwordstate:** Remains fully functional but cannot be upgraded to newer versions

**High Availability Module:** Remains fully functional

**Password Reset Portal:** Is subscription based and all functionality is disabled

**Remote Site Locations:** Is subscription based and all functionality is disabled

### 3.4 Restrictions

Except as otherwise expressly permitted in this Agreement, you must not:

- a) reproduce, modify, adapt or create derivative works of any part of the Software;
- b) rent, lease, distribute, sell, sublicense, transfer, or provide access to the Software to a third party;
- c) use the Software for the benefit of any third party;
- d) incorporate the Software into a product or service you provide to a third party;
- e) interfere with any license key mechanism in the Software or otherwise circumvent mechanisms in the Software intended to limit your use;
- f) continue to make use of any Client Access License Set that has been used to upgrade to either an Enterprise or Global License Set;
- g) continue to make use of any original Client Access License Set, using the same Registration Name, that differs in the Permitted Number of users as shown in your current License Set;
- h) reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to the Software, except to the extent required by any applicable law (**and then only upon advance notice to us**);
- i) remove or obscure any proprietary or other notices contained in the Software;
- j) use the Software for competitive analysis or to build competitive products;
- k) publicly disseminate information regarding the performance of the Software; or
- l) encourage or assist any third party to do any of the foregoing.

### 3.5 Number of Instances

Unless otherwise specified you may install one (1) Passwordstate Instance on systems owned or operated by you or one of your Authorized Users. We allow you to deploy (1) non-production instance for development, staging or QA purposes. No other Passwordstate Instances are permitted, unless Multiple License Sets, the Global License, or the High Availability license options are purchased.

### 3.6 Multiple License Sets, Global and High Availability Licenses

When you purchase Multiple License Sets, the Global or the High Availability License you are entitled to the following;

- a) **Multiple License Sets** entitle you to one (1) Passwordstate Instance, per License Set, for each of the License Sets purchased. Additionally,
  - a. each License Set must have a unique Registration Name
  - b. each License Set may differ in the Permitted Number of users covered. You do not need to purchase the same quantity of licenses per License Set;
  - c. all License Sets must be covered under their own active Annual Support and Upgrade Protection to be eligible for Technical Support;
  - d. you may only deploy (1) non-production instance for development, staging or QA purposes regardless of how many License Sets you have purchased;
  - e. The provision of technical support is only provided when all License Sets are covered by

their own active Annual Support and Upgrade Protection. **For the avoidance of doubt, you must ensure Annual Support and Upgrade Protection remains active for all your License Sets to receive technical support on any Passwordstate Instance.**

- b) **Global Licensing** entitles you to an unlimited number of Passwordstate Instances. Each of these instances uses an Enterprise License with the Permitted Number of users being unlimited. Each of these Passwordstate Instances must be installed under the same company structure - no part owned subsidiary companies, partner companies, or alternate government departments are permitted to use this license.
- c) **High Availability Licensing** entitles you to a secondary Passwordstate Instance for the purpose of Disaster Recovery and Business Continuity. If purchased with a Global License, then unlimited installs of the High Availability module are also permitted under the same company structure - no part owned subsidiary companies, partner companies, or alternate government departments are permitted to use this license. **For the avoidance of doubt, you must purchase the High Availability license if you wish to use Virtual Server Replication technologies for disaster recovery or business continuity purposes.**

### 3.7 Permitted Number of Users

Each Passwordstate Instance may only be accessed by the Permitted Number of licensed named users (not the concurrent number of users). You may not exceed the Permitted Number of users for any Passwordstate Instance.

### 3.8 System Requirements

You are solely responsible for ensuring that your systems meet the hardware, software and any other applicable system requirements for the Software as specified [here](#). **Click Studios will have no obligations or responsibility under this Agreement for issues caused by your use of any Third-Party Products.**

## 4. Third-Party Products

You may choose to use or procure Third-Party Products. Your receipt or use of any Third-Party Products is subject to a separate agreement between you and the third-party provider. You acknowledge that third-party providers may access or use data stored within Passwordstate if their agreement with you permits them to do so. Any third-party provider's use of your data is subject to the applicable agreement between you and such third-party provider. Click Studios is not responsible for any access to or use of your data by any third-party provider or Third-Party Products, or for the security or privacy practices of any third-party provider or Third-Party Products. You are solely responsible for your decision to permit any third-party provider or Third-Party Product to use your data. It is your responsibility to carefully review the agreement between you and the third-party provider, as provided by the applicable third-party provider.

**Click Studios disclaims all liability, responsibility and obligation for any Third-Party Products (whether support, availability, security or otherwise) or for the acts or omissions of any third-party providers or vendors.**

## 5. Annual Support and Upgrade Protection, Delivery, Payment and Withholding Taxes

### 5.1 Annual Support and Upgrade Protection and Renewals

Some features included in our software are bound to Annual Support and Upgrade Protection (refer to 3.3

Features bound to Annual Support and Upgrade Protection). While a customer's Passwordstate Instance is actively covered by Annual Support and Upgrade Protection all licensed and subscribed features are enabled. The Annual Support and Upgrade Protection period is valid until the "Expires" date in your license key email. This date is shown in your Passwordstate Instance Licensing screen as the Annual Support date. All renewals for Annual Support and Upgrade Protection will be charged at the then-current rates. **For the avoidance of doubt, you acknowledge that some features are disabled, and, that Click Studios has no obligation to provide any technical support to customers without active Annual Support and Upgrade Protection on all Passwordstate Instances registered to them.**

## 5.2 Delivery

We will deliver all applicable license keys to your Nominated Contacts within 48 hours after receiving a valid Order and/or payment of the applicable fees. All deliveries of License keys under this Agreement will be electronic. Click Studios Software may be downloaded [here](#). **For the avoidance of doubt, you are responsible for installation of the Software, and you acknowledge that Click Studios has no further delivery obligation with respect to the Software after delivery of the license keys.**

## 5.3 Payment and Withholding Taxes

You will pay all fees in accordance with each Order, by the due dates and in the currency specified in the Order. For Non-Australian businesses, your fees under this Agreement exclude any taxes, duties and withholding tax payable in respect of the Software in the jurisdiction where the payment is either made or received. Notwithstanding the foregoing, if you have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed, you may provide to Click Studios any such exemption information, and Click Studios will use reasonable efforts to quote this exemption in invoices. You are responsible for the cost and payment of all applicable withholding taxes for your jurisdiction.

## 6 Reseller Orders

If you purchase the Software and or Annual Support and Upgrade Protection through an authorized Reseller of Click Studios;

- a) Instead of paying Click Studios, you will pay the applicable amounts to the Reseller, as agreed between you and the Reseller. Click Studios may suspend or terminate your rights to use the Software, or receive technical support, if Click Studios does not receive the corresponding payment from the Reseller.
- b) Instead of an Order with Click Studios, your order details (e.g., Software and Annual Support and Upgrade Protection period) will be as stated in the order placed with Click Studios by the Reseller on your behalf, and the Reseller is responsible for the accuracy of any such order as communicated to Click Studios.
- c) Resellers are not authorized to modify this Agreement or make any promises or commitments on Click Studios behalf, and Click Studios is not bound by any obligations to you other than as set forth in this Agreement.
- d) The amount paid or payable by the Reseller to us for your use of the applicable Software under this Agreement will be deemed the amount actually paid or payable by you to us under this Agreement for purposes of calculating the total liability to you.**

## 7. Future Functionality

Payment obligations for all products or services are not contingent on the purchase or use of any of our other products. You agree that your purchases are not contingent on the delivery of any future functionality or features (including future availability of any Software beyond the current License Term or any New Releases), or dependent on any oral or written public comments made by Click Studios regarding future functionality or features.

## 8. Enterprise Trial and Free for 5 Users

Click Studios allows you to download Passwordstate free of charge with an enterprise trial license valid for thirty (30) days ("**Enterprise Trial**"). This Enterprise Trial is offered to you for the purpose of trialing the Software, with all Enterprise features enabled, and you may request up to a maximum of five (5) extensions to your Enterprise Trial. On expiry of your Trial License Key the functionality provided is locked-out. To re-enable all functionality, you must either a) request a new Enterprise Trial License Key, or b) request your "Free for 5 Users" License Key.

Your use of the Enterprise Trial and "Free for 5 Users" is subject to the same terms and conditions as specified in this Agreement, with the following exceptions:

- a) There is no Annual Support and Upgrade Protection applicable to these licenses during the Enterprise Trial.
- b) Click Studios will use reasonable efforts to provide technical support to potential customers trialing the software.
- c) "Free for 5 Users" licensing, without active Annual Support and Upgrade Protection coverage can be upgraded to newer versions of the software. No technical support is provided without active Annual Support and Upgrade Protection.
- d) Small companies using the "Free for 5 Users", that wish to purchase additional licenses may do so. If the initial purchase of additional licenses includes Annual Support and Upgrade Protection then Click Studios will provide you with the equivalent "Free for 5 Users" licenses at no cost. License purchases without Annual Support and Upgrade Protection are not eligible to receive the "Free for 5 Users" licenses.
- e) **Notwithstanding anything else in this Agreement, Click Studios total liability to you in respect of the Enterprise Trial and "Free for 5 users" will be US \$0.**

## 9. Ownership

The Software is made available on a limited license or access basis, and no ownership right is conveyed to you, irrespective of the use of terms such as "purchase" or "sale". Click Studios have and retain all right, title and interest, including copyright, enhancements, modifications, updates and intellectual property rights, in and to Click Studios software and Documentation. Click Studios will not enter into any agreement with any third-party which would affect your rights under this Agreement, or bind you to any third party, without your prior written consent.

## 10. Confidentiality

Except as otherwise set forth in this Agreement, each party agrees that all code, inventions, know-how and business, technical and financial information disclosed to such party ("**Receiving Party**") by the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or

should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any Click Studios Software and any performance information relating to the Software will be deemed Confidential Information of Click Studios without any marking or further designation. Except as expressly authorized herein, the Receiving Party will;

- a) Hold in confidence and not disclose any Confidential Information to third parties and;
- b) Not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement.

The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know, provided that they are bound to confidentiality obligations no less protective of the Disclosing Party and that the Receiving Party remains responsible for compliance by them with the terms of this section 10. The Receiving Party's confidentiality obligations will not apply to information which the Receiving Party can document:

- a) Was rightfully in its possession or known to it prior to receipt of the Confidential Information;
- b) Is or has become public knowledge through no fault of the Receiving Party;
- c) Is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or
- d) Is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may also disclose Confidential Information if so required pursuant to a regulation, law or court order (**but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party**). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

## 11. Your Rights and Obligations

Click Studios Software and Documentation are protected by Australian copyright laws and international treaties. You must treat the Software and Documentation like any other copyrighted material. You may:

- a) Make one copy of the Software solely for backup or archival purposes, or,
- b) Transfer the Software to a single hard disk, provided you keep the original solely for backup or archival purposes.
- c) Ensure any copies of the Software or Documentation shall bear all copyright, trademark and other proprietary notices included therein by Click Studios.
- d) Make use of all Software and Documentation as covered under this Agreement without infringing any existing copyright, trade secret, patent or trademark rights of any third party.



You may not directly, or via the assistance or actions of any third-party, perform any of the actions listed under section 3.4 of this Agreement. **For the avoidance of doubt, to do so will automatically terminate this Agreement and Click Studios will be entitled to damages and appropriate equitable relief in addition to whatever other remedies it might have at law.**

## 12. Limited Warranty, Acceptance and Disclaimer

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. If you are an entity, you represent and warrant that this Agreement and each Order is entered into by an employee or agent of such entity with all necessary authority to bind such entity to the terms and conditions of this Agreement.

Click Studios warrants that, if the Software and the Documentation provided with it are provided to you as a physical medium (including compact disc, cartridge or universal serial bus device) are free from defects in materials and workmanship for a period of 60 days from the date of your original purchase.

Except for the limited warranty described above, the Software is sold 'as is', and you assume the entire risk as to its quality and performance. To the maximum extent permitted by law, Click Studios expressly disclaim any and all warranties and representations of any kind, including any warranty of non-infringement, title, fitness for a particular purpose, functionality, or merchantability, whether express, implied, or statutory. Click Studios will not be liable for delays, interruptions, service failures, viruses or malware or other problems inherent in use of the internet and electronic communications or other systems outside of our reasonable control.

It is your responsibility to verify the results obtained from the use of the Software. Your acceptance of the Software shall occur at the earlier of (a) Your operational use of the Software, or (b) the expiration of 60-day limited warranty period. If during the 60-day limited warranty period, you discover defects in the Software or in the Documentation, Click Studios will replace them at no charge to you. This is your sole remedy. **In no event will Click Studios be liable to any person for any direct, indirect, special, incidental, reliance, consequential or similar damages, even if advised of the possibility of such damages in advance.**

To the maximum extent permitted by law, Click Studios makes no representation, warranty or guarantee as to the timeliness, suitability, availability, accuracy or completeness of the Software or any content therein or generated therewith, or that: (a) the use of any Software within your environment will be secure, uninterrupted or error-free; (b) the Software will operate in combination with any other hardware, software, system, or data; (c) the Software will meet your requirements or expectations.

Some jurisdictions do not allow the exclusion or limitation of implied warranties or of liability for incidental or consequential damages, so the above limitations or exclusions may not apply to you. This warranty gives you specific legal rights and you may also have other rights that vary from state to state. **In the event that any of the above limitations or exclusions is held to be unenforceable, then Click Studios total liability to you shall not exceed the amount paid by you for Software and/or Annual Support and Upgrade Protection (as the case may be) in respect of the twelve (12) months immediately preceding the claim.**

## 13. Termination and Destruction of Software



Click Studios shall have the right to immediately terminate this Agreement if you fail to perform any obligation required of you under this Agreement or if you become bankrupt or insolvent. This Agreement takes effect upon your use of the Software and remains effective until terminated. You may terminate it at any time by destroying all copies of the Software, Documentation and License keys in your possession. It will also automatically terminate if you fail to comply with any term or condition of this Agreement. Click Studios shall have a reasonable opportunity to conduct an inspection of your place of business to assure compliance with this provision.

#### 14. Publicity

Click Studios will not refer to the existence of this Agreement in any press release, advertising or materials distributed to prospective customers, without the prior written consent from you.

#### 15. No Waiver

No failure or delay by the injured party to this Agreement in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder at law or equity.

Except as set forth in section 17 of this Agreement, any amendments or modifications to this Agreement must be executed in writing by the authorized representatives of Click Studios and you.

#### 16. Return Policy

As part of our commitment to customer satisfaction, it is our customary business practice to provide reasonable support during the evaluation phase of the Software. If during this evaluation phase the Software is not suitable for you, it can be removed from your systems with no further commitment to purchase any Software from Click Studios. If after purchase, and within the first 30-days from the date of original purchase, a fault is found which cannot be adequately resolved by Click Studios within a reasonable time frame, then a full refund for the amount paid to us can be obtained. We will not accept returns or provide refunds after this 30-day return period. You understand that Click Studios may change this practice in the future in accordance with section 17 of this Agreement.

#### 17. Changes to this Agreement

Click Studios may modify the terms and conditions of this Agreement from time to time, with notice given to your Nominated Contacts by email and via updates [here](#). Together with these notices, we will specify the effective date of the modifications. In continuing to use the Software after this Agreement has been modified, you confirm that you accept any such modifications to this Agreement. If you object to the modifications, your exclusive remedy is to cease using the Software. **For the avoidance of doubt, any Order is subject to the version of this Agreement in effect at the time of the Order.**

#### 18. General Provisions

##### 18.1. Notices

Any notice under this Agreement must be given in writing. We will provide notice to you via email to your Nominated Contacts or via our web site. You agree that any such electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing. Our notices to you will be deemed given upon the first business day after we send it. You will provide notice to us by post to **Click Studios (SA) Pty Ltd**, at the current address as stated on our website <https://clickstudios.com.au>, **Attn: Legal Counsel**. Your notices to us will be deemed given upon our receipt.

### **18.2. Force Majeure**

Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

### **18.3. Assignment**

You may not assign or transfer this Agreement without our prior written consent. As an exception to the foregoing, you may assign this Agreement in its entirety (including all Orders) to your successor resulting from your merger, acquisition, or sale of all or substantially all of your assets or voting securities, provided that you provide us with prompt written notice of the assignment and the assignee agrees in writing to assume all of your obligations under this Agreement. Any attempt by you to transfer or assign this Agreement except as expressly authorized above will be null and void. We may assign our rights and obligations under this Agreement (in whole or in part) without your consent. We may also permit our Affiliates, agents and contractors to exercise our rights or perform our obligations under this Agreement, in which case we will remain responsible for their compliance with this Agreement. Subject to the foregoing, this Agreement will inure to the parties' permitted successors and assigns.

### **18.4. Complete Agreement**

This Agreement is the entire agreement between you and Click Studios relating to the Software and supersedes all prior or contemporaneous oral or written communications, proposals and representations between you and Click Studios with respect to the Software or any other subject matter covered by this Agreement. If any provision of this Agreement is held to be void, invalid, unenforceable or illegal, the other provisions will continue in full force and effect.