

SAPP 2.0 and subsequent releases - End User License Agreement Revised: February 5, 2012

THIS IS A LEGAL AGREEMENT between "you", the individual, company, or organization utilizing SAPP (hereinafter SAPP) and Elite Game Servers, an Ammerzoden, The Netherlands based company.

USE OF SAPP INDICATES YOUR ACCEPTANCE OF THESE TERMS.

As used in this Agreement, the term "SAPP" means SAPP 2.0 and subsequent releases of the software, both client and server, as made available from <http://www.elitegameservers.net/sapp/>

Together with any and all enhancements, upgrades, or updates that may be provided to you through <http://www.elitegameservers.net/sapp/> .

Including, but not limited to, all files and their content including all data and source code provided through <http://www.elitegameservers.net/sapp/> or transmitted by Elite Game Servers or an authorized agent thereof.

1. APPLICABLE LAW

All terms in this Agreement relating to ownership, distribution, prohibited conduct, or upgrades to SAPP, will be handled by Elite Game Servers or an authorized agent under the laws of the Netherlands.

As such, all terms in this Agreement relating to SAPP sales, billing, compliance with licensing, including related issues such as piracy or banning of servers, will be handled by Elite Game Servers, or an authorized agent thereof, in accordance with the laws of The Netherlands.

2. OWNERSHIP

Ownership of SAPP and any accompanying documentation shall at all times remain with Elite Game Servers. This Agreement does not constitute the sale of SAPP or any accompanying documentation, or any portion thereof. Without limiting the generality of the foregoing, you do not receive any rights to any patents, copyrights, trade secrets, trademarks or other intellectual property rights relating to SAPP or any accompanying documentation. All rights not expressly granted to you under this Agreement are reserved by Elite Game Servers.

3. DEFINITIONS

3.1 SAPP Server

SAPP consists of a SAPP Server application. The SAPP Server is the application which acts as a host and allows two or more client connections to communicate with one another and issue commands over a network to a game server.

3.2 SAPP Development Kit (SAPP SDK)

SAPP may also consist of a Software Development Kit or SDK. The SAPP SDK is a set of development tools and documentation which allows software engineers to create customized or integrated

applications typically as part of an existing product or service. The SAPP SDK includes API information, sample code, tools, documentation, and other related items.

3.3 Commercial Entity

A commercial entity is an individual, company, or organization which demonstrates (typically via but not limited to a website) that it is in business to turn a profit of any kind; be it monetary, from direct sales or rental fees, advertising profit, or through the privileged use of intangible goods and services.

Example of a Commercial Entity:

A hosting company or organization which charges a monthly fee for the use of a server running SAPP OR a hosting company or organization which does NOT charge a monthly fee for the use of a server running SAPP but earns substantial profit from advertising, or from other products or services of any kind.

Example of a Commercial Entity profiting from advertising:

An organization advertising for products or services offered by a hosting company in exchange for the use of a server running SAPP means the hosting company will be considered to be a commercial entity, even if they choose not to charge anything at all for the use of any of their servers running SAPP. This situation is commonly referred to as a clan or guild "sponsorship".

Example of a Commercial Entity profiting from intangible goods:

A "payment" is made to an individual or hosting company using virtual currency (gold, etc.) within a popular massively multiplayer online game (MMOG) in exchange for the use of a server running SAPP means the individual or hosting company will be considered to be a commercial entity.

3.4 Non-Profit Entity

A non-profit entity is an individual or organization which does NOT utilize SAPP for profit of any kind; be it monetary, from direct sales or rental fees, advertising profit, or intangible goods and services.

Example 1: A clan or guild hosting a server running SAPP for their own private use while complying with all terms and conditions set forth in Section 5.1 of this Agreement.

Example 2: An individual hosting a server running SAPP for private use while complying with all terms and conditions set forth in Section 5.1 of this Agreement.

4. LICENSE FEES

Based on the definitions above, license fees may be applicable to entities utilizing SAPP. All Commercial Entities using SAPP for any reason must pay a license fee, regardless of whether or not they choose to charge fees for the use of their servers. Non-Profit Entities using the SAPP do not need to pay a license fee; however, these entities must comply with the terms and conditions set forth in the License Types

applicable to NonProfit Entities below. If you are uncertain as to whether you qualify as a Non-Profit Entity you must contact Gijs van der Velden@ gijsvandervelden@elitegameservers.net.

5. LICENSE TYPES

5.1. Non-Profit License

This license type is for an individual or organization which is non-profit in nature, and does not require registration on our website. An individual or organization operating under this license may install and use SAPP on one or more physical machines and other wise utilize SAPP as the individual or organization may desire without paying a license fee, provided that the following conditions are met:

- a. The individual or organization must be non-profit in nature. Elite Game Servers, and authorized agents thereof, reserve the right to assess and determine if any individual or organization is non-profit in nature. If you are uncertain as to whether you qualify as a Non-Profit Entity you must contact Gijs van der Velden@ gijsvandervelden@elitegameservers.net.
- b. Any software, code, application, or other work product that includes any portion of SAPP as defined by this license, must acknowledge the use of SAPP. The acknowledgement must be conspicuous and include the following phrase: "SAPP by Elite Game Servers.net". The determination of conspicuous placement of the aforementioned phrase will be in the sole discretion of Elite Game Servers and any authorized agent of Elite Game Servers.
- c. Any software, source code, application, or other work product that includes any portion of SAPP as defined by this license, must include a copy of this license and will be bound by the same terms included herein.
- d. Any software, source code, application, or other work product that includes any portion of SAPP as defined and bound by this license and is utilized by a commercial entity will be subject to the conditions, duties, and obligations of a Commercial License. (See Section 5.2)

5.2. Commercial License for ASHPs (Authorized SAPP Host Providers):

An Authorized SAPP Host Provider License or ASHP License is a license requiring recurring monthly fees. ASHP Licenses are issued to Commercial Entities (an individual, company, or organization) which host servers running SAPP to others for profit of any kind; be it monetary, from direct sales or rental fees, advertising profit, or through the privileged use of intangible goods and services. ASHPs are Commercial Entities which typically charge their customers a monthly fee for the use of a SAPP Virtual Server or include the Virtual Server as part of other services or offerings to their customers free of charge. Commercial Entities operating under the Authorized SAPP Host Provider License may install and use SAPP on one or more physical machines, and must adhere to the following conditions: a. ASHPs must contact Gijs van der Velden@ gijsvandervelden@elitegameservers.net.

- b. ASHPs are subject to recurring, monthly licensing fees based on the amount of SAPP servers hosted by the ASHP during the previous. These licensing fees are completely indifferent to whether or not an ASHP's customer, client, or user makes use of their SAPP Server Layer in any way.
- c. ASHPs are billed monthly, in arrears, by digital invoice delivered via "noreply@elitegameservers.net". All invoices are typically sent on the 1st or 2nd day of every month via email and are also posted to the ASHP's account which can be viewed by the ASHP here:

elitegameservers.net/controlpanel/clientarea.php?action=invoices.

- d. Payments are due 5 days after any invoice is generated (NET 5). Payment must be made through paypal.com to gijsvandervelden@elitegameservers.net. It is the ASHP's responsibility to ensure that their invoice is received; whether by the primary email address registered to the ASHP's online account or by a representative of the ASHP ensuring that the ASHP's online account is logged into or checked each month for new invoices.
 - e. ASHPs who become 30 or more days past due on their invoice may have their SAPP License suspended for non-payment.
 - f. ASHPs who consistently fail to pay their invoices on time are subject to having their account or license suspended or revoked.
 - g. All license fees are listed in United States Dollars (USD). All invoices for license fees will be calculated in (USD) and payments should be made through pay pal in (USD).
 - h. **New ASHPs acknowledge that Elite Game Servers requires a onetime "Processing Fee" of \$10.00, paid in advance, for the creation of a new ASHP account with elitegameservers.net. Payment of this fee is consideration and acknowledgment of the receipt, review, and acceptance of all terms and conditions set forth in this License Agreement.**
 - i. New ASHPs acknowledge that there will be a minimum license fee of \$10.00, per month, and includes ten (10) SAPP servers, per month.
 - j. License Fees are subject to bulk discounts.
 - 1. The first 200 (1-200) SAPP servers used by a ASHP are \$3.00 each, per month.
 - 2. SAPP servers over 200 but below 401 (201-400) used by an ASHP are \$2.00 each, per month.
 - 3. SAPP servers over 400 but below 501 (401-500) used by an ASHP are \$1.00 each, per month.
 - 4. SAPP servers over 500 used by an ASHP are \$.70 each, per month.
- For example, an ASHP that has hosted an average of (210) server per month would be subject to a (\$620) licensing fee; or an average of (600) servers would be subject to a (\$1170)
- k. License Fees are subject to change at any time. However, all current, ASHPs will be notified at least one full billing period before they are subject to any change in the license fee.
 - l. ASHPs acknowledge that invoices may occasionally reflect inaccurate data due to incorrectly configured Servers (e.g. - test servers accidentally created or duplicate data reported back to elitegameservers.net during data center migrations, etc.). As such, invoices are subject to review by Elite Game Servers and their authorized agents at billing@elitegameservers.net. Every effort will be made by Elite Game Servers to determine the best course of action when correcting or modifying an invoice.
 - m. ASHPs acknowledge that server count data for SAPP server hosted by the ASHP is reported daily to SAPP's tracking server located at elitegameservers.net -- (IP 46.249.47.12) for the purpose of tracking and billing the ASHP accordingly.
 - n. ASHPs must add command line arguments, or a text file, into their instances of SAPP upon request to facilitate tracking and identification of ASHP license holders.
 - o. ASHPs may not utilize firewalls or any other tools to prevent communication from their licensed Virtual Servers to SAPP's tracking server located at elitegameservers.net -- (IP 46.249.47.12). All inbound and outbound traffic, both TCP and UDP, must be made available to the tracking server

AND the organization must ensure that DNS is functioning properly and is able to resolve the hostname elitegameservers.net at all times on all physical machines where SAPP Servers are being hosted.

- p. ASHPs may allow resellers to sell their SAPP Servers; however, the ASHP must ensure that all of their Server IPs are licensed at all times. Resellers are not required to register and purchase a separate ASHP license for themselves as long as all Servers sold by the reseller are licensed through the ASHP. q. ASHPs must update all of their SAPP Servers within a reasonable time frame following the

release of an updated version of SAPP. All ASHPs will be notified of available updates through the email used to register the ASHP account. It is the ASHPs responsibility to regularly check that email account for such notices and apply updates. Failure to apply updates to SAPP may result in the suspension of an ASHP account and/or license.

6. DISTRIBUTION VIA THE INTERNET

The preferred method of distribution of SAPP over the Internet is via SAPP's official website at <http://www.elitegameservers.net/sapp/>. You may not distribute SAPP otherwise over the Internet, unless you obtain prior written consent from Elite Game Servers or its authorized agent.

7. THIRD PARTY DISTRIBUTION PROHIBITED

Distribution of SAPP by you to third parties (e.g. - publishers, magazines, third party products, etc.) is also hereby expressly prohibited unless you obtain prior written consent from Elite Game Servers or its authorized agent.

8. TERMINATION

Elite Game Servers reserves the right to terminate your license for SAPP at any time or for any reason. Your license may also be terminated if you are in breach of any of the terms or conditions set forth in this Agreement. Upon termination, you shall immediately discontinue using SAPP and destroy all copies and related intellectual property in your possession, custody or control.

9. BILLING/LICENSING

Gijs van der Velden is Elite Game Servers official sales, licensing, and billing partner for SAPP. As such, all billing matters for Commercial Entities are handled by Gijs van der Velden and should be forwarded to gijsvandervelden@elitegameservers.net. Any inquiries relating to licensing must be e-mailed to gijsvandervelden@elitegameservers.net.

10. PRICING

SAPP pricing information for Commercial Entities can be found on Elite Game Servers website at elitegameservers.net/sapp/licensing. (All prices are listed in United States Dollars (USD)).

11. PROHIBITED CONDUCT

You represent and warrant that you will not violate any of the terms and conditions set forth in this Agreement and that:

- a. You will not: (I) reverse engineer, decompile, disassemble, derive the source code of, modify, or create derivative works from SAPP; or (II) use, copy, modify, alter, or transfer, electronically or otherwise, SAPP or any of the accompanying documentation except as expressly permitted in this Agreement; or (III) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to SAPP whether in a stand-alone configuration or as incorporated with other software code written by any party except as expressly permitted in this Agreement.
- b. You will not use SAPP to engage in or allow others to engage in any illegal activity.
- c. You will not engage in use of SAPP that will interfere with or damage the operation of the services of third parties by overburdening or disabling network resources through automated queries, excessive usage or similar conduct.
- d. You will not use SAPP to engage in any activity that will violate the rights of third parties, including, without limitation, through the use, public display, public performance, reproduction, distribution, or modification of communications or materials that infringe copyrights, trademarks, publicity rights, privacy rights, other proprietary rights, or rights against defamation of third parties.
- e. You will not transfer SAPP or utilize SAPP in combination with third party software authored by you or others to create an integrated software program which you transfer to unrelated third parties unless you obtain prior written consent from ELITE GAME SERVERS or an authorized agent of ELITE GAME SERVERS.

12. UPGRADES, UPDATES AND ENHANCEMENTS

All upgrades, updates or enhancements of SAPP shall be deemed to be part of SAPP and will be subject to this Agreement.

13. LEGENDS AND NOTICES

You agree that you will not remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in SAPP or any accompanying documentation.

14. TERM AND TERMINATION

This Agreement is effective upon your acceptance as provided herein and will remain in force until terminated. Non-Profit Entities may terminate the licenses granted in this Agreement at any time by destroying SAPP and any accompanying documentation, together with any and all copies thereof.

Commercial Entities may terminate the licenses granted in this Agreement at any time by contacting ELITE GAME SERVERS or an authorized agent of ELITE GAME SERVERS at

(gijsvandervelden@elitegameservers.net) The licenses granted in this Agreement will terminate automatically if you breach any of its terms or conditions or any of the terms or conditions of any other agreement between you and ELITE GAME SERVERS or an authorized agent of ELITE GAME SERVERS.

15. SOFTWARE SUGGESTIONS

SAPP welcomes suggestions for enhancing SAPP and any accompanying documentation that may result in computer programs, reports, presentations, documents, ideas or inventions relating or useful to Elite Game Servers or SAPP. You acknowledge that all title, ownership rights, and intellectual property rights concerning such suggestions shall become the exclusive property of Elite Game Servers and may be used for its business purposes in its sole discretion without any payment or accounting to you.

16. MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties concerning SAPP, but is subject to change by Elite Game Servers or any authorized agent of Elite Game Servers. If any provision in this Agreement should be held illegal or unenforceable by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. Any waiver of any term of this agreement must be in writing.

17. DISCLAIMER OF WARRANTY

SAPP IS PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES THAT IT IS FREE OF DEFECTS, VIRUS FREE, ABLE TO OPERATE ON AN UNINTERRUPTED BASIS, MERCHANTABLE, FIT FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS LICENSE AND AGREEMENT. NO USE OF SAPP IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER.

18. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ELITE GAME SERVERS, OR ANY AGENT OF ELITE GAME SERVERS, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE SAPP, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN ANY CASE, ELITE GAME SERVERS, OR ANY AGENT OF , ELITE GAME SERVERS, COLLECTIVE LIABILITY UNDER ANY PROVISION OF THIS LICENSE SHALL NOT EXCEED IN THE AGGREGATE THE SUM OF THE FEES (IF ANY) YOU PAID FOR THIS LICENSE.