APLNext Application Server End User License Agreement (EULA)

1. **Agreement Version**
This is the 04/25/2008 version of this agreement. Print a hard-copy of this agreement for your records.

2. **Read this document completely and carefully**
This is a legal agreement between you and APLNext LLC for the Licensed Software which may include computer software, sample code, associated media and on-line, electronic or hard-copy documentation. Before continuing with the installation of the Licensed Software, you must read, acknowledge and accept the terms and conditions of the software license agreement that follows.

If you do not accept the terms and conditions of the Agreement:

   a. You may not install the Licensed Software.
   b. Within thirty (30) days of purchase of the license for the software, you may request a full refund of the purchase price of the license for the software exclusive of any shipping, handling or registration costs. Such a request for refund must be made in writing to the vendor of the Licensed Software to whom you paid the license fee. Any such refund is subject to the condition that the activation and registration process for the Licensed Software has not already been performed by you.
   c. You must destroy all copies of the Licensed Software which you may have received and be willing to certify in writing to Us that this has been done.

3. **Parties to the Agreement**
As of the Effective Date, this APLNext Application Server End User License Agreement ("Agreement") is made by and between APLNext LLC, a New Jersey company ("We", "Us" or "Our"), and you, ("You" or "Your") either an individual or legal entity as indicated in the product activation and registration information provided by You for the Licensed Software.

4. **Definitions**
   a. "Effective Date" means the date upon which You selected and clicked the "I Accept' button presented to You when You installed the Licensed Software onto Your computer and at which time You are deemed to have accepted all the terms and conditions of this Agreement.
   b. "Licensed Software" means the APLNext Application Server product and it component parts including the Developer Components, the Redistributable Code, software documentation and all Upgrades that We may deliver to You during the term of this agreement. The Software is licensed, not sold, to You.
   c. "Term of the Agreement" means the one (1) year period commencing on the Effective Date and ending one year after the Effective Date.
   d. "SDK" means the Licensed Software System Development Kit, if any, provided by Us to document the use of the Licensed Software.
   e. "Eligible Product(s)" means Your software and associated products developed with the Licensed Software, including the Integration Code and the Redistributable Code, which You distribute to Your End Users. Such Eligible Products must add specific and primary functionality to the Redistributable Code beyond that of the Licensed Software.
   f. "End User" means an employee, an individual or a legal entity that acquires, directly or indirectly from You (including through Resellers), one or more of Your Eligible Product(s) for its own use and not for distribution or resale to third parties.

g. "Integration Code" means the software code that You develop through use of the Licensed Software.
h. "Reseller" shall mean any third party authorized by You to market, sub-license, or otherwise distribute Eligible Product(s) to End Users in accordance with this Agreement.
i. "Upgrades" means all maintenance releases and enhancements to the Licensed Software which We distribute to You.
j. "Developer Components" means the portion of the Licensed Software including the documentation thereof, as identified in the Licensed Software SDK, which are for Your use only and cannot be redistributed by You to Your End Users.
k. "Redistributable Code" means the sample and object code portions of the Licensed Software which are identified in the SDK as redistributable by You to Your End Users.
l. "Distribution" or "Distribute" means selling, leasing, licensing or redistributing an Eligible Product to third party End Users external to your legal entity.
m. "Activation and Registration Process" means the procedure determined by Us to enable the functionality and operability of your copy of the Licensed Software. Such procedure may include, but is not limited to, web-based capture of information necessary to identify the computer hardware upon which You or Your end user(s) have installed the Licensed Software. Such activation and registration information, if collected by us, will be used exclusively by us, however from time to time we may request your permission to deliver such information only to others as explicitly designated by you.
n. "Time-limit on the Operability of the Licensed Software" means the time after the Term of the Agreement when We may limit the functionality and operability of the Licensed Software using controls which may include, but are not limited to, Our activation and registration process.
o. "Excluded License" means any license that requires as a condition of use, modification and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

5. **Grant of License**
   a. Development Rights: We hereby grant You a non-exclusive, limited, world-wide and non-transferable license to use the Developer Components for Your internal business purpose of developing Integration Code for Your Eligible Products.
   b. Distribution Rights: We hereby grant You a non-exclusive, limited, world-wide and non-transferable license to distribute to Your End Users the Redistributable Code only in conjunction with, and only when it is necessary to support, Your Eligible Product(s).

6. **Conditions and Restrictions on Grant of License**
   a. The Developer Components may be used by You solely for the purpose of developing Integration Code for Your Eligible Products.
   b. Any code identified as "Samples" in the Licensed Software may be used and modified by You solely for the purpose of designing, developing and testing Your Eligible Product(s).
   c. You may use the services of any independent contractor or consultants in the development of Your Eligible Product(s), provided, however, that You agree that such independent contractors and/or consultants will adhere to the provisions of this Agreement and You shall be jointly and severally responsible for such adherence.

d. You may distribute the Redistributable Code directly and indirectly (including without limitation through multiple tiers of distribution and Resellers, provided such parties adhere to the provisions of this Agreement) to End Users solely as part of Your Eligible Products.

e. In the event You use Resellers to exercise Your rights in this section, You and your Resellers shall be jointly and severally liable for their adherence to the terms and conditions of this Agreement.

f. You may install any number of copies of the Developer Components and Upgrades, if any, including as many copies as You deem reasonably necessary for disaster recovery, emergency restart and backup, including, but not limited to making copies for such purposes for use at one or more disaster recovery sites under Your control.

g. In order to effectively use the Licensed Software, it may be necessary for You or Your end user(s) to complete the activation and registration process provided by Us. We may control the number and type of distribution(s) of the Licensed Software and the use of the Licensed Software by means of the Activation and Registration Process and/or a Time-limit on the Operability of the Licensed Software.

h. You shall not reverse engineer, decompile or disassemble the Licensed Software in whole or in part except to the extent otherwise specifically permitted by law.

i. You shall secure the end user's consent to terms substantially similar to the requirement that "The End User agrees not to alter, disassemble, decompile, translate, adapt or reverse-engineer the Redistributable Code".

j. You will not use the Licensed Software to create for distribution an Eligible Product that is generally competitive with the Licensed Software.

k. You shall employ in Your reproduction and installation process best commercially available tests for virus infections to ensure that no Licensed Software will be shipped that has been infected with a virus.

l. You shall include the following acknowledgment in the credit screen and in any license agreement which accompanies your Eligible Product(s): "Portions ©Copyright 2005-2008 APLNext LLC. All rights reserved. Portions ©Copyright Microsoft Corporation. All rights reserved".

m. You shall not expose or enable others to expose the functionality contained in the Integration Code in a manner that allows it to be accessed or used by any third party product. By way of example but not limitation, You may not disclose the Integration Code to third parties in source code form.

n. Your license right to the Licensed Software (or any of Our intellectual property associated therewith) does not include any license, right, power or authority to subject the Licensed Software or derivative works thereof, including but not limited to the Integration Code, in whole or in part to any of the terms of an Excluded License.

o. Your license rights to the Licensed Software are conditioned upon You not using or enabling others to use the Licensed Software to develop or distribute extensions to or wrappers for the interfaces that are documented in the Developer Components.

p. If You distribute Your Eligible Product(s) to End Users who are not immediate employees of your legal entity, Your Eligible Product(s) shall include an end user license agreement which may be "break the seal", "click-wrap", "click-to-accept" or a signed agreement which will include terms and conditions no less protective than those contained in this Agreement with respect to use of the Licensed Software and the Integration Code.

q. You shall not remove any copyright, trademark or patent notices that appear on the Licensed Software as delivered to You.

r. You may not use any APLNext, VisualAPL, Cielo Explorer or Microsoft name, logos or trademarks to market Your Eligible Products unless You have executed a license agreement specifically granting You such rights.

s. Any pre-release versions of the Licensed Software or other technology which may be delivered by Us to You under this Agreement shall be used by You solely for evaluation and demonstration among the immediate employees of your legal entity and to provide commentary and feedback to Us. Such pre-release versions will be subject to all the terms and conditions of any license agreement which We may include when distributing such pre-release versions to You. You may not release to third parties any Eligible Product which contains components of, or was developed using, these pre-release versions, without Our prior written consent, which consent shall be at our sole discretion.

t. Any "Express" version of the Licensed Software that We may deliver to You will be subject to all the terms and conditions of this Agreement and any license agreement which We may include when distributing such an "Express" version of the Licensed Software. Notwithstanding anything to the contrary, an Eligible Product which contains components of, or was developed using, an "Express" version of the Licensed Software may only be distributed to Your End Users on a non-commercial basis, however it is permitted to distribute such Eligible Products to demonstrate or facilitate the evaluation of Your Eligible Products.

u. This terms and conditions of this Agreement supersede those of any promotional offers of any kind.

7. **Support of Eligible Products**
You shall be solely responsible for providing support for End Users of Your Eligible Products. Any support for Your integration of the Licensed Software into Your Eligible Products which We may provide You shall be governed by Our policies and programs and may be subject to execution of additional agreements covering such support. You may, but are not obligated to, report bugs You discover in the Licensed Software to Us.

8. **Ownership**

We and/or Our suppliers retain all right, title and interest in and to the Licensed Software and all copies at all times, regardless of the form or media in or on which the original or other copies may subsequently exist. You neither own nor hereby acquire any claim or right of ownership to the Licensed Software or to any related patents, patents pending, copyrights, trademarks or other intellectual property. You agree to use reasonable efforts to prevent and protect the contents of the Licensed Software from unauthorized disclosure or use. We and/or Our suppliers reserve all rights not expressly granted to you. Our suppliers, if any, are the intended third party beneficiaries of this License Agreement and have the express right to rely upon and directly enforce the terms set forth herein.

9. **Copyright**

The Licensed Software is copyrighted by Us and/or Our suppliers and is protected by United States copyright, trade secret, patent laws, patent pending provisions and international treaty provisions. You may not copy the Licensed Software except:

a. To provide a backup copy, or

b. To install the Licensed Software components licensed by you under the terms and conditions as set forth in this Agreement.

You must reproduce and include all copyright notices, patent pending notices, patent notices, trademarks or other proprietary legends of Us and our suppliers, if any, on any copy of the License Software or its documentation made by you.

10. **Acceptance and Disclaimer of Warranty**

   a. Your use of the Licensed Software shall be deemed Your acceptance of the Licensed Software, accompanying documentation (if any) and the terms of this Agreement.

   b. Neither You nor any of Your distributors, Resellers (if any) or employees shall have any right to make any representation, warranty or promise on behalf of Us.

   c. THE LICENSED SOFTWARE, END USER DOCUMENTATION, AND ANY OTHER SOFTWARE OR INFORMATION, IF ANY, PROVIDED UNDER THIS AGREEMENT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, REASONABLE CARE OR WORKMANLIKE EFFORT, LACK OF NEGLIGENCE, AND/OR A LACK OF VIRUSES, ALL WITH REGARD TO THE LICENSED SOFTWARE, END USER DOCUMENTATION, AND ANY OTHER SOFTWARE AND INFORMATION, IF ANY, PROVIDED UNDER THIS AGREEMENT, ARE EXPRESSLY EXCLUDED. WE MAKE NO WARRANTY THAT THE LICENSED SOFTWARE OR ANY COMPONENT THEREOF WILL OPERATE PROPERLY AS INTEGRATED IN YOUR ELIGIBLE PRODUCT(S) OR ON ANY END USER SYSTEM(S). ALSO THERE IS NO, AND WE DISCLAIM ALL WARRANTIES THEREOF, TITLE, QUIET ENJOYMENT AND NONINFRINGEMENT RELATING TO THE LICENSED SOFTWARE, END USER DOCUMENTATION, AND ANY OTHER SOFTWARE OR INFORMATION (IF ANY) PROVIDED TO YOU UNDER THIS AGREEMENT.

   d. EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES. EXCEPT FOR BREACHES OCCURRING UNDER THE DEFINITIONS PROVIDED BY THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF BUSINESS OR PERSONAL PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS OR PERSONAL OR CONFIDENTIAL INFORMATION, OR ANY OTHER PECUNIARY LOSS, DAMAGES FOR LOSS OF PRIVACY, OR FOR FAILURE TO MEET ANY DUTY, INCLUDING ANY DUTY OF GOOD FAITH, OR TO EXERCISE COMMERCIALLY REASONABLE CARE OR FOR NEGLIGENCE) ARISING OUT OF OR IN ANY WAY RELATED TO THE MATTERS DESCRIBED IN THIS AGREEMENT REGARDLESS OF THE FORM OF ANY CAUSE OF ACTION EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL NOT APPLY TO YOUR INDEMNITY OBLIGATIONS UNDER SECTION 11.a. OF THIS AGREEMENT.

e. LIMITATION OF LIABILITY. You agree that Our total cumulative liability to You under this Agreement shall be limited to the greater of (i) the amount actually paid by You to Us pursuant to this Agreement or Five Dollars (US$5.00). You hereby release Us from all obligations, liability, claims or demands in excess of this amount.

11. **Indemnity, Non-disclosure and Audit Rights**

   a. INDEMNITY. You hereby agree to defend, indemnify and hold Us harmless from and against any and all claims arising as a result of: (i) Your improper installation of the Licensed Software; (ii) any computer software virus introduced by You; (iii) any claim by an End User regarding its use or inability to use Eligible Product(s) if such claim would not have occurred solely from use of the Licensed Software; (iv) any claim by a third party that Eligible Product(s) infringe any proprietary right of such third party if such claim would have been avoided by the exclusive use of the Licensed Software; or (v) You or Your agents' breach of any of the provisions or covenants of this Agreement.

   b. NON-DISCLOSURE. You agree not to disclose (1) the Licensed Software in either object or source code form (including information therein) and/or (2) the Integration Code in source code form (including information therein) to any third parties.

   c. AUDIT RIGHTS. During the term of this Agreement and for two (2) years thereafter, You agree to keep and provide Us or Our designated auditor with access, at a mutually acceptable time and place, to all usual and proper records relating to the Eligible Products and the Licensed Software.

   Your records must be sufficient to allow Us to verify Your compliance with the terms of this Agreement and must include, without limitation, information relating to rights You have granted to third parties.

   In the event any such audit reveals that you have underpaid Us by an amount greater than ten percent (10%) of the amounts otherwise due Us in the period being audited, or that you have knowingly breached any material obligation under this Agreement, then, in addition to such other remedies We may have, you shall pay or reimburse Us for the cost of the audit.

12. **Termination**

   a. Either party may immediately terminate this Agreement, upon written notice to the other party, in the event of a material breach of this Agreement by the other party.

   b. Material breach of this Agreement includes, but are not limited to:

      i. Your failure to pay the requested license fee and any other associated charges, if any, for the Licensed Software is deemed to be a material breach of this Agreement.

ii. Failure to comply with any of the terms and conditions set forth in this Agreement and subsequent failure to remedy such failure within thirty (30) days after receiving notice of such failure from the other party.

c. Either party may terminate this Agreement, upon written notice to the other party, in the event of a non-material breach of this Agreement after notice of breach and a thirty (30) day opportunity to cure the breach.

d. If not terminated by either party to this agreement, this agreement is deemed to terminate on the date on which the Term of the Agreement ends.

e. Upon termination of this Agreement for any reason, Your rights under Section 5 shall immediately terminate.

f. Upon termination of this Agreement for any reason, You must destroy all copies of the Licensed Software which you may have received and provide notice to Us which certifies that this has been done.

g. End-user license agreements for the Licensed Software properly distributed under this Agreement and which were effective prior to the expiration or termination of this Agreement shall survive beyond the termination date of this Agreement, but not beyond the Term of this Agreement.

h. Sections 4, 6, 7, 8, 9, 10, 11, 12, and 13 shall survive termination of this Agreement.

i. Neither party shall be responsible for any costs or damages resulting from termination of this Agreement in accordance with this Section.

13. **General**

a. Except as otherwise pre-empted by United States federal law, this Agreement shall be construed and controlled by the laws of the State of New Jersey USA, without reference to conflict of laws, provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto. You waive all defenses of lack of personal jurisdiction and forum *nonconveniens*. Process may be served on either party in the manner authorized by applicable law or court rule. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

b. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, agency relationship or as granting a franchise.

c. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

d. The rights and obligations hereunder shall inure to the benefit of the successors of the parties hereto. You may not assign this Agreement, or any rights or obligations under it, whether by operation of contract, law or otherwise, except with Our express written consent and any attempted assignment by You in violation of this Section shall be void.

e. Any Licensed Software which You distribute or license to or on behalf of the U.S. government, pursuant to solicitations issued on or after December 1, 1995, are provided with commercial rights and restrictions described above in this Agreement. Any Licensed Software which You distribute or license to or on behalf of the U.S. government pursuant to solicitations issued prior to December 1, 1995, are provided with Restricted Rights as provided for in FAR, 48 CFR 52.227-14 (June 1987) or FAR, 48 CFR 252.227-7013 (October 1988), as applicable.

f. You acknowledge that the Licensed Software is subject to U.S. export jurisdiction. You agree to comply with all applicable international and national laws that apply to the Licensed Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments.

g. You shall, at Your own expense, promptly obtain and arrange for the maintenance of all non-U.S. government approvals, if any, and comply with all applicable local laws and regulations as may be necessary for Your performance under this Agreement.

h. You shall pay, and be responsible for any and all sales taxes, use taxes and any other taxes imposed by any jurisdiction as a result of (i) the entry into this Agreement; (ii) the performance of any of the provisions of this Agreement; or (iii) the transfer of any property, rights or any other grant hereunder.

i. Notices required under this Agreement shall be provided by You in writing to Us at APLNext LLC Box 392 Brielle NJ 08730-0392 USA or at such other address as We may Provide to You from time to time. Upon your acceptance, activation and registration of the Licensed Software, or upon any subsequent change of Your address, it is Your responsibility to provide Us with Your current address for written notices, otherwise any written notice by Us to You will be deemed delivered to You upon our preparation of the document and inclusion of it in our records.

j. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of You and Us by respective duly authorized representatives. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

14. **Additional Product License and Use Provisions**

a. The 'Developer' components of the Licensed Software include the Application Server when it used for development of the Integration Code,

the Application Server SDK and associated documentation and the WebServices Controller.

Each copy of these components is licensed on a 'per user' basis. One license for these components may not be shared among multiple users or used concurrently by more than one user on the same or different computers.

b. The 'Developer' components of the Licensed Software also include the Application Server component when it is used in production mode to support End-users of the Integration Code.

Each copy of this component is licensed on a 'per web server' basis. One license for these components may not be shared among multiple web servers or used concurrently by more than one physical or virtual web server on the same or different computers.

c. The 'Redistributable' component of the Licensed Software includes the WebTransfer component, used to support End-users of the Integration Code.