

RADIO42

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This agreement is between

you as

individual or entity

hereinafter referred to as "You"

and

RADIO42

Gryphiusstrasse 9

22299 Hamburg

Germany

hereinafter referred to as "RADIO42"

By installing the Software and clicking the "Register" button respectively, which is a symbol of your signature, you agree to accept the terms of this EULA.

## RECITALS

A. RADIO42 has developed an application software system known as "ProppFrexx ONAIR" (the "Program" / the "Software"), which is the software you are installing.

B. By installing the Software You desire to obtain a license to use the Program. RADIO42 is willing to provide You with a license to use the Program, upon the terms of this Agreement.

## AGREEMENT

### 1. DEFINITIONS

1.1 "RADIO42" means RADIO42, Bernd Niedergesäß, Gryphiusstrasse 9, 22299 Hamburg, Germany.

1.2 "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.

1.3 "CPU" means a single central processing unit within a computer. In the case of multi-core CPUs, each core represents a single CPU.

1.4 "Deployed" means one copy of Product deployed on one Computer/Server/CPU.

1.5 "Download Site" means the RADIO42 FTP- or Web-Site located at an address to be disclosed to you, or an alternative site as RADIO42 may notify you from time to time, with respect to subsequent Product downloads by website redirection, email, or as set forth in Section 22 below.

1.6 “End-User” or “Customer” means an End User of a Product, authorized to use the Product for its intended use and not for remarketing. In the context of this Agreement, the End-User would be You.

1.7 “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 the Internet or any other network community open to the public, including but not limited to membership or subscription driven groups, associations and similar organizations.

1.9 “License Fee” means the nonrefundable fee(s) payable to RADIO42 for each Deployed copy of Product.

1.10 “Permitted Number” means one (1) unless otherwise indicated under a valid license (e.g., volume license) granted by RADIO42.

1.10.1 In the case of ProppFrexx Single User this means one installation on one PC for use of one user (one seat license). The license may not be made available to other users through application server technology (ASP) like for example Citrix®, remote access technology or other technical possibilities such that this one license can be used by other users. Each additional installation on a separate Computer must be covered by an additional license.

1.10.2 In the case of ProppFrexx Multi User this means multiple installations on multiple PCs for use of one or more users (multiple seat license). Under the license you may concurrently instantiate and run more than one ProppFrexx instance. Each concurrently instantiated ProppFrexx instance must be covered by an individual license.

1.11 “Software”, “Product(s)” or “Program(s)” means (a) all of the information with which this agreement is provided, including but not limited to (i) RADIO42 or third party software files and other computer information; (ii) related explanatory written materials and files (“Documentation”); and (b) any modified versions and copies of, and upgrades, updates and additions to, such information, provided to you by RADIO42 at any time, to the extent not provided under a separate agreement (collectively, “Updates” and/or “Upgrades”).

1.14 “Term” means the entire period of the Agreement.

1.15 “Update” means bug fixes and perhaps minor functional enhancements to the software identified by a change in at least the third or fourth digit of the software’s four level version numbering scheme.

1.16 “Upgrade” means significant new features and/or functional enhancements to the software identified by a change in at least the first or second digit of the software’s four level version numbering scheme.

## 2. SOFTWARE LICENSE

2.1 As long as you obtained the Software from RADIO42 or one of its authorized Resellers and as long as you comply with the terms of this agreement, RADIO42 grants you a non-exclusive license to use the Software in the manner for the purposes described in the Documentation, as further set forth below. See Section 15 for specific provisions related to certain components.

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2.3 Server Deployment. You may install the Permitted Number of copies of the Software on the Permitted Number of Computer file server(s) within your Internal Network for the purpose of downloading and installing the Software on up to the Permitted Number of other Computers within the same Internal Network; or

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## 6. UPDATES

6.1 If the Software is an upgrade or update to a previous version of the Software, you must possess a valid license to such previous version in order to use such upgrade or update. All upgrades and updates are provided to you on a license exchange basis. You agree that by using an upgrade or update you voluntarily terminate your right to use any previous version. As an exception, you may continue to use previous versions of RADIO42 Software in the transition to the upgrade or update, provided that the upgrade or update and the previous versions are installed on the same computer. Upgrades and updates may be licensed to you by RADIO42 with additional or different terms.

## 7. COMPLIANCE WITH LICENSES

7.1 If you are a business, company or organization, you agree that upon request from RADIO42 of its authorized representative you will within thirty (30) days fully document and certify that use of any and all RADIO42 Software at the time of the request is in conformity with your valid licenses from RADIO42.

## 8. LIMITED WARRANTY

8.1 Except as may be otherwise provided in Section 15, RADIO42 warrants to the individual or entity that first purchases a license of the Software for use on Computers pursuant to the terms of this agreement that the Software will perform substantially in accordance with the Documentation for the ninety (90) day period following receipt of the Software when used on the recommended operating system and hardware configuration. Non-substantial variation of performance from the Documentation does not establish a warranty right. THIS LIMITED WARRANTY DOES NOT APPLY TO PATCHES, PRE-RELEASE (BETA), TRYOUT, STARTER, EVALUATION, PRODUCT SAMPLER, TEMPLATES, OR NOT FOR RESALE (NFR) COPIES OF SOFTWARE, WEBSITES OR ONLINE SERVICES (See Section 15). All warranty claims must be made, along with proof of purchase, within such ninety (90) day period. If the Software does not perform substantially in accordance with the Documentation, the entire liability of RADIO42 and its affiliates and your exclusive remedy will be limited to either, at RADIO42'S option, replacement of the Software or refund of the license fee you paid for the Software. THE LIMITED WARRANTY SET FORTH IN THIS SECTION GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE ADDITIONAL RIGHTS WHICH MAY VARY FROM JURISDICTION TO JURISDICTION. For further warranty information, please see the jurisdiction specific provisions at the end of this agreement, if any, or contact the RADIO42 Customer Support Department.

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## 10. LIMITATION OF LIABILITY



10.1 EXCEPT FOR THE EXCLUSIVE REMEDY SET FORTH ABOVE AND AS OTHERWISE PROVIDED IN SECTION 15, IN NO EVENT WILL RADIO42 OR ITS AFFILIATES OR SUPPLIERS BE LIABLE TO YOU FOR ANY LOSS, DAMAGES, CLAIMS OR COSTS WHATSOEVER INCLUDING ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, ANY LOST PROFITS OR LOST SAVINGS, ANY DAMAGES RESULTING FROM BUSINESS INTERRUPTION, PERSONAL INJURY OR FAILURE TO MEET ANY DUTY OF CARE, OR CLAIMS BY A THIRD PARTY, EVEN IF AN RADIO42 REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN YOUR JURISDICTION. RADIO42'S AGGREGATE LIABILITY AND THAT OF ITS AFFILIATES AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT PAID FOR THE SOFTWARE, IF ANY. THIS LIMITATION WILL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL OR MATERIAL BREACH OR A BREACH OF THE FUNDAMENTAL OR MATERIAL TERMS OF THIS AGREEMENT. Nothing contained in this agreement limits RADIO42'S liability to you in the event of death or personal injury resulting from RADIO42'S negligence or for the tort of deceit (fraud). RADIO42 is acting on behalf of its affiliates and suppliers for the purpose of disclaiming, excluding and limiting obligations, warranties and liability, but in no other respects and for no other purpose. For further information, please see the jurisdiction specific information at the end of this agreement, if any, or contact the RADIO42 Customer Support Department.

## 11. EXPORT RULES

11.1 You agree that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by German Export laws or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as export controlled items under the Export Laws, you represent and warrant that you are not a citizen, or otherwise located within, an embargoed or otherwise restricted nation (including without limitation Democratic Republic of Congo, Ivory Coast, Haiti, Iraq, Liberia, Libya, Myanmar, Serbia/Montenegro, Sierra Leone, Zimbabwe, Somalia, Sudan, Uzbekistan) and that you are not otherwise prohibited under the Export Laws from receiving the Software. All rights granted under this Agreement are granted on condition that such rights are forfeited if you fail to comply with the terms of this Agreement.

## 12. MARKETING

12.1 During the term of this Agreement, you agree to be a reference for RADIO42. RADIO42 may issue a press release - and you may participate in this press release - regarding the integration and use of the Product as follows:

12.1.1 Reference: As a reference, you agree to speak in good faith with media and/or RADIO42 customers or prospects from time to time about your use of RADIO42 Products and Services. Such reference opportunities will be limited to a reasonable quantity and mutually agreed content;

12.1.2 End User Reference: You agree that RADIO42 names you as an End Users of the Product.

12.1.3 Press Release: RADIO42 may issue a press release in which RADIO42 announces that you are integrating and using the Product. You, at your discretion, may issue a press release about the mutually agreed content. Neither party shall release its press release without first providing such press release to the other for its review and approval, which approval shall not be unreasonably withheld or delayed.

### 13. GOVERNING LAWS; ATTORNEYS' FEES

13.1 This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Hamburg, Federal Republic of Germany. The parties agree that any legal action or proceeding with respect to this Agreement may be initiated only in the federal or state courts located in the State of Hamburg, Germany. By execution and delivery of this Agreement, the parties submit to and accept with regard to any such action or proceeding the exclusive jurisdiction of such courts. If any legal action or proceeding is initiated, the prevailing party shall be entitled to all attorney fees, court costs, and expenses in addition to any other relief to which such prevailing party may be entitled. THIS AGREEMENT WILL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, THE APPLICATION OF WHICH IS EXPRESSLY EXCLUDED.

### 14. EQUITABLE RELIEF

14.1 You acknowledge that any breach or threatened breach of this Agreement involving an unauthorized use of Confidential Information or RADIO42 intellectual property will result in irreparable harm to RADIO42 for which damages would not be an adequate remedy, and therefore, in addition to its rights and remedies otherwise available at law, RADIO42 will be entitled to seek injunctive or other equitable relief, as appropriate, and you hereby waive the right to require RADIO42 to post a bond. If RADIO42 seeks injunctive or other equitable relief in the event of a breach or threatened breach of this Agreement by you involving an unauthorized use of Confidential Information or RADIO42 intellectual property, you agree that it will not allege in any such proceeding that RADIO42's remedy at law is adequate. If RADIO42 seeks any equitable remedies, it will not be precluded or prevented from seeking remedies at law, nor will RADIO42 be deemed to have made an election of remedies.

## 15. SPECIFIC PROVISIONS AND EXCEPTIONS

15.1 This section sets forth specific provisions related to certain components of the Software as well as limited exceptions to the above terms and conditions. The extent that any provision in this section is in conflict with any other term or condition in this agreement, this section will supersede such other term or condition.

15.2 Limited Warranty for Users Residing in Germany or Austria. If you obtained the Software in Germany or Austria, and you usually reside in such a country, then Section 8 does not apply; instead, RADIO42 warrants that the Software provides the functionalities set forth in the Documentation (the "agreed upon functionalities") for the limited warranty period following receipt of the Software when used on the recommended hardware configuration. As used in this Section, "limited warranty period" means one (1) year if you are a business user and two (2) years if you are not a business user. Non-substantial variation from the agreed upon functionalities will not and does not establish any warranty rights. THIS LIMITED WARRANTY DOES NOT APPLY TO SOFTWARE PROVIDED TO YOU FREE OF CHARGE, FOR EXAMPLE, UPDATES, PRE-RELEASE, TRYOUT, STARTER, PRODUCT SAMPLER AND NOT FOR RESALE (NFR) COPIES OF SOFTWARE, OR TO FONT SOFTWARE, WEB SITES, ONLINE SERVICES, OR SOFTWARE THAT HAS BEEN ALTERED BY YOU, TO THE EXTENT SUCH ALTERATION CAUSED A DEFECT. To make a warranty claim, during the limited warranty period you must return, at your expense, the Software and proof of purchase to the location where you obtained it. If the functionalities of the Software vary substantially from the agreed upon functionalities, RADIO42 is entitled – by way of re-performance and at its own discretion – to repair or replace the Software. If this fails, you are entitled to a reduction of the purchase price (reduction) or to cancel the purchase agreement (rescission).

15.3 Limitation of Liability for Users Residing in Germany or Austria.

15.3.1 If you obtained the Software in Germany or Austria, and you usually reside in such country, then Section 10 does not apply. Instead, subject to the provisions in Section 15.15.3.15.3.2, RADIO42 and its affiliates statutory liability for damages will be limited as follows: (i) RADIO42 and its affiliates will be liable only to the amount of damages as typically foreseeable at the time of entering into the purchase agreement in respect of damages caused by a slightly negligent breach of a material contractual obligation and (ii) RADIO42 and its affiliates will not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation, except for damages arising from death, injury or harm to health or offences under the German Product Liability Act. The same applies to damages on the part of any legal representatives of RADIO42.

15.3.2 The aforesaid limitation of liability will not apply to any mandatory statutory liability, in particular, to a liability under the German Product Liability Act, liability for assuming a specific guarantee of liability for culpably caused personal injuries.

15.3.3 You are required to take all reasonable measures to avoid and reduce damages, in particular to make back-up copies of the Software and your computer data subject to the provisions of this agreement.

15.4 Pre-release Software Additional Terms. If the Software is pre-commercial release of beta software ("Pre-release Software"), then this Section applies. The Pre-release Software is a pre-release version, does not represent a final product from RADIO42, and may contain bugs, errors and other problems that could cause system or other failures and data loss. RADIO42 may never commercially release the Pre-release Software. If you received the Pre-release Software pursuant to a separate written agreement, your use of the Software is also governed by such agreement. You will return or destroy all copies of Pre-release Software upon request by RADIO42 or upon RADIO42'S commercial release of such software. YOUR USE OF PRE-RELEASE SOFTWARE IS AT YOUR OWN RISK. SEE SECTIONS 9 AND 10 FOR WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS WHICH GOVERN TRYOUT SOFTWARE.

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