

## PRODUCER'S SUBLICENSE AGREEMENT

This **PRODUCER'S SUBLICENSE AGREEMENT** (this "*Agreement*") by and between **FAIRFAX CABLE ACCESS CORPORATION D/B/A FAIRFAX PUBLIC ACCESS**, a Virginia corporation ("*Company*") and \_\_\_\_\_, an individual ("*Producer*") (each of Producer and Company, a "*Party*") is made as of the Effective Date. The Parties agree as follows:

1. **DEFINITIONS.** Capitalized terms used in this Agreement have the following meanings:
  - 1.1. "*Agreement*" has the meaning attributed to it in the first unnumbered paragraph of this Agreement.
  - 1.2. "*Blanket License Agreement*" means the Blanket License Agreement between Ole Media Management L.P. d/b/a Jingle Punks and Fairfax Cable Access Corporation d/b/a Fairfax Public, which is attached hereto as Exhibit A.
  - 1.3. "*Business Day*" means any weekday which is not a legal public holiday set forth in 5 U.S.C. § 6103.
  - 1.4. "*Company*" has the meaning attributed to it in the first unnumbered paragraph of this Agreement.
  - 1.5. "*Edited Work*" means any edited, altered, or modified Work.
  - 1.6. "*Effective Date*" means the date on which the last signature is affixed hereto.
  - 1.7. "*Indemnified Parties*" means:
    - (a) Company, its officers, directors, employees, and agents;
    - (b) CoxCom LLC, its officers, directors, employees, and agents;
    - (c) Verizon Virginia, Inc., its officers, directors, employees, and agents; and
    - (d) Comcast Corporation, its officers, directors, employees, and agents.
  - 1.8. "*MusicBox*" means Ole Media Management L.P. d/b/a Jingle Punks.
  - 1.9. "*Notice*" has the meaning attributed to it in Section 8.
  - 1.10. "*Party*" has the meaning attributed to it in the first unnumbered paragraph of this Agreement.
  - 1.11. "*Producer*" has the meaning attributed to it in the first unnumbered paragraph of this Agreement.
  - 1.12. "*Production*" means an audio-video production produced by Producer for first-run exhibition by Company.
  - 1.13. "*Reasonable Efforts*" means, with respect to a given obligation, the efforts that a reasonable person in the promisor's position would use so as to perform that obligation as promptly as possible, except:
    - (a) taking any action that would, individually or in the aggregate, cause the promisor to incur costs, or suffer any other detriment, out of reasonable proportion to the benefits to the promisor under this Agreement;

- (b) changing its business strategy;
  - (c) taking any action which would violate any applicable law, regulation, or order; or
  - (d) taking any action that would imperil the promisor's existence or solvency
- 1.14. "**Term**" has the meaning attributed to it in Section 6.1.
- 1.15. "**Terminated Party**" has the meaning attributed to it in Section 6.2(b).
- 1.16. "**Terminating Party**" has the meaning attributed to it in Section 6.2(b).
- 1.17. "**Work**" has the meaning attributed to it in Section 2.1.

## 2. GRANT OF LICENSE

- 2.1. Company grants to Producer a non-exclusive, non-sublicenseable, non-transferable sublicense to use the production music catalogues listed on Schedule A of the Blanket License Agreement, including each of the musical compositions and sound recording contained therein and made available at <http://www.jinglepunks.com> (each such composition or recording, a "**Work**") in accordance with Company's rights and obligations under the Blanket License Agreement. Producer shall use Reasonable Efforts to ensure that no Work is accessed or used by any person not authorized to access and use such Work pursuant to this Agreement.
- 2.2. Notwithstanding any other provision of this Agreement, Producer shall not:
- (a) use any Work except in synchronism or timed-relation with a Production;
  - (b) make any copy of, or duplicate, any unsynchronized Work, in any format, except for internal copying for the sole purpose of assisting Producer in its use of Works;
  - (c) institute or defend any suit, proceeding, or cause of action relating to any Work without the prior, written consent of MusicBox;
  - (d) claim authorship or ownership of any Work or any Edited Work;
  - (e) sublicense, transfer, share, or assign its rights, or attempt to sublicense, transfer, share, or assign its rights, under this Agreement to any third-party without the prior, written consent of MusicBox;
  - (f) permit any third-party to access or use any Work;
  - (g) resell any Work, except as part of a Production and in accordance with the other terms of this Agreement;
  - (h) copy, reproduce, dub, synchronize, edit, alter, modify, or make any other use of any Work except as expressly permitted by the Blanket License Agreement; or
  - (i) copy, reproduce, dub, synchronize, edit, alter, modify, or make any other use of any Work in any way which causes Company to be in breach of the

Blanket License Agreement or which, if undertaken by Company directly, would be a breach of the Blanket License Agreement.

3. **WARRANTIES.** The representations and warranties set forth in this Section 3 are continuous in nature.
  - 3.1. Company represents and warrants that it has the unrestricted right, power, and authority to enter into this Agreement and to fully perform its obligations hereunder and consummate the transactions contemplated herein.
  - 3.2. Producer represents and warrants that:
    - (a) Producer has the unrestricted right, power, and authority to enter into this Agreement and to fully perform its obligations hereunder and consummate the transactions contemplated herein; and
    - (b) Producer is the owner of the entire right, title, and interest in and to each Submission and all Licensed Material.
  - 3.3. The warranties contained in Sections 3.1 and 3.2 survive the termination or expiration of this Agreement.
  - 3.4. **EACH WORK IS PROVIDED TO PRODUCER “AS IS,” WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED, OR OTHERWISE. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, PERTAINING TO ALL CONTENT INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
4. **INDEMNIFICATION.**
  - 4.1. Producer shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claims, actions or demands, including, without limitation, all reasonable attorney’s fees and costs, made by any third party (including, without limitation, MusicBox) due to or resulting from:
    - (a) any breach of this Agreement by Producer;
    - (b) any representation made by Producer in this Agreement;
    - (c) any breach of a warranty made by Producer in this Agreement;
    - (d) Producer’s negligence or gross negligence; or
    - (e) Producer’s copying, duplication, dubbing, synchronization, editing, alteration, modification, or making any other use of any Work, except as expressly permitted by the Blanket License Agreement.
5. **LIMITATION OF LIABILITY. COMPANY WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, REMOTE, SPECULATIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION)**

**ARISING FROM ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT.**

**6. TERM; TERMINATION.**

- 6.1. Unless otherwise terminated in accordance with the terms of this Agreement, this Agreement will be effective for a period of one year, starting on the Effective Date (such period, the “*Term*”).
- 6.2. The Parties may terminate this Agreement as follows:
- (a) by the Parties’ mutual written consent;
  - (b) by Company, immediately upon Notice to Producer, if:
    - (1) Company determines, in its sole discretion, that Producer has copied, duplicated, dubbed, synchronized, edited, altered, modified, or made any other use of any Work in any manner not expressly permitted by this Agreement; or
    - (2) MusicBox requests that Company terminate this Agreement.
  - (b) by either Party (such Party, the “*Terminating Party*”), immediately upon Notice to the other Party (such Party, the “*Terminated Party*”), if:
    - (1) the Terminated Party commits a material breach of this Agreement that is not cured within five Business Days after Notice from the Terminating Party to the Terminated Party of the breach;
    - (2) if any receiver, trustee, custodian, or similar official is appointed with respect to the Terminated Party or any of the Terminated Party’s property or assets;
    - (3) if the Terminated Party conveys any of its assets to a trustee, mortgagee, or liquidating agent;
    - (4) if the Terminated Party assigns any of its assets for the benefit of creditors; or
    - (5) if any proceeding is commenced by or against the Terminated Party which arises under any law of any jurisdiction relating to bankruptcy, insolvency, arrangement, or the adjustment of indebtedness.
- 6.3. Immediately upon termination or expiration of this Agreement, Producer shall return or destroy any and all copies of Works or Edited Works in Producer’s possession.
- 6.4. Without limitation, the rights, obligations, representations, and warranties contained in Sections 2.2, 3.1, 3.2, 4.1, 6.3, and 7 through 19 of this Agreement will survive any termination or expiration of this Agreement.
7. **STATUS OF PRODUCER.** Producer is not an agent or employee of Company. Nothing contained in this Agreement should be construed as creating a partnership, joint venture, or agency or employment relationship between Company and Producer.

8. **NOTICES.** Each notice, demand, request, consent, approval, disapproval, designation, or other communication to any Party (each of the foregoing, a “*Notice*”) must be in writing and delivered as follows: (a) if to Producer, to the address Producer has provided to Company, in writing; and (b) if to Company, to the address Company has provided to Producer, in writing.
9. **REPRESENTATIONS.** Each Party acknowledges and represents that this Agreement is executed without reliance upon any agreement, promise, statement or representation by or on behalf of any Party, except as set forth in this Agreement, and each Party acknowledges that no other Party nor any agent or attorney of such Party has made any promises, representations or warranties whatsoever, whether expressed or implied, which are not contained in this Agreement, concerning the matters set forth in the Agreement. Each Party represents that the execution and delivery of this Agreement constitutes a legal, valid and binding obligation of such Party.
10. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding and agreement between the parties and shall not be modified, amended, or assigned except upon express written consent of both Parties. Any attempted modification, amendment, or assignment in violation of this Section 10 is void.
11. **GOVERNING LAW.** This Agreement is governed and must be construed by the laws of the Commonwealth of Virginia, without regard to its conflict of laws provisions.
12. **CHOICE OF FORUM.** Any Party commencing against the other Party any legal proceeding (including, without limitation, any tort claim) arising out of, relating to, or concerning this Agreement shall bring that proceeding in the state courts sitting in Fairfax, Virginia or the United States District Court for the Eastern District of Virginia sitting in Alexandria, Virginia. Each Party hereby submits to the exclusive jurisdiction of those courts for the purposes of any such proceeding and waives any claim that any legal proceeding (including, without limitation, any tort claim) brought in accordance with this Section 12 has been brought in an inconvenient forum or that the venue of that proceeding is improper.
13. **JURY WAIVER.** The Parties hereby acknowledge that any controversy which may arise under this Agreement would involve complicated and difficult factual and legal issues, accordingly the Parties intentionally waive any right to request a jury trial in any action arising out of, relating to, or concerning this Agreement.
14. **ATTORNEY’S FEES AND COSTS.** Should any Party breach this Agreement or any warranty contained therein, the non-breaching Party shall be entitled to an award of its costs and reasonable attorneys’ fees expended in any action to seek injunctive or other relief from a court of competent jurisdiction based upon the terms of this Agreement in any case in which it is the substantially prevailing party.
15. **SEVERABILITY.** If any provision of this Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Agreement will continue unabated and in full force and effect.
16. **NO THIRD-PARTY BENEFICIARIES.** Except as expressly set forth in Section 4, this Agreement is not intended to confer upon any person other than the Parties any rights or

remedies whatsoever.

17. **NO WAIVER; CUMULATIVE REMEDIES.** No delay on the part of either Party or failure by that Party to exercise any power, right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any power, right or remedy or any abandonment or discontinuance of steps to enforce such right, power, or remedy preclude other or further exercises thereof, or the exercise of any other power, right or remedy. The rights and remedies in this Agreement are cumulative and not exclusive of any rights or remedies (including, without limitation, the right of specific performance) which either Party would otherwise have.
18. **EXECUTION IN COUNTERPARTS; FACSIMILE OR EMAIL SIGNATURE.** This Agreement may be executed in counterparts, all of which taken together constitute one and the same Agreement. This Agreement may be executed by facsimile or email signature and any such facsimile or email signature will be deemed an original.
19. **OPPORTUNITY TO CONSIDER AND CONFER.** The Parties acknowledge that each Party has had the opportunity to read, study, consider and deliberate upon this Agreement, and has had the opportunity to consult with counsel, and that all Parties fully understand and are in complete agreement with all of the terms of this Agreement. Each Party shall bear its own costs with respect to the preparation, revision, and execution of this Agreement.
20. **FURTHER ASSURANCES.** Producer shall cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Agreement.

**SIGNATURES BEGIN ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

**FAIRFAX CABLE ACCESS CORPORATION D/B/A FAIRFAX PUBLIC ACCESS**

\_\_\_\_\_ (SEAL)  
[PRODUCER]

Date: \_\_\_\_\_