

## **PROGRAMMING AGREEMENT**

This Programming Agreement ("Agreement") is made this 14th day of November, 2016, by and between PINE TREE BROADCASTING, LLC, a limited liability corporation organized in the State of Maine and MAINE PUBLIC BROADCASTING CORPORATION, a nonprofit corporation organized in the State of Maine.

### **RECITALS:**

Pine Tree Broadcasting, LLC ("Licensee") is the licensee of FM radio station WRMO(FM), Milbridge, Maine, FCC Facility Identification Number 84096 (the "Station"); and

Maine Public Broadcasting Corporation ("MPBC") is the licensee of multiple noncommercial educational radio stations in the State of Maine; and

Concurrently with this Agreement, Licensee and MPBC have entered into an Asset Purchase Agreement ("APA"), whereby Licensee will assign the license and certain related assets of the Station to MPBC, subject to the consent of the Federal Communications Commission ("FCC"); and

The purpose of this Agreement is to enable the Station to broadcast programming supplied by MPBC until the parties close on the APA.

NOW, THEREFORE, in consideration of the above recitals and mutual promises and other good consideration, the parties agree as follows:

### **1. PROGRAMMING**

MPBC hereby agrees to provide programming of an exclusively noncommercial nature, currently planned to be classical music programming (the "Programming") to the Station, subject to the supervision and control of Licensee. MPBC shall not assume ultimate financial responsibility for the operation of the Station nor for establishing Station policies. The ultimate legal responsibility for the operation and control of the Station shall be solely the obligation of Licensee.

### **2. TERM OF AGREEMENT**

Unless sooner terminated in accordance with the provisions of this Agreement, this Agreement shall commence on December 1, 2016 (the "Effective Date") and shall continue in full force and effect until the earlier of: one (1) year from the Effective Date or the closing date for the assignment of the Station License to MPBC.

### **3. CONSIDERATION**

As consideration for Licensee's agreement to broadcast the Programming on the Station pursuant to the terms of this Agreement, MPBC shall deliver the Programming to the Station

solely at MPBC's expense and shall be responsible for the cost of producing or acquiring the Programming and for securing all licenses and clearances necessary to perform any copyrighted works contained in the Programming. In order to subsidize a portion of the costs of providing the Programming to Licensee, MPBC shall be allowed to retain all revenues, if any, derived from the Programming, including listener contributions and underwriting support.

As additional consideration for this Agreement, MPBC agrees to pay Licensee up to the amount of Three Thousand Dollars (\$3,000), which will be used by Licensee to pay down certain expenses it has incurred (or will incur) associated with the APA and the sale transaction, including the application processing fees assessed by the FCC (if any) and Licensee's attorneys' fees related to the negotiation and implementation of this Agreement and the APA, which expenses and payments shall be included in the monthly invoices as set forth in Section 4 below and in Schedule 4.

#### 4. PARTIAL REIMBURSEMENT OF OPERATING EXPENSES

To subsidize the costs of keeping the Station on the air for the Term of this Agreement, MPBC shall reimburse Licensee a portion of Licensee's direct operating expenses for the Station. The expenses to be reimbursed include utilities and tower rental, as well as portions of certain studio and Licensee personnel costs (up to a total of Four Thousand Two Hundred and Fifty Dollars (\$4,250) per month), as set forth in detail in Schedule 4 hereto. Licensee shall detail the actual expenses to be reimbursed in monthly invoices, supported by appropriate documentation, which, unless questioned, MPBC shall pay within ten (10) business days. In no event shall the payments received by Licensee exceed the payments allowed by 47 C.F.R. § 73.503(c).

#### 5. TERMINATION

Unless otherwise agreed in writing by the parties, this Agreement shall automatically and immediately terminate upon (a) the consummation of the assignment of the Station license to MPBC; or (b) the valid termination of the APA. Termination of this Agreement, however, shall not automatically terminate the APA. In the event of a valid termination of this Agreement for any reason, MPBC shall be relieved of all obligations of whatever nature under this Agreement.

(a) Termination by Licensee. Licensee may terminate this Agreement upon the occurrence of any of the following events, provided that Licensee is not in material breach or default of this Agreement:

(i) Immediately by giving written notice to MPBC if, in the reasonable judgment of Licensee, the Programming is contrary to the public interest, convenience and necessity, as set forth in policies Licensee has established for the Station, or in violation of the Communications Act of 1934, as amended and the rules and published policies of the FCC promulgated thereunder (collectively, the "Communications Laws"). In the event of termination pursuant to this subsection (i), Licensee's sole remedy shall be limited to actual damages sustained by Licensee.

(ii) Upon sixty (60) days' prior written notice to MPBC of any material failure by MPBC to perform any of its obligations, or any material breach of MPBC's

representations under this Agreement, that are not cured within ten (10) days after written notice to MPBC.

(b) Termination by MPBC. MPBC may terminate this Agreement upon the occurrence of any of the following events, provided that MPBC is not in material breach or default of this Agreement:

(i) MPBC may terminate this Agreement upon five (5) days' written notice to Licensee if Licensee fails to broadcast the Programming for any consecutive period of more than 48 hours, or for any material breach of Licensee's representations under this Agreement, if the material breach is not cured within ten (10) days' written notice to Licensee. In the event of termination pursuant to this subsection (i), Licensee's sole remedy shall be limited to actual damages sustained by Licensee.

(c) Termination by either Party. Either party shall have the right to terminate this Agreement upon sixty (60) days' prior written notice to the other party upon the occurrence of any of the following events, provided that such terminating party is not in material breach or default of this Agreement: the foreclosure of any lien or security interest in or the placement or issuance of any levy, writ of attachment, writ of garnishment, writ of execution or similar process against the other party that relates to the Station or the Assets, which event shall be deemed a material breach of this Agreement. In the event of termination pursuant to this subsection (c), the terminating party's remedies shall be actual damages. This subsection shall apply without exclusion of any other remedies to which the non-breaching party shall be entitled at law or equity on account of the other parties' breach.

## 6. AUTHORIZATION AND BINDING OBLIGATION

The parties hereto represent and warrant to one another that each has the power and authority to enter into and carry out this Agreement and that this Agreement constitutes a valid and binding obligation of each of them in accordance with its terms.

## 7. GRANTS

Nothing in this Agreement shall preclude or otherwise restrict MPBC from soliciting grants for Programming and for the use or benefit of the Station after Closing under the APA.

## 8. RESPONSIBILITY OF LICENSEE

MPBC and Licensee acknowledge and agree that the operation of the Station in compliance with the Communications Laws is the ultimate responsibility of Licensee. Nothing in this Agreement shall be construed as limiting, transferring, assigning or relieving Licensee of its responsibility to retain ultimate control over essential Station functions.

Without limiting the foregoing reservation of control, Licensee shall own or lease the technical facilities of the Station, assure that those facilities are operated in compliance with FCC authorizations, establish Station policies, determine Station format, and retain ultimate control over Station personnel, programming, and finances. Throughout the Term of this Agreement, Licensee shall have the right to (i) require the deletion of any program if Licensee reasonably

believes that its transmission over the Station would violate any Communications Law, or be contrary to the public interest, (ii) require the transmission of any program if Licensee reasonably believes that its transmission would serve the public interest. This paragraph shall be construed so as to vest in Licensee all powers that may be necessary to discharge its responsibilities as a licensee under the Communications Laws.

Licensee certifies that the Station is in compliance with the FCC's main studio rule, Section 73.1125, including, with specificity, the main studio staffing requirements which require meaningful management and staff presence. Licensee will continue to comply with the FCC's main studio rule, Section 73.1125, during the term of this Agreement.

#### 9. LICENSE MAINTENANCE

Licensee has the ultimate responsibility with respect to all activities in connection with FCC license renewals, call sign changes, applications for facility changes and such other filings and reports as may be required by the FCC. MPBC agrees to assist and advise Licensee in all such activities related to the Programming and to draft all necessary Programming-related documents, filings and reports in a timely manner for the review, approval and signature of Licensee. Licensee shall remain responsible for the cost of all legal services and advice relating to the Station license and other FCC matters.

#### 10. INDEMNIFICATION

(a) License agrees to indemnify and hold MPBC, its parent or subsidiary companies, the employees, directors, officers, shareholders and agents of any of these, harmless from and against any and all third party claims, and resulting damages, liabilities, costs and expenses (including all reasonable attorneys' fees) arising out of Licensee's performance or nonperformance of its obligations under this Agreement.

(b) MPBC agrees to indemnify and hold Licensee, its parent or subsidiary companies, the employees, directors, officers, shareholders and agents of any of these, harmless from and against any and all third party claims, and resulting damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of MPBC's performance or nonperformance of its obligations under this Agreement.

(c) The indemnifying party shall not be liable for any claims, damages, liabilities, costs or expenses unless the party seeking indemnification gives the indemnifying party prompt written notice of any such claims, damages, liabilities, costs or expenses. All decisions relating to litigation or the settlement thereof shall be made by the indemnifying party. The party seeking indemnification agrees to cooperate fully with the indemnifying party in the defense, compromise or settlement of any claims.

(d) Except for the indemnification obligations established by this Section 10, neither MPBC nor Licensee shall be liable for any consequential, incidental, indirect, economic, special, exemplary or punitive damages arising from any provision of this Agreement, even if the other party has advised that such damages are possible.

11. INSURANCE

Licensee shall maintain in full force and effect, during the term of this Agreement and any extensions or renewals thereof, insurance for the Station consistent with reasonable and customary industry standards.

12. NOTICES

All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by personal delivery, or sent by commercial delivery service or registered or certified mail, return receipt requested, (c) deemed to have been given on the date of personal delivery or the date set forth in the records of the delivery service or on the return receipt, and (d) addressed as follows:

If to Seller:

Pine Tree Broadcasting, LLC  
8600 Foundry Street, Suite G1B  
Savage, Maryland 30763  
Attn: Charles B. Begin, Managing Member  
Phone: 301-503-0906  
Email: [cbegin@pinetreebroadcasting.com](mailto:cbegin@pinetreebroadcasting.com)

With a copy to (which shall not constitute notice):

Mark B. Denbo, Esq.  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, N.W., Suite 301  
Washington, DC 20016  
Phone: 202-350-9656  
Email: [mdenbo@fccworld.com](mailto:mdenbo@fccworld.com)

If to Buyer:

Maine Public Broadcasting Corporation  
63 Texas Ave.  
Bangor, ME 04401  
Attention: Mark Vogelzang, President and CEO  
Phone: 207-440-0700  
Email: [mvogelzang@mainepublic.org](mailto:mvogelzang@mainepublic.org)

With a copy to (which shall not constitute notice):

Margaret L. Miller, Esq.  
Gray Miller Persh, LLP  
1200 New Hampshire Avenue, N.W., Suite 410  
Washington, D.C. 20036-6802  
Phone: (202) 776-2914

Email: [mmiller@graymillerpersh.com](mailto:mmiller@graymillerpersh.com)

13. SEVERABILITY

In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable, the same shall not affect in any respect whatsoever the validity of any other provisions of this Agreement.

14. BINDING ON SUCCESSORS

This Agreement may not be assigned by either party without the other party's prior written consent, which consent may not be unreasonably withheld. Any attempted assignment without such consent shall be cause for immediate termination of the Agreement by the other party.

15. COMPLETE AGREEMENT

This Agreement contains the entire agreement of the parties with respect to the management and operation of the Station during the term hereof, and, except as specifically referred to herein, all prior obligations, proposals and agreements relating to the subject matter hereof have been merged herein. This Agreement shall not be modified or amended except by agreement in writing duly executed by the parties hereto.

16. GOVERNING LAW

This Agreement shall be construed and enforced in accordance with the laws of the State of Maine, without giving effect to choice of law principles.

17. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

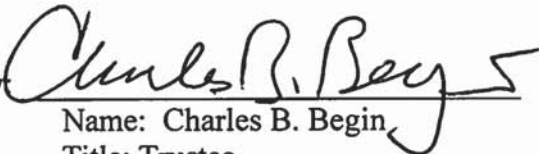
IN WITNESS WHEREOF, the parties to this Agreement have duly executed this Agreement as of the first date set forth above.

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[Signature Page for Programming Agreement]

**PINE TREE BROADCASTING, LLC**

By: Charles B. Begin Living Revocable Trust, its sole and Managing Member

By:   
Name: Charles B. Begin  
Title: Trustee

**MAINE PUBLIC BROADCASTING CORPORATION**

By: \_\_\_\_\_  
Name: Mark Vogelzang  
Title: President and CEO

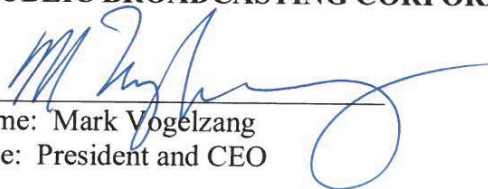
[Signature Page for Programming Agreement]

**PINE TREE BROADCASTING, LLC**

By: Charles B. Begin Living Revocable Trust, its sole and Managing Member

By: \_\_\_\_\_  
Name: Charles B. Begin  
Title: Trustee

**MAINE PUBLIC BROADCASTING CORPORATION**

By:  \_\_\_\_\_  
Name: Mark Vogelzang  
Title: President and CEO



#### Schedule 4

- 1) tower rent
- 2) power bill at Franklin site
- 3) Internet service bill at Franklin site
- 4) 50% of Bar Harbor office/main studio rent
- 5) 50% of salaries and expenses of one full time employee
- 6) up to \$3,000 in certain FCC application (if any) and legal expenses incurred in negotiating and implementing this Programming Agreement and the APA