OPERATING AGREEMENT

BY AND AMONG

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

FRIENDS OF WLRN, INC.

AND

SOUTH FLORIDA PUBLIC MEDIA COMPANY

This Agreement (hereinafter referred to as “Operating Agreement”) dated as of the _______ day of ____________, 2016 by and among The School Board of Miami-Dade County, Florida, a political subdivision of the State of Florida whose mailing address is 1450 NE 2nd Avenue, Miami, FL 33132, WLRN-FM and WLRN-TV (referred to herein interchangeably as “School Board” “WLRN-FM and WLRN-TV” and/or "WLRN"), Friends of WLRN, Inc., a Florida not-for-profit corporation whose mailing address is 169 East Flagler Street, Miami, FL 33131 (hereinafter referred to as “Friends”), and South Florida Public Media Company, a Florida not-for-profit corporation whose mailing address is 169 East Flagler Street, Suite 1400, Miami, FL 33131 (hereinafter referred to as “SFPM”).

RECITALS

WHEREAS: Friends was formed in 1974 by the School Board to be a fundraising source for WLRN-FM and WLRN-TV;

WHEREAS: WLRN is a governmental entity and education institution, operating WLRN 91.3 FM/HD, WKWM 91.5 FM/HD, public radio members of National Public Radio (NPR), WLRN-TV, public television member of the Public Broadcasting Service (PBS), WLRN.org, a website capable of streaming audio and Educational Broadband Service (EBS) stations WHA956, WGH230, KTB84 and KTB85;

WHEREAS: Friends’ operating budget has been derived principally from fundraising revenue and other activities carried out on behalf of and utilizing the name of WLRN;

WHEREAS: WLRN and Friends may already be parties to a number of agreements concerning the operation of the above-referenced stations; and
WHEREAS: WLRN and Friends and SFPM desire to establish a definitive operating agreement for the carrying out of Friends’ and SFPMs not-for-profit mission of supporting the communications programs of the Miami-Dade Public Schools originating at the WLRN Studios located at its address above; and

NOW, THEREFORE, in reliance upon the true and correct recitals stated above, and in consideration of mutual covenants, conditions, and agreements contained herein, each party hereto agrees as follows:

I. MANAGERMENT

1.1 WLRN, Friends and SFPM jointly agree to work actively, collaboratively and in good faith to ensure that they comply with all current agreements and that such agreements comport with the requirements of this Operating Agreement.

1.2 Friends' sole purpose is to serve as the exclusive fundraising agency for WLRN-FM and WLRN-TV, licensed to the School Board and provide related services. As such, Friends owes a fiduciary duty to WLRN and WLRN is the intended third party beneficiary of Friends' activities. All funds raised, received or earned by Friends, with the exception of expenditures to meet operational costs, are and shall be expended for the sole and exclusive benefit of WLRN and its related activities and shall be expended as directed by WLRN.

1.3 Friends acknowledges that the list of staff attached hereto as Exhibit A is an accurate and complete list of employees, whether full-time employees, hourly-paid employees, independent contractors, or otherwise, working at WLRN at the time of execution of this Operating Agreement. Friends, shall within thirty (30) business days of execution of this Operating Agreement, provide WLRN with the job title, job description, and salary of each employee listed in Exhibit A.

1.4. The President/Chief Executive Officer of Friends shall be subject to nomination as provided in Article IV, Section 9 of the By-Laws. The Superintendent of Schools may renominate the present Friends President/Chief Executive Officer or another, either of whom shall be subject to the advice of the Friends Board Board confirmation as therein provided.

1.5. Hiring of senior Friends and SFPM management and staff and the compensation formulas used to arrive at salaries for such employees as well as for Friends' and SFPM's Board Members shall be subject to WLRN's review and approval.

1.6. Friends shall have at a minimum one member of the School Board as a voting member of Friends’ Board of Directors. Such member(s) shall be selected by the School Board. Friends shall notify WLRN management of the time and
place of all meetings when called and none shall be called with less than two (2) business days' notice except in case of emergency.

1.7. Friends and SFPM, during the period of transition described in Paragraph 15.2, hereby adopt the Editorial Integrity Policy and Advisory Mechanisms for WLRN Public Television and Radio (Editorial Policy) as adopted by the School Board of Miami-Dade County under School Board Rule 6Gx13-8C1.011 adopted February 15, 2006, now incorporated by reference into School Board Policy 0172 Licensee/Trustee of WLRN-TV and WLRN-FM, and as may be modified from time to time. Friends’ and SFPM’s adoption of the Editorial Policy does not mean that either Friends or SFPM is authorized to create or produce content for WLRN. WLRN shall own all rights, titles, and interests in all data and materials previously produced by either Friends or SFPM on behalf of WLRN and/or for broadcasting by WLRN and/or in the performance of this Operating Agreement, as described in Section VI of this Operating Agreement.

1.8. Friends and SFPM, during the period of transition described in Paragraph 15.2, shall adopt a code of ethics in accordance with Florida Statutes Section 112.3251, which shall be applicable to all board members, managers, staff and retained consultants. All employees, officers and directors shall annually execute and deliver ethical compliance agreements in the form executed by the members of the Community Advisory Board of WLRN. Friends’ and SFPM’s adoption of a code of ethics does not mean that either Friends or SFPM is authorized to create or produce content for WLRN. WLRN shall own all rights, titles, and interests in all data and materials previously produced by either Friends or SFPM on behalf of WLRN and/or for broadcasting by WLRN and/or in the performance of this Operating Agreement, as described in Section VI of this Operating Agreement.

1.9. To promote transparency, Friends and SFPM, during the period of transition described in Paragraph 15.2, shall consult regularly with WLRN management and provide WLRN management, on a timely basis, information, materials, documents and files requested by WLRN, including, but not limited to financial books and budgets. Furthermore, all meetings of the Friends and SFPM Board shall be open to the public. Friends’ and SFPM’s compliance with this provision does not mean that either Friends or SFPM is authorized to create or produce content for WLRN. WLRN shall own all rights, titles, and interests in all data and materials previously produced by either Friends or SFPM on behalf of WLRN and/or for broadcasting by WLRN and/or in the performance of this Operating Agreement, as described in Section VI of this Operating Agreement.

1.10. During the period of transition described in Paragraph 15.2 of this Operating Agreement and prior to the School Board’s approval of a subject Professional Services Contract, persons or entities employed by Friends and
SFPM or serving as volunteers shall not, by virtue of such employment, be employees of WLRN. WLRN shall be under no obligation to compensate employees or volunteers for their services or reimburse them for any expenses incurred in connection with the services provided to WLRN.

1.11 Within one hundred twenty (120) days of the execution of this Operating Agreement or once all staff listed in Exhibit A who are willing and eligible to become employed by the School Board, pursuant to Paragraph 15.3 of this Operating Agreement, have been approved for employment by the School Board, whichever comes first, SFPM shall no longer provide content for WLRN.

II.

RESPONSIBILITIES

2.1. Friends and WLRN management shall hold at least one (1) joint annual planning session for the purposes of achieving greater communication and coordination of activities and developing a fundraising plan designed to support WLRN's strategic plan, budget and fundraising goals. Unless otherwise agreed by all the Parties, this annual planning session shall be held during the fourth quarter of the fiscal year and the discussions shall, at a minimum, include (a) a review and evaluation of fundraising activities, as well as the financial operating and staffing requirements during the past year as reported by Friends' officers and (b) a review of WLRN's past year's activities as reported by WLRN management. At this planning session, the Parties shall, at a minimum, develop the objectives for the following year's fundraising activities and a strategy for their achievement. At this planning session, the Parties shall also collaborate to determine the budget needed to cover expenses, including funding employee salaries.

2.2. Friends shall provide, and WLRN shall have a right to Review and approve or deny, all proposed funding and endowment agreements between Friends and a third-party. Such agreements shall be made available for review by the Superintendent and the School Board's general counsel. In addition, no relationship with WLRN to benefit third-parties including third-parties that are affiliated with Friends, e.g., non-profit or for-profit subsidiaries, shall be entered into by Friends or SFPM without prior written consent of WLRN.

III.

MANAGEMENT VOLUNTEER ACTIVITIES

3.1 Friends and SFPM shall coordinate with WLRN management to develop, organize and direct volunteer activities on behalf of WLRN and provide WLRN such volunteer services that may be requested from time to time to carry out the mutual goals of Friends and WLRN.
3.2 All volunteers must comply with School Board Policy 2430.01, *School Volunteers*.

IV.

**FINANCIAL MANAGEMENT/BUDGET AND AUTHORITY TO AUDIT**

4.1 Friends and SFPM must maintain accounting books and records under a system of accounts and financial controls that is consistent with Generally Accepted Accounting Principles ("GAAP"). Friends and SFPM must annually provide their certified financial statement(s) and their Federal Tax Return(s), including but not limited to, their Federal Information Return(s) on Form 990 together with all attachments, to WLRN, the School Board’s Audit Committee and the Superintendent or his/her designee. Books and budgets shall be made available to WLRN for audit or review promptly, upon request.

4.2 All provisions of this Operating Agreement regarding Friends and SFPM shall include and be binding upon their respective subsidiaries and affiliates.

V.

**FUNDRAISING/DONOR LISTS**

5.1 WLRN and Friends shall coordinate fundraising activities which generate financial contributions from individuals, corporations and foundations. These include, but are not limited to, membership solicitation, underwriting, grants, major gifts and special events. All funds raised or secured by Friends shall be for the sole benefit of WLRN and its operations. Friends shall issue WLRN a grant to fund WLRN's budget, which will be determined on a yearly basis, as described in Paragraph 2.1 of this Operating Agreement.

5.2 Membership and donor lists and all associated information, while held and managed by Friends, are the property of WLRN and shall be made available to WLRN upon request in any form maintained by Friends. SFPM shall not have access to donor lists or any associated information. WLRN shall maintain active control of its membership and donor lists and take all appropriate measures to ensure against unauthorized use of such lists, including such measures that are required by federal law and by the Corporation for Public Broadcasting's grant requirements. WLRN shall require any third party, including Friends, to abide by WLRN's compliance requirements. There shall be no disclosure of contributors or donor names or other personally identifiable information regarding donors or contributors to any nonaffiliated third party unless such disclosure is permitted or required in accordance with law or judicial process. Donor lists are exempt from disclosure under Section 119.07(1), the Florida public records disclosure law, pursuant to Sections 1001.24(4), & 1001.453(4) of Florida Statutes. Neither WLRN nor Friends shall rent, sell or license contributor or donor names or other personally identifiable information, to or from, or exchange such information with
any candidate, political party, or political committee. Friends and WLRN are also prohibited from disclosing this personally identifiable information with any nonaffiliated third party unless permitted or required in accordance with law or judicial process. Contributor and donor names, or other personally identifiable information, shall be freely shared between WLRN and Friends as set forth in this Operating Agreement.

5.3. Friends shall review the contributions of donors with WLRN to ensure that proposed donations do not give rise to an appearance of loss of integrity or impartiality, or otherwise reduce public confidence in Friends or WLRN.

VI. INTELLECTUAL PROPERTY

6.1. The call sign, "WLRN" is a registered trademark of the School Board identifying quality broadcasting services associated with audience trust, respect and loyalty. When using the WLRN brand, Friends and, during the period of transition described in Paragraph 15.2, SFPM shall always present the brand in a positive manner that identifies WLRN as the sole source of the services associated with the trademark. Friends and, during the period of transition described in Paragraph 15.2, SFPM may only use the WLRN brand in its communications and fundraising campaign efforts with the knowledge and prior approval of WLRN management. Friends' and SFPM's public campaign communications concerning WLRN and the activities of WLRN shall be made only after advance approval by WLRN management.

6.2. Friends and, during the period of transition described in Paragraph 15.3, SFPM agree to adhere to the policies and procedures of WLRN regarding the use and publication of trademarks, call signs and service marks containing the words "WLRN" and all logos associated therewith. WLRN shall own all rights, titles, and interests in all data and materials previously produced by either Friends or SFPM on behalf of WLRN and/or for broadcasting by WLRN and/or in the performance of this Operating Agreement. Friends and SFPM do hereby assign to the School Board all such works, including all intellectual property rights relating thereto. Unless otherwise agreed to by WLRN in writing, all intellectual property created on behalf of WLRN and/or for broadcasting by WLRN and/or in association with this Operating Agreement shall be used by Friends and, during the period of transition described in Paragraph 15.2, by SFPM solely in furtherance of the goals of this Operating Agreement and for internal reporting purposes. Notwithstanding the foregoing, WLRN has the right to review and approve in writing each proposed use of the WLRN trademark or any other WLRN intellectual property. Within one hundred twenty (120) days of the execution of this Operating Agreement or once all staff listed in Exhibit A who are willing and eligible to become employed by the School Board, pursuant to Paragraph 15.2 of this Operating Agreement, have been approved for employment by the School Board, whichever comes first, SFPM shall cease and
desist the use and publication of trademarks, call signs and service marks containing the words "WLRN" and all logos associated therewith.

6.3 WLRN, Friends and, during the period of transition described in Paragraph 15.2, SFPM and their respective parents, direct and indirect officers, directors, employees, agents, successors, licensees and assigns, shall have the right and license, but not the obligation, to incorporate media footage and photographs of WLRN in a manner approved by the School Board in writing (the "Property") in Friends' and, during the period of transition described in Paragraph 15.2, SFPM's film or video production or commercials (the "Production"), and to use and authorize others to use the Property as so incorporated in the Production in the internal communication channels of Friends and, during the period of transition described in Paragraph 15.2, SFPM, throughout the universe, in all forms of media (whether now known or hereafter developed) as approved by the School Board. "Internal" as used in this section, is defined as employee/consultant facing channels, as well as selected physical real estate locations (either owned or rented) which may contain shared communication channels such as in-wall video displays. All rights granted in this license, shall be solely for WLRN fundraising purposes.

WLRN warrants and represents that the School Board has the right to grant all rights granted in this section and Friends' use of the Property as permitted in this license will not infringe upon, violate or otherwise misappropriate on the rights of any third party.

6.4 All books, manuals, films or other materials suitable for copyright, patent, or other intellectual property protection regardless of the means of transmission, previously produced by either Friends or SFPM on behalf of WLRN and/or for broadcasting by WLRN and/or as a result of the work or services performed under, or in connection with, this Operating Agreement are hereby reserved as the exclusive property of and sole ownership by the School Board, and SFPM, Friends and WLRN do hereby assign to the School Board all right, title and interest in and to such works. All trademark rights associated with intellectual property created for or on behalf of WLRN shall transfer to the School Board. Friends and/or SFPM shall defend, indemnify and hold the School Board and its successors and assigns harmless from and against all third-party claims, suits and proceedings and any and all damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) incurred as a result of (i) infringement by any third-party patent, copyright or trademark (ii) misappropriation of any third-party trade secret, or (iii) violation of any other intellectual property right of any kind in connection with any of the foregoing. Friends and SFPM will indemnify and hold harmless the School Board from liability of any nature or kind, including costs and expenses for or on account of any copyrighted, service marked, trademarked, patented or unpatented invention, process, article or work manufactured or used in the performance of the Operating Agreement, including its use by the School Board. If Friends or
SFPM use any design, device, materials or works covered by letters, service mark, trademark, patent, copyright or any other intellectual property right, it is mutually agreed and understood without exception that the proposal prices will include all royalties or costs arising from the use of such design, device or materials in any way involved in the work.

VII.

EBS STATIONS REGISTERED TO FRIENDS AND MANAGED BY WLRN

7.1. Friends agrees and warrants that there are four (4) EBS Channels registered by Friends through the FCC under Call Sign WHR866, that are the property of WLRN. Friends further agrees and acknowledges that all sub-agreements related to these four (4) EBS Channels and any and all funds generated as a result of these Channels are for the benefit of WLRN. Additionally, upon termination of this Operating Agreement, Friends agrees to effectuate the necessary filings and execute the necessary paperwork and/or documentation to assign the WHR866 EBS License to WLRN.

7.2. Friends through an Amended and Restated ITFS Agreement dated December 20, 1994, by and between Friends, South Florida Instructional Television and WLRN, manages EBS stations licensed to WLRN, on which it has leased excess capacity to Sprint with proceeds to benefit WLRN and its educational programming. Friends shall administer the Sprint EBS lease in such a manner that all revenues derived from the Sprint EBS lease shall be used for the purpose of funding WLRN operations. Friends and WLRN may, by mutual agreement, establish an endowment upon such terms and conditions as the Parties agree, using the surplus of funds earned from the EBS lease. Additionally, upon termination of this Operating Agreement, or upon notice from WLRN, Friends agrees to effectuate the necessary amendments to assign the Sprint EBS Lease to WLRN.

VIII.

ENDOWMENTS AND INVESTMENT ACCOUNTS

8.1 Friends must establish, manage and administer its account(s), investments and endowments according to a professionally prepared Statement of Investment Policy (Investment Policy) that conforms to applicable legal requirements and ethical standards for non-profit organizations. The Investment Policy must be generated by Friends and must be updated as necessary. The Investment Policy must be provided to the WLRN upon request. Friends must utilize an experienced and credentialed investment advisor, acceptable to WLRN, to assist with account management. Nothing herein is intended to require depletion of any endowment corpus. The expenditure of an endowment's corpus
is only to be undertaken with the written concurrence of WLRN. SFPM represents that it does not own or manage any account, endowments or investments on behalf of WLRN.

IX.

INSURANCE

9.1 Friends shall, at its sole cost and expense, maintain during the term of this Operating Agreement commercial general liability insurance including bodily injury and property damage (including coverage for contractual liability) in adequate amounts of not less than a limit of One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) general aggregate. In addition, The Friends Board shall maintain such insurance as is necessary to indemnify WLRN against liability due to due to the negligent or tortuous acts of Friends, its board, employees and consultants. The general liability policy or policies shall name “The School Board of Miami-Dade County, Florida its officers, director and employees” as an additional insured. Friends shall also maintain adequate commercial automobile liability insurance, as well as worker’s compensation at as required by law. The policies shall specify that the insurer shall have no right of subrogation for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at Friends’ sole risk.

9.2 During the period of transition described in Paragraph 15.2 of this Operating Agreement, SFPM shall, at its sole cost and expense, maintain commercial general liability insurance including bodily injury and property damage (including coverage for contractual liability) in adequate amounts of not less than a limit of One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) general aggregate. In addition, during the period of transition described in Paragraph 15.2 of this Operating Agreement, SFPM shall maintain such insurance as is necessary to indemnify WLRN against liability due to due to the negligent or tortuous acts of Friends, its board, employees and consultants. The general liability policy or policies shall name “The School Board of Miami-Dade County, Florida its officers, director and employees” as an additional insured. During the period of transition described in Paragraph 15.2 of this Operating Agreement, SFPM shall also maintain adequate commercial automobile liability insurance, as well as worker’s compensation at as required by law. The policies shall specify that the insurer shall have no right of subrogation for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at SFPM’s sole risk.
X.

WRITTEN APPROVALS

10.1. Friends and SFPM shall obtain prior written approval from the general manager of WLRN or his/her designee before:

(a) Holding special events on WLRN property;

(b) Entering into third-party agreements specifically related to implementation of this Operating Agreement;

(c) Releasing any information to the public that refers to the School Board, donors, members, WLRN, any WLRN employee (by name or title), this Operating Agreement or the Projects contemplated hereunder; and

(d) Using any intellectual property of WLRN and School Board, including WLRN and School Board logos and taglines.

XI.

COMPLIANCE WITH APPLICABLE LAWS

11.1. This Operating Agreement and performance hereunder is subject to all applicable laws, regulations and government policies, whether now in force or hereafter enacted or promulgated. Nothing in this Operating Agreement shall be construed as in any way impairing the general powers of the WLRN to supervise, regulate, and control its property under applicable laws, regulations, and management policies. Nothing in this Operating Agreement shall be construed to be inconsistent with or contrary to the purpose or intent of any law.

11.2. If and to the extent that any provision of this Operating Agreement is contrary to any law, rule or regulation, including but not limited to those of the Internal Revenue Code and Federal Communications Commission, said law, rule or regulation shall be controlling and this Operating Agreement shall be deemed amended solely to the extent necessary to comply with such legal requirements.

XII.

TERMINATION

12.1. This Operating Agreement may be terminated by any Party upon at least ninety (90) days advance written notice to all other Parties which notice shall state the effective date of termination.
12.2. Unless otherwise provided for in this Operating Agreement, no Party shall be liable to any other Party for any damages, costs or claims in the event of termination. Termination will be effective at the end of the period stated in the termination notice. Any funds, assets, pledges, endowments of any kind, goods, or services raised for the benefit of WLRN, in whole or part, shall be held for the benefit of WLRN and transferred and/or disposed of consistent with provisions of this Operating Agreement.

12.3. In addition, in the event that Friends and/or SFPM fails to fulfill or comply with any of the terms or conditions of the Operating Agreement, in whole or in part, WLRN may place Friends and/or SFPM in default status and take any one of the following actions: a) Require Friends and/or SFPM the defaulting party to suspend activities under the Operating Agreement, upon fifteen (15) days advance written notice by WLRN, except for those activities which Friends and/or SFPM cannot reasonably avoid, or which would be financially detrimental to WLRN for Friends and/or SFPM to suspend during any period of suspension, until such time as Friends and/or SFPM has cured the default; b) Terminate the Operating Agreement for cause, in whole or in part, upon fifteen (15) days advance written notice from WLRN; c) Terminate the Operating Agreement for cause, in whole or in part, immediately effective upon notice, whenever the School Board determines that the Friends and/or SFPM has jeopardized the integrity, safety or welfare of WLRN or the public or whenever the fiscal integrity of the Operating Agreement has been compromised; and d) Invoke any other remedy or remedies that may be legally available to WLRN.

12.4. Disposition of assets upon termination or expiration of the Operating Agreement or cessation of Friends' or SFPM's (referred to as Terminated Party for this section) operations shall be made in an orderly and financially responsible manner including the following:

(a) Terminated Party shall cease using all of WLRN's trademarks and logos.

(b) Terminated Party shall cease raising funds for WLRN.

(c) Terminated Party shall transfer all domain names and registered licenses to WLRN.

(d) Terminated Party shall not make any disbursement of funds without the prior written approval of WLRN.

(e) All contracts to which Terminated Party is a party which WLRN desires to be transferred to it shall be transferred and assigned to WLRN or its designee; Terminated Party and WLRN shall use their best efforts to secure the approval of the counterparty to such transfer and assignment;

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(f) Terminated Party shall not terminate any agreement to which it is a party without the written consent of WLRN, which shall not be unreasonably withheld, conditioned or delayed.

(g) Terminated Party shall promptly deliver to WLRN all of its books, papers and records and all of its computers (with all passwords) to WLRN and all safe deposit keys. Terminated Party shall transfer the right of access to all safe deposit boxes to WLRN's designees.

(h) No employee, officer or director of Terminated Party shall be allowed to remove any of WLRN's or Terminated Party property from its offices without the consent of WLRN.

(i) All funds and accounts including interest and earnings thereon, and all in-kind contributions held by Terminated Party for the benefit of WLRN or its projects or programs, shall be transferred to WLRN or to a third-party deemed acceptable by WLRN (under such terms and conditions deemed acceptable by WLRN) for use consistent with the purposes for which the donations were made. Nothing herein shall prevent Terminated Party from satisfying allowable outstanding obligations reasonably incurred in association with this Operating Agreement prior to termination or expiration of this Operating Agreement. (As per Friends, See Article VII of the Amended and Restated Articles of Incorporation of Friends of WLRN, Inc. (2005)).

(j) In appropriate circumstances, WLRN may allow Terminated Party to continue to manage any investments and/or endowment established by Terminated Party for the benefit of WLRN or WLRN projects or programs after termination or expiration of this Operating Agreement. In this event, investment and/or endowment fund management shall continue to be subject to the provisions of this Operating Agreement. Terminated Party's permission to continue operation of an endowment must be in writing and may be terminated by WLRN at its discretion. In the event permission to operate an endowment is terminated, endowment funds shall be transferred to WLRN.

(k) Terminated Party shall cooperate in the preparation, execution and filing of necessary paperwork, applications and/or documentation to assign the WHR866 EBS License
to WLRN. (As per Friends, See Article VII of the Amended and Restated Articles of Incorporation of Friends of WLRN, Inc. (2005)).

(l) Terminated Party shall terminate its management of WLRN's EBS stations and shall promptly effectuate the necessary amendments to assign the Sprint EBS Lease to WLRN.

To the greatest extent allowable under law, all Parties shall take actions necessary to give full force and effect to the provisions and the intent of this Article.

The aforementioned Terminations provisions shall survive termination or expiration of this Operating Agreement.

XIII.

INDEMNIFICATION AND DUTY TO DEFEND

13.1. To the fullest extent permitted by law, Friends shall indemnify and hold harmless WLRN, its Board, and its employees ("Indemnitees") from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs and attorneys' fees at the pre-trial, trial and appellate levels, arising out of, resulting from or incidental to Friends' performance under this Operating Agreement or to the extent caused by negligence, recklessness, or intentional wrongful conduct of Friends, its Board, or other persons employed or utilized by Friends in the performance of this Operating Agreement. The remedy provided to the Indemnitees by this indemnification shall be in addition to and not in lieu of any other remedy available under the Operating Agreement or otherwise available at law. This indemnification obligation shall not be diminished or limited in any way to any insurance maintained pursuant to the Operating Agreement or otherwise available to Friends. The provisions of this section and the remedy provided to the Indemnitees by this indemnification shall survive the expiration or termination of this Operating Agreement. The provisions of this Section are intended to require Friends to furnish the greatest amount of indemnification allowed under Florida law. To the extent any indemnification requirement contained in this Operating Agreement is deemed to be in violation of any law, that provision shall be deemed modified so that the Friends shall be required to furnish the greatest level of indemnification to the Indemnitees as was intended by the parties hereto.

13.2. To the fullest extent permitted by law, SFPM shall indemnify and hold harmless WLRN, its Board, and its employees ("Indemnitees") from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs and attorneys' fees at the pre-trial, trial and appellate levels,
arising out of, resulting from or incidental to SFPM's performance under this Operating Agreement or to the extent caused by negligence, recklessness, or intentional wrongful conduct of SFPM, its Board, or other persons employed or utilized by SFPM in the performance of this Operating Agreement. The remedy provided to the Indemnitees by this indemnification shall be in addition to and not in lieu of any other remedy available under the Operating Agreement or otherwise available at law. This indemnification obligation shall not be diminished or limited in any way to any insurance maintained pursuant to the Operating Agreement or otherwise available to Friends. The provisions of this section and the remedy provided to the Indemnitees by this indemnification shall survive the expiration or termination of this Operating Agreement. The provisions of this Section are intended to require SFPM to furnish the greatest amount of indemnification allowed under Florida law. To the extent any indemnification requirement contained in this Operating Agreement is deemed to be in violation of any law, that provision shall be deemed modified so that SFPM shall be required to furnish the greatest level of indemnification to the Indemnitees as was intended by the parties hereto.

13.3. Friends agrees, at its own expense, and upon written request by the Board, to defend any suit, action or demand brought against WLRN on any claim or demand arising out of, resulting from or incidental to Friends' performance under this Operating Agreement.

13.4. SFPM agrees, at its own expense, and upon written request by the Board, to defend any suit, action or demand brought against WLRN on any claim or demand arising out of, resulting from or incidental to SFPM's performance under this Operating Agreement.

13.5 The indemnification obligations in this section are intended to supplement the intellectual property and other indemnifications obligations set forth elsewhere in this Operating Agreement.

XIV.

NOTICES

14.1. All notices hereunder shall be mailed certified mail, return receipt requested to the Parties as follows:

If to WLRN:

General Manager, WLRN
WLRN
172 NE 15 Street
Miami, FL 33132

With a copy to:

Superintendent of Schools
Miami-Dade School Board
1450 NE 2nd Avenue
Miami, FL 33132

and

School Board Attorney
Miami-Dade School Board
1450 NE 2nd Avenue
Miami, FL 33132

If to Friends:

President
Friends of WLRN, Inc.
169 E. Flagler Street, Suite 300
Miami, FL 33131

With a copy to:

Chair of Friends of WLRN, Inc.
Name and address to be furnished.

If to SFPM:

President
South Florida Public Media
169 East Flagler Street, Suite 1400
Miami, FL 33131

With a copy to:

Thomas J. Quarles
150 W. Flagler St., Ste. 2200
Miami, FL 33130

or at such other addresses as either party may designate by Notice to the other.
XV.

HIRING AND STAFFING

15.1 Each employment contract between any staff who transitions to employment with WLRN, pursuant to Paragraph 15.2 of this Operating Agreement, and WLRN shall expressly provide:

The employee(s) agrees to be bound to WLRN by all of the terms of the Operating Agreement among WLRN, Friends and SFPM. WLRN may, at its sole option, take an assignment of the employee in the event the under the Operating Agreement is terminated or WLRN otherwise deems it necessary to have the employment agreement assigned.

15.2 The staff listed in Exhibit A shall have sixty (60) days from the date of this Operating Agreement to apply for employment through WLRN/the School Board. In order to continue providing services under this Operating Agreement, these staff must undergo the School Board’s employment application process and enter into an employment contract with the School Board, subject to the School Board approval. Any individuals seeking employment/to provide services under this Operating Agreement after the date of this Operating Agreement shall undergo the School Board’s employment application process and enter into an employment contract with the School Board, subject to the School Board approval.

15.3 Friends and SFPM represents to WLRN that each has the required expertise in the type of professional services that will be required under this Operating Agreement.

15.4 No provision of this Operating Agreement shall, however, be construed as constituting an agreement between WLRN and any such other person or firm. Nor shall anything contained herein be deemed to give any such Party or any third party any claim or right of action against WLRN beyond such as may otherwise exist without regard to this Operating Agreement.

15.5 Friends and, during the period of transition described in Paragraph 15.2 of this Operating Agreement, SFPM shall obtain prior approval from the School Board’s Chief Communications Officer on the following matters:

a. All new hires, regardless of which entity is funding the salary;
b. Any agreements, contracts, including, but not limited to, those dealing with licensing, trademarks and logos;
c. All purchases and expenditures;
d. Any programming changes for WLRN TV or Radio; and
e. Any capital improvements projects at WLRN.
XVI.

ACCESS TO RECORDS/FLORIDA'S PUBLIC RECORDS LAWS

Friends and SFPM understands the broad nature of these laws and agrees to comply with Florida's Public Records Laws and laws relating to records retention. Friends and SFPM shall keep and maintain public records required by the School Board to perform the service. Friends and SFPM shall keep records to show each entity has complied with program requirements. Friends and SFPMs must make available, upon request of the School Board, a Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, any books, documents, papers, and records of Friends and SFPM which are directly pertinent to this Operating Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Upon request from the School Board's custodian of public records, provide the School Board with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. Friends and SFPM shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Friends and SFPM does not transfer the records to the public agency. Friends and SFPM shall retain all records for five (5) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1).

Upon completion of the contract, transfer, at no cost, to the School Board all public records in possession of Friends and SFPM or keep and maintain public records required by the School Board to perform the service. If Friends and SFPM transfers all public records to the School Board upon completion of the contract, Friends and SFPM shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Friends and/or SFPM keeps and maintains public records upon completion of the contract, Friends and/or SFPM shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the School Board, upon request from the School Board's custodian of public records, in a format that is compatible with the information technology systems of the School Board.

IF FRIENDS OR SFPM HAVE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTOMIAN OF PUBLIC RECORDS AT 305-995-1128, prr@dadeschools.net, and 1450 NE 2 Avenue, Miami, Florida 33132.
XVII.

GENERAL PROVISIONS

17.1 **Choice of Law; Forum.** This Agreement will be governed by and construed in accordance with the laws of the State of Florida without regard to any jurisdictions' conflicts of laws principles. The exclusive forum for any dispute relating to or arising out of this Agreement shall be the state or federal courts of Miami-Dade County, Florida.

17.2 **No Assignment.** No Party shall transfer, assign or delegate this Agreement or any rights or obligations hereunder, in whole or in part, whether voluntarily, by operation of law or otherwise, without the prior written consent of all other Parties, such consent not to be unreasonably withheld.

17.3 **Severability.** If any provision of this Agreement is found by any court, tribunal or administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other Section or part of this Agreement.

17.4 **Waiver.** No failure of a Party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.

17.5 **Force Majeure.** No Party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of military authorities, fire, floods, earthquakes, accidents or strikes, provided that such Party gives prompt written notice thereof to the other Parties.

17.6 **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating thereto.

17.7 **No Modification.** No term of this Agreement shall be modified, waived or changed except by an instrument in writing executed by all the Parties.

17.8 **Counterparts.** This Agreement may be executed in two or more counterparts, and each counterpart will be deemed an original, but all counterparts together will constitute a single instrument. Executed counterparts delivered by PDF or other email or facsimile transmission shall have the same force and effect as counterparts bearing original signatures.

17.9 **No Third-party Beneficiaries.** Except where expressly stated, no provision of this Agreement is intended to or shall be construed to provide or create any third-party beneficiary right or any other right of any kind in any person or entity other than the Parties.

17.10 **Authority to Execute.** Each individual signatory hereto warrants that he/she has the authority to execute this Agreement on behalf of any entity that
17.11 Interpretation of This Agreement. The Section headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. If any dispute arises concerning the meaning or construction of any term or terms of this Agreement, then no part or term of this Agreement shall be construed for or against any Party as a drafting Party. The Parties hereto recognize that the drafting of this Agreement was the joint effort of all Parties hereto. Signed, Sealed and Delivered as of the date first above written.

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

By: ________________________________

Print Name: _________________________

Title: ______________________________

Approved as to Form and Legal Sufficiency

By: ________________________________

Print Name: _________________________

Title: School Board Attorney

FRIENDS OF WLRN, INC

By: ________________________________

Print Name: _________________________

Title: ______________________________

SOUTH FLORIDA PUBLIC MEDIA COMPANY

By: ________________________________

Print Name: _________________________

Title: ______________________________