

## PROGRAMMING AGREEMENT

This Programming Agreement (“Agreement”) is made as of the 31<sup>st</sup> day of August, 2011 (the “Execution Date”) by and between **The Wheeler School**, a Rhode Island non-profit corporation (“Licensee” or the “School”), and **Rhode Island Public Radio**, a Rhode Island non-profit corporation (“RIPR”). (Licensee and RIPR are sometimes referred to herein, individually, as a “Party” or, collectively, as the “Parties”).

### WITNESSETH:

WHEREAS, Licensee is the licensee of noncommercial educational FM Radio Station WELH, Facility ID No. 66656, Providence, Rhode Island, operating on the frequency 88.1 MHz, (the “Station”);

WHEREAS, RIPR, the licensee of AM Radio Station WRNI, Facility ID No. 48308, Providence, Rhode Island and noncommercial FM Radio Station WRNI-FM, Facility ID No. 22874, Narragansett Pier, Rhode Island, has experience in the management of noncommercial radio stations and desires to help Licensee manage and program the Station;

WHEREAS, RIPR is the only public radio station in Rhode Island that broadcasts locally-produced news and public affairs programming in combination with programming provided by National Public Radio;

WHEREAS, Licensee, as a fellow non-profit Rhode Island corporation focused on education, appreciates the role that RIPR plays in the education of the community; and

WHEREAS, Licensee wishes to secure the services of RIPR to facilitate Licensee’s management and programming of the Station.

NOW, THEREFORE, the Parties agree as follows:

1. Agreement Term. The initial term of this Agreement (“the Initial Term”) will begin October 1, 2011 (the “Effective Date”) and will continue for a period of ten (10) years. Unless either Party gives written notice to the other of its election to terminate the Agreement no less than six (6) months prior to the end of the Initial Term (the “Notice Deadline”), the Initial Term shall be extended for an additional period of ten (10) years (the Initial Term and any extension are collectively referred to as the “Term”).

2. Management of Air Time and Broadcast of the Programs. Subject to the terms and conditions set forth in this Agreement, Licensee agrees to make the facilities of the Station available to RIPR for broadcast of the programming provided by RIPR (the “Programming”) for up to 24 hours per day, seven days per week, except for a three-hour period each week between Friday at midnight and 3 a.m. Saturday, during which Licensee wishes to broadcast programs produced by students of The Wheeler School (“Licensee Programming”). Under Licensee’s direction, RIPR will air all Emergency Alert System (“EAS”) tests, announcements required by the FCC’s Rules, and Station Identifications required under Section 73.1201 of the FCC’s Rules. The Station Identification shall take the following form: “This is Rhode Island Public Radio, broadcasting on WELH 88.1FM The Wheeler School in Providence, WRNI-FM 102.7FM Narragansett Pier, and WCVY 91.5FM, Coventry Public Schools. Rhode Island Public Radio, Rhode Island’s NPR.”

3. Operation, Ownership, and Control of the Station. Notwithstanding anything to the contrary in this Agreement, as long as Licensee remains the licensee of the Station it will have ultimate authority, power, and control over the facilities of the Station during the Term, including Station finances, personnel and programming. Licensee will bear responsibility for the Station’s compliance with all applicable provisions of the rules and policies of the FCC and all other applicable laws and regulations. Without limiting the generality of the foregoing, Licensee

will: (a) retain ultimate control over the programming of the Station, including the right to preempt any of the Programming, as set forth below; (b) maintain oversight of the Station's finances; and (c) cause the Station to comply with Station Identification, EAS, public file, and main studio rules, provided that RIPR's employees shall broadcast Station Identifications and EAS tests and announcements as set forth in Section 2, above. Nothing herein shall prevent or hinder Licensee from rejecting or refusing programs which Licensee believes to be unsatisfactory, unsuitable or contrary to the public interest; or from substituting programs which, in Licensee's opinion, are of greater local or national importance, or which are specifically designed to address the problems, needs, and interests of the community served by the Station.

During the Term, RIPR shall maintain and deliver to Licensee documents required to be placed in the public inspection file of the Station, pursuant to Sections 73.1943 and 73.3527 of the FCC's Rules, which documents shall include information concerning the broadcast of sponsored programming which must be reported in the Station's Donor File, and programs addressing political issues or controversial subjects of public importance in accordance with the provisions of Section 73.1212 of the FCC's Rules. Licensee shall be advised promptly by RIPR of any FCC complaint or inquiry concerning the Programming and shall be given copies of any letters or e-mails from the public, including complaints, concerning the Programming.

The Station's transmission system and technical facilities will remain under Licensee's control. Licensee shall take appropriate steps to assure that the Station operates in compliance with the terms of its license, but will not employ technical staff who are on call 24 hours per day. Licensee shall repair, and, if necessary, replace any of the Station's transmission facilities in a reasonable manner, and will maintain the Station transmission facilities in substantially their current condition, ordinary wear and tear excepted. Licensee shall request and obtain from Arbitron and shall install an encoder and station monitor ("PPM Equipment"), to implement

Arbitron's Portable People Meter system at the Station. RIPR agrees to perform transmitter readings and maintain the Station Log on behalf of Licensee, as required by Section 73.1820 of the Commission's Rules. RIPR shall not be responsible or liable for the repair or replacement, or the cost of repair or replacement, of any of the Station's transmission facilities. RIPR may make recommendations to Wheeler regarding the installation, repair or replacement of equipment, including but not limited to, for example, air conditioning, auxiliary transmitter, and emergency power at the transmitter site. Wheeler shall receive such recommendations, shall give them due and good faith consideration, and shall cooperate with RIPR in acting on them.

Notwithstanding anything to the contrary contained herein, RIPR shall timely deliver to Licensee reports, including, but not limited to, monthly Financial Reports concerning Station Revenues, and listener complaints, in order for Licensee to effectively exercise its licensee responsibility.

4. Insurance. Each Party will maintain in full force and effect, with respect to the properties and employees utilized by each to fulfill their respective obligations under this Agreement, a general liability and worker's compensation insurance policy; and will continue to maintain such insurance coverage in full force and effect throughout the Term. The RIPR policy shall provide coverage of \$5,000,000 for general liability, broadcaster liability and employer's liability, with no exclusions for activities contemplated by this Agreement. During the Term, RIPR shall provide a copy of its insurance policy, including evidence that Licensee is covered as an additional insured, to Licensee annually, or upon Licensee request. Additionally, Licensee will maintain in full force and effect broadcaster liability insurance with respect to the Student Programming and other programming it elects to broadcast, and shall name RIPR as an additional insured on its policy. Wheeler shall provide a copy of its broadcaster liability policy to RIPR annually, or upon RIPR request.

5. Programs and Licensee Approval. The Programming shall be broadcast in conformity with all applicable laws and regulations regarding programming of a noncommercial nature, including, without limitation, Section 399 of the Communications Act of 1934, as amended, and Section 73.503 of the FCC's Rules. RIPR will air the Programming exclusively in a noncommercial format acceptable to Licensee.

This Agreement shall not be construed to grant Licensee any right of ownership in the Programming. Except as provided herein, neither Party shall use trade names, trademarks or service marks of the other Party without the prior written approval of the other Party, which approval may be withheld in that Party's absolute discretion; provided, however, that RIPR may use the call letters of the Station in required Station Identification announcements and in connection with the Programming.

6. Consideration. In consideration for the Programming, Licensee will compensate RIPR in accordance with Exhibit A. As an inducement for Licensee to enter into this Agreement, RIPR agrees, in cooperation with one or more faculty members of the School, to create an internship program for students of the School who are interested in the production and transmission of audio programs. Each year during the Term, RIPR will offer a minimum of two internships to School students whom RIPR and the School agree are qualified.

7. Expenses and Taxes; Proceeds. Subject to Exhibit A, each Party shall be responsible for all expenses and taxes incurred or imposed with respect to its property, employees, or operations. Without limiting the generality of the foregoing, RIPR will employ and be responsible for the salaries, taxes, insurance, and related costs for all personnel used in the production of its Programming and for delivering the Programming to the Station, and shall pay for all costs associated with its program production or acquisition and for all fees to ASCAP, BMI, or SESAC and for any other copyright fees attributable to the Programming. Subject to

Exhibit A, Licensee will be responsible for the salaries, taxes, insurance, and related expenses for its employees.

“Station Revenues” means any donation that is explicitly restricted to the operation of the Station and shall be for the account of Licensee. All Station Revenues shall be delivered to the Wheeler School.

8. Licenses: Compliance with Law. During the Term, Licensee will maintain the validity of all licenses and other permits and authorizations necessary for the operation of the Station as presently conducted (including FCC licenses, permits, and authorizations).

9. Default.

9.1 Events of Default. An event of default (an “Event of Default”) will be deemed to occur if either Party materially breaches or violates, or fails in any material respect to observe or perform, any obligation, covenant, condition, or agreement imposed upon the Party under this Agreement, and such default remains uncured beyond the periods provided in Section 9.2.

9.2 Cure Period. An Event of Default will not be deemed to have occurred until thirty (30) days after the non-defaulting Party has provided the defaulting Party with written notice specifying the event or events that, if not cured, would constitute an Event of Default under this Agreement, and the default has not been cured within such applicable period. In the event the defaulting Party is not reasonably able to cure a default before the expiration of the thirty (30) day cure period despite the defaulting Party’s use of commercially reasonable and diligent efforts for same, then such cure period shall be extended until such time as the default is cured or until the defaulting Party ceases diligently working toward such cure, whichever shall first occur; provided, however, that the cure period shall not extend beyond ninety (90) days.

9.3 Remedies Upon Default, Rights of Termination. Subject to the cost reimbursement provisions set forth in Exhibit A, upon the occurrence of an Event of Default, the non-defaulting Party may terminate this Agreement and, except as otherwise provided in this Agreement, pursue all remedies available at law or in equity for breach of this Agreement. In the event that Wheeler preempts as much as two hours of Programming in any thirty-day period RIPR shall have the right to terminate this Agreement upon thirty (30) days' notice to Wheeler. Each Party agrees to submit itself to the jurisdiction of, and venue in, either Federal or State courts sitting in Providence, Rhode Island in connection with any litigation arising out of this Agreement. In any proceeding brought under this Agreement, time shall be deemed of the essence.

9.4 Liabilities Upon Termination. Subject to the cost reimbursement provisions set forth in Exhibit A, upon termination of this Agreement, RIPR shall be responsible for all liabilities, debts, and obligations of RIPR as set forth in this Agreement, and Licensee shall be responsible for all liabilities, debts, and obligations of Licensee.

9.5 Return of Assets Upon Termination. Upon termination of this Agreement, each party shall return to the other any and all assets used or held by the other in fulfilling its obligations under this Agreement including, but not limited to, any lists of donors that have been shared.

10. Authority. Licensee and RIPR each represent and warrant to the other that it has the power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. Each further represents and warrants that it is duly qualified and in good standing in its state of formation and is qualified to do business in any state where such qualification is necessary.

11. Modification and Waiver: Remedies Cumulative. No modification or waiver of any provision of this Agreement will be effective unless in writing and signed by both Parties. No failure or delay on the part of either Party in exercising any right or power under this Agreement will operate as a waiver of such right or power, nor will any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise of such right or power or the exercise of any other right or power. Except as otherwise provided in this Agreement, the rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies which a Party may otherwise have.

12. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of Licensee, RIPR and their respective successors and assigns. Notwithstanding the preceding sentence, neither Party shall assign its rights or duties hereunder, except to a wholly owned or controlled subsidiary, affiliate or assign, without the express written consent of the other.

13. Right Of First Refusal. In the event that Licensee shall at any time during the Term desire to sell or otherwise transfer the assets of the Station pursuant to any bona fide offer which it shall have received, it shall offer them to RIPR on the same terms and conditions as contained in such bona fide offer. RIPR shall have thirty (30) days from and after receipt thereof to decide whether or not to purchase the Station on such terms and conditions. If RIPR shall give notice of intent not to purchase or shall give no notice within the time provided, Licensee may accept such offer and proceed with the sale thereunder, but only on the terms and conditions offered to RIPR. If RIPR notifies Licensee that it elects to purchase the Station on such terms and conditions, the Parties shall enter into a contract of purchase and sale forthwith.

14. Counterpart Signatures: Facsimile Signatures. This Agreement may be signed in one or more counterparts, each of which will be deemed a duplicate original.

15. Notice. All notices, demands or other communications required or permitted by this Agreement shall be in writing and effective upon receipt, and shall be: (a) delivered personally, (b) sent, charges prepaid, by a nationally recognized overnight delivery service, or (c) by facsimile transmission, to the following persons at the specified addresses or facsimile transmission phone numbers (or at such other address or facsimile transmission phone number as a Party may designate in writing to the other Party):

If to Licensee:

Dan B. Miller, Head  
The Wheeler School  
216 Hope Street  
Providence, RI 02906-2246

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

John Crigler, Esq.  
Garvey Schubert Barer  
Fifth Floor  
1000 Potomac Street, N.W.  
Washington, D.C. 20007

If to RIPR:

H. Joseph O'Connor  
General Manager  
Rhode Island Public Radio  
One Union Station  
Providence, RI 02903

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

John Wells King, Esq.  
Law Office of John Wells King, PLLC  
9016 Tropical Bend Circle  
Jacksonville, FL 32256-9192

16. Entire Agreement. This Agreement and its attachments embody the entire understanding between the Parties with respect to the subject matter hereof.

17. Relationship of Parties. Neither Licensee nor RIPR will be deemed to be the agent, partner, or representative of the other Party to this Agreement, and neither Party is authorized to bind the other to any contract, agreement, or understanding.

18. Force Majeure. The failure of either Party hereto to comply with its obligations under this Agreement due to Acts of God, strikes, force majeure, terrorism, or other causes beyond such Party's reasonable control will not constitute a default under this Agreement, and neither Party will be liable to the other Party therefor for the period of such contingency.

19. Indemnification.

19.1 Indemnification by RIPR. RIPR will indemnify and hold harmless Licensee, its directors, officers, employees, agents and affiliates from and against all liability, including without limitation reasonable attorneys' fees, arising out of or incident to the Programming or the broadcast thereof, or the conduct, acts or omission of RIPR, its employees, contractors or agents including, but not limited to, any breach of this Agreement by RIPR, and any reasonable attorneys' fees incurred in responding to any complaint to the FCC, or any FCC inquiry, regarding this Agreement. Without limiting the generality of the foregoing, RIPR indemnifies and holds harmless Licensee, its directors, officers, employees, agents and affiliates against liability for libel, slander, infringement of trademarks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights and proprietary rights resulting from the Programming. RIPR's obligations to hold Licensee harmless against the liabilities specified above shall survive termination of this Agreement for a period of one (1) year; provided, however, that this Section will not terminate with respect to any *bona fide* claim as to

which the Party to be indemnified has, before the expiration of this Agreement and of such one (1) year period, delivered proper notice in accordance with this Section.

19.2 Indemnification by Licensee. Licensee indemnifies and holds harmless RIPR, its directors, officers, employees, agents and affiliates from and against all liability, including without limitation reasonable attorneys' fees, arising out of or incident to any Licensee Programming or the broadcast thereof, or the conduct, acts or omissions of Licensee, its employees, contractors, or agents including, but not limited to, any breach of this Agreement by Licensee. Without limiting the generality of the foregoing, Licensee indemnifies and holds harmless RIPR, its directors, officers, employees, agents and affiliates against liability for libel, slander, infringement of trademarks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights and proprietary rights resulting from any programming broadcast by Licensee (exclusive of the Programming). Licensee's obligation to hold RIPR harmless against the liabilities specified above shall survive any termination of this Agreement for a period of one (1) year; provided, however, that this Section will not terminate with respect to any *bona fide* claim as to which the Party to be indemnified has, before the expiration of this Agreement and of such one (1) year period, delivered proper notice in accordance with this Section.

20. Construction. This Agreement shall be construed in accordance with the internal laws of the State of Rhode Island, and the obligations of the Parties hereto are subject to all federal, state, or municipal laws or regulations now or hereafter in force and to the policies and rules of the FCC and all other governmental bodies or authorities presently or hereafter duly constituted. The Parties believe that the terms of this Agreement meet all FCC requirements for such agreements and agree that they shall negotiate in good faith to meet any FCC concern if they have incorrectly interpreted FCC policy or that policy is subsequently modified. If the

Parties cannot agree to a modification or modifications deemed necessary by either Party to meet FCC requirements, either Party may terminate this Agreement, in which event the Parties shall negotiate in good faith to restore each other to the position the other enjoyed immediately prior to the Effective Date. The Parties further agree that they will file a copy of this Agreement with the FCC if required to do so by the FCC's Rules.

21. Publicity. Neither Party will issue a press release nor make any other written public announcement related to this Agreement, or the terms thereof, without the prior consent of the other Party, except that either Party may make any disclosure of the Agreement required to be made under applicable state or federal law.

22. Attorneys' Fees. In the event of commencement of suit by either Party to enforce the provisions of, and/or recover damages for breach of, this Agreement, the prevailing Party shall be entitled to receive attorneys' fees and costs as a court may adjudge reasonable in addition to any other relief granted. Reasonable attorneys' fees incurred in enforcing any judgment arising out of this Agreement are also recoverable by the prevailing Party.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their duly authorized officials as of the date first above written.

**THE WHEELER SCHOOL**

By: \_\_\_\_\_

Dan B. Miller  
Head

**RHODE ISLAND PUBLIC RADIO**

By: \_\_\_\_\_

H. Joseph O'Connor  
General Manager