

## PROGRAMMING AGREEMENT

THIS PROGRAMMING AGREEMENT ("Agreement") is made this 11th day of July, 2013, by and between Knox College ("Licensee") and The Board of Trustees of Western Illinois University ("University").

### RECITALS:

WHEREAS, Licensee is the Federal Communications Commission ("FCC") licensee of noncommercial educational radio station WVKC, Galesburg, Illinois (the "Station");

WHEREAS, University is an experienced noncommercial broadcaster and the licensee of noncommercial educational FM Radio Stations, pursuant to authorizations of the FCC;

WHEREAS, Licensee and University desire that University undertake the programming of the Station for, and under the supervision of, Licensee;

WHEREAS, Licensee and University desire that University shall upgrade the transmission facilities of the Station to provide high definition (HD) programming on the Station as well as a digital sub-channel to be programmed by students of Licensee;

WHEREAS, Licensee expects that the management by University will promote quality public radio programming over the facilities of the Station; and

WHEREAS, Licensee and University wish to collaborate in ways that will advance the educational objectives of both parties.

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

#### 1. UNIVERSITY SERVICES

University hereby agrees to program the Station under the supervision and control of Licensee. As FCC licensee, Licensee shall at all times retain ultimate responsibility for the Station's essential functions, including its programming, finances and Station personnel employed by Licensee. Subject to the foregoing limitations, the services provided herein shall include all aspects of the programming of the Station. University will program the Station 24 hours per day, seven days per week with a noncommercial radio station format (the "Programming"). The Programming shall serve the needs and interests of the Station's community of license and further Licensee's educational objectives. University shall establish a physical presence in Galesburg for a full-time news reporter.

University will not change the format of the Programming without the prior consent of Licensee. The Programming will comply with Licensee's program standards, set forth in Attachment 1; the Communications Act of 1934, as amended; the FCC's rules and all applicable

content-related law for broadcast programming. University will be responsible for obtaining or maintaining any and all intellectual property rights, including copyright licenses, necessary for the broadcast of the Programming over the Station. Any listener complaints or FCC inquiry concerning the Programming shall be promptly reported to Licensee. Licensee shall have the right to preempt or reject any Programming if Licensee, in its reasonable judgment, concludes that the Programming does not serve the public interest, does not advance Licensee's educational objectives or that alternate programming would better address local needs.

(a) **Delivery of Programming.** University shall deliver the Programming to the Station at University's cost and expense. University will be responsible for all costs and expenses incurred in connection with equipment for receiving Programming at the Station, including appropriate equipment for satellite reception, EAS compliance, transmitter remote control and confidence monitoring.

(b) **Operating Expenses.** Licensee shall be responsible for all Station operating expenses, including, but not limited to, Station's studios, utility charges and antenna tower and studio maintenance expenses, as well as responsibility for the hiring, firing and compensation (without reimbursement by University) of the Station employees needed to satisfy the FCC's main studio rules.

(c) **Technical Support.** University will, at its expense, upgrade the technical facilities of the Station to enable the Station to broadcast in HD and to provide a digital subchannel (HD2) on which Licensee students can broadcast programs to meet the needs of Licensee's student body and the Galesburg community ("Student Programming"). In addition to enabling Licensee to broadcast Student Programming on an HD2 channel of the Station, University shall provide funding for, and the technical guidance needed to develop smart phone and tablet apps for transmission of the Student Programming to mobile devices, and establish an internship program for Licensee students in areas of journalism and marketing. The HD2 channel shall be technically compatible with the Audio Information Service now carried on the Station's subcarrier. Upon reasonable request of Licensee, University and Licensee will review the state of the Station's technical capabilities and provide for potential upgrades to the technical facilities in order for Student Programming to remain current and effective.

## 2. TERM OF AGREEMENT

Unless sooner terminated in accordance with the provisions of this Agreement, this Agreement shall commence on JULY 22, 2013 and shall continue in full force and effect until November 30, 2020. Beginning on December 1, 2020, the Agreement shall automatically renew for an additional 8-year term unless either party provides at least thirty (30) days advance written notice to the other party of its intention to terminate the agreement.

## 3. TERMINATION

(a) Licensee may terminate this Agreement: (i) immediately by giving written notice if, in the reasonable good faith discretion of Licensee, the Station is operated by University in a manner contrary to the best interests of Licensee, the public interest, convenience and necessity, FCC rules and regulations, the Communications Act of 1934, as amended, or other applicable

law; or (ii) if University otherwise breaches its obligations under this Agreement, and University fails to cure such breach within thirty (30) days of written notice from Licensee.

(b) University may terminate this Agreement: (i) immediately by giving written notice if, in the reasonable good faith discretion of University, Licensee unreasonably frustrates or impedes effective operation and programming of the Station by University; or (ii) if Licensee otherwise breaches its obligations under this Agreement, and Licensee fails to cure such breach within thirty (30) days of written notice from University.

(c) Upon termination of this Agreement, Licensee shall assume complete operational responsibility for the Station, and University shall be relieved of all obligations under this Agreement.

(d) If at any time during the Term of this Agreement, in the event that Licensee determines to assign the license for the Station to any other party, University shall have a right of first refusal to enter into such agreement, as follows: Upon the receipt by Licensee of any bona fide offer to acquire the Station license or assets, which offer Licensee determines to accept, Licensee shall transmit a notice of the offer to University. The notice (i) shall contain the payment structure and a summary of all material terms of the offer, and (ii) shall offer to University the option to enter into agreement upon the terms and subject to the conditions of the proposed third party agreement as set forth in the notice. University shall then have the right for thirty (30) days to accept such offer. If after the thirty (30) day period University fails to accept the offer, its right as to that offer shall terminate and Licensee may enter into an agreement with the original offering party on the same material terms and conditions as were offered to University. If Licensee does not enter such an agreement with the original offering party, University's right of first refusal shall again apply for the balance of the period specified above. University agrees that the notice of the offer and all information disclosed in conjunction with the notice of the offer will be kept strictly confidential by University and its employees, agents, and attorneys and that confidentiality shall survive the termination of this Agreement for a period of one (1) year, except for disclosures required by applicable law or compulsory legal process or necessary to meet governmental reporting obligations.

#### 4. GRANTS/FUNDRAISING/MARKETING

(a) Grants. Licensee agrees to cooperate with University in applying for grants, awards, contributions, donations, bequests, devises, legacies or other property or monies (hereinafter collectively referred to as "grants") regardless of nomenclature, for the use or benefit of the Station, including, but not limited to Corporation for Public Broadcasting ("CPB") grants, and any other grants applied for or received in the name of Licensee and intended for the use and benefit of the Station; provided that (1) University drafts for Licensee's review and approval all applications or other documentation required by such grants; (2) University agrees to the terms and conditions of, and serves as fiscal agent for, such grants; and (3) University covers all administrative costs, such as audits or financial reports, required by such grants.

(b) Fundraising. University will conduct fundraising activities for the benefit of the Station, including but not limited to membership drives and program underwriting, in such

manner as to raise sufficient funds for University to program the Station in continuing consultation with Licensee staff. University shall conduct all fundraising so as to comply with the rules and policies of the FCC applicable to noncommercial educational broadcast stations, including (with specificity) Section 73.503(d) of the FCC rules, and with IRS requirements for documenting charitable contributions.

5. LICENSE MAINTENANCE

Licensee, as FCC licensee, has the ultimate responsibility with respect to all activities in connection with FCC license renewals, applications for facility changes and such other filings and reports as may be required by the FCC. University agrees to assist and advise Licensee in all such activities and to prepare all necessary documents, filings and reports for the timely review and approval by Licensee in consultation with Licensee's own legal counsel.

6. RESPONSIBILITY OF FCC LICENSEE

Licensee and University acknowledge and agree that the operation of the Station in compliance with all laws, rules, policies and regulations of the FCC is the ultimate responsibility of Licensee. Nothing in this Agreement shall be construed as limiting, transferring, assigning or relieving Licensee of such responsibility. Licensee and University acknowledge that their relationship requires a commitment on both parties' parts to the educational and cultural mission of the Station.

7. STANDARDS OF OPERATION

University agrees that it will program the Station consistent with industry standards for noncommercial educational broadcasting, so that the Station will provide quality service to the public, protect and enhance Licensee's reputation, and comply with all legal requirements. University further agrees to operate the Station in a manner that will provide noncommercial programming of high quality for broadcast to Galesburg, Illinois and residents of the WVKC service area.

8. INSTITUTIONAL COOPERATION AND MEDIA PROMOTION

(a) Identification of Licensee. University will air station identifications that comply with the FCC's rules at the beginning and end of each time of operation and on the hour while the Station is on the air. University will identify Licensee as the Station's licensee during each on-air identification, and, as feasible, in marketing or promotional materials that refer to the Station.

(b) Events/Performances. Licensee and University will explore, in good faith, opportunities to co-present and co-promote events and performances for the general public and for Station donors in Galesburg and surrounding areas.

9. REPRESENTATIONS AND WARRANTIES

University represents and warrants that it will maintain its organization and operate in accordance with all laws and regulations applicable to public institutions of higher education in its State. University represents and warrants that it will program the Station in full compliance with all applicable laws, rules and policies, including intellectual property law.

#### 10. INSURANCE

(a) During the term of this Agreement and any extensions or renewals thereof, University shall self-insure or cause to be insured the following types and amounts of insurance for:

- (1) Broadcast libel and errors/omissions insurance - at least \$1,000,000.
- (2) Commercial general liability - at least \$1,000,000.
- (3) Workers' compensation - as required by law.

(b) During the Term of this Agreement and any extensions or renewals thereof, Licensee shall either self-insure or obtain insurance policies that insure Licensee's employees, agents and representatives. Coverage shall include, but not be limited to, media liability covering liability arising out of any programming provided by Licensee; comprehensive general liability insurance; workers compensation insurance covering Licensee employees and agents who may visit the Station premises as needed; and property insurance covering damage to or risk of loss of Station equipment.

#### 11. CONSIDERATION

As consideration for the services provided by University pursuant to this Agreement, University shall be allowed to solicit charitable contributions from listeners to the Station and to acknowledge contributions from underwriters in the Programming. All revenues from such listeners and underwriters shall be retained by University as the reasonable value of its services.

#### 12. RECORDS/ACCOUNTING

University shall keep full and adequate financial and accounting records of the Station's activities and make such records, including, but not limited to, bank records, ledgers, accounts, journals, and audits, available for inspection by representatives of Licensee upon reasonable prior written notice. Within ten (10) business days after the end of each quarter or after reasonable request by Licensee in conjunction with periodic campus accounting (including fiscal year end accounting), University shall provide to Licensee a financial report, in a form reasonably acceptable to Licensee, that accounts for all revenues and expenses attributable to the Station. Licensee shall be responsible for ascertaining the programming needs of its community of license and maintaining the Station public inspection file in compliance with FCC requirements, provided, however, that University shall provide advice and assistance with respect to the ascertainment of programming needs and shall provide Licensee with all relevant documents and information required to be placed in the Station public inspection file.

13. RELATIONSHIP

During the term of this Agreement and subject to its terms and conditions, University is authorized to hold itself out as providing programming on the Station. The relationship of the parties shall, however, be that of independent contractors. Nothing in the Agreement shall be deemed to create a partnership or joint venture.

14. OVERSIGHT AND CONTROL

Notwithstanding anything in this Agreement to the contrary, Licensee shall retain and exercise oversight and control of the activities and operations of the Station. Without limiting the foregoing, Licensee (through its governing board or the board's designated representative(s)) shall have the right: (a) to promulgate basic Station policies regarding personnel (but only to the extent such personnel are working on matters relating to the Station), finances and programming; (b) to direct the day-to-day activities of Licensee's employees working at the Station (but only to the extent that such employees are working on matters relating to the Station); (c) to inspect the Station's facilities at any time during operation; and (d) to require written reports, in addition to the financial reports described above, no less often than on a yearly basis, including but not limited to, an audited financial statement of Station revenues for the year.

15. NOTICES

Any written notice to any party required or permitted under this Agreement shall be deemed to have been duly given on the date of personal service on or on the date of receipt by the party to whom notice is to be given, and shall be addressed to the addressee at the address stated below, or at the most recent address specified by written notice under this provision.

If to Licensee:

Knox College  
2 E. South Street, K-147  
Galesburg, IL 61401

Attn: Thomas B. Axtell, Vice President for Finance and Administrative Services  
Phone: (309) 341-7212  
Email: taxtell@knox.edu or vsjones@knox.edu



If to University:

WESTERN ILLINOIS UNIVERSITY  
1 UNIVERSITY CIRCLE  
SHERMAN HALL 200  
MACOMB, IL 61455  
Attn: DANA BIERNBAUM  
Phone: 309.298.1800  
Email: DM-BIERNBAUM@WIU.EDU

16. INDEMNIFICATION

To the extent permitted by Illinois state law, University agrees to save harmless Licensee from loss, damage, or liability that may be caused by or arise from University's management or operation of the Station after this Agreement commences or from any acts or omissions by University relating to its obligations under this Agreement. At its option, University may repair or replace any Licensee equipment, fixture or other tangible asset damaged or destroyed by University, or University's employees or agents. To the extent permitted by Illinois state law, Licensee agrees to indemnify, defend, and save harmless University from loss, damage, or liability that may be caused by or arise from Licensee's operation of the Station before this Agreement commences, or related solely to the acts, or failures to act, by Licensee after this Agreement commences, or Licensee's obligations under the Agreement.

17. SEVERABILITY

If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Agreement, provided that such remaining portions or provisions can be construed in substance to constitute the agreement that the parties intended to enter into in the first instance.

18. BINDING ON SUCCESSORS

This Agreement may not be assigned by either party without the other party's consent, which may be given or withheld in its sole discretion. Any attempted assignment without such consent shall be cause for immediate termination of the Agreement by the other party.

19. 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.

WESTERN ILLINOIS UNIVERSITY  
LIBRARY  
601 N. UNIVERSITY  
CARBONDALE, ILL. 62901  
TEL. 636-242-2000  
WWW.WIU.EDU

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20. GOVERNING LAW

This agreement was made and entered into in the State of Illinois, and shall be construed in accordance with and governed by the laws of the State of Illinois.

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

Teresa L. Amott (LICENSEE)

By: Teresa L. Amott

Title: President, Knox College

Jack Thomas (UNIVERSITY)

By: Jack Thomas

Title: President, Western Illinois University

Dana M. Biernbaum

DANA M. BIERNBAUM, ASST VP FOR ADMIN. SERVICES

V.P. Kathleen Neenan  
DATE 7/18/13

By  
Purchasing  
7-18-13

John Thomas

1875

DEPARTMENT OF THE ARMY, WASHINGTON, D. C.

RECEIVED  
MAY 10 1875

STATEMENT OF STATION POLICIES OF  
LICENSEE

Knox College ("Licensee"), licensee of Radio Station WVKC, Galesburg, Illinois (the "Station"), hereby establishes the following standards, practices, policies and regulations to govern the broadcast of all programming aired over the Station. The following standards, practices and policies are to be adhered to in the preparation, writing, production and broadcasting of all advertisements and programs aired over the Station:

I. No Payola Or "Plugola". The mention of any business activity or "plug" for any commercial, professional or other related endeavor on the Station is prohibited, except where contained in an underwriting message that complies with the requirements of Section 399B of the Communications Act and Section 73.503 of the rules of the Federal Communications Commission ("FCC") and such message contains a sponsorship identification announcement which meets the requirements of Section 317 of the Communications Act and Section 73.1212 of the FCC's rules.

II. No Lotteries. Except as expressly permitted under Section 73.1211 of the FCC's rules, no announcements, messages or programs may be broadcast over the Station (without the express prior written approval of the Licensee) which give any information about or which promote any lotteries or games of chance, including any bingo games and the like, which are to be held by a local church or other non-profit institution or organization. A lottery, for these purposes, is a game or promotion in which a prize is awarded and where the selection of the winner or the amount or nature of the prize is determined in

whole or in part on the basis of chance, and where contestants enter the promotion by paying or promising any form of consideration (e.g., money, substantial time, or substantial energy).

III. Station Identification Announcements Required. A station identification announcement must be broadcast each time the Station goes on the air and when it signs off the air. A station identification announcement must also be broadcast each hour, as close to the top of the hour as feasible, at a natural break in programming, and shall comply with the requirements of Section 73.1201 of the FCC's rules.

IV. Contests and Promotions. In the event that the Programs contain information about any contest that the University conducts, the University shall comply with Section 73.1216 of the FCC's rules by fully and accurately disclosing the material terms of the contest and by conducting the contest "substantially as announced." No contest description shall be broadcast on the Station where the University knows that such description is false, misleading or deceptive with respect to any material term.

V. Obscenity and Indecency Prohibited. No obscene material may be broadcast over the facilities of the Station. No indecent material may be broadcast on the Station during any time when the airing of such programming would be contrary to law or FCC regulations or policies. For these purposes, "indecent" material is defined as language or material that describes sexual or excretory activities or organs in a patently offensive manner, as measured by contemporary community standards for the broadcast medium. Material will be considered obscene if (a) the average person, applying contemporary community standards, would find that the material appeals to the prurient interest, (b) it describes or depicts, in a patently offensive manner, sexual conduct as defined by

applicable state law, and (c) taken as a whole, it lacks serious literary, artistic, political or scientific value.

VI. Advertising. No advertisements as defined by Section 399B of the Communications Act and Section 73.503 of the FCC's rules, shall be broadcast on the Station.

VII. Defamatory Statements Prohibited. No statements known to be libelous or defamatory may be broadcast on the Station. Libel is a false statement of fact about a person, which tends to injure that person's reputation or otherwise cause injury or damages to that person.

VIII. "Equal Time" For Political Candidates. If a legally qualified candidate for public office is allowed to "use" (as defined in Section 73.1941(b) of the FCC's rules) the Station during his/her campaign, his/her legally qualified opponents must be afforded equal opportunities to appear on the Station.

IX. Sponsorship Identification Announcements. All sponsored programs must (a) contain an announcement stating the fact that the matter broadcast was sponsored, paid for, furnished by, or in support of the Station, and must disclose the true identity of the person or entity on whose behalf payment was made or promised for the broadcast, or (b) otherwise comply with Section 317 of the Communications Act and Section 73.1212 of the FCC's rules. Whenever such a sponsorship identification announcement is required, the announcement must be made both at the beginning and conclusion of each program of over five minutes in length. If a sponsored broadcast is five minutes or less in duration, only one such announcement is required, and it may be made either at the beginning or the conclusion of the broadcast or announcement.