

SHARED SERVICES AGREEMENT

Jan. 6, 2020

This **SHARED SERVICES AGREEMENT** ("Agreement") is entered into as of [Date] by and between L.M. Communications, Inc., a Kentucky corporation ("LMC") and Clarity Communications, Inc., a Kentucky corporation ("Clarity"). LMC and Clarity are referred to collectively as the "Parties" and each a "Party."

Premises

Clarity is the licensee of radio broadcast station WLXO(FM) (the "Station") licensed by the Federal Communications Commission ("FCC") to serve Stamping Ground, Kentucky.

LMC and its affiliate, L.M. Communications of Kentucky, LLC, are the licensees of five radio stations serving the Lexington, Kentucky radio market (the "LMC Stations").

The Parties desire to enter into this Shared Services Agreement to memorialize an oral argument among the parties relating to LMC's provision of certain services to Clarity and agreement to lease to Clarity office and studio space for the Station.

NOW, THEREFORE, in consideration of the mutual covenants, and agreements contained herein for other good and valuable consideration, the receipt of sufficiency of which is hereby acknowledged, LMC and Clarity agree as follows:

1. GENERAL PRINCIPLES GOVERNING SHARING ARRANGEMENTS.

(a) All arrangements contemplated by this Agreement shall be subject to, and are intended to comply in all respects with, the Communications Act of 1934, as amended (the "Act"), the rules, regulations and policies of the Federal Communications Commission (the "FCC"), as in effect from time to time (the "FCC Rules and Regulations"), and all other applicable laws ("Other Laws"). The arrangements made pursuant to this Agreement shall not be deemed to constitute "joint sales," "program services," "time brokerage," "local marketing," or similar arrangements or a partnership, joint venture, or agency relationship between the Parties or the Station, and no such arrangement shall be deemed to give either Party any right to control or influence the policies, operations, management or any other matter relating to any stations operated by the other Party.

(b) From time to time, LMC and Clarity may agree to share the costs of certain services and procurements that they individually require in connection with the operation of the Station and the LMC Stations. Such sharing arrangements may take the form of the performance of certain functions relating to limited aspects of the operation of one station by employees of the operator of the other stations (subject in all events to the supervision and control of personnel of the operator of the station to which such functions relate), or may be otherwise structured, and shall be governed by terms and conditions upon which LMC and Clarity may agree in writing from time to time. Such sharing arrangements may include non-managerial administrative and/or technical facilities of the stations and the sharing of grounds keeping, maintenance, security and other services relating to those facilities.

2. **CERTAIN SPECIFIC SHARING ARRANGEMENTS.** LMC and Clarity have agreed as follows with respect to the sharing of certain services (the "SSA Services") provided in the ordinary course of business.

(a) **Continuity and Traffic Support.** Subject to direction and control by Clarity, LMC personnel shall carry out back-office and non-managerial services, continuity, and such other tasks necessary to support traffic functions of the Station.

(b) **Technical Facilities Maintenance.** Subject to direction and control by Clarity, LMC personnel shall maintain and provide routine repair (as needed) and maintenance of the technical facilities of the Station.

(c) **General and Administrative.** Subject to direction and control by Clarity, LMC shall provide general and administrative support and back-office services (including without limitation, at the request of Clarity, business-office, accounting, traffic, facilities maintenance, and other support services for Clarity.

(d) **Websites.** LMC shall maintain and operate the websites maintained by or on behalf of the Station, and may, at the request and direction of Clarity, establish additional websites for Clarity, with all such websites to be branded with the call-sign of the Station.

(e) **Promotional Services.** Clarity shall be responsible for the promotion of the Station; provided, however, that LMC shall have the right to supplement the promotional efforts undertaken by Clarity, but shall coordinate such efforts with Clarity to maintain image consistency with Clarity's promotional efforts.

3. **CERTAIN SERVICES NOT TO BE SHARED.**

(a) **Personnel.**

(i) Clarity shall maintain for the Station sufficient personnel to comply with its obligations as a broadcast licensee under the FCC's Rules and to fulfill its obligations under this Agreement. Without limiting the foregoing, Clarity agrees that it shall maintain a sales force sufficient and competent under general industry standards for the sale of those commercial availabilities on the Station that are available for sale by Clarity other than the Provided Advertising, as defined in Section 4 of this Agreement.

(ii) At all times, any LMC employees utilized by LMC to perform its obligations under this Agreement shall be employed solely by LMC; and except as otherwise provided in this Agreement, LMC's employees shall report solely to LMC and shall otherwise have no involvement with, or duties with respect to, the programming, or operation of the Station.

(b) **Programming.** Each Party shall maintain for its own station(s) separate personnel to carry out the selection and procurement of programming for such station(s) and in no event shall the Parties share services, personnel, or information pertaining to such matters.

(c) **Control.** Notwithstanding anything to the contrary in this Agreement, the parties hereto acknowledge and agree that during the Term, Clarity will maintain ultimate control and authority over the Station, including, specifically, control and authority over the Station's operations, finances, personnel and programming. To that end, Clarity shall (a) have exclusive authority for the negotiation, preparation, execution and implementation of any and all programming agreements for the Station, and (b) retain and hire or utilize whatever employees Clarity reasonably deems appropriate or necessary to fulfill those programming functions.

(d) **Joint Advertising Sales.** Except as provided in Section 4 hereof, Clarity shall conduct and manage all advertising sales for the Station. Clarity shall act diligently and use all commercially reasonable efforts to maximize the revenues from the sale of advertising availabilities on the Station and shall use commercially reasonable efforts to collect all amounts owned for advertising availabilities in accordance with accepted industry practice.

4. **JOINT ADVERTISING SALES.**

(a) LMC, as partial consideration for the duties and obligations undertaken by LMC, shall have the right, during the Term of this Agreement, to sell to third parties for its own account, commercial time availabilities on the Station, *provided that* the commercial availabilities acquired by LMC shall not equal or exceed fifteen percent (15%) of the total amount of commercially available advertising time on the Station during any calendar week (Sunday to Saturday) (the advertising sold by LMC for such commercial availabilities being referred to hereinafter as the "Provided Advertising").

(b) All Provided Advertising shall comply with applicable federal, state and local regulations and policies. Clarity shall have the right to preempt any Provided Advertising to present program material of greater local or national importance. Clarity may reject any Provided Advertising if it reasonably determines that the broadcast of such material would violate any applicable law or would otherwise be contrary to the public interest. Clarity shall promptly notify LMC of any such rejection, preemption, or rescheduling. Schedule A sets forth Clarity's statement of policy (the "Policy Statement") with regards to the Provided Advertising. LMC shall ensure that the Provided Advertising complies with the terms of this Agreement and the Policy Statement.

(c) Subject to Clarity's rights of review and preemption, as provided herein, Clarity shall air the Provided Advertising, as provided to Clarity. In the event that Clarity preempts, deletes, or otherwise rejects any of the Provided Advertising or if any of the Provided Advertising is not broadcast due to a technical failure, Clarity shall attempt in good faith to broadcast the Provided Advertising through "make good" commercial announcements.

(d) The rates for advertising sold by LMC shall be set by LMC, provided, however, that Clarity shall establish the rates to be charged for candidate political advertising in a manner consistent with FCC Rules and Regulations. Clarity shall cooperate with LMC to provide affidavits of performance confirming the placement of advertisements in accordance with industry practice within five business days after the close of each broadcast month.

5. CONDUCT OF OPERATIONS.

(a) **Control.** At all times during the Term, Clarity shall maintain control over the operations of the Station within the meaning of the Act and FCC's Rules and Regulations, including, but not limited to, management, programming, finances, editorial policies, personnel, facilities and compliance with the Act, FCC Rules and Regulations and Other Laws in effect from time to time. Nothing contained herein shall give LMC any right to control or otherwise influence Clarity's management, programming, finances, editorial policies, or personnel.

(b) **Compliance with Law.** LMC agrees that, throughout the term of this Agreement, LMC shall comply with the Act, the FCC Rules and Regulations, and Other Laws. Clarity agrees that, throughout the term of this Agreement, Clarity shall comply with the Act, the FCC Rules and Regulations, and Other Laws.

6. PREMISES AND FACILITIES. During the Term, LMC shall make available to Clarity such premises and facilities as may be reasonably necessary (i) to conduct broadcast operations from such location and establish the main studio of the Station at such location and (ii) for the employees of Clarity to conduct the applicable business and operations of the Stations; provided, that all such access and use shall be pursuant to the terms and subject to the conditions set forth in Schedule C attached hereto (the "*Lease Terms*").

7. MONTHLY FEE AND EXPENSES.

(a) In consideration for the SSA Services to be provided to the Station by LMC as set forth herein, and the provision of the premises as set forth in Section 6, Clarity shall pay to LMC, beginning as of the Effective Date, with such amounts payable in arrears, a monthly SSA Fee as defined and in accordance with the terms and conditions set forth in Schedule B, provided that the amount of the SSA Fee in any month shall not exceed the amount by which Clarity's cash on hand on the first day of each month during the Term exceeds Clarity's Minimum Financial Requirements for such month; and, provided further, that in the event Clarity's cash on hand on the first day of any month during the Term is less than the Minimum Financial Requirements for that month, LMC shall forego payment of the SSA Fee for such month and make a payment to Clarity equal to such shortfall within ten (10) days of receipt of notice from Clarity of such shortfall.

(b) Other than payment of the SSA Fee as set forth in Section 7 hereof and monies generated and collected by LMC for the Provided Advertising, Clarity shall retain all other revenues generated from the sale of time on the Station during the Term of this Agreement.

(c) As used in this Agreement, the term Minimum Financial Requirements shall mean during any calendar month during the Term (as the same may be prorated for any partial calendar month during the Term), the sum of the following: (i) amounts necessary for Clarity to pay expenses incurred in the ordinary course of business in operating the Station that have become due, including without limitation, insurance, programming, regulatory fees, equipment maintenance, salaries and other compensation for employees, capital expenditures, professional fees (including engineering and legal), (ii) payment of amounts due under any credit agreement for senior debt to which Clarity is a party, and (iii) any other expenditures which the

Parties may agree to in writing and such reasonable reserves as Clarity shall establish with respect to contingent liabilities and capital expenditures.

8. REPRESENTATIONS AND WARRANTIES.

(a) **By LMC.** LMC is duly organized and is validly existing and in good standing as a corporation under the laws of the State of Kentucky. LMC has the requisite power and authority to enter into and perform this Agreement. The execution, delivery and performance of this Agreement by LMC are within the powers of LMC and have been duly and validly authorized by all necessary action on the part of LMC. This Agreement has been duly executed and delivered by LMC and constitutes a valid and binding agreement of LMC enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other laws relating to or affecting creditors' rights generally and the exercise of judicial discretion in accordance with general equitable principles.

(b) **By Clarity.** Clarity is duly organized and validly existing and in good standing as a corporation under the laws of the State of Kentucky. Clarity has the requisite power and authority to enter into and perform this Agreement. The execution, delivery and performance of this Agreement by Clarity are within the powers of Clarity, and have been duly and validly authorized by all necessary action on the part of Clarity. This Agreement has been duly executed and delivered by Clarity and constitutes a valid and binding agreement of Clarity enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other laws relating to or affecting creditors' rights generally and the exercise of judicial discretion in accordance with general equitable principles.

9. INDEMNIFICATION.

(a) **By LMC.** LMC shall indemnify and hold Clarity and its officers, directors, shareholders, agents, and employees harmless against any claim, loss, cost, damages or liability (each, a "Loss") resulting from, (i) a breach or nonfulfillment of any obligation or agreement or any representation, warranty, or covenant of LMC contained in or made pursuant to this Agreement (ii) the services furnished by LMC, or all other matters arising out of or related to LMC's obligations under this Agreement.

(b) **By Clarity.** Clarity shall indemnify and hold LMC and its officers, directors, stockholders, agents and employees harmless against any Loss relating in any manner to a breach of this Agreement by Clarity or a failure by Clarity to perform any of its covenants or agreements set forth in this Agreement, provided that any such breach or failure to perform does not arise out of or otherwise relate to (i) any actions or omissions by or under the authorization of LMC, its affiliates or any of their respective officers, directors, employees, agents or representatives, or (ii) the failure of LMC to perform any of its obligations under this Agreement.

(c) **General.** Indemnification shall include all liability, costs, and expenses, including reasonable counsel fees (at trial and on appeal). The indemnification obligations under this Section shall survive any termination of this Agreement. Each Party shall give the other reasonably prompt notice of any matter subject to indemnification under this paragraph, provided that no failure to give any such notice as set forth in this sentence shall limit the obligation of the

indemnifying Party, except to the extent such failure results in prejudice to the indemnifying Party. The Party responsible for indemnification shall select counsel and control the defense, subject to the indemnified Party's reasonable approval, provided, however, that no claim may be settled by an indemnifying Party without the consent of the indemnified Party, and provided further, that if an indemnifying party and a claimant agree on a settlement and the indemnified Party rejects the settlement unreasonably, the indemnifying Party's liability shall be limited to the amounts the claimant agreed to accept in settlement. Notwithstanding anything to the contrary contained herein, in no event shall any Party hereto be liable for punitive, treble, exemplary, consequential, special or other damages that are not actual damages in accordance with applicable law, except to the extent such damages are awarded by a court of competent jurisdiction in connection with a claim made by a third party.

10. TERM OF SSA ARRANGEMENT.

(a) The term of this Agreement shall commence on the date of execution of this Agreement. The initial term of this Agreement is eight (8) years. This Agreement shall renew for an additional eight (8) year term, unless either party provides the other party with notice of non-renewal at least 180 days prior to the end of the initial term.

(b) This Agreement shall terminate:

(i) by mutual consent of the parties,

(ii) upon the election of LMC or Clarity if the FCC revokes or fails to renew the Station's license and Clarity has fully exhausted all of its appeals of such action before the FCC and before any court with jurisdiction over such action, or

(iii) as provided for in Section 13.

11. EVENTS OF DEFAULT. The following shall, after the expiration of the applicable cure periods, constitute Events of Default under this Agreement:

(a) **Non-Payment.** Clarity's failure to remit to LMC any payment described in Section 7 above in a timely manner.

(b) **Default in Covenants.** The default by either Party in the material observance or material performance of any covenant, condition, or agreement contained herein (provided the Party asserting the default is not then in default under this Agreement or the material breach of any representation or warranty herein made by such Party to the other herein).

12. CURE PERIOD AND TERMINATION UPON DEFAULT. An Event of Default shall not be deemed to have occurred until twenty (20) business days after the non-defaulting party has provided the defaulting party with written notice specifying the event or events which if not cured would constitute an Event of Default and specifying the actions necessary to cure within such ten-day period. Either Party may terminate this agreement upon notice to the other Party in the event the other Party is responsible for an Event of Default;

provided that no such termination shall relieve any Party of its obligations arising prior to such termination.

13. **FORCE MAJEURE.** If a *force majeure* event such as a strike, labor dispute, fire, flood or other act of God, failure or delay of technical equipment, war, public disaster, or other reason beyond the cause or control of Clarity or LMC prevents such Party or its personnel from performing tasks which it is required to perform under this Agreement during any period of time, then such failure shall not be a breach of this Agreement and such Party shall be excused from such performance during that time, except for payment obligations.

14. **SEVERABILITY.** If this Agreement is challenged in whole or in part at the FCC or in another administrative or judicial forum, LMC and Clarity shall jointly defend the Agreement and their respective performance hereunder, throughout all such proceedings. If any provision of this Agreement or the application thereof to any person or circumstances shall be deemed invalid or unenforceable to any extent by any court, administrative agency or similar governmental authority, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, except that if such invalidity or unenforceability should change the basic economic positions of the Parties, they shall negotiate in good faith such changes in other terms as shall be practicable in order to restore them to their prior positions while still ensuring compliance with the court order or decision, rule, regulation or policy interpretation, application, alteration or modification. In the event that the FCC alters or modifies its rules or policies in a fashion which would raise substantial and material questions as to (i) the validity of any provision of this Agreement or (ii) whether or not a Party would be in violation of any FCC rule or policy as a result of such Party's compliance with any provision of this Agreement, the Parties shall negotiate in good faith to revise any such provision of this Agreement in an effort to comply with all applicable FCC Rules and policies, while attempting to preserve the intent of the Parties as embodied in the provisions of this Agreement. If the Parties are unable to negotiate a mutually acceptable modified Agreement or such court, administrative agency (including the FCC) or similar governmental authority does not approve any reformed or revised version of this Agreement, or approves such reformed or revised version with conditions that have, or would reasonably be expected to have a material adverse effect on LMC or Clarity, then either party may terminate this Agreement upon written notice to the other and such termination shall not be deemed to be an event of default.

15. **AMENDMENT AND WAIVER.** This Agreement may be amended, modified or changed and any provision of this Agreement may be waived; *provided* that any such amendment, modification, change or waiver shall be binding upon a Party only if such amendment, modification, change or waiver is set forth in a writing executed by the Party against whom enforcement of any amendment, modification, change or waiver is sought.

16. **NOTICES.** All notices, demands and other communications given or delivered under this Agreement shall be in writing and shall be deemed to have been given when personally delivered, delivered by express overnight courier service (such as Federal Express) or delivered by email with confirmation of receipt. Notices, demands and communications to LMC or Clarity shall, unless specified differently in writing, be sent to as indicated below:

To LMC: L.M. Communications, Inc.
401 West Main Street
Suite 301
Lexington, KY 40507
Attn: Lynn Martin
Email: lmartin@lmcomm.com

To Clarity: Clarity Communications, Inc.
5780A Princess Palm Ct.
Delray Beach, FL 33484
Attn: Charles Cohn
Email: newwavecohn@aol.com

17. **SUCCESSORS AND ASSIGNS.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Except as provided for herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by Clarity without the prior written consent of LMC, which consent shall not be unreasonably withheld, provided that Clarity shall be permitted to assign this Agreement to an entity that is controlling, controlled by, or under common control with Clarity without prior consent. Subject to obtaining the consent of LMC, Clarity shall assign its rights and obligations under this agreement to any successor in interest to Clarity or licensee as holder of the FCC license for the Station and shall require, as a condition of such assignment or transfer, that its successor undertake to assume each and every obligation of Clarity hereunder pursuant to a written agreement reasonably satisfactory to LMC. LMC may not assign its rights and obligations under this Agreement to any other party or Parties without the consent of Clarity, which consent shall not be unreasonably withheld, provided that LMC shall be permitted to assign this Agreement to an entity that is controlled by, controlling, or under common control with LMC without prior consent. The covenants, conditions and provisions hereof are and shall be for the exclusive benefit of the parties hereto and their permitted successors and assigns, and nothing herein, express or implied, is intended or shall be construed to confer upon or to give any person or entity other than the parties hereto and their permitted successors and assigns any right, remedy or claim, legal or equitable, under or by reason of this Agreement.

18. **STRICT CONSTRUCTION.** The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

19. **CAPTIONS.** The captions used in this Agreement are for convenience of reference only, do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.

20. **GOVERNING LAW; ENTIRE AGREEMENT.** This Agreement, and the rights and obligations of the parties hereto, shall be construed in accordance with the laws of the

State of Kentucky without regard to principles of conflict of laws. This agreement embodies the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof with respect to the subject matter hereof.

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

22. **NO PARTNERSHIP OR JOINT VENTURE; SPECIAL DAMAGES.**

(a) The Agreement is not intended to be, and shall not be construed as, an agreement to form a partnership, agency relationship, or a joint venture between the parties. Except as otherwise specifically provided in the Agreement, neither party shall be authorized to act as an agent of or otherwise to represent the other party.

(b) Notwithstanding anything to the contrary contained herein, except with respect to each party's indemnification obligations under this Agreement, in no event shall any party hereto be liable for punitive, treble, exemplary, consequential, special or other damages that are not actual damages in accordance with applicable law, except to the extent such damages are awarded by a court of competent jurisdiction in connection with a claim made by a third party.

23. **WAIVER OF JURY TRIAL.** AS A SPECIFICALLY BARGAINED INDUCEMENT FOR EACH OF THE PARTIES TO ENTER INTO THIS AGREEMENT (EACH PARTY HAVING HAD OPPORTUNITY TO CONSULT COUNSEL), EACH PARTY EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN.

24. **RIGHTS CUMULATIVE.** Except as set forth herein, all rights, powers and remedies herein given to the parties hereto are cumulative and not alternative.

25. **THIRD PARTY RIGHTS.** Nothing in this Agreement (including any ancillary agreement, instrument or document contemplated hereby or relating hereto) shall be deemed to create any right with respect to any person or entity not a party to, or any property not subject to this Agreement.

26. **CONFIDENTIALITY.** Except as otherwise required by law, neither party shall disclose to third parties, other than its members, partners, stockholders, directors, officers, employees, lenders and prospective lenders, accountants, attorneys and agents for purposes of performing the services contemplated hereby (who shall also be made subject to the restrictions of this section), any information, whether or not in writing, received from the other party or its agents in the course of performing the services contemplated by this Agreement; provided, that no information shall be deemed to be confidential that (a) becomes publicly known or available other than through disclosure by such party: (b) is rightfully received from a third party who has

no obligation of confidentiality to the other party; or (c) is independently developed. This Section 25 shall remain in effect until one (1) year after termination of this Agreement.

27. **OTHER DEFINITIONAL PROVISIONS.** The terms “hereof,” “herein” and “hereunder” and terms of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Section references contained in this Agreement are references to Sections in this Agreement, unless otherwise specified. Each defined term used in this Agreement has a comparable meaning when used in its plural or singular form. Each gender-specific term used in this Agreement has a comparable meaning whether used in a masculine, feminine or gender-neutral form. Whenever the term “including” is used in this Agreement (whether or not that term is followed by the phrase “but not limited to” or “without limitation” or words of similar effect) in connection with a listing of items within a particular classification, that listing shall be interpreted to be illustrative only and shall not be interpreted as a limitation on, or an exclusive listing of, the items within that classification.


[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO SUPPLIER AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Supplier Agreement as of the date first written above.

CLARITY:

CLARITY COMMUNICATIONS, INC.

By: 

Name: Charles Cohn

Title: President

LMC:

L.M. COMMUNICATIONS, INC.

By: 

Name: Lynn Martin

Title: President