



## Advertisement Notice for an Additional Services Licence

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## Section 1

# Introduction

- 1.1 Radio Additional Services are services which use spare capacity within the signals carrying sound broadcasting services on relevant frequencies, for example to transmit data.
- 1.2 There is currently one radio Additional Services licence. It is held by INRIX UK Ltd and is used to transmit traffic and road travel data to in-car navigational devices, using spare capacity within the signals on the FM frequencies used to broadcast Classic FM. This Additional Services licence is due to expire on 28 February 2018.
- 1.3 The framework for advertising and awarding an Additional Services licence is set out in the Broadcasting Act 1990 (as amended) (“the 1990 Act”). The relevant provisions are mainly in Chapter IV of Part III of the 1990 Act, although section 100, in Chapter II of the same part is also key (and section 85, in Chapter I of Part III is also relevant). Their application in respect of this radio Additional Services licence was set out in Ofcom’s consultation document<sup>1</sup>: Advertisement of a national<sup>2</sup> Additional Services licence (published 7 December 2016) and in our final statement in the relevant 2016/17 consultation process: Additional Services Licence. That document may be found at: <https://www.ofcom.org.uk/consultations-and-statements/category-2/advertisement-of-a-national-radio-additional-services-licence>.
- 1.4 In addition to explaining the statutory background, the consultation document presented proposals and asked questions for consultation in areas where, under the current legislation, Ofcom has discretion.
- 1.5 Our final statement sets out Ofcom’s decisions in relation to the matters on which we consulted. They are:
  - 1.5.1 The new licence will be for a maximum period of just under four years (running from 1 March 2018 until 23 February 2022, but subject to earlier termination for any reason (as explained in the final statement, in this advertisement document and in the draft licence terms at Annex 5)).
  - 1.5.2 The new Additional Services licence will be a licence to use the same spare capacity within the signals carrying the Classic FM sound broadcasting service on the relevant frequencies as under the existing Additional Services licence. The extent and nature of this spare capacity is set out in Annex 1 to this document.
  - 1.5.3 The Percentage of Qualifying Revenue (“PQR”), for the purposes of the PQR payment the licensee must make annually under the licence, will be 4%.

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<sup>1</sup> The document may be found at: <https://www.ofcom.org.uk/consultations-and-statements/category-2/advertisement-of-a-national-radio-additional-services-licence>.

<sup>2</sup> Our consultation document referred to the proposed licence as a “national” licence. To be clear, the 1990 Act makes no reference to a “national” Additional Services licence. Our reference to the licence as “national” denoted only that the licence would be for spare capacity within the signals on the frequency used to broadcast the national sound broadcasting service, Classic FM. It did not denote that any service under the new licence would necessarily be “national.” The service can only be provided where the Classic FM service is provided (as to which see further below).

- 1.6 This advertisement document constitutes a notice of Ofcom's proposal to grant a new Additional Services licence in accordance with section 116 of the 1990 Act ('the Notice').
- 1.7 This document also explains certain relevant matters. It is not intended to be exhaustive, but has been provided solely for the purpose of assisting applicants in the preparation of their applications. The mechanisms for advertising and awarding this Additional Services licence, and the statutory obligations to be met by the licensee, are fully set out in the 1990 Act available from <http://www.legislation.gov.uk/ukpga/1990/42/contents>
- 1.8 Applicants should obtain a copy of the Act and should read and familiarise themselves thoroughly with the provisions of it which refer to national radio services and additional services. Ofcom accepts no responsibility with respect to any applicant who, for any reason whatsoever, fails to comply with the procedures laid down by the Act and this document.

## Section 2

# Proposal to grant a new Additional Services licence

- 2.1 Ofcom proposes to grant an Additional Services licence to utilise the spare capacity within the RDS sub-carrier<sup>3</sup> on the frequencies on the FM (VHF) waveband made available by Ofcom for the purposes of the sound broadcasting service provided under Independent National Radio licence INR1.<sup>4</sup> The extent and nature of that spare capacity is specified in Annex 1 of this Notice.
- 2.2 The period for which Ofcom proposes to grant the licence will be of just under four years (1 March 2018 until 23 February 2022). The licence period will be the period starting on the commencement date of the licence (1 March 2018, unless otherwise agreed in writing between Ofcom and the licensee) and ending on the earlier of:
- the end of the period of approximately four years beginning on the licence commencement date (provided that this date shall not in any event be later than 23 February 2022); and
  - the end for any reason<sup>5</sup> of the INR1 sound broadcasting service licence, currently held by Classic FM Ltd, and which shall in any event end on 23 February 2022.

The continuation in force of the licence is also subject to the provisions in Part III of the 1990 Act.

- 2.3 This licence is advertised under the terms set out in the Broadcasting Act 1990 (“the 1990 Act”). It will be awarded, subject to the requirements of the Act being satisfied, and to section 100(3) of the Act in particular (see also Award Mechanism – Section 3.11 - 3.24 of this document), to the applicant offering the highest cash bid for the licence.
- 2.4 Ofcom accordingly invites applications for the proposed licence. Completed applications should be submitted in accordance with the guidelines and procedures set out in Sections 5 and 6 of this Notice. The closing date for submission of completed applications will be 3.00 pm on **Wednesday 31 May 2017**.
- 2.5 An application fee of £20,000 is payable for each application submitted. This fee will not be refundable under any circumstances.
- 2.6 In addition to the cash bid sum which must be paid annually under the terms of the licence, the licensee will be required to make a payment representing a Percentage

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<sup>3</sup> RDS (Radio Data System) is a communications standard used to embed small amounts of digital information in conventional FM radio broadcasts, a sub-carrier is the sideband of a frequency's carrier wave (the receivable signal).

<sup>4</sup> The INR1 sound broadcasting service licence is currently held by Classic FM Ltd, under which it provides the Classic FM sound broadcasting service, which service currently covers approximately 92% of the UK adult population. The service under the new Additional Services licence can only be provided where the Classic FM service is provided (which may change in accordance with the conditions of the Classic FM licence, INR1, and the statutory provisions that apply to it). Ofcom gives no warranty, makes no representation and assumes no obligation as to the population or size or location of the areas capable of receiving the service provided by the Additional Services licensee pursuant to the Additional Services licence.

<sup>5</sup> and by reason of digital switchover in particular.

of Qualifying Revenue (“PQR”) for each of its accounting periods (or pro-rata for part accounting periods) falling within the licence period. For this licence the PQR will be set at 4% for each accounting period.

- 2.7 Both the cash bid sum increased annually by RPI, and the PQR payment are paid to HM Treasury. These sums are administered by Ofcom.
- 2.8 The following chapters of this document contain particulars relevant to the licence and applications for it, including the prescribed layout of the application, details required in respect of transmission arrangements, financial requirements, information about the mechanism and process for the licence award and the licence fee payable.

## Section 3

# Consideration of applications

## Form of applications

- 3.1 As set out above, completed applications should be submitted in accordance with the guidelines and procedures set out in Sections 5 and 6 of this Notice. The following section summarises the framework under which Ofcom will consider those applications. Further detail about that framework is set out in Ofcom’s consultation and final statement documents referred to in section 1 above, and in Annex 2 to this Notice.

## General statutory background

- 3.2 Under section 85 of the 1990 Act, one of Ofcom’s functions is the licensing of Additional Services. This includes advertising, awarding and granting those licences in accordance with Part III of that Act, in particular sections 100 and 114 - 118. Those latter sections set out the powers Ofcom has in order to perform this licensing function, and in the exercise of which it must fulfil its duties.
- 3.3 In carrying out all of its functions, Ofcom is also required to have regard to the general duties set out in section 3 of the Communications Act 2003 (“the 2003 Act”), which are described in Annex 2 to this Notice, along with other Ofcom functions and powers and other relevant statutory requirements.

## Statutory requirements relating specifically to award of an Additional Services licence

- 3.4 Section 117 of the 1990 Act sets out the procedure Ofcom must follow in considering applications for, and awarding, Additional Services licences. It does so by saying that, subject to certain modifications, section 100 of the 1990 Act applies.
- 3.5 These sections make provision for Additional Services licences to be awarded by auction, though one to which certain conditions and qualifications apply. What they make clear is that the primary mechanism by which an Additional Services licence is awarded is by auction to the highest cash bidder (what may be described as the “highest cash bidder” rule). But, there are also some thresholds which must be met by any applicant, and Ofcom has some discretion to award the licence to a bidder other than the highest cash bidder.
- 3.6 Under section 100(1) of the 1990 Act as amended, “Subject to the following provisions of this section, Ofcom shall, after considering all the cash bids submitted by applicants for a national licence, award the licence to the applicant who submitted the highest bid.”
- 3.7 Ofcom may, however, as set out in section 100(3), “... disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant; and where it appears to Ofcom, in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of this subsection, those circumstances may be so regarded by them despite the fact

that similar circumstances have been so regarded by them in the context of any other licence or licences.”

3.8 Ofcom is also obliged to have regard to the requirements set out in section 117(1) of the 1990 Act. These set two thresholds which, if not met by an applicant, preclude Ofcom from considering that applicant’s cash bid and awarding it the licence under section 100. These are as follows:

- a) section 117(1)(a) stipulates that, as far as it involves the use of an electronic communications network, the technical plan submitted by an applicant must be acceptable to Ofcom; and
- b) section 117(1)(b) stipulates that the service(s) proposed to be provided under the licence must be capable of being maintained throughout the period the licence would be in force.

Each of these is explained further, as follows.

### **Acceptable technical arrangements**

3.9 Sub-section (3)(b) of section 116 requires that any application should be accompanied by a technical plan indicating (amongst other things) the nature of any Additional Services the applicant proposes to provide. This is expanded on in Section 6: The Application (below), and also in Annex 3 to this Notice.

### **Ability to maintain the proposed service**

3.10 In fulfilling its statutory obligations under section 117(1)(b) of the 1990 Act, Ofcom needs to satisfy itself that an applicant has access to sufficient financial resources, and appropriate human and technical resources, to maintain the proposed service throughout the period for which the licence would be in force. More particularly, Ofcom will need to be satisfied that an applicant has made a well-reasoned calculation of the expected levels of costs and revenue, such that the service proposed is capable of being maintained. The questions set out under this criterion in section 6 of this Notice are designed to enable Ofcom to consider applications in relation to this legislative requirement.

### **Award mechanism**

3.11 As soon as we reasonably can after the closing date for applications we will publish on our website<sup>6</sup>:

- the name of every applicant;
- particulars of each applicant’s technical plan;
- the applicant’s cash bid amount; and
- such other information connected with the applications as we consider appropriate (which may include all other parts of applications Ofcom considers it appropriate to publish).

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<sup>6</sup> Pursuant to section 116(6) of the 1990 Act

- 3.12 In considering the applications Ofcom will, firstly, have regard to the two thresholds described above.
- 3.13 During this process Ofcom may seek clarification and/or amplification of answers given in the application form. This will usually be conducted through questioning by a single letter, which will be sent to the individual nominated in the application. Further ad hoc questioning, if appropriate, may be conducted by telephone, or by e-mail, as well as by letter. Non-confidential<sup>7</sup> responses to these questions will be published on the Ofcom website, alongside the original application.
- 3.14 No material amendments to the application may be made by the applicant without the agreement of Ofcom. Ofcom will not agree to any such amendment which it considers would be unfair to any other applicant for the licence.
- 3.15 Ofcom will then make a decision about which bidder(s) meet the two thresholds described above.
- 3.16 If there is only one bidder for the licence, and Ofcom were able to award the licence to that bidder,<sup>8</sup> or only one bidder to whom we could make the award,<sup>9</sup> we would do so.
- 3.17 If, however, there is more than one eligible bidder for the licence<sup>10</sup> we will consider whether to award the licence to the highest cash bidder or to a bidder who did not make the highest bid on the basis that there appear to us to be exceptional circumstances that make it appropriate for us to award the licence to that bidder.
- 3.18 In doing so, we will be likely to do the following:
- publish details of the bidders and their cash bids, including their amounts;<sup>11</sup>
  - invite submissions from bidders and any other interested parties about why and how Ofcom should, or should not, exercise discretion to award the licence to a bidder other than the highest cash bidder; and
  - publish those submissions and invite responses.
- 3.19 In deciding whether exceptional circumstances exist which would make it appropriate for Ofcom to award the licence to a bidder who did not submit the highest cash bid, we would consider our statutory duties and all relevant evidence. Ofcom will make a decision whether to award the licence to the highest cash bidder or to a different bidder on the exceptional circumstances basis.
- 3.20 As soon as we reasonably can after making the licence award decision we will publish on our website:
- 3.20.1 the name of the applicant to whom the licence has been awarded and the amount of its cash bid;

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<sup>7</sup> See paragraphs 5.5 and 5.6 of this document Guidelines and procedures for submission of applications.

<sup>8</sup> Because that bidder met the relevant thresholds and, for example, is a fit and proper person, not disqualified from holding the licence, and there are no concerns about the relevant source(s) of that bidder's funds (see sections 100(4) – (6) of the 1990 Act)

<sup>9</sup> Because only one bidder met the relevant thresholds and it meets any other relevant requirements such as the need to be fit and proper

<sup>10</sup> That is, more than one bidder who meets the relevant thresholds

<sup>11</sup> Some of this information may already have been published under section 116(6) of the Act

- 3.20.2 the name of every other applicant who appeared to us to meet the thresholds referred to above;
- 3.20.3 if the licence is awarded to an applicant who has not submitted the highest cash bid, the reasons for that award; and
- 3.20.4 any other information we think appropriate to publish.

## Section 4

# Regulatory and other requirements

## Ownership rules

4.1 Ofcom will need to be satisfied that applicants fully comply with statutory provisions regarding ownership. In addition, Ofcom is required to satisfy itself that applicants are "fit and proper persons" before it may grant a licence. The application includes the questions about the following topics, designed to enable Ofcom to achieve these objectives:

- board of directors;
- proposed Investors and shareholding structure;
- involvement of the applicant in specified activities; and
- regulatory history.

4.2 The statutory provisions on ownership are in schedule 2 to the 1990 Act and schedule 14 to the 2003 Act. Copies of this legislation are available from <http://www.hmso.gov.uk>.

4.3 In general terms, the ownership rules applicable to a radio Additional Services licence disqualify certain categories of persons from holding a licence or participating in a licensee above a prescribed level.

4.4 Applicants should ensure that they would comply with all relevant ownership rules should their application be successful and obtain their own independent legal advice in this regard. If applicants have specific queries on the application of the ownership rules to them, they should contact Paul Boon tel: 020 7981 3616, e-mail: [paul.boon@ofcom.org.uk](mailto:paul.boon@ofcom.org.uk)

## Annual licence fee

4.5 The successful applicant will be liable to pay an annual licence fee. This is detailed in Annex 4.

## Licence conditions

4.6 A draft of the conditions to which the licence will be subject is at Annex 5 to this Notice. This draft indicates terms that are likely to apply, but it is not exhaustive or definitive, and is not binding on Ofcom as constituting the final version of the licence that is awarded. In particular, Ofcom may consider that the licence should be awarded subject to further conditions that:

- pursuant to section 87(1)(a), Ofcom considers appropriate to further the interests of citizens and/or consumers having regard to Ofcom's duty under section 3(1) of the 2003 Act; and

- pursuant to sections 316 and 317 of the 2003 Act, Ofcom considers appropriate for ensuring fair and effective competition in the provision of licensed services or of connected services, and which may include conditions relating to the provision of additional services under licences for local sound broadcasting services.

## Section 5

# Guidelines and procedures for submission of applications

- 5.1 The application must be in writing and presented in the format prescribed by Ofcom in Section 6 of this Notice, and should include responses to all of the relevant questions (certain questions are for the incumbent licensee only to answer, should it apply for the new licence, while other questions are for other applicants only to answer, though they place all applicants in materially equivalent positions as far as their applications are concerned). Pages should be numbered.
- 5.2 Applications must be clear, concise and simple in layout and style. Over-elaborate applications which include videos and/or other supplementary promotional material are strongly discouraged. Ofcom will not be influenced by the inclusion of illustrations or other devices designed to enhance the visual appeal of an application. In particular, applications must not include photographs and/or pictures. A limited number of charts is acceptable.
- 5.3 One electronic copy of an application must be received by Ofcom no later than the closing-date specified in Section 2 of this Notice. Applications received after this time will not normally be accepted. All applications will be acknowledged upon receipt. If e-mail is the chosen method of submission, the application must be sent to [commercialradio@ofcom.org.uk](mailto:commercialradio@ofcom.org.uk). Applicants should be aware, however, that e-mails are not an instantaneous means of communication, especially when they have large attachments. Applicants are therefore strongly advised to submit e-mail applications at least 48 hours in advance of the closing-date, so that urgent steps can be taken by the applicant if no acknowledgement from Ofcom is received.
- 5.4 Payment of the application fee must also be received (i.e. the funds must be present in the Ofcom bank account) by the closing-date specified in Section 2 of this Notice. Applicants may submit their payment by either of the following methods:
- Payment by BACS into the Ofcom bank account (sort code: 30-97-90, account number: 00782415, account name: Ofcom). Please note that any payments made using this method will take at least three working days to reach the Ofcom account.
  - Payment by CHAPS into the Ofcom bank account (details as above). Please note that although this is a 'same day' payment method, applicants intending to submit their payment on the closing-date itself should confirm with their bank the deadline for ensuring that it is received by Ofcom on that date.

Payment must be notified in advance to Ofcom's Accounts Receivable team and referenced "AS1" (fax: 020 7783 4901; telephone 020 7783 4930 or email: [remittances@ofcom.org.uk](mailto:remittances@ofcom.org.uk)) with the notification including the following information:

- the name of the licence to which the application fee relates (in the mandate reference field);
- the amount submitted;

- the payee name;
- the bank sort code;
- the account name; and
- the anticipated receipt date.

5.5 All parts of applications that Ofcom considers it appropriate to publish will be made available for public inspection on the Ofcom website as soon as reasonably possible after the closing date. Details of which parts of an application may be submitted in confidence are included in Section 6 of this Notice. If an applicant wishes to submit any information in confidence, this should be presented in an appropriately-marked annex to the main application. If an applicant wishes to submit information in confidence other than where this is specifically indicated as permissible, confirmation that this is acceptable must be sought beforehand, in writing, from Ofcom's Director of Broadcast Licensing.

5.6 Where an applicant indicates that part of, or information included in, an application is confidential, we will treat this request seriously and will try to respect it. However, we may need to publish information, including information an applicant considers confidential, where doing so is necessary to meet Ofcom's legal obligations and/or for the purpose of facilitating the carrying out by Ofcom of any of our functions or is otherwise required or permitted by law.

5.7 Failure to comply with any of the above guidelines may render the application liable to disqualification.

5.8 Anticipated timetable:<sup>12</sup>

31 May 2017	Closing date for applications and publication of list of bidders and their cash bid sums
31 May 2017	Commence assessment of applications and threshold analysis
Early June	Announce bidders remaining after threshold analysis
Early June	(If appropriate) Invite submissions regarding 'exceptional circumstances'
Mid-June	Closing date for submissions about 'exceptional circumstances' and their publication
Late June	Closing date for responses to submissions about 'exceptional circumstances'.
July	Conclusion of assessment of AS licence applications and internal governance
July	Award licence to successful applicant
July	Publication of award decision and related information

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<sup>12</sup> This timetable is indicative of Ofcom's intended timetable, not a binding guarantee of the timing of relevant steps and decisions

## Section 6

# The application

The application must be in writing and structured strictly in accordance with the following outline. Ofcom may also request additional information from applicants, including for the purpose of verifying information provided in accordance with the following paragraphs of this section.

Please note that there are some separate questions for the existing licensee and new applicants to answer, to reflect their differing status.

Applicants should also note that Ofcom reserves the right to revoke a licence if at any time any information provided or statement made in connection with an application for the licence is found to be false in a material particular, or if at any time Ofcom is satisfied that, in connection with that application, the licensee withheld any material information with the intention of causing Ofcom to be misled.

In addition, any statement made to Ofcom in connection with an application for the licence, or its continued holding, by the applicant or any member or officer thereof knowing it to be false in a material particular may be a criminal offence under section 144 of the Broadcasting Act 1996. This could incur a criminal conviction and a disqualification from the holding of a licence, as could recklessly making a statement to Ofcom which is false in a material particular, and withholding relevant information with the intention of misleading Ofcom.

Applicants are therefore urged, in respect of any matter relevant to their application in which there is any doubt whether provision of information is required, to provide that information to Ofcom.

All applications must include the following information, in the format given.

### 1. General information

#### (a) Name of Applicant, Address, Telephone and E-mail address

Note for applicants: this must be a single legal entity: either a body corporate or a named individual person. If the former, a copy of the certificate of incorporation must be included with the application.

#### (b) Brief Description of Proposed Service

Provide a one-sentence summary of the nature and type of service proposed.

#### (c) Cash Bid

The cash bid is the amount payable in respect of the first complete calendar year falling within the licence period and each subsequent year falling wholly or partly within that period (increased by the appropriate percentage<sup>13</sup> in each of those subsequent years), in accordance with section 118 (1)(a) and (b) of the 1990 Act.

Cash bids must be in whole pounds sterling.

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<sup>13</sup> As defined in section 102 (10) of the 1990 Act

#### **(d) Main Contact (For Public Purposes)**

Applicants must nominate at least one individual to deal with any press or public enquiries, providing the following details:

Name:

Telephone (daytime):

Address:

E-mail address:

#### **(e) Main Contact (For Ofcom Purposes)**

Applicants must nominate one individual to whom questions of clarification and/or amplification of the application should be sent, providing the following details:

Name:

Telephone (daytime):

Address:

E-mail address:

This information may be submitted in confidence<sup>14</sup>, separately from the other responses in this section.

## **2. 116(3)(b) and 117(1)(a): technical arrangements**

Applicants must submit a technical plan with their application, in accordance with section 116(3)(b) of the 1990 Act, indicating the nature of any Additional Services they propose to provide and, so far as known to the applicant, the nature of any additional services which any other person proposes to provide in accordance with section 115(3) of the same Act.<sup>15</sup>

Applicants should note Annex 3 Technical Plan and Technical Arrangements to this Notice, and the plan submitted should provide the information set out below in the form specified.

**New applicants** proposing to use the same transmission site(s) and parameters as the licensee under the existing Additional Services licence (AS1) should also set out whether they have entered into negotiations with the owner/operator of the sound broadcasting service provided under licence INR1 (Classic FM Ltd) regarding arrangements for the new licence period.

If so, they should provide details; if not, they should state what arrangements are anticipated.

#### **(a) RDS capacity**

Applicants must provide a technical description of the services in relation to the use to be made by the Additional Services licence of the relevant RDS features and characteristics. Particular reference should be made to:

- the Group and feature to be used;

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<sup>14</sup> See also paragraphs 5.5 and 5.6 of this document Guidelines and procedures for submission of applications.

<sup>15</sup> This technical information may also be used in the consideration of any aspect of an application including, for example, whether an applicant has the ability to maintain its proposed service for the licence period

- the actual Group reception rate or the average repetition rate over a time period;
- the data rate in bits/sec;
- the required RDS deviation level for satisfactory and optimum service;
- compliance with the IEC 62106:2016 Ed. 2.0 specification of the radio data system

**(b) Transmitter network**

Applicants must list all the transmitters from which it is intended to provide the service's coverage. (The list of transmitter sites currently used to broadcast Classic FM is shown in Annex 3).

For each transmitter site give, as applicable:

- the target service date;
- the intended use or modification of existing equipment already installed for addition of the Additional Services signal to the INR1 signal; and
- whether any additional equipment is to be installed in a new building or rack, or within an existing building (and if so, whose), and the status of any relevant agreements secured or in process of negotiation at the time of the licence application.

**(c) Technical contractors**

As far as this is known, applicants should give the names of the organisations which it is intended will be responsible for the provision, operation and maintenance of equipment used to generate and add the Additional Services signal to the INR1 signal. Also, if appropriate, name any bodies which it is planned to use for project management, installation services, and equipment supply for any installation programme which may be envisaged. State whether responsibility for any of these functions will be vested in just one organisation. The status of any relevant agreements should be indicated.

**(d) Operations centre(s)**

Applicants must set out where they intend to site the operation centre(s).

**(e) Distribution**

Applicants must set out how they propose to distribute the service information from the operation centre(s) to the transmitters.

Applicants must also set out which organisation(s) will be responsible for provision of the relevant circuits.

**(f) Technical monitoring**

Applicants must set out what arrangements are proposed for monitoring the technical performance of the service?

Please describe the approach to securing a desired availability of service (state objectives for each transmitter service area), especially with regard to the response to:

- equipment failure;
- distribution network failure; and
- interference to the INR1 programme signal

### **(g) Service equipment maintenance**

Applicants must set out what arrangements will be put in place for the effective maintenance and repair of the service equipment? Indicate the number of personnel or size of organisation envisaged to be necessary to undertake this function. State if this function be partially or wholly contracted out (and to whom)? What items of equipment will be necessary to support this operation effectively?

### **(h) Standby arrangements**

Where these are not fully given in other responses, please describe any automatic and procedural inter-relationships proposed between:

- automatic/manual monitoring systems;
- automatic/manual reserve arrangements; and
- maintenance/repair arrangements.

## **3. Sections 116(3)(d) and 117(1)(b): Ability to maintain proposed service**

Please note this section may be submitted in confidence.<sup>16</sup> Should this be the case please clearly mark your application accordingly.

### **(a) Summary of business plan**

Applicants must provide a summary of your business plan for the licence period (up to 28 February 2022). Summarise the main assumptions underpinning the applicant's business plan for the licence period; e.g. trends in consumer take-up market expectations and revenue streams (and the relationship between them), taking into account expected technological developments and competition from other technology/media; the impact of digital radio; marketing policies; ownership patterns, and the applicant company's own business development strategy; etc. Include a summary of the main findings and conclusions drawn from any background or market research or any analysis of other data which provides support for the business plan.

### **(b) Consumer projections**

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<sup>16</sup> See section 5 as to the status of information submitted in confidence. In relation to financial information, whilst Ofcom will take seriously the applicant's request for confidentiality of that information, we may publish information, for example, about applicants who do, and do not, meet the threshold relating to the ability to maintain the service proposed in their application.

**New applicants** should provide the following information:

- i) Projections for consumer/business to business/other recipient take-up over the first three years of the service, with detailed demographic breakdowns as appropriate; and
- ii) The basis on which the estimates above have been calculated, and any assumptions taken into account.

**The existing licensee** only should answer the following questions:

- i) If you propose to continue, in the new licence period, the same type of service as currently transmitted, please provide evidence of the take-up attracted by the present service;
- ii) To what extent do you believe that the potential maximum take-up for your present service is already being achieved? Indicate any proposals designed to increase this during the new licence period.

### **(c) Financial accounts and forecasts**

Applicants must provide detailed figures for profit and loss account, cash flow, and balance sheet forecasts for the period [1 March 2018 to 28 February 2022] (the maximum possible duration of the licence).

In addition, if the applicant is part of a larger commercial group, the last set of completed accounts for the parent company should also be supplied. However, no forecasts are required in respect of the parent group.

Appropriate details of all assumptions used in the preparation of forecasts should also be provided.

Explicitly define and forecast within the financial model all revenue streams.

Provide detailed views on the level of any investment required either for the initial launch of the services proposed and or the development of the services throughout the licence period.

#### Notes on completion of (c) above

Ofcom requires that the following should be explicitly shown in the financial models for each year.

##### Profit and Loss

- Revenue streams identified separately
- Qualifying revenue
- Contra revenue
- Other non-qualifying revenue
- Total revenue
- Royalties and commissions

- 'Additional payments' to HM Treasury
  - Cash bid
  - Percentage of Qualifying Revenue
- Staff costs
- Transmission costs
- Depreciation
- Marketing costs
- Any head office/intra-group charges
- Other costs
- Tax
- Contra costs

Balance sheet/cash flow

- Fixed assets
- Net assets
- Capital employed
- Capital expenditure
- Tax

All forecasts should be supplied on an Excel spreadsheet or similar with accompanying guidance notes and should be based upon constant prices at the time of the application.

**(d) Auditor review**

The forecast financial model must be reviewed and certified to be properly and accurately compiled, using generally UK accounting standards. This review must be undertaken by a registered auditor with the Institute of Chartered Accountants of England and Wales.

**4. Ownership and control of company which will operate the licence**

The following is information Ofcom requires in order to be satisfied that applicants comply fully with statutory provisions regarding ownership and that an applicant is a "fit and proper person" to whom Ofcom may grant a licence.<sup>17</sup>

**(a) Board of Directors**

- i) Provide the name, occupation, other directorships, other media interests, and, if not a director of an existing Ofcom licensee, the relevant experience, of each director (executive and non-executive) of the applicant, including the proposed chairperson.
- ii) If there are firm plans to appoint any further directors, provide information about this (with details of any specific individuals in mind and information of the kinds in (a)i) above). This information may be submitted in confidence.

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<sup>17</sup> Some of this information may also be used in the consideration of any aspect of an application including, for example, whether an applicant has the ability to maintain its proposed service for the licence period.

## **(b) Investors and Shareholding Structure**

Please note this section may be submitted in confidence<sup>18</sup>. Should this be the case please clearly mark your application accordingly.

In this section and the following sections, “control,” “participant” and “associate” have the meanings given to them in Schedule 2 of the Broadcasting Act 1990 to which applicants should refer and cognate expressions, such as “controlled” and “controller,” shall be construed accordingly.

Full details of the shareholding structure of the applicant must be provided, together with other relevant matters, including:

- i) Names and addresses of all existing or proposed shareholders (or those beneficially entitled to, or controlling voting rights in respect of, any shareholding).
- ii) Total number, class/classes of shares and issue price of shares (specify voting, non-voting, preference, other etc.).
- iii) State the number, class/classes and price of shares held by, or to be held by, or for the benefit of or in relation to, those in i).
- iv) Any shareholders’ agreements or arrangements which exist.
- v) Where a corporate body will be providing 30% or more of the applicant’s required funding, details should be given of that body corporate’s directors and main shareholders (holders of more than 5% of shares), and of its name and activities.
- vi) Names of the directors of all corporate bodies holding, or beneficially entitled to, or controlling voting rights in respect of, 30% or more of shares in the applicant, and of the directors of any corporate body by whom the applicant is controlled (together with the names of all corporate bodies referred to in this sub paragraph).
- vii) Names of the persons or bodies who control any body referred to in vi).
- viii) The name and address of any other individuals or corporate bodies in accordance with whose wishes the applicant’s affairs (and/or those of any person or body which controls the applicant) are or will be conducted in most cases or in significant respects, or who otherwise control the applicant (and/or who control any person or body which controls the applicant).
- ix) Ofcom may request additional information (e.g. a banker’s letter, statutory/management accounts) regarding the shareholders, or any other providers of finance, listed in the application.

**(Note:** Details must also be supplied of any agreement or arrangements, including but not confined to the company’s Articles of Association, which could affect voting rights or the ability to achieve the result, in all the circumstances, that the affairs of the applicant are conducted in accordance with the wishes of particular parties).

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<sup>18</sup> See also paragraphs 5.6 of this document Guidelines and procedures for submission of applications.

### **(c) Involvement of the Applicant in Specified Activities**

Details are required of any operation by the applicant and its controllers and participants<sup>19</sup> as a body or organisation of any of the types listed below and/or any involvement<sup>20</sup> in any activities of such bodies or organisations, and the extent of the interest therein. For these purposes, the applicant includes associates of the applicant<sup>21</sup> and its directors' associates and other group companies.

- x) advertising agencies;
- xi) newspapers;
- xii) other broadcasting interests;
- xiii) bodies whose objects are wholly or mainly of a religious nature;
- xiv) bodies whose objects are wholly or mainly of a political nature (or bodies who are affiliated to such bodies);
- xv) local authorities; and
- xvi) other publicly-funded bodies.

Please also give details of any other participant in the applicant whose interest could, or does, give rise to an incompatibility with the requirements imposed by or under Schedule 2 to the Broadcasting Act 1990.

## **5. Regulatory history**

Ofcom requires that the applicant must notify Ofcom of any matters which might influence Ofcom's judgement as to whether the applicant is or will remain a fit and proper person to hold the licence. This includes any matters relating to the applicant's directors, shareholders and other associates that might influence Ofcom's judgement of a licensee's fitness and propriety.

Accordingly, in respect of any individual or corporate body referred to in the preceding two sections above, and any other associate of the applicant, please provide details of any matter that might influence Ofcom's judgment as to whether the applicant is, or will remain, a 'fit and proper person' to hold the licence.

Such matters include, for example, but are not limited to:

- i) details of any complaints of breach of any licence issued by or on behalf of Ofcom (or its predecessor regulators (the ITC and the Radio Authority)) under the Broadcasting Act 1990, the Broadcasting Act 1996, the Communications Act 2003, the Wireless Telegraphy Act 2006, and of any complaints otherwise in connection with a matter arising under one of those Acts;

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<sup>19</sup> where they are shareholders or other subscribers of 5% or more of the applicant's total funding requirements or, in the case of an existing company, holders of 5% or more of the share capital, or those beneficially entitled to, or controlling voting rights in respect of, any such shareholding

<sup>20</sup> of the applicant and/or its controllers and participants

<sup>21</sup> e.g. its directors – but see the full definition of 'associate' in Schedule 2 of the 1990 Act.

- ii) details of any findings made by Ofcom (or its predecessor broadcast regulators) and/or any court or tribunal in respect of any matters referred to in i), and of any other action, formal or otherwise, taken by Ofcom (or its predecessors) in respect of such matters;
- iii) any disciplinary action taken by any other regulatory authority;
- iv) unspent convictions for criminal offences committed within ten years before the date of submission of the application;
- v) any insolvency or undischarged bankruptcy order; and
- vi) any disqualification from being a director of a limited company.

Please also provide the licence number and the names of the licensee and services provided relating to:

- i) any licence to provide a licensed service issued by Ofcom (or its predecessor broadcast regulators) applied for or held at any time (including the present) by the applicant, any individual or body referred to in the preceding two sections above and any other associate of the applicant; and
- ii) any such licence in relation to which any of those persons has had any involvement in the operation and/or management of the licence and licensed service;

## **6. Declaration**

Applicants are required to conclude their application by responding to the following question:

Do you confirm that, to the best of your knowledge and belief:

- b) the applicant is not a disqualified person in relation to the licence by virtue of the provisions referred to in section 143(5) of the Broadcasting Act 1996 (relating to political objects);
- c) the applicant is not otherwise a disqualified person in relation to the licence by virtue of Part II of Schedule 2 to the Broadcasting Act 1990;
- d) holding the licence would not place the applicant in contravention of requirements imposed by or under Schedule 14 of the Communications Act 2003;
- e) no director or person concerned directly or indirectly in the management of the company or the applicant group is the subject of a disqualification order as defined by section 145(1) of the Broadcasting Act 1996;
- f) no person (corporate or natural) involved in the application has been convicted within the past five years of an unlicensed broadcasting offence and that the applicant will do all it can to ensure that no person (corporate or natural) so convicted will be concerned in the provision of the service, the making of programmes included in it, or the operation of a wireless telegraphy station, if the applicant is granted a licence; and

- g) any and all matters which might influence Ofcom's judgement as to whether the applicant is a fit and proper person to hold the licence have been made known to Ofcom?

## Section 7

# Procedures for decision making

- 7.1 The rules set out for awarding the Additional Services licence are set out in statute. Section 3 of this document summarises them and outlines the process Ofcom is likely to follow. This section of this document indicates who within Ofcom will make decisions relating to the licence award.
- 7.2 Decisions in the statutory licence award process will be made by senior members of the Ofcom Executive ('the Executive').
- 7.3 After the closing date for applications, a summary of each applicant's cash bid along with proposals, highlighting issues of relevance under each of the statutory thresholds under section 117(1) of the Broadcasting Act 1990, drawn both from the original application and any subsequent questioning, will be prepared by Ofcom's Broadcast Licensing team and presented to the Executive for consideration.
- 7.4 The Executive will then consider the application of the statutory thresholds and decide which bidders meet them. If only one bidder does, the Executive will decide whether to award the licence.
- 7.5 The process Ofcom is likely to follow in the event that there is more than one eligible bidder is set out in section 3 of this document. The Executive will make the decision to whom the licence will be awarded. That is, whether:
  - a) to award the licence to the highest cash bidder, or
  - b) to award it to an applicant who has not submitted the highest bid because it appears to Ofcom that there are exceptional circumstances which make it appropriate for Ofcom to award the licence to that applicant.

## Annex 1

# Spare capacity

## Available RDS capacity

A1.1 Ofcom service is to be operated on the RDS sub-carrier conforming to IEC standard 62106:2009 Ed. 2.0 using one or more of only the following allowable features:

- TDC (Group 5A)
- Paging (RP) (Group 7A with part of Group 1A)
- TMC (Group 8A)
- IH (Group 6A only)
- ODA (Various allowable Groups: refer to specification)

A1.2 The group repetition rate available to the Licensee will be, to the extent necessary:

- an average of 2.4 groups/sec, averaged over any one-minute period
- a minimum of 1 group in any second
- 4 groups/sec. for consecutive seconds in every five minute period in every hour;
- such parts of the overhead signalling capacity in the RDS bitstream, notably group types 3A, as are necessary for use of the above-referenced Additional Services groups.

A1.3 No further capacity beyond this is to be made available to the Licensee.

A1.4 The minimum deviation of the FM carrier due to the modulated RDS subcarrier shall be  $\pm 2.0$  kHz, and the maximum deviation shall be  $\pm 2.5$  kHz.

## Annex 2

# Statutory framework for Additional Services

## General

A2.1 The framework for advertising and awarding an Additional Services licence is set out in the Broadcasting Act 1990 (again, “the 1990 Act”). The relevant provisions are mainly in Chapter IV of Part III of the 1990 Act, although section 100, in Chapter II of the same Part, is also key (and section 85, in Chapter I of Part III is also relevant). These set out Ofcom’s functions in relation to Additional Services and their licensing. Also relevant are Ofcom’s general duties, with which it must comply in performing these functions. These are in section 3 of the Communications Act 2003 (“the 2003 Act”).

## Ofcom’s duties

A2.2 Ofcom’s principal general duty, when carrying out our radio functions, is set out in section 3(1) of the 2003 Act. It is to further the interests of citizens – all members of the public in the UK - in relation to communications matters; and to further the interests of consumers in relevant markets, where appropriate by promoting competition.

A2.3 To meet this duty, Ofcom is required to secure (amongst other things):

- the optimal use for wireless telegraphy of the electro-magnetic spectrum;
- the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests; and
- the maintenance of a sufficient plurality of providers of different television and radio services.

A2.4 Ofcom must also take into account in relevant cases, amongst other things:

- the desirability of promoting competition in relevant markets;
- the desirability of encouraging investment and innovation in relevant markets;
- the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;
- the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it; and
- the opinions of consumers in relevant markets and of members of the public generally.

A2.5 More specific duties are contained in the 1990 Act. Amongst these is that in section 115(1). This says we must do all we can to secure that, in the case of each relevant frequency, all of the spare capacity available for the provision of Additional Services on that frequency is used for the provision of such services under Additional Services licences.

## Ofcom's functions and powers

A2.6 Under section 85 of the 1990 Act, one of Ofcom's functions is the licensing of additional radio services. This includes advertising, awarding and granting those licences in accordance with Part III of that Act, in particular sections 100 and 114 - 118. Those latter sections set out the powers Ofcom has in order to perform this licensing function, and in the exercise of which it must fulfil its duties.

A2.7 Section 114 defines what an Additional Service is: any service which consists in the sending of electronic signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any sound broadcasting service provided on a relevant frequency.<sup>22</sup> It also defines what spare capacity is and provides for Ofcom to determine the spare capacity available for providing an Additional Service.

A2.8 Section 114 also provides for Ofcom to change, but not reduce, the amount of spare capacity determined to be available in respect of a particular Additional Services licence.

A2.9 Section 115 contains provisions relating to the licensing of Additional Services. For example, sub-section (6) says every licence to provide a national sound service shall include conditions Ofcom think appropriate for securing that the sound service licensee grants to an Additional Services licensee access to facilities reasonably required to provide the Additional Service.

A2.10 Sub-section (3) requires that any application for an Additional Services licence must be in writing and accompanied by (amongst other things) a technical plan indicating the nature of any Additional Services the applicant proposes to provide, its cash bid and such information as Ofcom reasonably require about the applicant's present and projected financial position.

A2.11 Section 117 sets out the procedure Ofcom must follow in connection with the consideration of applications for, and awarding of, Additional Services licences. It does so by saying that, subject to certain modifications, section 100 of the 1990 Act applies.

A2.12 These sections make provision for Additional Services licences to be awarded by auction,<sup>23</sup> though one to which certain conditions and qualifications apply. This means that, although in principle the licence is awarded to the person who submits the highest cash bid, there are also some thresholds which must be met by any applicant, and Ofcom has some discretion to determine to whom the licence should be awarded.<sup>24</sup>

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<sup>22</sup> Classic FM is an example of a sound broadcasting service provided on a relevant frequency

<sup>23</sup> And do so under a scheme which does not make provision for Ofcom to set an explicit reserve or minimum cash bid price in the auction.

<sup>24</sup> See sections 3 and 7 of this document and Ofcom's consultation and final statement documents relating to this licence

- A2.13 There are two thresholds. First, section 117(1)(a) says that, insofar as they involve the use of an electronic communications network, the technical arrangements proposed by an applicant must be acceptable to us. Second, section 117(1)(b) says the services proposed to be provided under the licence must appear to Ofcom to be capable of being maintained throughout the period the licence would be in force.
- A2.14 We can only consider whether to award the licence to an applicant on the basis of his cash bid where it appears to us to meet these thresholds. Of those applicants that meet them, the primary criterion for awarding the licence is that Ofcom shall award it to the highest cash bidder (and there are provisions for settling ties (by seeking further bids)). But, it is not necessarily the case that the highest bidder wins. Ofcom can choose to award the licence to an applicant who has not submitted the highest cash bid if it appears to us there are “exceptional circumstances” which make it appropriate for us to award it to that applicant.<sup>25</sup>
- A2.15 Certain other statutory rules are relevant in the context of this award process. For example, section 86(4) of the 1990 Act says Ofcom must not grant a licence to any person unless we are satisfied they are fit and proper to hold it. Section 88(1) of the same Act provides another example. It says, amongst other things, Ofcom must do all we can to secure that a person does not become a licence holder if he is disqualified from holding that licence by virtue of Part II of Schedule 2 to the 1990 Act. Section 89(1) of the 1990 Act is a third example. It says a person is disqualified from holding an Additional Services licence if they have been convicted within the previous five years of any of a number of specified criminal offences relating to wireless telegraphy transmissions and broadcasting.
- A2.16 Section 118 of the 1990 Act deals with financial payments an Additional Services licensee must make. It says the licence must include conditions requiring annual payment of his cash bid sum (increased by an appropriate percentage each year) and an amount representing the percentage of the qualifying revenue specified in the advertisement of the licence. It also provides for the composition of the qualifying revenue: all amounts which are received or to be received by the licensee or by any connected person and are referable to the right under his licence to use, or to authorise any other person to use, the spare capacity allocated by the licence.
- A2.17 Also relevant are the provisions of the 1990 Act relating to the duration of the Additional Services licences. In particular, sections 86(3), 97A, and 97B:
- section 86(3) says an Additional Services licence must specify a period of no more than twelve years as the period for which it is to be in force;
  - section 97A says the Secretary of State may nominate a date for digital switchover - a date after which it will cease to be appropriate for a service to continue to be provided in analogue form - for licences granted after 8 April 2010, including the new Additional Services licence; and
  - section 97B provides that, where the Secretary of State nominates a switchover date, Ofcom must vary relevant licences so they end before that date (as long as this, in effect, gives licensees two years’ notice of the end of the licence).

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<sup>25</sup> There are also provisions which require Ofcom to refer an applicant to the Secretary of State for Culture, Media and Sport for approval if we are concerned that their source of funds means that it would ‘not be in the public interest’ to award the licence to them.

A2.18 Section 105A is also relevant, though less directly so. It provides for the possible termination of certain renewed sound broadcasting licences, including (if it is renewed) that under which Classic FM is broadcast, if digital switchover does not occur (either because no switchover date is nominated, or a nominated date is withdrawn and not replaced). In those circumstances, the Secretary of State may give notice to Ofcom fixing a termination date – a date after 31 December 2015 - in relation to specified services (provided under certain renewed licences), including potentially Classic FM. Ofcom would then have to amend the duration of all relevant renewed licences that would otherwise end after the specified termination date, so they end on or before it (again provided that, in effect, we give relevant licensees two years' notice of the end of their licences). This is relevant because it would also bring the licence period of the new Additional Services licence to an end.

## Annex 3

# Technical requirements

## General

- A3.1 This annex sets out, for the benefit of prospective applicants for the licence, certain technical matters and requirements relating to the Additional Services licence.
- A3.2 The licence is for an Additional Service (or services) to be delivered to its recipients by transmissions from the terrestrial network of transmitters – the current list of which is below - provided by the INR1 licensee, Classic FM Ltd. Enquiries as to this network should be directed to David Holroyd at:
- Global Radio  
Head of Technology Operations and Infrastructure  
30 Leicester Square  
London  
WC2H 7LA  
Tel: 020 7344 4894  
Email: [david.holroyd@thisisglobal.com](mailto:david.holroyd@thisisglobal.com)
- A3.3 The licence is for the provision of one (or more) Additional Services utilising the spare capacity within the RDS subcarrier on the frequency(ies) on the FM (VHF) waveband made available by Ofcom for the purposes of the sound broadcasting service provided under Independent National Radio licence INR1.<sup>26</sup> Accordingly, the licence is for the provision of such service(s) only when and where the Classic FM service is provided under licence INR1, which may change in accordance with the conditions of the INR1 licence and the statutory provisions that apply to it. It should be noted that Ofcom will not take the requirements of the Additional Services licence into account in its regulation of the INR1 licensee's development or other modifications of its transmitter network under the terms of its licence.
- A3.4 It will be the responsibility of the Additional Services licensee to ensure compliance with the technical requirements set out in this annex in so far as they relate to the provision of Additional Services. This is without prejudice to the licensee's responsibilities as stated elsewhere in this document and as will be stated in the licence.
- A3.5 What is explained in this annex relates solely to the requirements of Ofcom. Compliance with these requirements in no way absolves the licensee from general legal responsibilities outside the interest of Ofcom. These general requirements include:
- compliance with the current Health and Safety at Work Act (including adherence to specification IEC 60215 – 'Safety Requirements for Radio Transmitting Equipment'); and

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<sup>26</sup> The INR1 sound broadcasting service licence is currently held by Classic FM Ltd, under which it provides the Classic FM sound broadcasting service, which service currently covers approximately 92% of the UK adult population.

- duties and liabilities imposed by law by virtue of ownership, occupation or use of a building and surrounding land.

## **Agreement with INR1 licensee**

A3.6 Under the Broadcasting Act 1990, the INR licensee is required to grant “access to facilities reasonably required by (the Additional Services licensee) for the purposes of, or in connection with, the provision of any such additional services” (section 115(6) refers). The INR1 licence contains a condition to that effect. Within that condition, the INR1 licensee “may require that other person to pay a reasonable charge thereof; and any dispute as to the amount of any such charge shall be determined by Ofcom” (section 115(7) refers). Access to facilities may reasonably be interpreted as installation of additional RDS software (and if appropriate, coders) by the INR1 licensee, with access to suitable interfaces (connected to the RDS encoder) granted by the INR1 licence at the transmitter site. Subject to the technical specifications and limitations set out in Annex 1 of this Notice, the INR1 licensee may offer any additional technical facility which may be mutually agreed between the INR1 and Additional Services licensee.

## **Commissioning tests and subsequent modifications**

- A3.7 Before the Additional Services licensee is permitted to transmit from any given transmitter site, Ofcom, or agents appointed to act on its behalf, reserves the right to carry out tests on the respective transmitting equipment. These tests will be to ensure compliance with this specification and to ascertain that the stability of the equipment is such that the requirements therein should be satisfied thereafter.
- A3.8 Ofcom shall reserve the right to conduct such other tests as it sees fit, including the remote measurement of the INR1 or Additional Services licensee’s transmissions, without notifying the licensee. Arrangements which the licensee makes with third parties must enable compliance with these requirements. Ofcom reserves an equivalent right in respect of the INR1 licensee’s equipment.
- A3.9 The licensee shall nominate a person (or persons), or organisation(s) with nominated contact(s), as responsible for maintenance and operation of the Additional Services transmission equipment.
- A3.10 The Additional Services licensee will be responsible for ensuring that its services do not, directly or indirectly, interfere with the INR1 service or any RDS service, whether or not on INR1, by provoking unintended responses within the receivers or otherwise. The technical specification and requirements relating to the licence are designed to ensure that this will not happen, and Ofcom does not envisage the need to include further provisions to this effect in pursuit of its responsibility under section 119 of the 1990 Broadcasting Act. However, Ofcom reserves the right to include such provisions in the licence in accordance with the 1990 Act. Responsibility for the radiated characteristics of the signal remains with the INR licensee.

## **Available RDS capacity**

A3.11 This is specified in Annex 1 of this Notice.

## List of transmitter sites currently<sup>27</sup> used to broadcast Classic FM (INR1)

Site	NGR	ERP Tot
Angus	NO394407	17
Arfon	SH476493	30
Bath	ST769655	0.2
Beecroft Hill	SE237350	1
Belmont	TF218836	6.4
Bilsdale	SE553962	2
Black Hill	NS828647	250
Blaen Plwyf	SN569756	20
Blunsdon	SU143900	0.72
Bow Brickhill	SP914342	10
Crystal Palace	TQ339712	2
Darvel	NS557341	8
Divis	IJ287750	250
Douglas	SC372745	11
Dover	TR274397	10
Fenham	NZ216648	0.1
Great Ormes Head	SH766834	4
Hemdean	SU710762	1
Holme Moss	SE095041	250
Idle	SE164374	0.5
Kilvey Hill	SS672940	1
Londonderry	IC405176	31
Meldrum	NJ761330	150
Morecambe Bay	SD239791	10
Mounteagle	NH639580	50
North Hessary Tor	SX578742	160
Oxford	SP567105	46
Peterborough	TL126913	40
Pontop Pike	NZ147527	130
Presely	SN172306	20
Pur Down	ST610764	0.2
Redruth	SW690394	50
Ridge Hill	SO630333	10
Rowridge	SZ447865	250
Sandale	NY266398	250
Selkirk	NT500294	20
Sutton Coldfield	SK113003	250
Tacolneston	TM131958	250

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<sup>27</sup> as of the date of this document

Advertisement for an Additional Services licence

Tapton Hill	SK324870	0.5
Wenvoe	ST110742	250
Whitehawk Hill	TQ330045	0.5

**Annex 4****Annual licence fees****Broadcasting Act licence fees**

A4.1 The Broadcasting Act licence fees are payable under the licence in addition to the payment of cash bid and PQR sums. They are currently based on the annual Relevant Turnover obtained by the licensee.

A4.2 To illustrate, the tariff of annual Broadcasting Act licence fees (with effect from 1 April 2016) for the Additional Services licence (National FM) is as follows (different fees may apply for 2017/18 and subsequent years):

<b>Additional Services</b>	<b>Tariff for 2016/2017</b>
Percentage fee of relevant turnover	10%
Minimum (per annum)	£25,000
Maximum (per annum)	£100,000

## Annex 5

# Draft AS licence

## Licence AS xx

**OFFICE OF COMMUNICATIONS ADDITIONAL RADIO SERVICES LICENCE  
LICENCE GRANTED TO XXX Ltd / PLC TO PROVIDE AN ADDITIONAL RADIO SERVICE  
UNDER PART III OF THE BROADCASTING ACT 1990 ON AN APPLICATION COMPLYING  
WITH SECTION 116 OF THE BROADCASTING ACT 1990**

### THE LICENCE

1. The Office of Communications ("Ofcom") in exercise of the powers conferred upon it by Part III of the Broadcasting Act 1990 as amended by the Broadcasting Act 1996 and the Communications Act 2003 hereby grants to XXX Ltd / PLC (the "Licensee") a licence (the "Licence") subject to the conditions set out in the Schedule (the "Conditions"), to provide the additional radio service specified in the Annex (the "Licensed Service").
2. This Licence is granted on the basis of the Licensee's representation that the statements set out in the declaration as to his affairs made by the Licensee on (DATE) are true to the best of his knowledge and belief.
3. The Licensee must not operate the Licensed Service unless and until he is complying with any requirement to hold or have held on his behalf a licence under Section 8 of the Wireless Telegraphy Act 2006, any requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 or the Technical Code to the extent that it applies to him.
4. This Licence shall come into force on 1 March 2018 or on such other date as Ofcom and the Licensee may agree in writing (the "Commencement Date").
5. The Schedule and the Annex to this Licence form part of it.

SIGNED FOR AND  
ON BEHALF OF  
OFCOM BY

DIRECTOR BROADCAST LICENSING

XX (month) 20XX

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### **Annex THE LICENSED SERVICE**

## THE SCHEDULE

### PART 1 DEFINITIONS AND INTERPRETATION RELATING TO THE LICENCE

#### 1. Definitions and interpretation

(1) In this Licence unless the context otherwise requires:-

**"the 1990 Act"** means the Broadcasting Act 1990 (as amended);

**"the 1996 Act"** means the Broadcasting Act 1996 (as amended);

**"the Communications Act"** means the Communications Act 2003 (as amended);

**"Fairness Code"** means the code giving guidance as to principles to be observed and practices to be followed in connection with the avoidance of unjust or unfair treatment and unwarranted infringement of privacy in the provision of licensed services as drawn up and from time to time revised by Ofcom in accordance with Section 107 of the 1996 Act;

**"fairness complaint"** shall be interpreted in accordance with Section 110 (4) of the 1996 Act;

**"Licence Period"** means the period starting on the Commencement Date and ending on the earlier of:

(1) the end of the period of xx years beginning on the Commencement Date (provided that this date shall not in any event be later than 23 February 2022); and

(2) the date the National Sound Broadcasting licence INR1 (AN001) ends for any reason (which date shall not in any event be later than 23 February 2022);

**"programme"** unless otherwise stated includes an advertisement and anything included in the Licensed Service;

**"the radio transfer date"** has the meaning given to it in Section 405 of the Communications Act;

**"Standards Code"** means the code or codes governing standards for the content of programmes, including standards and practice in advertising and in the sponsoring of programmes included in licensed services, as drawn up and from time to time revised by Ofcom in accordance with Section 319 of the Communications Act;

**"Standards Complaint"** means a complaint about the observance of standards set under Section 319 of the Communications Act; and

**"Technical Code"** means the code or codes governing technical standards and practice in the provision of licensed services, as drawn up and from time to time revised by Ofcom (and to the extent that such code or codes has not or have not been drawn up by Ofcom or is not or are not in force a technical code drawn up by the Radio Authority and in force immediately before the radio transfer date is to have effect as if it were a technical code issued by Ofcom).

- (2) The Interpretation Act 1978 shall apply for the purpose of interpreting this Licence as if it was an Act of Parliament.
- (3) Any word or expression used in this Licence shall unless otherwise defined herein and/or the context otherwise requires have the same meaning as it has in the 1990 Act, the 1996 Act or the Communications Act, as the case may be.
- (4) For the purposes of interpreting this Licence, headings and titles shall be disregarded.
- (5) The statutory references in the margins of this Licence are for purposes purely of convenience and shall not affect the interpretation or construction of the Licence or limit the statutory basis for the inclusion of the relevant Condition in the Licence.
- (6) Where an order is made under the Deregulation and Contracting Out Act 1994 which authorises a person to exercise any functions of Ofcom, the relevant references in the Licence to Ofcom shall include a reference to that person.
- (7) This Licence shall be governed by English law.

## **PART 2**

## **GENERAL CONDITIONS**

### **2.**

#### **Provision of additional radio service by Licensee**

- Section 115 of the 1990 Act (1) The Licensee shall provide the Licensed Service specified in the Annex for the Licence Period.
- Section 87 (1) (b) of the 1990 Act (2) The Licensee shall ensure that the provisions of the Technical Code are observed in the provision of the Licensed Service to the extent such provisions apply to him.
- Section 115 (3) (3) The Licensee may, subject to obtaining Ofcom's written consent and to any conditions Ofcom may impose on the granting of that consent, authorise any person who is not a disqualified person in relation to the Licence by virtue of Part II of Schedule 2 to the 1990 Act, and who would not be in contravention of the requirements imposed by or under Schedule 14 to the Communications Act 2003 if he held such a licence, to provide the Licensed Service.
- (4) The conditions of the Licence shall apply in relation to the provision of the Licensed Service by a person authorised as mentioned in sub-condition (3) above as they apply in relation to the provision of the Licensed Service by the Licensee; and any failure by such a person to comply with any such conditions shall be treated as a failure on the part of the Licensee to comply with those conditions.

### **3.**

#### **Fees**

- Sections 87 (1) (c), 87 (3) and 87 (4) of the 1990 Act (1) The Licensee shall pay to Ofcom such fees as Ofcom may determine in accordance with the tariff fixed by it and for the time being in force under Section 87 (3) of the 1990 Act as Ofcom shall from time to time publish in such manner as it considers appropriate.
- (2) Payment of the fees referred to in Condition 3 (1) above shall be made in such manner and at such times as Ofcom shall specify.
- Section 87 (1) (d) of the 1990 Act (3) The Licensee shall within 28 days of a request therefore provide Ofcom with such information as it may require for the purposes of determining or revising the tariff referred to in Condition 3 (1) above.

### **4.**

#### **Additional payments**

- Section 118 (1) of the 1990 Act (1) In addition to the fees payable under Condition 3(1) above, the Licensee shall pay to Ofcom:
- (a) in respect of the first complete calendar year falling within the Licence Period, the amount of £XX (XX thousand pounds) (the "Cash Bid");

- (b) in respect of each subsequent year falling wholly or partly within the Licence Period, the Cash Bid as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of the Licensee falling within the Licence Period, an amount representing 4 (four) per cent. of the Qualifying Revenue for that accounting period.
- (2) The amounts due under Condition 4 (1) are payable as follows:
  - (a) the amount due under Condition 4 (1) (a) is due on the first date of 1 January falling in the Licence Period;
  - (b) in respect of any year in which an amount is due under Condition 4 (1) (b), the amount is due on 1 January in that year;
  - (c) in respect of any accounting period for which an amount is due under Condition 4 (1) (c), the amount is payable throughout the Licence Period at such times and in such manner as is determined by Ofcom in accordance with the provisions of Condition 4 (3).
- Sections 118 (3) and 118 (4) of the 1990 Act      (3) In relation to the amount payable under Condition 4 (1) (c) above, Ofcom may:
  - (a) before the beginning of an accounting period estimate the amount due for that period;
  - (b) require the Licensee to pay the estimated amount by monthly instalments in advance throughout the period;
  - (c) revise any estimate on one or more occasions as it shall think fit and adjust the instalments payable by the Licensee to take account of the revised estimate;
  - (d) provide for the adjustment of any overpayment or underpayment by the Licensee; and
  - (e) in estimating the amount payable make any apportionment with respect to any accounting period of the Licensee as appears to Ofcom to be necessary for that purpose.
- (4) Where:
  - (a) the first complete accounting period of the Licensee falling within the Licence Period does not begin at the same time as that period, or

- (b) the last complete accounting period of his falling within the Licence Period does not end at the same time as that period,

any reference in this Condition to an accounting period of his shall, if appropriate, include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the Licence Period; and other references to accounting periods shall be construed accordingly.

- (5) In this Condition, "**Qualifying Revenue**" means, in relation to any accounting period of the Licensee, the aggregate of all revenue derived directly or indirectly by the Licensee from its holding of the Licence and shall include (but shall not be limited to) revenue from subscriptions, sponsorship, co-funding and advertising and shall also include the amount of any payment made to any connected person of the Licensee to meet any payments payable by the Licensee under Condition 4 (1) (c) above.
- (6) In calculating the Qualifying Revenue for any accounting period the statement of principles published and from time to time revised by Ofcom in accordance with Part II of Schedule 7 to the 1990 Act shall apply.
- (7) In this Condition, "**the appropriate percentage**", in relation to any year ("**the relevant year**"), means the percentage which corresponds to the percentage increase between:
  - (a) the retail prices index for the month of November in the year preceding the first complete calendar year falling within the Licence Period; and
  - (b) the retail prices index for the month of November in the year preceding the relevant year;

and for this purpose "**the retail prices index**" means the general index of prices (for all items) published by the Office for National Statistics.

## 5. V.A.T.

- Section 87 (1) (c) and (f) of the 1990 Act (1) The Licensee shall pay any V.A.T. on any supply for V.A.T. purposes by Ofcom under this Licence on presentation of a valid V.A.T. invoice.
- (2) Without limitation to Condition 5 (1) above, all sums payable by the Licensee are exclusive of V.A.T. which shall be paid by the Licensee in addition to such sums.
- (3) In this Condition 5 "**V.A.T.**" means value-added tax chargeable under or pursuant to the Value Added Tax Act

1994, including any amendment to or replacement of that Act, and/or any similar tax.

**6. General standards and requirements**

Section 325 (1) of the Communications Act      The Licensee shall ensure that the provisions of the Standards Code are observed in the provision of the Licensed Service.

**7. Advertising and sponsorship standards and requirements**

Sections 321 (4) and 321 (5) of the Communications Act      (1)      The Licensee shall comply with all directions given to him by Ofcom with regard to advertisements or methods of advertising or sponsorship, including directions with respect to:

(a)      the exclusion from the Licensed Service of a particular advertisement, or its exclusion in particular circumstances;

(b)      the descriptions of advertisements and methods of advertising to be excluded from the Licensed Service (whether generally or in particular circumstances);

(c)      the forms and methods of sponsorship to be excluded from the Licensed Service (whether generally or in particular circumstances); and

(d)      the content and scheduling of advertising of alcoholic beverages.

Sections 120 to 122 and 321 (4) of the Communications Act      (2)      The Licensee shall ensure that the provisions of the code approved by Ofcom for regulating the provision of premium rate services, or in the absence of such a code, the terms of any order made by Ofcom for such purposes, are observed in the provision of the Licensed Service.

Section 321 (1) and (4) of the Communications Act      (3)      The Licensee shall ensure that the provisions of the Standards Code set to secure the objective in Section 319 (2) (a) and (g) to (j) of the Communications Act and relating to standards and practice in advertising and sponsorship of programmes and any prohibitions of advertisements and forms and methods of advertising or sponsorship of programmes are observed in the provision of the Licensed Service and in particular but without limitation shall ensure that the Standards Code's requirements on commercial communications in radio programming are met

- Section 321 (4) of the Communications Act
- (4) The Licensee shall supply to Ofcom details, in whatever form and within such period as Ofcom may reasonably require, of any particular advertisement or any class of advertisement specified by Ofcom or any sponsored programme which Ofcom shall from time to time request.

**8. Retention and production of recordings**

- Section 334 of the Communications Act
- (1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings of any programme which is the subject of a Standards Complaint and in relation to the production of recordings of any programme which is the subject of a fairness complaint the Licensee shall also comply with the requirements of Condition 18 below.
- (2) In particular, the Licensee shall:
- (a) make and retain, for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service together with regular time reference checks;
  - (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction; and
  - (c) at the request of Ofcom forthwith produce to Ofcom any script or transcript of a programme included in the Licensed Service which he is able to produce to it.

**9. General provision of information to Ofcom**

- Section 87 (1) (d) of the 1990 Act
- (1) The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act or the Communications Act and in particular (but without prejudice to the generality of the foregoing):
- Sections 88 (1) and (2) of the 1990 Act and Sections 143 (2) and 143 (5) of the 1996 Act
- (a) a declaration as to the Licensee's corporate structure in such form and at such times as Ofcom shall specify; and
  - (b) such information as Ofcom may reasonably require from time to time for the purposes of determining whether the Licensee is on any ground a disqualified person by virtue of any of the provisions referred to in Section 143(5) of the 1996 Act and/or Schedule 2 to the 1990 Act or whether the requirements imposed by or under Schedule 14 to the Communications Act are contravened in relation to his holding of the Licence.

Section 88 (5) of the 1990 Act (2)

The Licensee shall inform Ofcom forthwith in writing if:

- (a) the Licensee becomes aware that any order is made or any resolution is passed or other action is taken for the dissolution, termination of existence, liquidation (whether compulsory or voluntary), or winding up of the Licensee (otherwise than for the purpose of amalgamation made whilst the Licensee is solvent and previously approved in writing by Ofcom in accordance with Condition 13 below) or a liquidator, trustee, receiver, administrative receiver, administrator, manager or similar officer is appointed in respect of the Licensee, or in respect of all or any part of his assets;
- (b) the Licensee makes or proposes to enter into any scheme of compromise or arrangement with his creditors save for the purposes of amalgamation or reconstruction;
- (c) the Licensee shall permit an execution to be levied against his assets and/or chattels and allows such execution to remain outstanding for more than 14 days;
- (d) the Licensee becomes aware that any person having control of the Licensee does or is subject to any of the events specified in subconditions (a) to (c) above; or
- (e) anything analogous to or having a substantially similar effect to any of the events specified in subconditions (a) to (d) above occurs under the laws of any applicable jurisdiction.

Sections 86 (4), and 87 (1) (d) and (f) of the 1990 Act (3)

The Licensee shall inform Ofcom when final judgment is awarded against him in any court proceedings brought against him in respect of the inclusion in the Licensed Service of any defamatory, seditious, blasphemous or obscene matter or any matter which constitutes an injurious falsehood or slander of title or any tort or an infringement of any copyright, moral right, right in a performance, design right, registered design, service mark, trademark, letters patent or other similar monopoly right or a contravention of the provisions of the Official Secrets Act or of any statutory enactment or regulation for the time being in force or a criminal offence or contempt of Court or breach of Parliamentary privilege.

Sections 86 (4), 88 (5) and 87 (1) (d) of the 1990 Act (4)

The Licensee shall inform Ofcom if the Licensee or any individual or body corporate having control over the Licensee within the meaning of Paragraph 1(3), Part I of Schedule 2 to the 1990 Act is convicted of a criminal offence.

**10. Provision of information to Ofcom relating to a change of participants, officers or control**

Sections 86 (4), 87 (1) (d) and 88 (2) of the 1990 Act (1) Where the Licensee is a body corporate, the Licensee shall notify Ofcom:

- (a) of proposals affecting shareholdings of 5% or more in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or the directors of any body corporate which controls the Licensee, and of any proposals to enter into any arrangements of the type referred to in Condition 10 (2) below, by giving advance notice of such proposals where they are known to the Licensee as soon as reasonably practicable; and
- (b) of changes, transactions or events affecting shareholdings of 5% or more in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or the directors of any body corporate which controls the Licensee (irrespective of whether proposals for them have fallen to be notified) within 28 days of the Licensee becoming aware of any such change, transaction or event.

Section 87 (1) (d) of the 1990 Act and Paragraph 1 (3) (c) and (3A) of Part I to Schedule 2 to the 1990 Act (2) (a) The Licensee shall notify Ofcom within 28 days if any person:

- (i) holding or being beneficially entitled to 50 per cent. of the equity share capital in the Licensee or in any body corporate which controls the Licensee; or
- (ii) possessing 50 per cent. of the voting power in the Licensee or any body corporate which controls the Licensee

enters into an arrangement with any other participant in the Licensee or in any such body corporate which controls the Licensee as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.

- (b) For the purposes of Condition 10 (2) (a):

- (i) **"arrangement"** includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable;
- (ii) a person shall be treated as holding, or being beneficially entitled to, any equity share capital which he controls or to which such a body corporate is beneficially entitled, and as possessing any voting power possessed by such a body corporate; and
- (iii) **"participant"**, in relation to a body corporate, means a person who holds or is beneficially entitled to shares in that body or who possesses voting power in that body.

**11. Disqualified persons under Section 89 of the 1990 Act**

Section 89 of the 1990 Act

The Licensee shall do all that the Licensee can to ensure that no person who is disqualified from holding a licence by virtue of Section 89 of the 1990 Act is concerned in the provision of the Licensed Service or the making of programmes included in it or in the operation of any station for wireless telegraphy used for broadcasting the Licensed Service.

**12. Compliance with ownership restrictions**

Section 88 (1) and (2) of the 1990 Act

- (1) The Licensee shall comply in all respects with the restrictions and requirements imposed on or in relation to the Licensee by or under Schedule 2 to the 1990 Act and Schedule 14 to the Communications Act to the extent that such requirements apply to the Licensee.
- (2) The Licensee shall comply with any direction of Ofcom requiring him to take, or arrange for the taking of, any steps specified by Ofcom for the purposes of complying with the requirements referred to in Condition 12 (1) above.
- (3) The Licensee shall inform Ofcom of any circumstances or events which may give rise to a breach of the Licensee's obligations imposed on the Licensee by or under Schedule 2 to the 1990 Act or the requirements imposed by or under Schedule 14 to the Communications Act being contravened in relation to the Licensee's holding of the Licence immediately upon becoming aware of such circumstances or events.

**13. Transferability of the Licence**

Section 86 (7) and (8) of the 1990 Act

This Licence is not transferable except with the prior consent in writing of Ofcom. Without prejudice to the generality of the foregoing, such consent shall not be given unless Ofcom is satisfied that the person to whom it is proposed to transfer the Licence would be in a position to comply with all of the Conditions whilst it remains in force.

**14. Compliance**

Section 87 (1) (a) and 87 (2) (a) of the 1990 Act (1) The Licensee shall comply with any direction given to him by Ofcom in respect of any matter, subject or thing which direction is in the opinion of Ofcom appropriate, having regard to any duties which are or may be imposed on it, or on the Licensee by or under the 1990 Act, the 1996 Act or the Communications Act.

Section 87 (1) (a), (d) and (f) of the 1990 Act; Sections 321 (4) and 328 (1) of the Communications Act (2) The Licensee shall adopt procedures and ensure that such procedures are observed by those involved in providing the Licensed Service for the purposes of ensuring that programmes included in the Licensed Service comply in all respects with the provisions of this Licence, the 1990 Act, the 1996 Act and the Communications Act.

The Licensee shall, without prejudice to the generality of the foregoing, ensure that:

(a) there are sufficient persons involved in providing the Licensed Service who are adequately versed in the requirements of this Licence, the 1990 Act, the 1996 Act and the Communications Act and all relevant codes and guidelines as may be drawn up and from time to time revised by Ofcom and that such persons are able to ensure compliance with such requirements on a day-to-day basis;

(b) adequate arrangements exist for the immediate implementation of such general and specific directions as may from time to time be given to the Licensee by Ofcom; and

(c) adequate arrangements exist for the advance clearance of advertisements of such types and for such products as Ofcom shall determine.

(3) The Licensee shall supply Ofcom with details of such procedures (and any revisions of such procedures) adopted by him and required to be observed by those involved in providing the Licensed Service for the purposes of Condition 15 (2) above.

**15. Government directions and representations**

Section 336 of the Communications Act (1) The Licensee shall if so directed by Ofcom:

(a) include in the Licensed Service, at such times as may be specified to Ofcom by the Secretary of State or any other Minister of the Crown, such announcement as may be specified by a notice

given pursuant to Section 336 (1) of the Communications Act; or

- (b) refrain from including in the programmes included in the Licensed Service any matter or description of matter specified to Ofcom by the Secretary of State by a notice given pursuant to Section 336 (5) of the Communications Act.
- (2) The Licensee may when including an announcement in the Licensed Service in accordance with Condition 15 (1) (a) above indicate that the announcement is made in pursuance of a direction by Ofcom.
  - (3) Where Ofcom:
    - (a) has given the Licensee a direction to the effect referred to in Condition 15 (1) (b) above; or
    - (b) in consequence of the revocation by the Secretary of State of the notice giving rise to the issuing of such a direction, has revoked that direction, or where such a notice has expired

the Licensee may include in the Licensed Service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.

**16.**

**Powers of inspection**

Section 87 (2) (b) of the 1990 Act

The Licensee shall permit any employee of, or person authorised in writing by Ofcom to enter any premises used in connection with the broadcasting or delivery of the Licensed Service and to inspect, examine, operate or test any equipment on the premises which is used in that connection.

**17.**

**Standards Complaints**

Sections 325 (1) (b) and 328 (1) of the Communications Act

- (1) The Licensee shall ensure that procedures acceptable to Ofcom for the handling and resolution of Standards Complaints in respect of programmes included in the Licensed Service are established and maintained and shall ensure that such procedures are duly observed.
- (2) The Licensee shall comply with any direction given to the Licensee by OFCOM for the purpose of bringing such procedures to the attention of the public (whether by means of broadcasts or otherwise).
- (3) The Licensee shall for a period of 12 months keep a written record of any complaints referred to in Condition 17 (1) above and of any response given by the Licensee in relation to any such complaint and shall make such record available to Ofcom at such times as Ofcom may reasonably require.

**18.**

**Fairness complaints**

Sections 115 and 119 of the 1996 Act (see also Section 327 of the Communications Act)

- (1) The Licensee shall comply with such directions and requests for information as may be given to him by Ofcom following receipt by him from Ofcom of a copy of a fairness complaint that relates to the provision of the Licensed Service, and in particular the Licensee shall, if so requested:
- (a) provide Ofcom with a recording of the programme, or of any specified part of it, to which the complaint relates if and so far as such a recording is in his possession;
  - (b) make suitable arrangements for enabling the complainant to hear any such recording, or any specified part of it, to which the complaint relates if and so far as such a recording is in his possession;
  - (c) provide Ofcom and the complainant with a transcript of the programme, or of any specified part of it, to which the complaint relates if and so far as the Licensee is able to do so;
  - (d) provide Ofcom and the complainant with copies of any documents in the possession of the Licensee that are originals or copies of any correspondence between the Licensee and the person affected or the complainant in connection with the complaint;
  - (e) provide Ofcom with such other things that Ofcom may specify or describe and that appear to Ofcom to be relevant to its consideration of the complaint and to be in the possession of the Licensee;
  - (f) furnish to Ofcom and the complainant a written statement in answer to the complaint;
  - (g) attend Ofcom and assist Ofcom in its consideration of the complaint; and
  - (h) take such steps as he reasonably can to ensure compliance with any request made by Ofcom to any other person under Section 115 (7) of the 1996 Act.

Sections 119 and 120 of the 1996 Act

- (2) The Licensee shall comply with such directions as may be given to him by Ofcom to publish, in such manner, and within such period as may be specified by Ofcom, in any direction given pursuant to Section 119 (1) of the 1996 Act, a summary of any fairness complaint with regard to a programme included in the Licensed Service, together with Ofcom's findings on the fairness complaint or a summary of such findings. The form and content of any such summary shall be such as may be approved by Ofcom.

- (3) References in Condition 18 (2) to the publication of any matter shall be references to the publication of that matter without its being accompanied by any observations made by a person other than Ofcom and relating to the fairness complaint.
- (4) Where Ofcom has given a direction under Section 119 (1) in relation to a fairness complaint and either the Licensee and/or any other person responsible for the making or the provision of the relevant programme has or have taken any supplementary action (interpreted in accordance with Section 120 (5) of the 1996 Act) the Licensee shall promptly send to Ofcom a report of that action.
- Section 326 of the Communications Act (5) The Licensee shall ensure that the provisions of the Fairness Code are observed in connection with the provision of the Licensed Service and in relation to the programmes included in the Licensed Service.

**19.**

**Publicising Ofcom's functions**

Section 328 of the Communications Act

The Licensee shall comply with such directions as may be given to him by Ofcom to secure that:

- (1) the procedures which are established and maintained for handling and resolving complaints about the observance of standards as set out in Section 319 of the Communications Act; and
- (2) Ofcom's functions under Part V of the 1996 Act in relation to the Licensed Service

are brought to the attention of the public (whether by means of broadcasts or otherwise).

**20.**

**Power of Ofcom to vary Licence Conditions**

Section 86 (5) of the 1990 Act

- (1) Ofcom may by a notice served on the Licensee:
- (a) vary the Licence Period, other than as provided for by the 1990 Act and this Licence, provided that the Licensee consents to such variation; or
- (b) subject to Condition 20 (2), vary the Licence in any other respect provided that the Licensee has been given a reasonable opportunity to make representations to Ofcom concerning the proposed variation.
- (2) Ofcom shall not vary Condition 4.

**21.**

**Notices and service**

Section 394 of the Communications Act

- (1) Any notification or document (as defined in Section 394 (9) of the Communications Act) to be served, given or sent under or in relation to this Licence may be delivered to the party to be

served or sent by first-class post to him at his proper address (as defined in Section 394 (7) of the Communications Act) or left at that address.

- (2) Any such notification or document shall be deemed to have been served:
  - (a) if so delivered or left, at the time of delivery or leaving; or
  - (b) if posted, at 10.00 am on the second business day after it was put into the post.
- (3) In proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such notification or document was properly addressed and posted as a pre-paid first-class letter or was left at the proper address, as the case may be.
- (4) Notices and documents may also be served or given by Ofcom on or to the Licensee and by the Licensee on or to Ofcom in electronic form subject to the requirements set out in Sections 395 and 396 of the Communications Act.

Sections 395 and 396 of the Communications Act

## 22.

### Equal opportunities and training

Section 337 of the Communications Act

- (1) The Licensee shall make, and from time to time shall review, arrangements for:
  - (a) promoting, in relation to employment with the Licensee:
    - (i) equality of opportunity between men and women and between persons of different racial groups; and
    - (ii) the equalisation of opportunities for disabled persons; and
  - (b) training and retraining persons whom he employs in or in connection with the provision of the Licensed Service or the making of programmes for inclusion in the Licensed Service.
- (2) The Licensee shall take appropriate steps to make those affected by the arrangements to be made in accordance with Condition 22 (1) aware of them including publishing the arrangements in such manner as Ofcom may require.

- (3) In particular (but without limiting the generality of the foregoing) the Licensee shall from time to time (and at least annually) publish, in such manner as he considers appropriate, his observations on the current operation and effectiveness of the arrangements required by virtue of this Condition.
- (4) The Licensee shall, in making and reviewing the arrangements made in accordance with Condition 22 (1), have regard to any relevant guidance published by Ofcom as revised from time to time.
- (5) This Condition 22 shall apply if the requirements of Sections 337 (7) and (8) of the Communications Act are satisfied in the case of the Licensed Service.
- (6) Ofcom will treat the Licensee's obligations under Conditions 22 (1) to (5) above as discharged where a member of a group of companies to which the Licensee belongs has discharged those obligations in relation to employment with the Licensee.

**PART 3**

**EXCEPTIONS AND LIMITATIONS ON LICENSEE'S OBLIGATIONS**

**23.**

**Force majeure**

Section 87 (1) (f) of the 1990 Act

The Licensee shall not be in any way responsible for any failure to comply with any Conditions of this Licence directly or indirectly caused by or arising from any circumstances beyond the control of the Licensee including (without limitation) accident or breakdown of any equipment or apparatus (caused otherwise than by the wrongful act, neglect or default of the Licensee, his servants or agents), war, damage by the Queen's enemies, terrorism, riot, rebellion, civil commotion, interference by strike, lockout, sit-in, picket or other industrial dispute or action.

**24.**

**Miscellaneous**

Nothing in this Licence shall imply any warranty, representation or obligation on the part of Ofcom as to the population or size or location of the areas actually capable of receiving the service provided and broadcast by the Licensee pursuant to the Licence.

**PART 4**

**CONDITIONS RELATING TO ENFORCEMENT OF LICENCES**

**25.**

**Interest on late payments**

Section 87 (1) (c) and (f) of the 1990 Act

- (1) Any payment due from the Licensee under or in respect of the Licence shall carry interest at three per cent. per annum over the base rate for the time being of Lloyds TSB plc (or if unavailable then the rate published by another clearing bank as selected by Ofcom) from the date such payment was due until the date of actual payment.
- (2) The Licensee's liability to pay to Ofcom the amounts payable by him under Condition 26 (1) above shall accrue from day to day and shall be calculated on the basis of a year of 365 days and for the actual number of days elapsed.

**26.**

**Sanctions for breach of Condition**

Section 120 of the 1990 Act

- (1) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence or with any direction given by Ofcom under the Licence and it has given him a reasonable opportunity to make representations to it about the matters complained of, it may serve on him a notice requiring him to pay to Ofcom, within a specified period, a specified financial penalty.
- (2) The amount of any financial penalty imposed pursuant to Condition 26 (1) shall not exceed five per cent. of the Qualifying Revenue for the Licensee's last complete accounting period during the period for which the Licence has been in force (the "**relevant period**").
- (3) Where any such penalty is imposed when the first complete accounting period of the Licensee falling in the relevant period has not yet ended Ofcom shall impose a financial penalty in accordance with Condition 26 (2) above which is based upon its estimate of the amount of Qualifying Revenue for that accounting period.
- (4) In this Condition "**Qualifying Revenue**" has the same meaning as in Condition 4.

Section 87 (1) (e) of the 1990 Act

- (5) The Licensee shall reimburse to Ofcom any costs reasonably incurred by Ofcom in connection with or resulting from a breach of any Condition in the Licence that requires Ofcom at its sole discretion to arrange for the translation from one language into another any broadcast made by the Licensee. Any amounts payable under this Condition 26 (5) shall be payable by the Licensee in such manner and at such time or times as Ofcom shall determine.

**27.**

**Revocation**

Section 111 of the 1990 Act

- (1) (a) If Ofcom is satisfied that the Licensee is failing to comply with any Condition of the Licence or with any direction given by Ofcom under the Licence and that that failure is such that, if not remedied, it would justify the revocation of the Licence it shall serve on the Licensee a notice:-
  - (i) stating that Ofcom is so satisfied;
  - (ii) specifying the respects in which, in the opinion of Ofcom, the Licensee is failing to comply with any such Condition or direction; and
  - (iii) stating that, unless the Licensee takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, Ofcom will revoke the Licence.
- (b) If at the end of the period specified in any notice served under Condition 27 (1) (a) above Ofcom is satisfied that the Licensee has failed to take the steps specified in the notice and that it is necessary in the public interest to revoke the Licence, Ofcom shall serve on the Licensee a notice revoking the Licence.

Section 87 (5) of the 1990 Act

- (2) Ofcom may revoke the Licence by notice in writing served on the Licensee and taking effect either from the time of service or on a date specified in the notice, in any of the following circumstances:
  - (a) if the Licensee agrees in writing with Ofcom that the Licence should be revoked;
  - (b) if the Licensee becomes a disqualified person in relation to the Licence by virtue of Part II of Schedule 2 to the 1990 Act or a requirement imposed by or under Schedule 14 to the Communications Act is contravened in relation to his holding of the Licence;
  - (c) if Ofcom is satisfied that the Licensee:-
    - (i) in purporting to comply with any of the Conditions of this Licence has provided information which is false in a material particular or has withheld any material information with the intention of causing Ofcom to be misled; or

- Section 111 (5) of the 1990 Act
- (ii) in connection with his application for the Licence, provided Ofcom with information which was false in a material particular or withheld any material information with the intention of causing the Radio Authority or Ofcom to be misled;
- Section 88 (7) of the 1990 Act
- (d) if, where the Licensee is a body, a change in the nature or characteristics of the Licensee or any change in the persons having control over or interests in the Licensee, or any change giving rise to a disqualification under Part II of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act in relation to his holding of the Licence takes place (whether before or after the Commencement Date), which change is such that, if it fell to Ofcom to determine whether to award the Licence to the Licensee in the new circumstances of the case, it would be induced by the change to refrain from awarding the Licence to the Licensee;
- Section 86 (4) (b) of the 1990 Act
- (e) if Ofcom ceases to be satisfied that the Licensee is a fit and proper person to hold the Licence;
- Section 86 (9) of the 1990 Act
- (f) if the Licensee fails to comply with any requirement to hold or have held on his behalf a licence under Section 8 of the Wireless Telegraphy Act 2006 or if the Licensee ceases to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act;
- (3) Ofcom shall before serving any notice referred to in Condition 27 (1) or Condition 27 (2) give the Licensee a reasonable opportunity of making representations to Ofcom about the matters complained of.
- Sections 89 of the 1990 Act and 145 of the 1996 Act
- (4) If the Licensee is disqualified from holding a licence pursuant to Section 89 of the 1990 Act, or is convicted of an offence under Section 144 of the 1996 Act and the court by which the Licensee is convicted makes an order disqualifying him from holding a licence during a period specified in the order, or if the Licensee is disqualified from holding a licence pursuant to Section 145(3) of the 1996 Act in consequence of an order disqualifying an individual from holding a licence, this Licence shall be treated as being revoked with effect from the time when the order takes effect.

**Part 5**

**DIGITAL SWITCHOVER AND END OF LICENCE PERIOD**

**28.**

**Variation of Licence Period**

Sections 97A and 97B of the 1990 Act

Where:

- (a) the Secretary of State has given notice to OFCOM nominating a date for digital switchover for the service provided under the Licence (and not withdrawn that notice); and
- (b) that date for digital switchover is before:
  - (i) the end of the period of xx years beginning on the Commencement Date DD MM YYYY in a case where the end of that period would be after DD MM YYYY); and
  - (ii) the end of the licence period for National Sound Broadcasting licence INR1 (AN001),

Ofcom shall give the Licensee notice varying the Licence so that the Licence Period ends on or before that date for digital switchover (provided that OFCOM may not so vary the Licence so that it ends less than 2 years after the day on which they issue the notice, unless the Licensee holder consents to such a reduction).

**29.**

**End of Licence Period**

Sections 86 (1), 86 (3), 111, 114 (1), 114 (2) and 114 (3)

Where the licence period of National Sound Broadcasting licence INR1 (AN001) ends for any reason before 23 February 2022 (but within the period of six years and two months beginning on the Commencement Date), and in particular pursuant to sections 97A and 97B, or 105A, of the 1990 Act, or by reason of its surrender or revocation, the Licence Period shall end.

**ANNEX TO LICENCE      LICENSED SERVICE**  
**NO A/S1-2**

Introduction

This Licence is for an Additional Service (or services) to be delivered to its recipients by transmissions from the terrestrial network of transmitters provided by the INR 1 licensee, currently Classic FM Ltd. Enquires as to this network should be directed to David Holroyd at:

Global Radio  
Head of Technology Operations and Infrastructure  
30 Leicester Square  
London  
WC2H 7LA  
Tel: 020 7344 4894  
Email: [david.holroyd@thisisglobal.com](mailto:david.holroyd@thisisglobal.com)

The licence is for the provision of one (or more) Additional Service utilising the spare capacity within the RDS sub carrier on the frequency(ies) on the FM (VHF) waveband made available by Ofcom for the purposes of the sound broadcasting service provided under Independent National Radio licence INR1.<sup>28</sup> Accordingly, the licence is for the provision of such service(s) only when and where the Classic FM service is provided under licence INR1, which may change in accordance with the conditions of the INR1 licence and the statutory provisions that apply to it. It should be noted that Ofcom will not take the requirements of the Additional Services licence into account in its regulation of the INR1 licensee's development or other modifications of its transmitter network under the terms of its licence.

It will be the responsibility of the Licensee to ensure compliance with the requirements of this annex in so far as they relate to the provision of Additional Services. This is without prejudice to the Licensee's responsibilities as stated elsewhere in the Licence.

The conditions in this annex relate solely to the requirements of Ofcom. Compliance with these requirements in no way absolves the Licensee from general legal responsibilities outside the interest of Ofcom. These general requirements include:

- compliance with the current Health and Safety at Work Act (including adherence to specification IEC 60215 – 'Safety Requirements for Radio Transmitting Equipment'); and
- duties and liabilities imposed by law by virtue of ownership, occupation or use of a building and surrounding land.

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<sup>28</sup> The INR1 sound broadcasting service licence is currently held by Classic FM Ltd, under which it provides the Classic FM sound broadcasting service, which service currently covers approximately 92% of the UK adult population.

### Agreement with INR1 licensee

Under the Broadcasting Act 1990, the INR1 licensee is required to grant “access to facilities reasonably required by (the Licensee) for the purposes of, or in connection with the provision of any such additional services” (section 115 (6) refers). Within that condition, the INR1 licensee “may require that other person to pay a reasonable charge thereof; and any dispute as to the amount of any such charge shall be determined by Ofcom” (section 115 (7) refers). Access to facilities may reasonably be interpreted as installation of additional RDS software (and, if appropriate, coders) by the INR1 licensee, with access to suitable interfaces (connected to the RDS encoder) granted by the INR1 licensee at the transmitter site. Subject to the technical specifications and limitations set out below, and in paragraph 10 in particular, the INR1 licensee may offer any additional technical facility which may be mutually agreed between the INR1 licensee and the Licensee.

### Commissioning tests and subsequent modifications

Before the Licensee is permitted to transmit from any given transmitter site, Ofcom, or agents appointed to act on its behalf, reserves the right to carry out tests on the respective transmitting equipments. In any event, permission must be confirmed by the issue of a certificate or letter from Ofcom. These tests will be to ensure compliance with this specification and to ascertain that the stability of the equipment is such that the requirements therein should continue to be satisfied thereafter.

Ofcom shall reserve the right to have access to the transmitter and/or coder installations from time to time to conduct inspections, and tests thereof, to verify continued compliance with this specification. Ofcom will also reserve the right to conduct such other tests as it sees fit, including the remote measurement of the INR1 licensee's or the Licensee's transmissions, without notifying the Licensee. Arrangements which the Licensee makes with third parties must enable compliance with these requirements. Ofcom reserves an equivalent right in respect of the INR1 licensee's equipment.

The Licensee shall nominate a person (or persons), or organisations(s) with a nominated contact(s), as responsible for maintenance and operation of the A/S1-2 transmission equipment.

The Licensee will be responsible for ensuring that its services do not, directly or indirectly, interfere with the INR1 service or any RDS service, whether or not on INR1, by provoking unintended responses within the receivers or otherwise. The technical specification and requirements relating to the Licence are designed to ensure that this will not happen, and Ofcom does not envisage the need to include further provisions to this effect in pursuit of its responsibility under section 119 of the 1990 Broadcasting Act. However, Ofcom reserves the right to include such provisions in the licence in accordance with the 1990 Act. Responsibility for the radiated characteristics of the signal remains with the INR1 licensee.

Available RDS capacity

The additional services is to be operated on the RDS sub-carrier conforming to IEC standard 62106:2000 Ed. 2.0 using one or more of only the following allowable features:

- TDC (Group 5A)
- Paging (RP) (Group 7A with part of Group 1A)
- TMC (Group 8A)
- IH (Group 6A only)
- ODA (Various allowable Groups: refer to specification)

The group repetition rate available to the Licensee will be, to the extent necessary:

- an average of 2.4 groups/sec, averaged over any one-minute period
- a minimum of 1 group in any second
- 4 groups/sec. for consecutive seconds in every five minute period in every hour;
- such parts of the overhead signalling capacity in the RDS bitstream, notably group types 3A, as are necessary for use of the above-referenced additional services groups.

No further capacity beyond this is to be made available to the Licensee.

The minimum deviation of the FM carrier due to the modulated RDS subcarrier shall be  $\pm 2.0$  kHz, and the maximum deviation shall be  $\pm 2.5$  kHz.