

AGREEMENT FOR THE SALE AND PURCHASE OF TELEPHONE KIOSK(S) TO A LOCAL AUTHORITY IN ENGLAND OR WALES.

This agreement is made this 19 day of April, 2017

Background

The Buyer wishes to buy the Goods from the Seller and the Seller has agreed to sell the Goods to the Buyer upon the terms and conditions set out in this agreement.

This agreement is for use only for the sale of kiosk types K6 and K8 and to a recognised local public body within England and Wales.

1 Definitions

In this agreement, unless the context requires otherwise:

'Buyer' means **Pleshey Parish Council**

'Conditions' means the terms and conditions of sale set out in this document.

'Decommissioning' means (i) the disconnection of the Goods from the Seller's telecommunications network and (ii) the removal of the payphone, ancillary equipment and wiring from within the kiosk. 'Decommission', 'Decommissioning' and 'Decommissioned' shall be construed accordingly in the appropriate tense.

'Goods' means the telephone kiosk or kiosks as more fully described in the schedule to this agreement, which the Buyer agrees to buy from the Seller but excluding any telephony and ancillary apparatus.

'IP Rights' means all intellectual property rights in any part of the world, including but not limited to patents, copyright, design rights, trade marks, database rights, registered design rights and community design rights and shall include pending applications for any intellectual property rights.

'Notice to Complete' means a notice in writing by the Seller to the Buyer stating that in the Seller's reasonable opinion the Goods have been satisfactorily Decommissioned and are ready for delivery to the Buyer.

'Ofcom' means the regulatory body whose duties are set out in the Communications Act 2003 and includes any replacement body or entity under equivalent or replacement legislation.

'Planning Acts' means any relevant planning legislation in force at the date of this agreement which shall for the avoidance of doubt include the Town and Country Planning Act 1980, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Town and Country Planning (General Permitted Development) Order 1995 and any statutory

replacement or modification thereof.

'Price' means the price for the Goods excluding any carriage, packing and insurance.

'Seller' means British Telecommunications plc (company registration number 1800000 whose registered office is at 81 Newgate Street, London EC1A 7AJ).

Universal Service Obligation means the obligations imposed upon BT by Ofcom in accordance with the EU Universal Services Directive.

2 Conditions applicable

- 2.1 These Conditions shall apply to this agreement to the exclusion of all other terms and conditions in previous documents and correspondence.
- 2.2 Any order for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these conditions.
- 2.3 Any variation to these conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3 Agreement, price and payment

- 3.1 The Seller shall sell to the Buyer the Goods and the Buyer shall purchase the Goods.
- 3.2 The Price shall be ONE POUND (£1.00) inclusive of VAT which shall be payable on the date of this agreement.
- 3.3 The Seller agrees that following the date of this agreement it shall Decommission the Goods.
- 3.4 The Seller shall be under no obligation to the Buyer to re-site, re-position, restore or repair the Goods. The Buyer acknowledges that it purchases the Goods in no better condition than described in the schedule hereto and by making payment is deemed to have accepted their condition.
- 3.5 For the avoidance of doubt the Seller is not selling the land beneath the Kiosk nor shall the Buyer acquire that land under this agreement.

4. Decommissioning, delivery and acceptance

- 4.1 The Seller shall serve the Notice to Complete on the Buyer on completion of the Decommissioning works in respect of the Goods
- 4.2 Delivery of the Goods shall be deemed to have taken place five working days after the day upon which the Seller sends the Notice to Complete to the Buyer. No further intimation is required.
- 4.3 The Buyer shall make all necessary arrangements to take delivery of the Goods following receipt of the Notice to Complete.
- 4.4 The Buyer shall be deemed to have accepted the Goods upon delivery.
- 4.5 After acceptance the Buyer shall not be entitled to reject the Goods due to their physical condition or due to any financial or statutory obligations (whether foreseen or not) imposed upon the Buyer as a result of this agreement or as a result of the Goods.
- 4.6 The Seller shall not be liable to the Buyer for late delivery of the Goods.

5 Post acceptance obligations

- 5.1 The Buyer shall own the Goods following acceptance and shall be responsible for all maintenance and repair of the Goods, which it shall do in accordance with:
 - 5.1.1 Any industry or statutory guidelines and regulations relevant to the Goods in circulation or in force from time to time.
 - 5.1.2 Any requirements, directions, rules or recommendations of Ofcom.

- 5.1.3 Any relevant planning legislation in force at the date of this agreement which shall for the avoidance of doubt include the Planning Acts and any statutory replacement or modification thereof.
- 5.1.4 Any planning consents relating to the Goods whose condition have not expired or in respect of which the granting local authority or its successor may still take enforcement steps or proceedings.
- 5.2 The Buyer acknowledges that the Goods may have been painted with paint containing lead and accepts the health and safety risks which may be associated with its removal or maintenance. The Buyer also acknowledges that leaden paint may require specific maintenance procedures.
- 5.3 The Buyer shall indemnify the Seller in respect of any loss or damage it suffers in respect of any act or omission on the part of the Buyer or persons or entities authorised by it under this sub-paragraphs 5.1 and 5.2.
- 5.4(i) Following payment, the Seller shall be under no obligation to the Buyer to maintain, repaint, repair or manage the Goods nor shall it be under any obligation to the Buyer to maintain or provide Call Box Services (as defined in the Universal Service Obligations) or telephony services from the Goods SAVE that where the Buyer has opted for the Seller to be responsible for the supply of electricity then the Seller shall supply that electricity (at the Seller's cost) to (but not beyond) the REC (regional electricity company) fusebox for the operation of an 8 watt lightbulb or similar. Where the Seller is responsible for the supply of electricity, then the Seller may discontinue to provide that supply (and payment) of electricity at any time by giving the Buyer notice in writing.
- 5.4(ii) The Buyer is not permitted to connect any equipment to the unmetered power supply without first obtaining the Seller's written agreement.
- 5.4(iii) If written permission is given by the Seller to the Buyer, in accordance with paragraph 5.4 (ii), to connect defibrillator equipment to the unmetered electricity supply, the equipment, must meet all appropriate safety standards as amended from time to time including, but not limited to, the requirements as set out at paragraph (a)-(d) below.
- The Defibrillator Cabinet must be:
- (a) Class 2;
 - (b) Compliant to BS7671-416/417 in its construction;
 - (c) Manufactured by a ISO 9001/2 certified manufacturer;
 - (d) Protected by an RCD
- 5.4(iv) The Seller does not activity monitor the electricity supply to the Goods. Responsibility for ensuring a continuous electricity supply required to power any equipment installed within the Goods remains with the Buyer at all times.
- 5.4(v) The Buyer shall remain, at all times, responsible for the monitoring, maintenance and repair of any equipment installed within the Goods.
- 5.4(vi) The Buyer indemnifies the Seller in respect of all damages or losses which the Seller may incur, or any third party claims received by the Seller as a result of any breach by the Buyer of its obligations as set out in this paragraph 5.
- 5.5 Following acceptance of the Goods the Buyer shall:

- 5.5.1 At all times display a sign in or on the Goods (clearly visible to anyone viewing or inspecting the Goods) that the Goods are the responsibility of the Buyer, do not contain a British Telecommunications payphone and are not connected to the Seller's electronic communications network.
- 5.5.2 Take reasonable steps to inform the local public in the region or city in which the goods are situated that the telephony machinery has been removed and that the Goods are now the responsibility of the Buyer.
- 5.5.3 Apply to the relevant authority or authorities for all necessary consents, licences, waivers, restrictions or determinations (if any) required for the Goods (including but not limited to consents granted under the Planning Acts and consents and licences under the Communications Act 2003 and any statutory replacement or modification thereof) and shall fully and without delay comply with any conditions or recommendations imposed by them made in respect of the Goods.
- 5.5.4 Covenant not to sell, lease or license the Goods to a competitor to the Seller nor to permit a competitor to install electronic communications apparatus (as defined in schedule 2 of the Telecommunications Act 1984 as amended by Schedule 3 of the Communications Act 2003) within the Goods or itself (as the Buyer) shall not install, provide or operate any form of electronic communications apparatus (as defined in schedule 2 of the Telecommunications Act 1984 as amended by Schedule 3 of the Communications Act 2003) within the Goods.
- 5.5.5 Release the Seller, insofar as it can do, from any obligation under the Town and Country Planning (Permitted Development) Order 1995 in respect of the Goods.
- 5.5.6 Notify the emergency services that the Goods are no longer owned or maintained by the Seller and are now the property and responsibility of the Buyer.
- 5.5.7 Indemnify the Seller in respect of any damages or losses which the Seller may incur as a result of any breach of the Buyer's obligations in this sub-paragraph 5.5 and in respect of any obligations imposed upon the Buyer under the Highways Act 1980 and the New Roads and Street Works Act 1991 in respect of the Goods.
- 5.6 The Buyer waives any rights it may have against the Seller in respect of the Goods under the Communications Act 2003.
- 5.7 The Seller reserves the right and the Buyer grants such right, at any time from the date of acceptance of the Goods by the Buyer, to enter into or onto the Goods and any neighbouring land of the Buyer (but only to the extent necessary) to undertake works or to procure the undertaking of works to disconnect or cap-off the electricity supply to the Goods described above in paragraph 5.4, at the cost of the Seller and making good any damage caused to the Goods and the Buyer's neighbouring land as aforesaid to the reasonable satisfaction of the Buyer.
- 5.8 Not connect any equipment to the electricity supply referred to in Clause 5.4 without the express written agreement of the Seller.

6 Warranties and liability

- 6.1 All warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 6.2 The Buyer acknowledges that the Seller is not in the business of selling the Goods and the

Buyer will assume full responsibility to ensure compliance with any English Heritage requirements from the date of transfer of the goods.

6.3 The Seller makes no representations to the Buyer as to the Goods' quality, state of repair, safety, performance and fitness for purpose nor as to any apparent or latent defects. The Buyer shall take the Goods subject to any such defects and dilapidations (if any).

6.4 The Buyer agrees to the Decommissioning and, insofar as it is able, relieves the Seller of its obligations under Ofcom's Universal Services Obligations in respect of the Goods. The Buyer agrees not to object to Ofcom or any other tier of local government to itself of the Decommissioning of the Goods.

6.5 The Seller may supply the Buyer with a kiosk maintenance manual or other documents. Any recommendations or guidance therein shall not form warranties nor obligations of any nature upon the Seller.

7 Title and risk

7.1 Title shall pass on delivery of the Goods.

7.2 Risk shall pass on delivery of the Goods.

8 Limitation of Liability

8.1 When the Buyer accepts the Goods then the Seller shall have no liability whatsoever to the Buyer in respect of those Goods.

8.2 The Seller shall not be liable to the Buyer for late delivery of the Goods.

8.3 Except in respect of death any personal injury resulting from a negligent act or omission on the part of the Seller or anyone authorised by it, the Seller's liability to the Buyer for tortious and contractual damages shall not exceed the Price. The Buyer shall at all times use its best endeavours to minimise and mitigate its losses.

8.4 The Seller shall not be liable to the Buyer for any economic loss suffered by the Buyer as a result of it entering into this agreement.

8.5 The Buyer acknowledges that it has taken or has considered taking legal advice from a solicitor or counsel (whether in-house or using external advisors) before entering into this agreement.

9 Intellectual property

No assignment or licensing of any IP Right is granted or made under this agreement.

10 General

10.1 This contract is subject to the law of England and Wales and the non-exclusive jurisdiction of the courts of England and Wales.

10.2 The invalidity or unenforceability of any provision in this agreement, for whatever reason, shall not prejudice or affect the validity or enforceability of its other provisions.

10.3 The headings of this agreement are for reference only. No delay, neglect, forbearance by either party in enforcing any provision in this agreement shall be deemed to be a waiver or compromise of any right or rights unless made in writing.

10.4 In relation to the Goods, this agreement constitutes the entire agreement between the parties.

10.5 A person who is not a party to this agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

10.6 The Seller may assign the benefit and burden of this agreement to a third party or to a group company (where group company has the meaning given to it in section 42 of Landlord and Tenant

Act 1954).

10.7 The Buyer may not assign the benefit and burden of this agreement other than to a statutory successor or to another tier of local government. In the case of the latter the Buyer shall notify the Seller of the assignment within 28 days of completion of the assignment.

10.8 The Buyer shall not, disclose the existence of the Agreement in any journal magazine or publication or any other publicly available media or otherwise use the Seller's name or logos (including any trade marks) in any of its advertising or publicity material without the seller's prior written consent, which may be withheld or given in the Seller's absolute discretion.

SCHEDULE

THE GOODS – Specification and Description

01245237287

THE STREET,

PLESHEY,

CHELMSFORD,

CM3 1HQ

Signed by [*P. ARMOUR*
of **BRITISH TELECOMMUNICATIONS plc**

] for and on behalf *B.T.*.....

Signature


P. Armour.....

Position (director/company
secretary/manager/attorney/agent).

*If signing as agent or under a power of
attorney, please attach a copy of the
document giving authority.*

Signed by [WADSHEAD
-GRANT] for and on behalf of

PLESHEY
PARISH
COUNCIL.

.....
Signature 
.....

Position (director/company
secretary/manager/attorney/agent).
CLERK of PARISH Council.

*If signing as agent or under a power of
attorney, please attach a copy of the
document giving authority.*

07.03.16