

Update on Memorial Clock situated at All Saints Church as a Parish Asset

At its February meeting the parish council resolved to accept the Memorial Clock as a parish asset, based on anticipated associated costs which will fall upon it arising from this in the next and future years (as set out in report [WPC.23.02.08](#)) and asked the clerk to instruct Jacqueline Law, consultant solicitor from Excello Law to draw up an agreement between the parish council and the parochial church council to effect the transfer (**Min 23.02.13** refers).

The id documentation now having been accepted, the instructed specialist solicitor, Jacqueline Cooper, has now provided a draft agreement for the parish council to consider (**Appendix A** refers).

The agreement sets out the terms of the assignment by the parochial church council of All Saints Church of the Memorial Clock to the parish council and includes:

- The sale (£1)
- The existing condition of the clock
- Delivery
- Title and risk
- Buyer remedies
- Manufacturers warranties
- Indemnity and
- Termination of the agreement

If the parish council is satisfied with the terms of the agreement, then, on instruction, the clerk will forward to the Parochial Church Council for review prior to the agreement being entered into.

Recommendation:

The parish council approve the draft agreement supplied by Excello Law for assignment of the Memorial Clock to the parish council at a cost of £1 including VAT and delegate authority to the clerk to sign the agreement (subject to Excello Law advising that there have been no substantive changes following review and questions from the Parochial Church Council) on behalf of the parish council at a future date agreeable to both parties.

Reports

[WPC.23.02.08](#)

[WPC.EC.23.02.05](#)

[WPC.22.11.10](#)

[WPC.EC.22.11.02](#)

[WPC.22.02.08](#)

[WPC.21.11.09](#)

Minutes

23.02.13

23.02.11

22.11.19

22.11.11

22.02.13

21.11.17

DATED

ASSIGNMENT OF MEMORIAL CLOCK

between

WICKHAMBROOK PAROCHIAL CHURCH COUNCIL Seller

and

WICKHAMBROOK PARISH COUNCIL

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SCHEDULE

Schedule 1 Memorial Clock, price~~1044~~
Schedule 2 Records~~1142~~

This agreement is dated 2023

Parties

- (1) **WICKHAMBROOK PAROCHIAL CHURCH COUNCIL** care of Church Road, Wickhambrook, Suffolk, CB8 8XH being part of the Bansfield Benefice of the Diocese of St Edmundsbury and Ipswich (**Seller**)
- (2) **WICKHAMBROOK PARISH COUNCIL** care of Parish Clerk, 3 Farriers Close, Great Barton, Bury St.Edmunds , Suffolk, IP31 2FP (**Buyer**)

Agreed terms

1. Interpretation

1.1 Definitions

Business Day: a day other than a Saturday, Sunday or public holiday, in England when banks in London are open for business.

Delivery Date: the date of this agreement.

Diocese: Diocese of St Edmundsbury and Ipswich

Memorial Clock the clock set out in ~~Schedule 1~~ ~~Schedule 4~~.

Payment Date: the date of this agreement.

Price: the price for the Clock set out in ~~Schedule 1~~ ~~Schedule 4~~.

Records: all documents of title and certificates for the lawful operation and use of, and all service documents relating to, the Memorial Clock set out in ~~Schedule 1~~ ~~Schedule 4~~

VAT: value added tax [or any equivalent tax] chargeable in the UK [or elsewhere].

1.2 Interpretation:

- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (b) Any phrase introduced by the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** excludes faxes and emails.

2. Recitals

- 2.1 The history of the Memorial Clock is as described in Annex 1- "History of Clock and Funding "
- 2.2 The Memorial Clock is housed in the Clock Tower at Wickhambrook All Saints Church , Wickhambrook which is within the Diocese which is under the management of the Seller
- 2.3 The Buyer has in the past contributed to the maintenance and repair costs of the Memorial Clock
- 2.4 At the date of this agreement the Memorial Clock is not functional and needs further work by a specialist horologist.
- 2.5 The Buyer has resolved to fund the cost of such work subject to the assignment of the Memorial Clock to the ownership of the Buyer
- 2.6 The Seller has resolved to assign the Memorial Clock to the Buyer and has obtained the necessary consent from the Diocese as is required to enable it to do so.
- 2.7 The Buyer has resolved to accept assignment of the Memorial Clock and to use its reasonable endeavours to maintain it from the date of this agreement on the terms of this agreement.

3. Sale of the Clock

- 3.1 In consideration of payment by the Buyer of the Purchase Price and the covenants and undertakings of the parties to this agreement the Seller sells and the Buyer buys the Memorial Clock free of all liens charges and encumbrances.
- 3.2 The Seller warrants to the Buyer that it has sufficient title and all necessary consents to enable it to enter into and complete this agreement.

4. The Memorial Clock 's condition

- 4.1 The Seller and the Buyer agree that at the date of this agreement the Memorial Clock is not functioning and that a quote has been obtained from specialist horologists, Haward Horological Limited detailing the works needed to restore the Clock to working order a copy of which is annexed at Annex 2 confirms.
- 4.2 The Buyer may inspect and test the Memorial Clock by itself and/or with the use of specialist horologists at any time before delivery.

4.3 If following inspection or testing the Buyer considers that the Memorial Clock has suffered additional damage, the Buyer shall inform the Seller and the Seller shall immediately undertake an inspection of the Clock and take the necessary remedial action.

4.4 The Buyer may conduct further inspections and tests after the Seller has carried out any remedial actions.

4.5 Subject to the terms of this agreement the Seller shall remain fully responsible for the Memorial Clock during any inspection or testing of the Clock prior to completion of this agreement.

5. Price and payment

5.1 The Buyer shall pay the Price on the date of this agreement. Payment shall be made by handing one pound sterling to [] a member of the Seller organisation.

5.2 The Price is inclusive of VAT (if any is due)

5.3 No extra amounts may be charged for the Memorial Clock unless agreed in writing and signed by the Buyer.

5.4 The Seller shall issue the Buyer with an invoice for the Price inclusive of any VAT payable on signature of this agreement. The Seller shall ensure that the invoice includes the date of the sale, the invoice number, the Buyer's order number, the Seller's VAT registration number (if applicable) , and any supporting documentation that the Buyer may reasonably require.

6. Location and Delivery

6.1 The Memorial Clock is housed in the Clock Tower at Wickhambrook All Saints Church managed by the Seller.

6.2 The Memorial Clock will remain in the Clock Tower after completion of this agreement.

6.3 On and after completion the Seller will procure that the Buyer its licensees, servants agents and assignees will have safe and unhindered access to the Clock Tower over Wickhambrook All Saints Church and its appurtenant land on foot and with all relevant equipment required for the maintenance and management of the Memorial Clock during Business at reasonable times of the day and outside of at .

6.4 The Seller shall deliver the Records to the Buyer at 3 Farriers Close as above on or before the date of this agreement during the Buyer's usual business hours on a Business Day or as otherwise agreed with the Seller and confirmed in writing.

7. Title and risk

- 7.1 Title in the Memorial Clock shall pass to the Buyer on completion of this agreement.
- 7.2 Risk of damage to or loss of the Memorial Clock shall pass to the Buyer on completion of delivery subject to compliance by the Seller with its obligation in this agreement.

8. Seller's covenants and undertakings

- 8.1 On and after completion the Seller will procure that the Buyer its licensees, servants agents and assignees will have safe and unhindered access to the Clock Tower over Wickhambrook All Saints Church and its appurtenant land on foot and with all relevant equipment reasonably required for the maintenance and management of the Memorial Clock during Business Days during normal business hours and at other times in the case of emergency.
- 8.2 The Seller will make reasonable practical arrangements with the Buyer to enable the Buyer to be able to enjoy the rights granted by Clause 8.1
- 8.3 The Seller will take all reasonable steps to maintain the Clock Tower in such condition as required to enable it to continue to house the Memorial Clock in satisfactory condition and so as to avoid deterioration of the condition of the Memorial Clock linked to the adverse conditions of the Clock Tower.
- 8.4 The Seller will take all reasonable steps to maintain access routes to the Clock Tower over Wickhambrook All Saints Church in such state and condition for use by the Buyer in accordance with Clause 6.3 in such condition as required to enable it to continue to house the Memorial Clock in satisfactory condition and so as to avoid deterioration of the condition of the Memorial Clock that could reasonably be expected to result from it being housed in the Clock Tower should that be allowed to fall into disrepair.
- 8.5 The Seller will take all reasonable steps to alert the Buyer to concerns about the state and condition of the Clock Tower or access routes
- 8.6 With effect from the date of completion the Seller will not permit or suffer any person (other than as authorised by the Buyer) or purport to give consent to any person to access the room in which the Memorial Clock is housed in the Clock Tower save as may be required for essential works to the Clock Tower, in respect of which the Seller shall give advance notice to the Buyer to enable the Buyer's representative to be present during such works;
- 8.7 The Seller will maintain public liability insurance [*in a minimum sum of £ to be reviewed annually*] to from the date of this agreement throughout the period in which the Memorial Clock is in the Clock Tower and in the ownership and care of the Buyer

Commented [HW1]: Agreed amount? £10,000,000

- 8.8 The Seller will produce a copy of its public liability insurance, policy schedule and premium receipt to the Buyer at least once in each year within one month of renewal of its public liability insurance
- 8.9 The Seller will display a notice in a prominent place in the Clock Tower and on its social media accounts and website and in its own records to the effect that the Memorial Clock is in the ownership of the Buyer.
- 8.10 The Seller warrants that it has obtained all necessary consents and authorisations from the Diocese and any other party who is required to give consent to the terms of this agreement in general and the terms of Clause 8.1 to 8.9 in particular.

9. Buyer's covenants

- 9.1 From the date of completion the Buyer will use reasonable endeavours to maintain the Memorial Clock subject to compliance by the Seller with its obligations in Clause 6
- 9.2 From the date of completion the Buyer will insure the Memorial Clock for the replacement value of a clock providing a similar service to the Parish of Wickhambrook
- 9.3 From the date of completion the Buyer will comply with all reasonable regulations provided to it by the Seller to ensure the safety of visitors to the Memorial Clock in respect of access to the Clock-Tower and will take such reasonable steps as are possible to ensure its licensees servants and agents and assignees are made aware of such regulations as communicated to it by the Seller in timely manner

10. Buyer remedies

- 10.1 If the Seller does not comply with the undertakings set out in clause 3.2 then, without limiting any of its other rights or remedies, and whether or not it has accepted the Equipment, the Buyer may exercise any one or more of the following remedies:
- (a) to terminate the agreement;
 - (b) to reject the Memorial Clock and return it to the Seller at the Seller's own risk and expense;
 - (c) to require the Seller to repair or replace the rejected Memorial Clock, or to provide a full refund of the price of the rejected Memorial Clock (if paid);
 - (d) to recover from the Seller any costs incurred by the Buyer in obtaining substitute equipment from a third party; and

- (e) to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out its obligations under the agreement.

11. Manufacturer's warranties

- 11.1 To the extent that the benefit of any warranties made by the manufacturer or previous seller of the Clock to the Seller can be assigned to the Buyer, the Seller shall, if requested by the Buyer, assign them to the Buyer.
- 11.2 Until such assignment, the Seller will co-operate with the Buyer in any reasonable arrangements to provide the Buyer with the benefit of such warranties or like condition including enforcement at the cost of and for the benefit of the Buyer.

12. Indemnity

- 12.1 The Seller shall indemnify the Buyer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Buyer as a result of or in connection with any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Equipment, to the extent that the claim is attributable to the acts or omissions of the Seller, its employees, agents or subcontractors.
- 12.2 This clause 12 shall survive termination of this agreement.

13. Termination

- 13.1 Without limiting its other rights or remedies, the Buyer may terminate the agreement with immediate effect by giving written notice to the Seller if:
 - (a) the Seller commits a material breach of any term of the agreement and (if such a breach is remediable) fails to remedy that breach within 15 Business Days ~~days~~ of that party being notified in writing to do so;
 - (b) the Seller takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];

- (c) [the Seller suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Seller's financial position deteriorates to such an extent that in the Buyer's opinion the Seller's capability to adequately fulfil its obligations under the agreement has been placed in jeopardy.

13.2 Termination of the agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination.

13.3 Any provision of the agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

14. General

14.1 Entire agreement. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.2 Variation. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.3 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

14.4 Severance. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is deemed deleted under clause ~~14.414.5~~ the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.5 Further assurance. Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

14.6 Notices.

- (a) Any notice [or other communication] given to a party under or in connection with this agreement shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case)
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice given under this agreement is not valid if sent by facsimile transmission of email.]

14.7 Third party rights. No one other than a party to this agreement shall have any right to enforce any of its terms.

14.8 Governing law. The agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

14.9 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Clock, price and delivery

1. Memorial Clock

The Memorial Clock described in Annex 1

2. Records

[DETAILS OF RECORDS [AND ANY RELEVANT RELATED ITEMS]]

3. Price

One pound sterling (£1.00) inclusive of any VAT chargeable

4. Payment Date

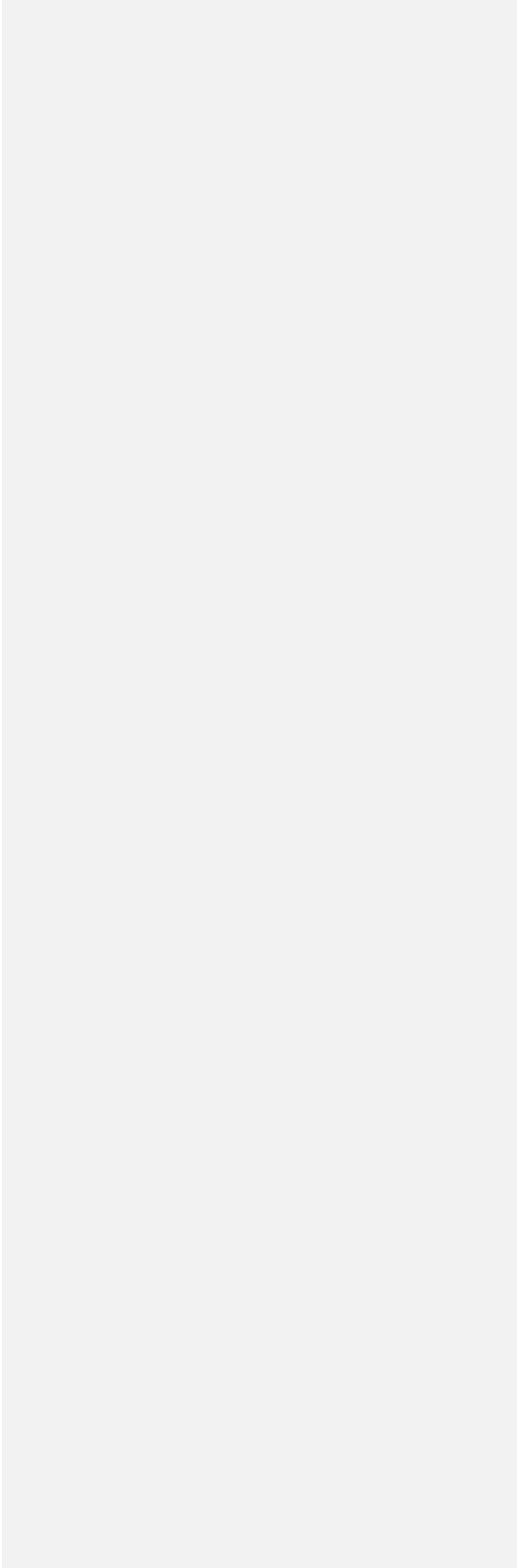
The date of this agreement

5. Delivery Date

The date of completion of this agreement.

Schedule 2 [Specification]

[INSERT SPECIFICATION]



Executed as a Deed by

Wickhambrook Parochial
Church Council

Acting by:

And

.....

In the presence of:

Executed as a Deed by

Wickhambrook Parish Council

Director

Acting by:

.....

And...../

In the presence of:
