

**Terms of Appointment for
estate agency services
Disposal**

**Sole Agent with sole
selling rights**



Client:	The Trustees of Alexander Chapel Associates Small Self Administered Pension Scheme		
Property Address:	6 Berkeley Square, Clifton, Bristol BS8 1HG		
Client Contact address: (if different from above)			
Telephone number:	0117 985 9985		
Our ref: Ben O'Connor	Your ref:	Stuart Travis / Mark Doherty / Mark Church / Paul Hyland	

Definitions

GVA ("GVA") is the trading name of GVA Grimley Limited is registered in England and Wales under company number 6382509 with its registered office at 3 Brindleyplace, Birmingham B1 2JB and trading as GVA ("GVA").

Charges means: Fee plus marketing expenditure, plus disbursements, at rates indicated by GVA subject to the addition of Value Added Tax payable by the Client on receipt of an invoice from GVA.

Fee means: the Fee payable by the Client in consideration of GVA carrying out the Services.

Property means: the location, site or building(s) which is the subject of the Services.

Report means: any document, report, drawing, specification, calculation, form or table which is written, produced or created by GVA in the course of carrying out the Services.

Services means: the Services provided by GVA in carrying out the Client's instructions.

1 Introduction

- 1.1** GVA is appointed as sole agent with sole selling rights on the basis set out below.

2 Description

- 2.1** These Terms of Appointment are to be read in conjunction with the accompanying letter dated 2 February 2011. Collectively they will form the contract between the Client and GVA ("this Agreement").
- 2.2** GVA shall provide the Services described in the Marketing Report or Letter of Appointment or as an Appendix to these Terms of Appointment ("Services") with all reasonable skill and care.

- 2.3** Acceptance of our commencement of the provision of Services to the Client shall be deemed to be acceptance of this Agreement.

3 Basis of Appointment

- 3.1** The Client hereby appoints GVA to act solely with sole selling rights as defined below, on the Client's behalf to market its property and to seek to arrange a disposal, of the property, including any individual unit comprising part of the property (the Services) subject to a formal contract and subject to this Agreement.

4 Sole Selling Rights

- 4.1** The Client will be liable to pay the Fee to GVA in addition to any other costs or charges agreed in each of the following circumstances:
- 4.2** If unconditional contracts for the sale/letting/ subletting/ assignment/surrender of the property (or conditional contracts that subsequently become unconditional) are exchanged in the period during which GVA has sole selling rights, even if the purchaser/tenant/assignee/landlord was not found by GVA but by another agent or by any other person, including the Client;
- 4.3** If unconditional contracts for the sale/letting/subletting/assignment/surrender of the property (or conditional contracts that subsequently become unconditional) are exchanged after the expiry of the period during which GVA has sole selling rights but to a purchaser/tenant/subtenant /assignee/landlord who was introduced to the Client during that period by GVA or another agent or by any other person, including by way of the Client's own actions, or with whom GVA had negotiations about the property during that period.

5 Client's Obligations

- 5.1** The Client shall notify GVA in writing of any instruction to vary the Service or these Terms of Appointment.

6 Sub Agents

- 6.1** Where appropriate GVA reserves, subject to the Client's consent, the right to instruct sub agents on behalf of the Client. This will involve the Client in no extra costs unless separately agreed.

7 Payment

- 7.1** Invoices will be rendered to the individual or organisation named in these Terms of Appointment. The Client undertakes to pay the Charges to GVA for the performance of the Services, including marketing expenditure, and disbursements as detailed in Appendices 1, 2 and 3 and VAT thereon (the Charges) in such instalments as are set out below or upon completion of the disposal. Payment shall be made within 14 days of the invoice date.
- 7.2** In the event of a conditional contract, GVA shall invoice the Client for 50% of their Charges upon exchange of conditional contracts and for the balance when the conditions are satisfied.
- 7.3** In the event of an agreement to lease or agreement to sell prior to completion of a development, GVA shall invoice the Client for 50% of its Charges upon exchange of an agreement to lease or agreement to sell and the balance upon practical completion of the development itself unless specifically agreed otherwise in Appendix 1.
- 7.4** The Fee shall be subject to the addition of Value Added Tax applicable at the time of invoice.

- 7.5** Where a purchaser exchanges contracts but fails to complete the purchase, GVA shall be paid its Charges within seven days of the contracted completion date.
- 7.6** If a prospective purchaser, having agreed terms acceptable to the Client and who has signed the contract and offered to exchange the contract unconditionally, is prevented from so doing by the Client withdrawing the sale/letting/subletting/ assignment/surrender of the property for any matter other than Act of God the Client will then be liable to pay 50% of the Fee otherwise due on completion if contracts had exchanged plus all authorised marketing expenditure, disbursements and VAT
- 7.7** GVA reserves the right to charge interest and debt recovery costs in respect of any amounts that remain unpaid after the date for payment. Interest will be calculated in accordance with the "Late Payment of Commercial Debts Regulations 2002".

8 Marketing Expenses

- 8.1** Marketing expenses incurred on behalf of the Client are as set out at Appendix 2. Marketing expenses are payable regardless of whether or not a sale/letting/subletting/assignment/surrender of the property is transacted. Marketing expenses become payable within 14 days of invoicing the Client.

9 Disbursements

- 9.1** In addition to the Fee and authorised marketing expenditure referred to above, the Client will be liable for disbursements incurred by GVA on its behalf in carrying out the Client's instructions at Appendix 3. Disbursements are payable regardless of whether or not a sale/letting/subletting/ assignment/surrender of the property is transacted. Disbursements become payable within 14 days of invoicing the Client.

10 Limitation of Liability

- 10.1** The Liability of GVA for its own acts and omissions whether in contract , in tort (including negligence) or breach of statutory duty shall be limited in each of the following respects:-
- 10.2** GVA shall not be liable for more than GVA's just and equitable proportionate share of the loss, injury or damage assuming that all other professionals / consultants / specialists (either directly appointed by the Client or appointed by GVA) who are responsible are equally obliged to exercise reasonable professional skill and care and they have been appointed on terms no less onerous and shall be deemed to have paid to the Client their just and equitable proportionate share of the liability.
- 10.3** Subject to paragraph 10.6, neither party shall be liable to the other in respect of any claim for any pure economic or similar consequential loss, howsoever caused arising out of or in connection with these Terms of Appointment irrespective of whether such loss may be found to be an ultimate consequence of negligence of the other party and/or breach of contract.
- 10.4** Subject to paragraph 10.6, the maximum liability of GVA shall be to £1,000,000 for asbestos related claims and £2,000,000 in total for all claims arising in connection with the Services.
- 10.5** If these limits are not acceptable please contact GVA to discuss agreeing higher figures; any variation agreed will be recorded in writing.
- 10.6** Nothing in these Terms of Appointment shall exclude or restrict GVA's liability for death or personal injury resulting from GVA's negligence or for fraud.
- 10.7** Save as provided under 15.1 below no term within this Agreement shall be enforceable by virtue of Section 1 of the Contracts (Rights of Third Parties) Act 1999.

- 10.8** Marketing advice including quoting prices, quoting rents, quoting yields or the like and advice given during negotiations in connection with the Service is not a formal valuation and is exempt from the current RICS Valuation Standards and as such cannot be relied upon as a valuation.

11 Suspension and Termination

- 11.1** Either the Client or GVA may terminate the GVA appointment by giving 28 days notice in writing to the other party or immediately in the event of either party having a receiver, administrative receiver or administrator appointed over all or part of its assets or undertaking or if either party passes a resolution to wind up or has a liquidator appointed or in the case of an individual is adjudged bankrupt.
- 11.2** If the Client materially breaches its obligations under this Agreement, GVA may serve on the Client a notice specifying the breach and requiring its remedy within 28 days, and if the Client thereafter fails to remedy that breach within that period, GVA may terminate this Agreement by giving written notice to the Client.
- 11.3** In the event of termination of instructions for whatever reason, the Client shall pay all Charges reasonably due to GVA on receipt of invoice.

12 Conflicts

- 12.1** If the Client is aware or becomes aware of a possible or actual conflict of interest this shall be notified immediately to GVA. Where a potential or actual conflict of interest arises then GVA shall take account of the legal constraints, professional regulations and the Client's and other client's interests to determine whether we should continue to act for both parties, for one party or for neither. In the event of such a conflict arising GVA shall in its discretion be entitled to terminate these Terms of Appointment with immediate effect by notice in writing to the Client.
- 12.2** Notwithstanding termination, GVA shall remain entitled to its Charges where any eventual sale/letting/subletting/ assignment/surrender of the property results from previous activities or introductions during the period of our agency or any period of notice.

13 Complaints

- 13.1** In the event that the Client has a complaint, he shall be entitled to have access to the complaints handling procedure maintained by GVA, details of which are available on request from the Company Secretary.

14 Confidentiality

- 14.1** The Services provided to the Client will be treated by GVA in confidence. GVA will take reasonable steps to keep such matters confidential as may be required by the Client in writing save for such information which:-
- 14.2** is now or hereafter becomes available in the public domain other than through the fault of GVA or any of its employees, directors, consultants, sub contractors or agents;
- 14.3** is already or becomes known to GVA or any of its employees, directors, consultants, sub contractors or agents at the time of its disclosure;
- 14.4** is required by law by any Court of competent jurisdiction, or by a governmental or regulatory authority, or where there is a legal or regulatory duty or requirement to disclose;
- or it is agreed that it may be released.

15 Notice

- 15.1** Any notice to be given under these Terms of Appointment shall be in writing and delivered by hand or sent by recorded delivery post to the party at the address showing in these Terms of Appointment or to such an address as the other party may have specified from time to time by written notice to the other.

16 Unoccupied Premises

- 16.1** Unless formally instructed to the contrary with appropriate remuneration, GVA accepts no liability or responsibility for the maintenance or repair of, or for any damage to, the property at any time. If the property is vacant when adverse weather conditions are likely, frost damage may occur to water and heating systems and sanitary appliances. The Client is strongly recommended to take all necessary action to protect their property from such risks and to ensure that they have adequate insurance cover.

17 Liability of Employees

- 17.1** The duties and responsibilities owed to the Client are solely and exclusively those of GVA. No employee, director, consultant, sub contractor or agent of GVA shall owe to the Client any personal duty of care or be liable to the Client for any loss or damage howsoever arising as a consequence of the acts or omissions of such employee, director, consultant, sub contractor or agent (including negligent acts or omissions) save and to the extent that such loss or damage is caused by the fraud, dishonesty, wilful misconduct or unauthorised conduct on the part of such employee, director, consultant, sub contractor or agent. Whilst the employees of GVA may rely on this clause these Terms of Appointment may be varied without their consent.
- 17.2** The Client will therefore not bring any claim personally against any individual employee, director, consultant, sub contractor or agent, of GVA other than in respect of those liabilities caused by fraud, dishonesty, wilful misconduct or unauthorised conduct on part of such employee, director, consultant, sub contractor or agent.
- 17.3** This term is intended to be enforceable by and for the benefit of the employees of GVA in accordance with RICS requirements.

18 Law

- 18.1** English law shall apply to this agreement and if there is any dispute, the English Courts will have exclusive jurisdiction.
- 18.2** Alternatively, where this contract is instructed by a GVA Scottish office then Scottish law shall apply to this agreement and if there is any dispute, the Scottish courts will have exclusive jurisdiction.

19 Sales Particulars

- 19.1** The Property Misdescriptions Act 1991 makes it a criminal offence to give false or misleading information about a property and matters relating to its disposal. Draft particulars will be sent to the Client for approval and Client's assistance is essential to ensure that any information we provide is factually accurate in every respect. If the Client is in any doubt about any information relating to title, land charges, covenants, planning or other legal matters, the Client should tell GVA.

20 Personal Interest

- 20.1** Under the Estate Agents Act 1979, GVA is required to disclose to prospective purchasers any family relationship or business association between the vendor and any employee or director in GVA.

- 20.2** Where GVA is aware of such a declarable interest, the relevant disclosure will be made in all sales/letting and marketing particulars. If the Client becomes aware of any such relationship, GVA must be notified as soon as possible with full details.

21 Services to Prospective Purchasers

- 21.1** Subject to there being no conflict of interest, GVA may offer a range of Services to prospective purchasers and tenants, subtenants, assignees and landlords and similarly, the Services may be offered to them by another organisation in circumstances where GVA may financially benefit.

22 Assignment

- 22.1** Neither party may assign any of their respective rights or obligations under the Terms of Appointment to any third party without the prior written consent of the other party.

23 Joint and Several Liability of Client

- 23.1** If at any time the Client shall consist of more than one person, the obligations on the Client under this Agreement shall be enforceable against each of them on a joint and several basis.

24 Entire Agreement

- 24.1** These Terms of Appointment together with the Marketing Report or Letter of Appointment contain the whole Agreement between the Client and GVA, supersede all prior representations, proposals, agreements or undertakings (whether written or oral).
- 24.2** From time to time it may be necessary to amend or replace these Terms of Appointment with new terms. Where this is the case, GVA will notify the Client of the changes and unless the Client notifies GVA within 7 days after such notification, the amendments or new terms will come into effect at the end of the 7 day period.
- 24.3** GVA reserves the right to amend this Agreement including but not limited to the Services described as a consequence of any variation of the Services.
- 24.4** If there is an inconsistency or contradiction between the Marketing Report or Letter of Appointment and these Terms of Appointment the provisions of the Marketing Report or Letter of Appointment will prevail.

25 Reliance and Instructions

- 25.1** GVA shall act in accordance with and shall be entitled to rely upon instructions which are received (or in the reasonable opinion of GVA appear to have been received) from a person authorised to give instructions on behalf of the Client and GVA shall bear no liability in respect of anything done or suffered to be done by it in good faith and in accordance with such instructions.
- 25.2** The Client undertakes to promptly (i) provide free of charge to GVA any information that is reasonably necessary for GVA to perform the Services; (ii) notify GVA of any changes relating to this information; and (iii) ensure that its decisions, instructions, consents or approvals in relation to all matters properly referred to it shall be given in such reasonable time so as not to delay or disrupt the performance of the Services by GVA.

26 Force Majeure Events

- 26.1** GVA shall be relieved from any and all liability under or in connection with these Terms of Appointment to the extent that such liability arises from any failure to perform any of its obligations under or in connection with the Terms of Appointment and such failure has been caused or contributed to by any event or circumstance or cause beyond the reasonable control of GVA.

27 Data Protection

- 27.1** As a result of GVA's relationship with you, GVA will need to hold and process personal data about individuals within the Client's business (such as contact details of the Client and for related purposes such as updating Client records, crime prevention, legal and regulatory compliance) and may need to disclose this information to appropriate persons. In providing any personal data to GVA, you confirm that you have informed the individuals concerned and obtained any necessary consents to the transfer to GVA and for GVA's use of data for these purposes.
- 27.2** GVA will process that information only in connection with providing the Services and (unless you instruct us to the contrary at any time) for the purpose of contacting the Client about other Services GVA may offer.
- 27.3** Should you not wish to receive mail from GVA relating to our Services please advise the Agent responsible for this instruction.

28 Money Laundering Regulations

- 28.1** In order to comply with the current EU Regulations on Money Laundering (MLR) you accept that GVA may research (possibly using third party agencies) and hold information on individuals or companies who contract with GVA. This may also include information on their officers, Directors, principal shareholders and any beneficiaries of the Service. Alternatively the client will be required to provide documentary evidence. The information will not be disclosed to any other person, except for those duly authorised to regulate or conduct enquiries under Money Laundering Regulations.

Signed for and on behalf of GVA GRIMLEY LIMITED:

Ben O'Connor
Associate

(Name)



(Signature)

Date: 4 May 2011

For and on behalf of the Client:

.....(Name)(Signature)

Title:..... Date:

Appendix 1

The Fee

The Fee is payable by you to us as follows:

- On a sale 1 percent of the sale price.
- On a letting/subletting 10 percent of the first full year's rent payable or in the event of a stepped or rising rental 10 percent of the average annual rental calculated until the next rent review whichever is the higher.

Notes:

- Rent free periods, reverse premiums and other inducements shall be ignored for the purposes of calculating Fee as above.
- Occupation for a term of 12 months or more constitutes a letting/subletting for the purpose of calculating the Fee above.

Appendix 2

Marketing Expenditure

In addition to any Fee, the Client will be liable to pay to GVA in full the charges (plus VAT) for any agreed marketing expenditure to be incurred on your behalf. The estimated marketing budget is £1,200.

The estimated marketing budget is £1,200.

Itemised costs are as follows:

1. Brochure	£250
2. Agency Boards	£200
3. Mailshot	£250
4. Energy Performance Certificate	£500

Notes:

The total budget estimate will not be exceeded without the Client's prior written authority except due to increased rates or charges levied upon GVA by the media or its suppliers during the campaign.

Where appropriate, and by agreement with the Client, GVA shall arrange for its suppliers to invoice the Client directly in respect of agreed marketing expenditure. In this event, any advance payment shall be reduced accordingly.

Appendix 3

Disbursements

These costs are recharged to the Client as follows:-

Travel Expenditure by Car	£0.55 per mile (outside Bristol)
Travel Expenditure by Public Transport	at cost
Colour photocopying	at cost
Black & White Photocopying	at cost
Messenger Deliveries	at cost
Postage	at cost
Other Costs	at cost

The reproduction of Ordnance Survey, A-Z or other maps will be charged in accordance with the Copyright Licence arrangements dictated by the respective publishers.