

# Dashboard Terms (2022 edition)

These Dashboard Terms between BW and the School apply to the School's (and its Authorised User's) access to and use of Dashboard and the Benchmark Data. The School acknowledges and agrees that by accepting these Dashboard Terms the School represents that it has authority to enter into these Dashboard Terms and that it agrees to be bound by the terms set out herein. In consideration of BW making Dashboard and the Benchmark Data available to the School (and its Authorised Users), the School agree to be bound by and comply with these Dashboard Terms.

## 1. Definitions and interpretation

### 1.1. In these Dashboard Terms:

- 1.1.1. **Affiliates:** means, in relation to a party, that party's subsidiaries and holding companies and any subsidiary of any such holding company and any limited liability partnership of which that party is a member, as the same may vary from time to time;
- 1.1.2. **Authorised Users:** those employees and independent contractors of the School who are authorised by the School, in accordance with these Dashboard Terms, to access and use Dashboard and the Benchmark Data;
- 1.1.3. **Benchmark Data:** means the benchmark data and comparators derived and/or collated from the Survey Responses, as made available by BW on Dashboard, from time to time;
- 1.1.4. **Business Day** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.1.5. **Business Hours:** means the hours of 9.00 a.m. to 5.00 p.m. on each Business Day;
- 1.1.6. **BW:** means Barnett Waddingham LLP;
- 1.1.7. **Commencement Date:** means the date on which the School accepts these Dashboard Terms;
- 1.1.8. **Confidential Information:** means:
  - (a) in respect of the School, any School Data of a confidential nature; and
  - (b) in respect of BW, all information of a confidential nature (whether in oral, written or electronic form) including information relating to BW's (or its Affiliates') business, technology, know-how, finances, commercial interests, opportunities, initiative and/or, strategies; and BW's (or its Affiliates') Intellectual Property Rights;
- 1.1.9. **Dashboard:** the data analytics platform made available by BW known as "Data Navigator for Schools" (as may be updated from time to time) in any of its versions:
  - (a) **Core Dashboard** is the version of the Dashboard that is free for participating schools and gives access to comparing the school's own data with benchmark data across several dimensions and with most filters for selecting the benchmark group

- (b) **Enhanced dashboard** is a paid-for upgrade to the Core Dashboard. Upgradable features are marked in the tool with a golden star. Upgradeable features include the forecasting tools and a few filters.
  - (c) **Lite Dashboard** is a version of the Core Dashboard for schools that did not participate in the survey. This product shows only the Benchmark Data, not any individual school, and many of the filters are non-functional since there is no own school for comparison.
- 1.1.10. **Dashboard Terms:** means these terms and conditions;
- 1.1.11. **Data Protection Law:** means all legislation relating to privacy or data protection in the UK, including the Data Protection Act 2018, the UK General Data Protection Regulation (UK GDPR) and the Privacy and Electronic Communications Regulations 2003;
- 1.1.12. **Feedback:** means any feedback and/or suggestions for improvements or changes relating to Dashboard or Survey provided by the School or any Authorised User (whether via Dashboard, survey, email, phone, interview or otherwise);
- 1.1.13. **Information Security Standards:** means BW's information security standards which shall meet or exceed appropriate industry standards which could reasonably and ordinarily be expected to be maintained by a provider of a product the same or substantially similar to Dashboard;
- 1.1.14. **Intellectual Property Rights:** means all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights, domain names and all similar rights and, in each case: whether registered or not; including any applications to protect or register such rights; including all renewals and extensions of such rights or applications; whether vested, contingent or future; and wherever existing;
- 1.1.15. **ISBA:** means the Independent Schools' Bursars Association incorporated and registered in England and Wales with company number **06410037** and **registered charity number 1121757** and whose registered office is at 5<sup>th</sup> Floor, 167-169 Great Portland Street, London, W1W 5PF;
- 1.1.16. **Participating Schools** means Schools which participated in the particular edition of the Survey;
- 1.1.17. **Privacy Policy:** means BW's privacy policy available at: [privacy-policy.pdf \(bwlip.co.uk\)](https://www.bwlip.co.uk/privacy-policy.pdf);
- 1.1.18. **Purpose:** means the School's own internal business purposes only;
- 1.1.19. **School:** means the school on whose behalf the Authorised User is entering into these Dashboard Terms;
- 1.1.20. **School Data:** the data (excluding any personal data and any Feedback) that is provided to BW or uploaded to any part of Dashboard or Survey by the School or by any Authorised User, for the purpose of using Dashboard or facilitating the School's use of Dashboard;
- 1.1.21. **Subscription Fees:** means the subscription fees payable by the School to BW pursuant to these Dashboard Terms;

- 1.1.22. **Survey:** means the Finance and Operational Insights Survey collecting data in respect of the financial performance of income, expenditure, and surplus for the school year ended summer 2022 as provided by BW and made available to of schools that are members of ISBA;
- 1.1.23. **Survey Responses:** means the data and information that is provided to BW by or on behalf of the Schools (including, if applicable, the School) of the Survey;
- 1.1.24. **Survey Start Date** means the date on which the Survey (excluding any trial edition of it) is made first available to schools that are members of ISBA;
- 1.1.25. **Survey Year** means the period of approximately twelve (12) months, during which BW facilitates the Survey and provides the Dashboard to Participants and/or Subscribers; and
- 1.1.26. **VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.
- 1.2. In these Dashboard Terms:
- 1.2.1. headings are included for convenience only and shall have no effect on interpretation;
- 1.2.2. a reference to a 'party' includes that party's successors and permitted assigns;
- 1.2.3. a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.4. words in the singular include the plural and vice versa;
- 1.2.5. any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.6. a reference to any legislation or legislative provision is a reference to it as amended, extended, re-enacted or consolidated from time to time; and
- 1.2.7. any obligation on the School to do, or to refrain from doing, any act or thing under these Dashboard Terms shall include an obligation upon the School to procure that all Authorised Users also do, or refrain from doing, such act or thing.
- 1.3. These Dashboard Terms may be updated from time to time by BW posting a notice of the update on Dashboard or by notifying the School in writing by any other reasonable means. Such updates shall take effect ten (10) days after details of them are so posted or, if earlier, of the School otherwise being notified of the update. Updates to these Dashboard Terms shall prevail over the edition(s) previously provided.
- 1.4. Nothing in these Dashboard Terms shall prevent BW from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under Dashboard Terms.

## 2. BW's Obligations

- 2.1. Subject to clauses 2.2 and the receipt by BW of any applicable Subscription Fees, BW shall use its reasonable endeavours to provide the School and its Authorised Users access to and use of

Dashboard and the relevant Benchmark Data with reasonable skill and care and in accordance with best industry practice.

- 2.2. Clause 2.1 shall not apply to the extent of any non-conformance which is caused by use of Dashboard contrary to the instructions of BW or anyone acting on behalf of BW, or modification or alteration of Dashboard by any party other than BW or anyone acting on behalf of BW. If Dashboard does not conform with the warranties in clause 2.1, the School shall promptly notify BW, and BW shall use reasonable endeavours to remedy the relevant defect or fault within a reasonable time or (whether or not it has first attempted to remedy the relevant defect or fault) refund the Subscription Fees which were otherwise payable for the period during which BW was in breach of clause 2.1.
- 2.3. BW shall use reasonable endeavours to make Dashboard available during Business Hours. However, the School acknowledges and agrees that it may receive no advance notification for downtime caused by circumstances beyond the reasonable control of BW and/or in respect of any emergency maintenance. BW shall use reasonable endeavours to keep any such unscheduled maintenance to a minimum and to restore Dashboard as soon as reasonably practicable.
- 2.4. Subject to clause 9.5 and without prejudice to clause 2.1, to the maximum extent permitted by law, BW:
  - 2.4.1. does not warrant that the use of or access to Dashboard and/or the Benchmark Data shall be uninterrupted or error-free; or that Dashboard and/or the Benchmark Data shall meet any specific requirements or needs of the School;
  - 2.4.2. does not accept responsibility for any liability that arises in connection with unauthorised use of Dashboard and/or the Benchmark Data;
  - 2.4.3. does not provide and shall not be deemed to be providing any actuarial, consultancy, legal, financial, accountancy, taxation or other advice in or through the provision of Dashboard and/or the Benchmark Data;
  - 2.4.4. does not warrant that Dashboard is compatible with any particular software or equipment; and
  - 2.4.5. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the School acknowledges and agrees that Dashboard may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 2.5. In providing Dashboard, BW warrants that it shall implement and maintain its Information Security Standards in all material respects and shall ensure that the level of adequacy and protection of such standards does not fall below the standards in place as at the Commencement Date.
- 2.6. Save to the extent resulting from or caused by any breach of the warranty referred to in clause 2.5, BW (to the fullest extent permitted by law) disclaims and excludes any liability whatsoever arising from or in connection with any damage or other adverse effect caused howsoever to the information and communications technology system(s) of the School, its Authorised Users and/or any other third-party.
- 2.7. Except as expressly set out in these Dashboard Terms, BW disclaims and excludes all representations, warranties, conditions and other terms of any kind, whether express or implied, to the fullest extent

permitted by law, in relation to any aspect of the Dashboard and/or the Benchmark Data including those concerning satisfactory quality or fitness for purpose.

### **3. The School's warranties, obligations & restrictions**

3.1. The School warrants, represents and undertakes that:

- 3.1.1. it has full capacity and authority to enter into and to perform these Dashboard Terms;
- 3.1.2. these Dashboard Terms are entered into by a duly authorised representative of the School;
- 3.1.3. once entered into, these Dashboard Terms will constitute its legal, valid and binding obligations; and
- 3.1.4. it shall (and it shall procure that the Authorised User shall) only access and use Dashboard and Benchmark Data in the course of its and their business and for its and their own internal business purposes.

3.2. The School shall:

- 3.2.1. provide BW, its Affiliates (and, as applicable, its subcontractors) with (a) all necessary co-operation in relation to these Dashboard Terms; and (b) all necessary rights (including licence rights to use, copy and modify) to such information and materials as may be reasonably required by BW; in order to provide Dashboard and/or the Benchmark Data, including but not limited to the School Data; and
- 3.2.2. ensure that the School Data and (as applicable) the School's Survey Response is complete, accurate and up to date as at the date that it is provided to or received by BW.

3.3. The School shall not, and shall not attempt to:

- 3.3.1. copy, reproduce, publish, distribute, redistribute, broadcast, transmit, modify, adapt, alter, edit, abstract, store, archive, display publicly or to third parties, sell, license, lease, rent, assign, transfer, disclose (in each case whether or not for charge) or in any way commercially exploit any part of Dashboard and/or the Benchmark Data;
- 3.3.2. provide or permit access to Dashboard and/or the Benchmark Data to anyone other than an Authorised User;
- 3.3.3. permit any (direct or indirect) use of Dashboard and/or the Benchmark Data (or any part) in any manner by any third party;
- 3.3.4. create derivative works or improvements based on or from Dashboard and/or the Benchmark Data;
- 3.3.5. access all or any part of Dashboard and/or the Benchmark Data in order to build a product or service which competes with Dashboard and/or the Benchmark Data;
- 3.3.6. permit Dashboard and/or the Benchmark Data (or any part) to become incorporated into any other program or service or to be combined or merged with any other program;

- 3.3.7. attempt to reverse engineer, observe, study or test the functioning of, decompile or otherwise derive or access the source code of Dashboard and/or the Benchmark Data;
- 3.3.8. circumvent or endanger the operation or security of Dashboard and/or the Benchmark Data;
- 3.3.9. remove, alter, obscure, translate, combine, supplement or change any trademarks, terms, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks, or serial numbers on or relating to Dashboard and/or the Benchmark Data;
- 3.3.10. use Dashboard and/or the Benchmark Data (or any part) for any purpose other than the Purpose; or
- 3.3.11. use Dashboard and/or the Benchmark Data (directly or indirectly) to store, transmit or process in any manner any data that: (a) is unlawful, obscene, indecent, threatening, harassing, racially or ethnically offensive, libellous or defamatory; or (b) contains any virus, disabling code or malicious software (including, but not limited to, malware, trojan horses, ransomware and spyware).

3.4. The School shall:

- 3.4.1. access and use Dashboard and the Benchmark Data at all times in accordance with any instructions or user guidance issued by or on behalf of BW, from time to time and all other terms of these Dashboard Terms;
- 3.4.2. procure that each Authorised User is aware of, and complies with, the obligations and restrictions imposed on you under these Dashboard Terms; and
- 3.4.3. be liable for any act or omission of its Authorised User as if such act or omission were an act or omission of the School itself.

#### 4. Subscription Fees

4.1. The Core Dashboard shall:

- 4.1.1. be provided free of charge if the School participated in the Survey. For the purpose of this clause "participated" means that the School submitted its responses to the Survey and that BW at its discretion considers the responses (1) to be comprehensive in coverage when compared with the scope of the Survey and the coverage of other Participating Schools and (2) to be free of material errors.;

4.2. The Lite Dashboard shall be provided subject to receipt by BW of a Subscription Fee of £250 if the School did not participate in the Survey.

4.3. The Enhanced Dashboard shall be provided subject to receipt by BW of a Subscription Fee of £300.

4.4. BW shall issue an invoice for any Subscription Fees payable in respect of the:

- 4.4.1. Enhanced Dashboard on or shortly after a) BW receiving a written request from the School; or b) where such functionality is available, an Authorised User making a selection within Dashboard, confirming that the School wishes to have access to the Bespoke Benchmark Data.

4.4.2. Lite Dashboard on or shortly after BW receiving a written request from the School;

- 4.5. The School shall pay any invoice issued in respect of the applicable Subscription Fees within 14 days of receipt.
- 4.6. All sums payable to BW under these Dashboard Terms:
  - 4.6.1. are exclusive of VAT, and the School shall in addition pay an amount equal to any VAT chargeable on those sums as specified on the invoice; and
  - 4.6.2. shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 4.7. Without prejudice to any other right or remedy that BW may have, if the School fails to pay BW any sum due under these Dashboard Terms on the due date BW may on written notice to the School:
  - 4.7.1. immediately require the School to pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time-to-time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The School shall pay the interest together with the overdue amount; and/or
  - 4.7.2. immediately suspend access to Dashboard until payment has been made and received in full.

## **5. School Data & Survey Responses**

- 5.1. The School acknowledges and agrees that:
  - 5.1.1. BW has no control over any content placed on, inputted or uploaded to Dashboard by the School or any the Authorised Users; and
  - 5.1.2. BW shall not undertake any verification, assessment, cleanse or other check (whatsoever) of the accuracy or completeness of the School Data or any Survey Response.
- 5.2. BW makes no representation, warranty or assurance in respect of the Survey Responses.
- 5.3. All Intellectual Property Rights in and to the School Data shall at all times remain the property of the School or the relevant third-party owner.

## **6. Licence & Intellectual Property Rights**

- 6.1. Subject to these Dashboard Terms, BW hereby grants to the School a limited, non-exclusive, non-transferable, non-sublicensable right to access and use Dashboard and the Benchmark Data for the Permitted Purpose only.
- 6.2. The School shall not sub-license, assign or otherwise transfer the rights granted in clause 6.1.
- 6.3. All Intellectual Property Rights in and to Dashboard and/or the Benchmark Data (including, among other things, in all associated documentation, software, applications and data other than School Data) belong to and shall remain vested in BW (its Affiliates') or the relevant third-party owner. Neither the School its Authorised Users nor any third-party shall acquire any right, title or interest in or to any of Dashboard and/or the Benchmark Data (or any part).

## **7. Personal Data**



7.1. Each party acknowledges and agrees that:

7.1.1. it will be necessary for some personal data to be shared by the School to BW in order for BW to provide access to and use of Dashboard for example issuing Authorised User credentials, receiving relevant Feedback and/or delivering marketing communications (this includes where personal data previously transferred to BW is subsequently used for marketing communications), and (if applicable) process payments (“**Shared Data**”);

7.1.2. each party shall be a separate and independent controller of the Shared Data;

7.1.3. each party shall provide reasonable assistance as is necessary to each other to facilitate the handling of any personal data breach in an expeditious and compliant manner; and

7.1.4. each party shall comply with its respective obligations under the Data Protection Legislation in respect of the processing of Shared Data for which it is responsible.

7.2. BW shall process the Shared Data in accordance with its privacy policy, available <https://privacy.bwllp.co.uk/bw/privacy-policy.pdf> as updated from time to time.

## 8. Confidential information

8.1. The receiving party shall maintain the Confidential Information of the other party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care.

8.2. The receiving party will not, without the prior written consent of the other party, disclose the other party’s Confidential Information (or permit others to do so) to any person other than its personnel, representatives or Authorised Users (and in the case of BW, its, its Affiliates and each of its and its Affiliates direct and indirect sub-contractors’) officers, employees, agents and contractors) whose access is necessary to enable it to exercise its rights or perform its obligations under these Dashboard Terms and who are under obligations of confidentiality substantially similar to those in this clause 8.

8.3. The provisions of this clause 8 shall not apply to:

8.3.1. any aggregated and/or anonymised School Data, Survey Response and/or Benchmark Data; or

8.3.2. information which is required by law, by court or governmental or regulatory order to be disclosed provided that the party obligated to make such disclosure, where possible, notifies the other party at the earliest opportunity before making any disclosure.

## 9. Limitation of liability

9.1. Dashboard is provided for general information only. By its nature, the Benchmark Data provided involves numerous assumptions, known and unknown risks and uncertainties, both general and specific. The School should not place any reliance on any Benchmark Data, and the School remains solely responsible for any actions or decisions it takes regarding the operation of its business.

9.2. Subject to clause 9.5, the total aggregate liability of BW, its Affiliates and each of its and its Affiliates respective partners, officers, employees, contractors, directors, sub-contractors and agents under or in connection with these Dashboard for all claims whether in contract, tort (including negligence) or otherwise shall be limited to the greater of:



9.2.1. thousand pounds sterling (£1000); and

9.2.2. one hundred percent (100%) of the Subscription Fees (if any) paid or payable by the School to BW under these Dashboard Terms.

9.3. Subject to clause 9.5, BW (and/or its Affiliates) shall not be liable for consequential, indirect or special losses regardless of whether BW knew or had reason to know of the possibility of the loss, injury or damage in question.

9.4. BW shall not be liable to the School in relation to delayed completion or performance of any of its obligations under these Dashboard Terms to the extent to which such delay or failure is the result of any act or omission of the School or any Authorised User.

9.5. Notwithstanding any other provision of these Dashboard Terms, BW's liability shall not be limited or excluded in any way in respect of any other losses which cannot be excluded or limited by applicable law.

## 10. Feedback

10.1. BW (and/or its Affiliates) may use any Feedback for any purpose without charge or limitation. The School hereby assigns (or shall procure the assignment of) all Intellectual Property Rights in the Feedback with full title guarantee (including by way of present assignment of future Intellectual Property Rights), and with waiver of all moral rights, to BW at the time such Feedback is first provided to BW.

## 11. Monitoring

11.1. BW (and/or its Affiliates) may monitor, collect, store and use any information in, about or relating to Dashboard (including, without limitation, information on their performance and use) to monitor for or detect errors and for the maintenance, development and improvement of Dashboard.

## 12. Term, suspension and termination

12.1. These Dashboard Terms shall come into force on the Commencement Date and, unless terminated earlier in accordance with its terms, shall continue for the duration of the Survey Year after which they shall automatically expire.

12.2. Without affecting any other right or remedy available to it, BW may

12.2.1. suspend or terminate the School's and/or its Authorised Users access to and use of Dashboard and/or the Benchmark Data if the School or any of its Authorised User breaches these Dashboard Terms or BW has reasonable grounds to suspect such a breach; or

12.2.2. terminate these Dashboard Terms on as much written notice to the School as is reasonably practicable if any contract between BW and a third party involved in providing Dashboard and/or the Benchmark Data or any significant component or feature of Dashboard and/or the Benchmark Data expires, is suspended or is terminated.

12.3. Immediately on termination or expiry of these Dashboard Terms (for any reason), the rights granted to the School under these Dashboard Terms shall terminate and the School shall (and shall procure that each Authorised User shall) stop using Dashboard and the Benchmark Data.

12.4. Termination or expiry of these Dashboard Terms shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of these Dashboard Terms that is expressly or by implication intended to continue beyond termination.

### **13. Force Majeure**

BW shall not be in breach of these Dashboard Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Dashboard Terms if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

### **14. Entire agreement**

These Dashboard Terms constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral. Each party acknowledges that it has not entered into these Dashboard Terms in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in these Dashboard Terms. Nothing in these Dashboard Terms shall limit or exclude any liability for fraud.

### **15. Variation**

No variation of these Dashboard Terms shall be valid or effective unless it is made in accordance with these Dashboard Terms or made in writing, refers to these Dashboard Terms and is duly signed or executed by, or on behalf of, each party.

### **16. Severance**

If any provision of these Dashboard Terms (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of these Dashboard Terms shall not be affected. If any provision of these Dashboard Terms (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable.

### **17. Waiver**

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under these Dashboard Terms shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under these Dashboard Terms shall prevent any future exercise of it or the exercise of any other right, power or remedy.

### **18. Third party rights**

A person who is not a party to these Dashboard Terms shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

### **19. Governing law and jurisdiction**

- 19.1. These Dashboard Terms and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 19.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, these Dashboard Terms, their subject matter or formation (including non-contractual disputes or claims).