

2022 Survey Terms

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

1. Definitions and interpretation

1.1. In these Survey 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 (being natural persons who are registered using email addresses containing a domain name owned by the School) of the School who are authorised by the School, in accordance with these Survey Terms, to access and use the Platform and the Survey;
- 1.1.3. **BW:** means Barnett Waddingham LLP;
- 1.1.4. **Commencement Date:** means the date on which the School accepts these Survey Terms;
- 1.1.5. **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.
- 1.1.6. **Feedback:** means any feedback and/or suggestions for improvements or changes relating to the Platform and/or the Survey provided by the School or by any Authorised User (whether via Data Navigator, survey, email, phone, interview or otherwise);
- 1.1.7. **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;
- 1.1.8. **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 5th Floor, 167-169 Great Portland Street, London, W1W 5PF;
- 1.1.9. **Platform:** online platform and/or service including any software or applications contained therein used by or on behalf of BW to facilitate the provision and participation in the Survey;
- 1.1.10. **Privacy Policy:** means BW's privacy policy available at: [privacy-policy.pdf \(bwllp.co.uk\)](https://www.bwllp.co.uk/privacy-policy.pdf);
- 1.1.11. **Purpose:** means the provision of the School Data and the participation in the Survey;
- 1.1.12. **School:** means the school on whose behalf the Authorised User is participating and completing the Survey;
- 1.1.13. **School Data:** means all responses to the Survey and any other data (excluding any personal data and any Feedback) that is provided to BW or uploaded to any part of the Platform by the School or by any Authorised User;
- 1.1.14. **Survey:** means the Finance and Operational Insights Survey facilitated by BW in respect of the financial performance of income, expenditure, and surplus of schools that are members of ISBA;
- 1.1.15. **Survey Start Date** means the date on which the Survey (excluding any trial version of it) is made first available to schools that are members of ISBA;
- 1.1.16. **Survey Year** means the twelve (12) month period starting on the Survey Start Date, during which BW facilitates the Survey; and
- 1.1.17. **Survey Terms:** means these terms and conditions.

1.2. In these Survey 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;

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- 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 Survey 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 Survey Terms may be updated from time to time by BW posting a notice of the update on the Platform 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 Survey Terms shall prevail over the version(s) previously provided.

2. The School's obligations

- 2.1. The School shall not, and shall not attempt to:
- 2.1.1. 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 Platform and/or the Survey;
 - 2.1.2. provide or permit access to the Platform and/or the Survey to anyone other than an Authorised User;
 - 2.1.3. permit any (direct or indirect) use of Platform and/or the Survey (or any part) in any manner by any third party;
 - 2.1.4. create derivative works or improvements based on or from the Platform and/or the Survey;
 - 2.1.5. access all or any part of the Platform and/or the Survey in order to build a product or service which competes with the Platform and/or the Survey;
 - 2.1.6. permit the Platform and/or the Survey (or any part) to become incorporated into any other program or service or to be combined or merged with any other program;
 - 2.1.7. attempt to reverse engineer, observe, study or test the functioning of, decompile or otherwise derive or access the source code of the Platform and/or the Survey;
 - 2.1.8. circumvent or endanger the operation or security of the Platform and/or the Survey;
 - 2.1.9. 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 the Platform and/or the Survey;
 - 2.1.10. use the Platform and/or the Survey (or any part) for any purpose other than the Purpose; or
 - 2.1.11. use the Platform and/or the Survey (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).
- 2.2. The School shall:
- 2.2.1. access and use the Platform and the Survey 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 Survey Terms;
 - 2.2.2. procure that each Authorised User is aware of, and complies with, the obligations and restrictions imposed on you under these Survey Terms; and
 - 2.2.3. 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.

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3. Use & data

- 3.1. Subject to these Survey Terms, BW hereby grants to the School a limited, non-exclusive, non-transferable, non-sublicensable right to access and use the Platform and participate in the Survey for the Permitted Purpose only.
- 3.2. The School shall not sub-license, assign or otherwise transfer the rights granted in clause 3.1.
- 3.3. All Intellectual Property Rights in and to the Platform and/or the Survey (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 the Platform and/or the Survey (or any part).
- 3.4. 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.
- 3.5. Subject to clauses 4 and 6 of these Survey Terms, the School grants BW, its Affiliates (and each of its direct and indirect sub-contractors) a perpetual, irrevocable, royalty-free, non-exclusive, sub-licensable (including by multi-tier) licence to use, analyse, copy and other otherwise utilise the School Data (or any part(s) of it) and/or any analysis, data and/or information derived from the School's and/or its Authorised Users' participation in the Survey for or in connection with developing, improving, using, selling or licensing documentation, products and/or services relating to the provision and/or analysis of benchmark data to ISBA and members of ISBA (including the School).

4. Personal Data

- 4.1. Any personal information that the School or any of its Authorised Users provide to BW will be dealt with in line with BW's Privacy Policy available here [privacy-policy.pdf \(bwllp.co.uk\)](https://www.bwllp.co.uk/privacy-policy.pdf), which explains what information BW collect and hold, and how BW collect, store, use and share such information.

5. Availability

- 5.1. BW cannot guarantee that the Platform and/or the Survey will be available at any given time. BW also cannot guarantee that access to Platform and/or the Survey will be uninterrupted or error free.

6. Confidential information

- 6.1. 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.
- 6.2. 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 Survey Terms and who are under obligations of confidentiality substantially similar to those in this clause 6.
- 6.3. The provisions of this clause 6 shall not apply to:
 - 6.3.1. any aggregated and/or anonymised School Data; or
 - 6.3.2. 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.

7. Limitation of liability

- 7.1. Subject to clause 7.3, 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 terms for all claims whether in contract, tort (including negligence) or otherwise shall be limited to £1,000.
- 7.2. Subject to clause 7.3, 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.

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7.3. Notwithstanding any other provision of these Survey 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.

8. Disclaimer

8.1. The School acknowledges that the Platform and the Survey are provided on an 'as is' and 'as available' basis and without warranty or other obligation, whether express or implied, to the maximum extent permitted by applicable law.

8.2. Subject to clause 7.3, all warranties, conditions, terms, undertakings or obligations whether express or implied and including, without limitation, any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

9. Feedback

9.1. 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.

10. Monitoring

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

11. Term, suspension and termination

11.1. These Survey 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.

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

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

11.2.2. terminate these Survey 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 the Platform and/or the Survey or any significant component or feature of the Platform and/or the Survey expires, is suspended or is terminated.

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

11.4. The rights granted to BW under clause 3.5 of these Survey Terms shall subsist in perpetuity.

11.5. Termination or expiry of these Survey 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 Survey Terms that is expressly or by implication intended to continue beyond termination.

12. Entire agreement

These Survey 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 Survey Terms in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in these Survey Terms. Nothing in these Survey Terms shall limit or exclude any liability for fraud.

13. Variation

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

14. Severance

If any provision of these Survey Terms (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of these Survey Terms shall not be affected. If any provision of these Survey Terms (or part of any provision) is or becomes illegal, invalid or

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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.

15. Waiver

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under these Survey 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 Survey Terms shall prevent any future exercise of it or the exercise of any other right, power or remedy.

16. Third party rights

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

17. Governing law and jurisdiction

17.1. These Survey 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.

17.2. 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 Survey Terms, their subject matter or formation (including non-contractual disputes or claims).