

Assured Advice Terms and Conditions

1. Background

- 1.1. These Assured Advice Terms & Conditions (“**Agreement**”) set out the terms relating to the Primary Authority Service provided by Nielsen Brandbank with effect from 1st October 2017, in partnership with the Primary Authority and the Head Authority.
- 1.2. Nielsen Brandbank aims to bring greater clarity and certainty to the various FMCG sectors in which its customers operate (including, but not limited to, online food information). Nielsen Brandbank is the co-ordinator for members of the Regulated Group contained within the Members List.
- 1.3. A User that receives or accesses Assured Advice regarding relevant functions of the Regulated Group, from the Primary Authority, is able to rely on that advice in its dealings with all local authorities, by virtue of the fact that a local authority that proposes enforcement action against the User is required to first notify the Primary Authority. The Primary Authority is then able to direct that local authority not to take the proposed action if the Primary Authority decides that this would be inconsistent with any Assured Advice it has given. This provides certainty for a business that chooses to receive or access, and follow, advice from a Primary Authority, giving it confidence in its approach to compliance. The Head Authority is empowered to make a determination in the case of any subsequent disagreement as to whether proposed enforcement action is inconsistent with the advice, and whether that advice was correct and was properly given by the Primary Authority.

2. Definitions

In this Agreement, the following definitions apply:

Assured Advice	Advice, which is drafted by the co-ordinating Primary Authority, and is issued or made available by Nielsen Brandbank to the User from time to time, and which has been approved by the Primary Authority in accordance with The Regulatory Enforcement and Sanctions Act 2008, as amended by the Enterprise Act 2016. The Assured Advice(s) and responsibility and liability for the same are wholly-owned by the co-ordinating Primary Authority and not by Nielsen Brandbank.
Food Business Operator	As per Article 3(3) of Regulation 178/2002 laying down the general principles of food law and, as adopted therefrom by Article 2(1)(a) of Regulation EU1169/2011 on the provision of food information to consumers, ‘food business operator’ means: the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control.
Head Authority	The Secretary of State for the Department for Business, Energy and Industrial Strategy.
Members List	The conclusive list of Users that are currently opted-in to the Primary Authority Service and form part of the Nielsen Brandbank Regulated Group.
Nielsen Brandbank	BRANDBANK LIMITED is a company registered in England with company number 03650275 whose registered office is at 11 Robberds Way, Bowthorpe, Norwich, NR5 9JF, England (trading as ‘Nielsen Brandbank’).
Primary Authority	Cambridgeshire County Council for Trading Standards.
Primary Authority Service	The services provided by Nielsen Brandbank as detailed in this Agreement.
Regulated Group	The regulated group managed by Nielsen Brandbank for Users on the Members List.
User	A Nielsen Brandbank customer, which may include product brand owners / manufacturers, retailers and other data consumers

3. Nielsen Brandbank’s Obligations

- 3.1. Nielsen Brandbank shall work constructively with the Head Authority and the Primary Authority in relation to the provision of the Primary Authority Services.
- 3.2. Nielsen Brandbank shall act in accordance with primary authority legislation and the primary authority statutory guidance.
- 3.3. Nielsen Brandbank shall make available the Assured Advice and any documents, for example codes of practice, compliance procedures and guidance to Users included on the Members List as soon as reasonably practicable. Nielsen Brandbank shall also be responsible for informing Users included on the Members List of any changes to, or revocation of, any Assured Advice or the corresponding documentation.

4. Automatic Opt-In (With Option to Opt-Out)

- 4.1. Where the User has received explicit notification by email, the User will be automatically opted-in to the Regulated Group.
- 4.2. Unless (and without prejudice to clause 6) the User completes the ‘opt-out’ form included in the notification email (referred to in para 4.1) the User will remain on the Members List.
- 4.3. Having been automatically opted-in to the Primary Authority Service, the User will:
 - 4.3.1. be included on the Members List; and
 - 4.3.2. receive, or have access to, Primary Authority Assured Advice from Nielsen Brandbank from time to time.

5. Manually Opting-In to the Primary Authority Service

- 5.1. A User who has not received the explicit notification (referred to at clause 4.1) and/or believes they are not included in the Members List, but is eligible to be included, and wishes to be included, may manually opt-in to the Primary Authority Service.
- 5.2. By manually opting-in to the Primary Authority Service the User will:
 - 5.2.1. be included on the Members List; and

- 5.2.2. receive, or have access to, Primary Authority Assured Advice from Nielsen Brandbank from time to time.
- 5.3. The User (who is either manually or automatically opted-in) is solely responsible for reading and complying with the Assured Advice. Nielsen Brandbank is not responsible for checking the User's compliance with the Assured Advice, however, Nielsen Brandbank may provide guidance or clarification in relation to the Assured Advice where requested by the User and/or support the User to approach the Primary Authority for tailored advice, where appropriate, based on its individual circumstances.
- 5.4. Nielsen Brandbank is required by law to maintain the integrity and accuracy of the Members List and must provide up to date versions of the Members List to the Primary Authority and/or the Head Authority and/or a qualifying regulator who has a function which is both a relevant function of the regulator and a partnership function, from time to time. The User acknowledges and agrees that its contact details may be distributed in this manner, but for the avoidance of doubt, the Members List will not include any Personal Data as defined in the Data Protection Act 1998 or the General Data Protection Regulations (EU) 2016/679.
- 5.5. The User acknowledges that 'opting-out' of the Primary Authority Service will mean that their business contact details may still be provided to the Primary Authority and/or the Head Authority, accompanied by the date they left the Regulated Group.
- 6. Termination and Opt-Out**
- 6.1. The User, who is a member of the Regulated Group, can opt-out of the Members List at any time by completing the 'opt-out' form available on Nielsen Brandbank's website. However, by doing so, it will not be able to rely on any protection offered by the Primary Authority scheme, even if it has followed any relevant Assured Advice, and the corresponding actions are deemed unlawful.
- 6.2. If the User has more than one named contact on their Nielsen Brandbank account then it is acknowledged that any one of those contacts may opt the User out of the Members List. The User warrants that any representative that opts the User out of the Members List has the appropriate authority to do so and that such opt-out will be binding on the User.
- 6.3. If the User ceases to be a customer of Nielsen Brandbank, or does not have any 'live' Consumer Units within the Nielsen Brandbank Product Library for a period of one year or more (whichever is earlier), the User may be marked as having left the Primary Authority Service on the Members List in which event, the User will not be entitled to rely on any protection offered by the Primary Authority scheme. Nielsen Brandbank will provide notice to the User of its removal from the Members List in such circumstances. Notwithstanding, Nielsen Brandbank may continue to use the User's contact details for the purpose of notifying the Primary Authority and/or the Head Authority of any Users who are no longer members of the Regulated Group.
- 7. Fees**
- This service is provided to the User, free from direct charge. Nielsen Brandbank reserves the right to charge directly for the Primary Authority Service in the future, in which case, Nielsen Brandbank will notify the User.
- 8. Geographic Application**
- Please note that the Primary Authority scheme is currently only available to businesses registered in England (but please note that this may change from time to time). Nielsen Brandbank cannot guarantee that Assured Advice can be relied on by entities operating or registered in Scotland, Ireland or Wales.
- 9. The Members List**
- 9.1. The Members List provided (on request) to the relevant authority, is conclusive as to membership of the Regulated Group at the time of production.
- 9.2. Where the User believes they are included on the Member List but, in fact, are not (for whatever reason), the User will not be a member of the Regulated Group.
- 9.3. Further to clause 5.4, Nielsen Brandbank will use all reasonably practicable measures to ensure the accuracy of the Members List but accepts no liability arising from circumstances set out in clause 9.2.
- 9.4. The User agrees to inform Nielsen Brandbank of any changes to their business name and/or address as soon as possible and acknowledges that failure to do so may affect their membership to the Regulated Group.
- 10. Responding to other Enforcing Authorities**
- 10.1. The User acknowledges that, if they are contacted by an enforcing authority (other than the Primary Authority) who proposes enforcement action against the User in respect of functions relevant to the Regulated Group, it should inform that authority that it is a member of the Regulated Group and not rely upon such enquiry by the enforcing authority themselves (notwithstanding that this is required of the enforcing authority).
- 10.2. The User acknowledges that (as per paragraph 21.20 of the Draft Statutory Guidance for Primary Authority) failing to act in accordance with clause 10.1, may affect their rights under the Primary Authority scheme.
- 10.3. Further to para 10.2, Nielsen Brandbank accepts no liability in such circumstances.
- 11. Governing Law and Jurisdiction**
- This Agreement is governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.