



TRUSTe Download – Beta Certification Agreement

This TRUSTe Trusted Download Certification Agreement (the “Agreement”) is executed by and between Trusted Universal Standards in Electronic Transactions, Inc. (a California not for profit corporation) (“TRUSTe”) and [] (the “Participant”) with respect to the Participant’s submission of the Software Unit(s) to TRUSTe for evaluation under TRUSTe’s Trusted Download Program. This Agreement shall be effective on the Effective Date. Capitalized terms not defined herein shall have the meaning ascribed to them in the Program Requirements attached hereto as Schedule A (the “Program Requirements”). Unless specifically stated otherwise, references to “Sections” used in this Agreement refer to sections in this Agreement and references to “Sections” used in Schedule A refer to sections in Schedule A.

WHEREAS, TRUSTe has developed and administers the TRUSTe Trusted Download Beta Certification Program (the “Program”), as further described in the Program Requirements, whereby Participants submit Software Units, which are downloadable by a consumer from a website for evaluation by TRUSTe against criteria developed by TRUSTe; and

WHEREAS, Participant desires to have the Software Units evaluated pursuant to this Agreement and agrees to be bound by all of the terms and conditions of this Agreement and the Program. The Software Units submitted by Participant is listed on Exhibit 1 hereto. References to “Software” herein include each Software Unit listed in Exhibit 1 and shall be interpreted to include both the singular and the plural.

NOW, THEREFORE, the Parties hereto, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound, hereby agree as follows:

1. Participant’s Adherence to the Program.

(a) Participant’s Obligation to Comply. Participant shall comply with the Program Requirements as amended from time to time.

(b) Amendments. The Parties agree that TRUSTe may amend the Program Requirements from time to time in its reasonable discretion upon twenty (20) business days’ prior written notice to Participant. Upon receipt of such notice, Participant may terminate this Agreement by providing written notice to TRUSTe within said twenty (20) business day period, in which case Participant will receive a prorated refund of pre-paid Compliance Monitoring Fees for the then current Compliance Monitoring term (representing the portion of the current Compliance Monitoring term remaining as of the effective date of the termination). Participant’s failure to object in writing within the twenty (20) business day period shall be deemed to constitute Participant’s acceptance of the amended Program Requirements and Participant shall comply in full with the amended Program Requirements upon the end of said twenty (20) business day period. When deemed appropriate by TRUSTe, the amendment may provide a longer period for implementation of the amended Program Requirements. If the Program Requirements are amended within two (2) months of the Certification of the Software Unit, then Participant shall be permitted forty (40) business days to implement the amended Program Requirements. TRUSTe may shorten any of the time periods included in this Section 1(b) upon notice to Licensee if TRUSTe reasonably believes the

integrity of the Program may be compromised by application of the aforementioned time periods; provided that the time periods shall not be reduced to less than ten (10) business days. TRUSTe may amend, with immediate effect, the Program Requirements and any time periods referenced in this Agreement if required by law and shall notify Participant of such amendment.

(c) Complaints. TRUSTe will investigate credible allegations and complaints related to the Program and will use reasonable efforts to keep abreast of such allegations through available channels. Participant shall cooperate with TRUSTe in an effort to resolve all non-frivolous complaints in a manner that will comply with the Program Requirements and that will prevent damage to the reputation of the Program and TRUSTe's good will.

(d) Notice of Actions or Investigations. If Participant becomes (i) a defendant in any private lawsuit or (ii) the subject of an Action by any law enforcement or other governmental entity in any country, regarding the Certified Software or Participant's actions with respect to the Certified Software, it warrants to TRUSTe that it shall, except if prohibited by law, provide notice of the lawsuit or Action to TRUSTe and, if applicable, the name of the agency, the purpose of the investigation and the status of the Action to TRUSTe within five (5) business days of learning of such lawsuit or Action. For purposes of this Section, the term "law enforcement agency or other governmental entity" includes without limitation the Attorney General of any state, the United States Federal Trade Commission, any law enforcement agency or any foreign privacy authority.

(e) Provisional Certification. Based on an evaluation of the Software Unit, TRUSTe may determine that the Software Unit must be provisionally certified, as provided for in Section 11 of the Program Requirements. If so determined, TRUSTe will notify Participant and Participant will be required to comply with the additional terms and conditions provided in Section 11 of the Program Requirements. Software Units that have received Provisional Certification will be listed on the Whitelist; however, the Whitelist will reflect the Provisional Certification status.

2. Use of Marks.

(a) Statements by Participant. Participant may not disclose its participation in the Beta Program prior to TRUSTe's publication of the Whitelist. Upon launch of the Whitelist, Participant may make public statements asserting (if accurate) that the Certified Software (but not the Participant) is certified under the Program; provided, however, that (i) the then-current version of the Software Unit is certified and (ii) every public statement includes a link or instruction to consult TRUSTe's Program Whitelist for verification. Participant may not make any other public statement regarding the evaluation by TRUSTe of the Software Unit(s) or Certified Software, the Certification or lack of Certification of Software Units for inclusion in the Program, or the inclusion of the Certified Software and/or Participant on the Whitelist, without first obtaining the prior written consent of TRUSTe for any such statement. Under no circumstances shall Participant give any third party the impression that Certification has been granted to anything other than the Certified Software.

(b) No use of TRUSTe Name or TRUSTe Marks. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 2(a), NO RIGHT TO USE THE TRUSTe NAME OR ANY OF THE TRUSTe MARKS IS GRANTED HEREUNDER.

3. Duration.

(a) Initial Term. The initial term of this Agreement shall begin on the Effective Date of this Agreement and continue for the term of the Beta Period ("Initial Term"). The Beta Period shall last as long as deemed necessary by TRUSTe.

(b) Renewal. If the Initial Term lasts longer than one (1) year and Participant desires Renewal, Participant shall seek Renewal of this Agreement for an additional one (1) year period, pursuant to the requirements of this Section 3(b) ("Renewal"). If Renewal is not requested, this Agreement shall

terminate at the end of one (1) year, if not terminated earlier. For Renewal to be effective, Participant shall satisfy the following requirements:

(i) Participant must execute an addendum to this Agreement, in a form as provided by TRUSTe (“Renewal Addendum”), which shall: (1) contain a representation and warranty that Participant has either (A) made no Material Changes to the Certified Software as such Certified Software had been previously approved by TRUSTe or (B) made no Material Changes to the Certified Software as such Certified Software has been previously approved by TRUSTe, except those proposed Material Changes submitted with Participant’s renewal request; (2) contain a representation and warranty that the authorized representative signing the Addendum has reviewed the Participant’s current Self Assessment and Certification Agreement; and (3) be signed by an authorized representative of the Participant.

(ii) Participant must pay the Compliance Monitoring Fee then in effect (see Section 4(b) herein).

(iii) If the Program Requirements in effect at the time of Renewal differ from those integrated into Participant’s Agreement, Participant must accept the new Program Requirements as part of the Renewal Addendum. In addition, Participant must provide responses to any Self Assessment questions required by TRUSTe that are related to any changes in the Program Requirements.

Renewal shall be effective upon compliance with this Section 3(b)(i-iii) unless Participant’s Addendum is declined by TRUSTe within ten (10) business days of TRUSTe receiving the signed Renewal Addendum and the applicable Compliance Monitoring Fee, in which case such fee shall be returned. If there are Material Changes to the Certified Software or if new Self-Assessment questions and responses are required, Renewal shall be subject to TRUSTe’s requirements.

(c) Beta Program Transition. The Beta Period may be terminated by TRUSTe at any time after six (6) months from its launch. TRUSTe may either choose to end the Program at that time or transition to a full non-Beta Program (“Full Program”). Participant has no right by virtue of this Agreement to participate in the Full Program or to have the Certified Software continue to be certified under the Full Program. TRUSTe shall provide twenty (20) business days’ prior notice of the Full Program taking effect, which will coincide with the termination of the Beta Period. TRUSTe shall notify Participant of the requirements for participation in the Full Program which may include, without limitation, additional testing and testing fees, additional Compliance Monitoring Fees, further or renewed self-assessment requirements and the execution of a new Certification Agreement. Should the Beta Period be less than one (1) year, Participant will receive a pro-rated credit of Beta Period Compliance Monitoring Fees toward any Compliance Monitoring Fees due as part of the Full Program.

4. Fees. Participant shall pay TRUSTe as follows:

(a) Certification Fee. The amount of the Certification Fee for the term of this Agreement is as set forth in the attached Fee Schedule. The Certification Fee, together with two executed copies of this Agreement, and signed Self Assessment form, are to be submitted to TRUSTe for review and acceptance in TRUSTe’s sole discretion. The Certification Fee shall cover (i) initial testing and review of the Software Unit and Software Disclosures, (ii) generation of a report by TRUSTe summarizing TRUSTe’s findings upon its initial review of the Software Unit(s) and associated Software Disclosures, (iii) one (1) retest of the Software Unit if changes are made by the Participant at the direction of TRUSTe during the Certification process, and (iv) a second report, if necessary. If the Software Unit fails the Certification process, there shall be no refund of the Certification Fee. TRUSTe may increase the Certification Fee or apply additional fees for applicants that fail to provide full and accurate information during the pre-qualification process or in their Self-Assessment, and for applicants that impede TRUSTe’s testing and evaluation of the Software Unit.

(b) Compliance Monitoring Fee. Participant is required to pay the Compliance Monitoring Fee provided on the Fee Schedule upon Certification. The Compliance Monitoring Fee covers

Compliance Monitoring for the Initial Term, not to exceed one (1) year. Additional Compliance Monitoring Fees shall be required per the Renewal requirements of Section 3(b).

(c) Fees for Additional Program Related Services. Participant agrees to pay fees for additional services, as may be required by participation in the Program and as detailed in the Program Requirements.

(d) Additional Software Units. After the Effective Date, Participant can submit additional Software Units for Certification by signing an amendment hereto adding the additional Software Unit(s) and submitting a Self-Assessment (unless otherwise directed by TRUSTe) and Certification Fee for each new Software Unit. A Compliance Monitoring Fee will be assessed for each new Certified Software Unit.

(e) No Refunds. Except as otherwise explicitly provided in this Agreement, all fees are non-refundable.

5. Termination and Additional TRUSTe Rights and Remedies.

(a) Termination for Non-Certification; Right to Decline.

(i) In the event that the Software Unit is not approved for Certification, and Participant does not agree to modify the Software Unit and/or other relevant practices in a manner that fully addresses TRUSTe's objections, this Agreement shall terminate. In the event of such termination, Participant shall not be entitled to a refund of the Certification Fee. The foregoing right shall be Participant's sole and exclusive remedy if TRUSTe does not certify the Software Unit and allow the Software Unit into the Program.

(ii) Except for the circumstances provided for in Section 5(a)(i), if at any time prior to Certification of a Software Unit, TRUSTe determines that it does not wish to be bound under this Agreement with Participant, it shall so notify Participant and shall refund all fees received from Licensee, this Agreement shall be terminated (to the extent it was ever effective), and all prior discussions or exchange of information between TRUSTe and Participant shall remain confidential pursuant to the confidentiality requirements of Section 9 of this Agreement.

(b) Termination by TRUSTe for Cause with Right to Cure.

(i) TRUSTe may terminate this Agreement upon ten (10) business days' prior written notice ("Notice of Termination") to Participant of a material breach of this Agreement and/or the Program Requirements, unless the breach is corrected to TRUSTe's satisfaction within the same ten (10) business day period, or a greater period which may be granted in TRUSTe's discretion ("Cure Period"). Within the Cure Period, Participant shall:

- (1) Comply with any requirements imposed by TRUSTe, including compliance with Probation or Suspension status requirements (if any), and satisfy TRUSTe's concerns prior to expiration of the Cure Period; or
- (2) Take no action, in which case this Agreement will terminate without further action and without any refund of fees to Participant.

(ii) For purposes of this Section 5 material breaches include but are not limited to: (1) Participant's breach of any representation or warranty contained in this Agreement; (2) Participant's and/or Certified Software's non-compliance with the practices and/or software functions described in the Self-Assessment; (3) Participant's and/or Certified Software's material non-compliance with the Program Requirements; (4) Participant's failure to comply with TRUSTe's requirements during any Probation and/or Suspension Periods; (5) Participant's failure to cooperate with TRUSTe regarding an audit, complaint or the Compliance Monitoring activities of TRUSTe; (6) Participant's engaging in any of the Prohibited Activities listed in Section 12 of the Program Requirements; and (7) Participant's failure to

take steps, pursuant to Section 9 of the Program Requirements, to ensure that either its Distribution Partners, or Affiliates, or both, do not engage in any of the Prohibited Activities listed in Section 12 of the Program Requirements.

(c) Termination By Either Party for Any Reason. Either party may terminate this Agreement at any time upon twenty (20) business days' prior written notice for any reason ("Termination for Convenience"), provided that Participant may not terminate this Agreement under this Section 5(c) while it is curing a material breach pursuant to written notice from TRUSTe or while it is under Probation or Suspension. If termination by TRUSTe becomes effective, TRUSTe will promptly refund to Participant the amount equal to the prorated Compliance Monitoring Fee (but not the Certification Fee) for the portion of the term remaining as of the effective date of termination. If Participant terminates this Agreement pursuant to this Section 5(c) Participant is not entitled to any refund of prepaid Compliance Monitoring Fees or Certification Fees and Participant may not re-apply to become a Participant in the Program until six (6) months after the effective date of termination.

(d) "Probation" Status. Participant may be placed on Probation by TRUSTe for a material breach of this Agreement or in the event TRUSTe has received evidence, in TRUSTe's reasonable discretion, of a violation of the Program Requirements ("Probation").

(i) Participant will be considered to be on Probation immediately upon receiving notice from TRUSTe. Probation shall last until such time as the Participant has corrected the material breach of this Agreement, or Program Requirement violation to TRUSTe's satisfaction, but not for a period of greater than three (3) months ("Probation Period"). TRUSTe will notify Participant of the remedial steps necessary for Participant to take with respect to Probation within ten (10) business days of Participant being placed on Probation. Participant may provide documentation and information to TRUSTe regarding Participant's position with respect to this status and TRUSTe will promptly respond to any such documentation or information. Participant's Probationary status shall be communicated to Participant and any Informed Third Parties, but shall otherwise not be made public by TRUSTe.

(ii) During the Probation Period, in addition to correction of the material breach to TRUSTe's satisfaction, Participant shall comply with all actions required by TRUSTe, which may include, but are not limited to: (1) compliance with additional or more stringent Program Requirements; (2) cooperation with heightened Compliance Monitoring by TRUSTe; (3) payment to TRUSTe of an amount equal to one-twelfth (1/12) of the then current annual Compliance Monitoring Fee applicable to Participant, payable for every month of the Probation Period, as compensation for TRUSTe's additional Compliance Monitoring; and (4) pay any applicable additional testing charges required for re-testing of the Software Unit.

(iii) At the end of the Probation Period, TRUSTe will, in its discretion, either: (1) determine that Participant has complied with Participant's Probation obligations, thereby satisfying TRUSTe's concerns; (2) extend the Probation Period by mutual agreement with the Participant; or (3) determine that Participant has failed to comply with Participant's Probation obligations and place Participant on Suspension or terminate Participant for cause immediately.

(e) "Suspension" Status. Participant and/or Certified Software may be placed on Suspension by TRUSTe for a material breach of this Agreement, or in the event TRUSTe has received credible, substantially supported evidence or conclusive evidence, of a violation of the Program Requirements ("Suspension").

(i) Participant will be considered to be on Suspension immediately upon receiving notice from TRUSTe. Suspension shall last until such time as the Participant has corrected the material breach or Program violation to TRUSTe's satisfaction, but not for a period of greater than three (3) months ("Suspension Period"). TRUSTe will notify Participant of the remedial steps necessary for Participant to take with respect to Suspension within ten (10) business days of Participant being placed on

Suspension. Participant may provide documentation and information to TRUSTe regarding Participant's position with respect to this status and TRUSTe will promptly respond to any such documentation or information. Participant's Suspension status shall be communicated to Participant and any Informed Third Parties, and the Whitelist will be updated to reflect the Suspension status for the Certified Software (including all Certified Software covered by this Agreement).

(ii) During the Suspension Period, in addition to correction of the material breach or Program violation to TRUSTe's satisfaction, Participant shall comply with all actions required by TRUSTe, which may include, but are not limited to: (1) compliance with additional or more stringent Program Requirements; (2) cooperation with heightened Compliance Monitoring by TRUSTe; (3) payment to TRUSTe of an amount equal to one-twelfth (1/12) of the then current annual Compliance Monitoring Fee applicable to Participant, payable for every month of the Suspension Period, as compensation for TRUSTe's additional Compliance Monitoring, and (4) pay any applicable additional testing charges required for re-testing of the Software Unit.

(iii) At the end of the Suspension Period, TRUSTe will, in its discretion, either: (1) determine that Participant has complied with Participant's Suspension obligations, thereby satisfying TRUSTe's concerns; (2) extend the Suspension Period by mutual agreement with the Participant; or (3) determine that Participant has failed to comply with Participant's Suspension obligations and terminate Participant for cause immediately.

(f) Immediate Termination by TRUSTe for Cause. TRUSTe may terminate this Agreement for cause immediately upon written notice if TRUSTe has obtained what it reasonably believes to be conclusive evidence of a material breach of the Program Requirements by Participant or if Participant is not complying with all material aspects of the compliance requirements imposed by TRUSTe on Participant during Probation or Suspension status. In such case there shall be no right to cure for Participant and no refund of fees.

(g) Effect of Termination. Upon termination of this Agreement, Participant shall comply with any applicable post-termination Program Requirements. Upon termination, the Participant and Software Unit(s) shall be removed from the Whitelist and TRUSTe shall notify the Informed Third Parties of such termination. If Participant has a Certification Agreement with TRUSTe in place with respect to more than one Software Unit and termination of a particular Software Unit was for cause, TRUSTe may (i) terminate Participant on a company level, thereby terminating all Software Units submitted by Participant under this Agreement, or (ii) elect to terminate this Agreement on an individual Software Unit basis, rather than at the company level.

(h) TRUSTe's Right of Publication and Referral.

(i) TRUSTe may, after termination of this Agreement, report the departure of Participant and/or the Certified Software from the Program publicly on TRUSTe's Web site if such termination occurs after the launch of the Whitelist., including Participant's name and/or the Certified Software's identifying information and, where termination is

- (1) for cause based upon Participant's violation of the Program Requirements or other material breach of this Agreement, or
- (2) for Participant's convenience and Participant has violated or is under investigation for having potentially violated the Program Requirements,

TRUSTe may publish the Program Requirement found to have been violated, or suspected to have been violated, along with a description of the violation.

(ii) TRUSTe may refer matters related to Participant to the appropriate authorities, including but not limited to those authorities listed in Section 1(d), if this Agreement is terminated for cause by TRUSTe. If a matter related to the Certified Software or Participant's activities with respect to

the Certified Software is referred by TRUSTe to any such authority, TRUSTe may publish a notice of this fact, including descriptive references to Participant's name and identifying information regarding the Certified Software, and the Certification Agreement and/or Program Requirement Section(s) found to have been violated, along with a description of the violation.

(iii) TRUSTe reserves the right to refer any information it obtains from a user of the Certified Software, or other complaining party, to an appropriate law enforcement authority pursuant to the limitations of Section 5(g)(ii) of this Agreement.

(i) Remedies Not Limiting. The remedies provided in this Section 5 are in no way limiting of one another or of any other rights and remedies granted to TRUSTe under this Agreement or the Program Requirements. TRUSTe may choose to, but is not required to, place Participant on Suspension or Probation in lieu of terminating Participant for cause or taking other appropriate action.

(j) Survival. Sections 5(h), 7, 8, 9 and 10, as well as all post-termination obligations contained in the Program Requirements, shall survive termination of this Agreement regardless of the manner in which this Agreement was terminated.

6. Representations and Warranties. Participant represents, warrants and covenants, as applicable, to TRUSTe as of the Effective Date and throughout the Term of this Agreement that:

(a) Participant has all right, title and authority to enter into this Agreement.

(b) Participant has control over all aspects of the Software Unit and Software Disclosures, including without limitation, control sufficient to modify or discontinue distribution of the Software Unit(s) and Software Disclosures. During the term of this Agreement, Participant shall maintain such control over the Software Unit(s) and Software Disclosures and shall not transfer ownership or control of the Software Unit(s) or Software Disclosures to any third party.

(c) The information provided in the Self-Assessment by Participant is a true, accurate and complete representation as of the date of their delivery to TRUSTe.

(d) Participant shall not make or distribute Material Changes to the Software Unit without prior notice to TRUSTe. Any Material Change will void the Certification status of the Software Unit and trigger a recertification requirement for the Software Unit. Where a change to Certified Software is absolutely required in order to retain or effect the stated functionality as approved by TRUSTe during the Certification process for Certified Software ("Emergency Change"), such change may be made prior to notification to TRUSTe, provided that Participant shall notify TRUSTe of any Emergency Change in the shortest time commercially practicable but in any event no later than three (3) business days following implementation of such change. TRUSTe reserves the right to require recertification of Certified Software if any Emergency Change is deemed by TRUSTe, in its sole discretion, to be a Material Change to the Certified Software. Participant shall notify TRUSTe of any Non-Material Changes within ten (10) business days of release of such non-Material Changes.

(e) Participant's execution of this Agreement and its engagement hereunder do not constitute a breach of any contract, agreement or understanding, oral or written, to which it is a party or by which it is bound.

(f) After diligent inquiry and in good faith, and except as otherwise disclosed in its Self-Assessment, Participant attests that at the time of entering this Agreement it is not a defendant in a civil lawsuit or the subject of an Action by any known governmental entity in any country, including without limitation the Attorney General of any state, the United States Federal Trade Commission (FTC), any law enforcement agency or any foreign privacy authority, of which it has been notified, relating to the Software Unit, the Certified Software or Participant's conduct as it relates to the Program Requirements.

(g) Participant and the Certified Software shall remain in compliance with the Program Requirements (i) during the term hereof, and (ii) after the term hereof to the extent there are post-termination obligations applicable to Participant and/or the Certified Software.

(h) Participant represents that it has not modified the form or content of this Agreement from the form and content of the Agreement provided to it by TRUSTe, except by adding Participant's name and contact information, and the name of the Software Unit.

7. Indemnification; Release; Insurance

(a) Indemnification by Participant. Participant will defend, indemnify and hold TRUSTe and its subcontractors and service providers, and their respective officers, directors, employees, agents and representatives harmless from and against any liability, damages, costs and expenses, including without limitation reasonable attorneys' fees, in connection with any third party claims against TRUSTe, its officers, directors, employees or representatives, arising from or relating to: (i) the Software, (ii) the Certified Software, (iii) Participant's purchase of the services provided by TRUSTe and its subcontractors hereunder, (iv) Participant's non-compliance, or alleged non-compliance, with the Software Disclosures or Program Requirements, (v) Participant's non-compliance, or alleged non-compliance, with any Notice required under Section 3 of the Program Requirements, (vi) Participant's status as being on Suspension and/or Probation, or (vii) the Software's non-compliance, or alleged non-compliance, with the Software Disclosures or Program Requirements.

(b) Indemnification Procedures. With respect to Participant's obligation to indemnify TRUSTe (i) TRUSTe shall provide prompt written notice of any such claim, action or demand; (ii) TRUSTe shall allow Participant to control the defense and related settlement negotiations, provided, however, that TRUSTe shall have the right to participate in such defense with counsel of its own choosing at Participant's expense; (iii) TRUSTe shall provide Participant, at Participant's request, with reasonable assistance in the defense of such claim, action or demand, so long as Participant reimburses TRUSTe for TRUSTe's reasonable out-of-pocket expenses associated therewith; and (iv) Participant shall not settle a claim in a manner that causes TRUSTe to incur unindemnified liability, take action, or suffer other injury, without TRUSTe's written consent, which consent shall not unreasonably be withheld. Participant shall not be relieved of its indemnification obligations herein for TRUSTe's failure to comply with such requirements, except to the extent that Participant has been prejudiced by TRUSTe's failure.

(c) Release; Hold Harmless. The Participant does hereby release and agree to hold TRUSTe and its subcontractors and service providers, and their respective officers, directors, employees, agents and representatives (the "Releasees") harmless from and against any and all claims, debts, demands, allegations, actions, causes of action, suits, duties, dues, sums of money, bills, accounts, bonds, indemnities, exonerations, covenants, contracts, controversies, agreements, promises, omissions, trespasses, variances, damages, judgments, costs, expenses, losses, exposures, executions, obligations, and liabilities whatsoever, (the foregoing, collectively, "Claims") that the Participant may have, now or in the future, against any or all of the Releasees arising out of, resulting from, based upon, in connection with or relating to: (i) TRUSTe's refusal or failure to certify any Software Unit under the Program, (ii) TRUSTe's refusal or failure to place the Participant or any Software Unit on the Whitelist, (iii) TRUSTe's, or its Service Provider's, determination that any Software Unit does not "pass" the Certification criteria of, or otherwise qualify for, the Program, (iv) TRUSTe's decertification of the Certified Software, (v) the voluntary or involuntary termination of the Participant and/or the Certified Software from the Program and/or removal from the Whitelist, (vi) the placement of the Participant on Suspension and/or Probation status, (vii) TRUSTe's publication and/or referral of Participant, pursuant to Section 5(h), (viii) the status of Participant and/or the Certified Software as "provisionally" certified, (ix) TRUSTe's disclosure of information to Informed Third Parties, (x) the timing of the testing and Certification process, and (xi) the perception by any entity or entities that any Software Unit or Certified Software constitutes "spyware," "Covered Advertising Software" or "Covered Tracking Software" (as

those terms are generally understood in the industry) or is otherwise harmful, invasive, dangerous, malicious or destructive.

(d) Insurance. Participant shall maintain liability coverage with a limit of at least \$1,000,000 per each claim and \$2,000,000 annual aggregate, which must encompass, at a minimum and without limitation, all of Participant's indemnification obligations hereunder. If Participant obtains a claims-made policy, Participant shall maintain continuous coverage in effect at least three (3) years beyond the termination of this Agreement through renewal of the same policy or purchase of extended discovery period or retroactive insurance dated back to at least the Effective Date. If requested, Participant shall furnish TRUSTe with certificates of insurance evidencing all of the insurance referred to herein (including renewals of insurance). Participant's obligations under this Section shall in no way affect the indemnification or remedy provisions set forth in this Agreement.

8. Consequential Damages Waiver; Limitation of Liability. EXCEPT FOR PARTICIPANT'S INDEMNIFICATION OBLIGATIONS CONTAINED IN SECTION 7(a), NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FROM LOST PROFITS, LOST USE, DAMAGE TO GOODWILL OR ANY OTHER THEORY EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Except for (a) payments provided for in Sections 5(d) and 5(e), (b) costs and service fees provided for in the attached Schedule A, and (c) for damages, losses or expenses incurred by TRUSTe, including reasonable attorneys' fees for any claim, investigation or litigation resulting from a material breach or misstatement of the representations and warranties by Participant contained in Section 6 of this Agreement, neither party shall be liable to the other party on any claim arising under or relating to this Agreement, the Program or the Software for any amount greater than the amount of fees actually paid by Participant to TRUSTe under this Agreement.

9. Receipt of Confidential Information.

(a) Definition of Participant Confidential Information. "Participant Confidential Information" means information concerning Participant's business and or the Software and not generally known to the public that is either contained in Participant's application or that has been marked as confidential by Participant prior to its disclosure to TRUSTe. By way of illustration only, Participant Confidential Information may include trade secrets, know-how, inventions, information gathered pursuant to review of the Software Unit, draft privacy statements and disclosures, techniques, processes, algorithms, software programs, schematics, software source documents, contracts, customer lists, financial information, sales and marketing plans and information and business plans and other proprietary information, provided, however, that such information is marked in accordance with this Section 9.

(b) Confidentiality. TRUSTe agrees to take reasonable measures to maintain the confidentiality of Participant Confidential Information, but not less than the measures it uses for its own confidential information of similar type, and take reasonable measures not to disclose such information to any person except its officers, employees or TRUSTe's subcontractors, to whom it is necessary for the purposes of operation of the TRUSTe program. TRUSTe represents that all such officers, employees and TRUSTe subcontractors shall be bound by the terms of this confidentiality agreement or a similar written agreement with terms no less protective of Participant's Confidential Information than this Agreement. These obligations shall not apply to the extent that Participant Confidential Information includes information which (i) is already known to TRUSTe at the time of disclosure, which knowledge TRUSTe shall have the burden of proving; (ii) is, or, through no act or failure to act of TRUSTe, becomes publicly known; (iii) is legally received by TRUSTe from a third party without restriction on disclosure; (iv) is independently developed by TRUSTe without reference to the Confidential Information of Participant; or (v) is approved for release by written authorization of Participant. The parties agree that the Participant may be entitled to injunctive remedies as a remedy for any breach of this Section 9(b). Nothing in this

Section shall prohibit TRUSTe from disseminating aggregated information that contains no identifiable Participant Confidential Information.

(c) Limitation. Notwithstanding the provisions of this Section 9, TRUSTe may disclose Participant Confidential Information (i) in accordance with a judicial or other governmental subpoena, warrant or order; provided that TRUSTe shall comply with any applicable protective order or equivalent and, unless prohibited by law, TRUSTe will make commercially reasonable efforts to provide Participant with five (5) business days' prior written notice, so that Participant has an opportunity to intervene to protect the confidentiality of its information, (ii) as part of the publication and referral process contemplated in Section 5(h), and (iii) to Informed Third Parties.

10. Miscellaneous.

(a) Governing Law; Jurisdiction; Venue; Attorneys' Fees. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, except for that body of law addressing conflicts of law. The parties hereby consent to exclusive venue and jurisdiction for actions concerning or relating to this Agreement in the federal or state court having jurisdiction where TRUSTe's principal offices are located at the time suit is filed. In any action to interpret or enforce this Agreement, TRUSTe shall be awarded all court costs and reasonable attorneys' fees it incurs.

(b) Assignments; Subcontractors. Participant may not assign or transfer, indirectly or directly (including without limitation by merger or operation of law), any of its rights or delegate any of its duties hereunder without the prior written consent of TRUSTe. In the event of an Assignment or Transfer by Participant of this Agreement without TRUSTe's consent, or an attempt by Participant to do so, such Assignment or Transfer, or attempted Assignment or Transfer, shall be null and void, and TRUSTe may immediately terminate this Agreement for cause upon written notice to Participant pursuant to Section 5(f) herein. TRUSTe is free to subcontract portions of its obligations hereunder.

(c) Entire Agreement; Waiver; Relationship of the Parties. This Agreement and the Schedule(s), appendices and exhibits hereto constitute the entire Agreement between the parties as to the subject matter hereof, and supersede all prior and/or contemporaneous agreements, representations and understandings between them. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the parties. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agency or employment relationship between the parties, and neither party shall have any right to bind the other or incur any obligation on the other's behalf without the other's prior written consent. Except as expressly provided for herein, this Agreement is not for the benefit of any third party, but nothing in this Agreement shall prevent or interfere with any user of the Software Unit bringing an action against Participant for violation of law.

(d) Amendment. Except for amendments to the Program Requirements, as provided for herein, this Agreement shall not be changed, modified, or amended except by a writing signed by both parties.

(e) Force Majeure. Neither party shall be liable (except for nonpayment) for interruptions, delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof caused or occasioned by, or due to fire, flood, water, earthquake, the elements, acts of God, war and threat of imminent war, terrorism, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment for supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond either parties' reasonable control. The party so delayed or prevented from performing shall exercise good faith efforts to remedy any such cause of delay or cause preventing performance.

(f) Interpretation. In all instances in which Participant is referenced with respect to a violation or breach by the Participant of the Program Requirements, such reference shall also include any violation or breach of the Program Requirements by the Certified Software.

(g) Notices and Participant Contact Information. Except as otherwise provided herein with respect to TRUSTe's right to provide notice via email, all notices required to be given to Participant under this Agreement must be given in writing and delivered either in hand (in which case delivery shall be effective as of the delivery date), by certified mail, return receipt requested, postage pre-paid (in which case delivery shall be effective three (3) days after mailing), or by Federal Express or other recognized overnight delivery service (in which case delivery shall be effective the day following remittance to the delivery service), all delivery charges pre-paid, and addressed:

Designated Software Coordinator: _____

Software Coordinator's Email: _____

Software Coordinator's Telephone: _____

Participant Name: _____

Address: _____

Telephone: _____

PARTICIPANT ACKNOWLEDGES THE REQUIREMENT TO MAINTAIN THE SOFTWARE COORDINATOR'S EMAIL ACCOUNT. PARTICIPANT EXPRESSLY CONSENTS TO RECEIPT OF NOTIFICATION BY EMAIL OF THE FOLLOWING: (i) AMENDMENTS TO THE PROGRAM REQUIREMENTS AS PROVIDED FOR UNDER SECTION 1(b), AND (ii) NOTICE OF IMMEDIATE TERMINATION FOR CAUSE UNDER SECTION 5(f). PARTICIPANT WAIVES ANY RIGHT TO CONTEST ACTIONS TAKEN BY TRUSTe UNDER SECTIONS 1(b) AND 5(f) BASED ON THE ASSERTION THAT THE EMAIL ADDRESS IS NOT VALID OR OPERATIONAL.

(h) Notices to TRUSTe. Except as otherwise provided, all notices and acknowledgments required to be given to TRUSTe under this Agreement must be given in writing and delivered either in hand (in which case delivery shall be effective as of the delivery date), by certified mail, return receipt requested, postage pre-paid (in which case delivery shall be effective three (3) days after mailing), or by Federal Express or other recognized overnight delivery service (in which case delivery shall be effective the day following remittance to the delivery service), all delivery charges pre-paid, and addressed:

Designated Address: TRUSTe Compliance Department

Address: TRUSTe
685 Market Street, Suite 270
San Francisco, CA 94105

[SIGNATURES ON FOLLOWING PAGE]

The authorized representatives of the Parties have executed this Agreement below.

THE INDIVIDUAL EXECUTING THIS AGREEMENT ON BEHALF OF PARTICIPANT REPRESENTS AND WARRANTS THAT HE OR SHE IS AUTHORIZED TO EXECUTE THIS AGREEMENT ON BEHALF OF PARTICIPANT AND, TO THE BEST KNOWLEDGE OF SUCH PERSON, ALL REPRESENTATIONS MADE IN THIS AGREEMENT BY PARTICIPANT ARE TRUE AND CORRECT. PARTICIPANT ACKNOWLEDGES THAT VIOLATIONS OR MISSTATEMENTS CONTAINED IN PARTICIPANT'S NOTICES TO USERS PURSUANT TO SECTION 3 OF THE PROGRAM REQUIREMENTS MAY RESULT IN TERMINATION OF THIS AGREEMENT, CIVIL AND CRIMINAL ACTIONS BY LAW ENFORCEMENT AUTHORITIES AGAINST PARTICIPANT AND PRIVATE CAUSES OF ACTION.

Accepted and Agreed by TRUSTe:

Authorized
Representative
Signature _____

Name Frances A. Maier

Title Executive Director

Date _____

Accepted and Agreed by Participant:

Authorized
Representative
Signature _____

Name _____

Title _____

Date _____

Telephone _____

Email _____

Mailing Address _____

City, State, Zip _____

Exhibit 1

Listing of Software Units

In the table below please list the name or brand of the Software Unit(s) and version number of the Software Unit(s) to be tested and considered for Certification, along with the URL of the web page where the Software Unit can be downloaded.

Software Unit Name or Brand to be Tested and Considered for Certification	Version Number	Web page to Download the Software Unit (list all URLs at which Software Unit can be Downloaded)

Exhibit 2

List of Informed Third Parties



SCHEDULE A

TRUSTe TRUSTED DOWNLOAD CERTIFICATION PROGRAM – BETA PROGRAM REQUIREMENTS

1. DEFINITIONS]

(a) Action – means any allegation, investigation, demand, suit, legal proceeding, inquiry, or other legal action, whether formal or informal, initiated by any state or federal governmental authority.

(b) Ad Targeting – The term “Ad Targeting” means the use of Pseudonymous Information to determine User characteristics or preferences for use in ad delivery.

(c) Affiliate – means a person who, for financial consideration, offers the Program Participant’s Certified Software to Users in connection with an Affiliate Distribution Program.

(d) Affiliate, High Control – means an Affiliate that, for financial consideration, under a cost per acquisition (pay per install) model with Participant’s codes on their site, drives web traffic to Participant’s website in order to offer Participant’s Software Unit to Users. This distribution method allows the Participant to retain control of the download and installation process for its Certified Software.

(e) Affiliate, Medium Control – means an Affiliate that (1) offers Participant’s Software Unit to Users for financial consideration, and (2) in which the Participant controls the download and install process for its Software Unit; typically via some means of centralized software distribution from web servers owned or controlled by the Participant. This distribution method allows the Program Participant to ensure that the correct version of its Software Unit, with all the required disclosures, is downloaded as part of the software bundle distributed by the Affiliate.

(f) Affiliate Distribution Program – means a process whereby (1) a Participant provides financial consideration to one or more Affiliates in exchange for the Affiliate(s)’ agreement to offer Certified Software to Users. Typically but not always, as part of the process, at least some Affiliates have the Participant’s authorization to hire or subcontract with others to distribute the Participant’s Covered Advertising Software or Covered Tracking Software to Users.

(g) Agent – means a third party contracted with to perform a business process, provide a service, or deliver a product on behalf of the principal who retained the agent. An agent does not have an independent right to use the relevant User data on its own behalf or in any way other than to perform its obligations on behalf of the principal. Agents include Service Providers meeting these restrictions.

(h) Anonymous Information– The term “Anonymous Information” means information that does not fall within the definition of either Personally Identifiable Information or Pseudonymous Information . “Anonymous information” includes but is not limited to aggregate information.

(i) Applicant – means a company that has submitted Software for Certification to the Program.

(j) Certification – means the determination by TRUSTe that software submitted to the Program is compliant with the Program Requirements. While Certification applies to software (*i.e.*, the Program does not offer Certification to companies), no company that violates any company-level Program Requirement (such as performing the Prohibited Activities in Section 12) will be eligible for Certification of any of its software.

(k) Certified Ad Inventory – means the segregated ad inventory that may be displayed only to Users of Covered Advertising Software installed after its Provisional Certification Date or Legacy

Users of Covered Advertising Software that was installed prior to the Provisional Certification Date who have received the notice and/or given the consent required under Section 11.

(l) Certified Covered Advertising Software – means a Participant’s Covered Advertising Software that has been tested and awarded Certification, and is currently certified under this Program.

(m) Certified Software – means a Participant’s Software Unit that has been tested and awarded Certification, including Provisional Certification, and is currently certified under this Program. Certified Software includes, but is not limited to, Certified Covered Advertising Software and Certified Covered Tracking Software.

(n) Certified Covered Tracking Software – means a Program Participant’s Covered Tracking Software that has been tested and awarded Certification, and is currently certified under this Program.

(o) Children’s Website – means (as defined in Section 312.2 of the Children’s Online Privacy Protection Rule, 16 C.F.R. Part 312) a website that, based upon its subject matter, visual or audio content, age of models and other language or characteristics, is targeted or directed to children under the age of thirteen.

(p) Compliance Monitoring – means TRUSTe’s monitoring of ongoing compliance with these Program Requirements.

(q) Covered Advertising Software – means software that displays advertisements such that the display of any advertisement is not directly triggered by the User’s interaction with the Certified Software, unless such ads are displayed within the context of the application and the use of any other application is not disrupted. TRUSTe may consider other related formats or methods of delivery as part of the scope of the Program. The User’s option to disable display of advertising does not exempt software from this definition. Covered Advertising Software is often bundled with other software, such as screensavers, games, weather applications, and other popular User software. Covered Advertising Software may include Covered Tracking Software where the Covered Advertising Software also meets the definition of Covered Tracking Software.

(r) Covered Tracking Software- means any software that collects a User’s web browsing or other information entered into a separate application, where a purpose is to transfer such information to a destination off the User’s computer that is not controlled by the User. Covered Tracking Software does not include software where the collection and transfer purposes are network integrity or functionality, application integrity, or information security. (Covered Tracking Software may include Covered Advertising Software where the Covered Tracking Software also meets the definition of Covered Advertising Software.)

(s) Default Option – means an option that is pre-selected, so that a User can accept the option without taking any additional affirmative action indicating consent. For purposes of this definition, allowing Users to accept an option by selecting the “Enter” key on their computer keyboards is not an affirmative action indicating affirmative consent.

(t) Distribution Bundle, High Control - means two or more software programs, including Participant’s Software Unit and other software, which are offered contemporaneously to Users by a Distribution Partner, in which the Participant controls the download and install process for its Software, typically by means of centralized software distribution from web servers owned or controlled by the Program Participant. This distribution method allows the Participant to ensure that the correct version of its Software Unit, with all the required disclosures, is consistently downloaded as part of the Distribution Bundle.

(u) Distribution Bundle, Medium Control - means two or more software programs, including Participant’s Software Unit and other software, which are offered contemporaneously to Users by a

Distribution Partner, in which the Participant does not directly control the download and install process for its Software Unit.

(v) Distribution Partner - means a person that, for financial consideration, distributes Software to Users on behalf of the Program Participant. Typically, but not always, the Distribution Partner includes their own software and/or software from third parties as part of a Distribution Bundle offered to Users.

(w) Effective Date – means the date this Agreement is signed by both parties, or, in the case of a Renewal, the day after the previous license expires, if the requirements for Renewal are satisfied.

(x) EULA – means an End User License Agreement.

(y) Informed Third Party(ies) – means those entities that Participant has designated in writing to TRUSTe to receive Certification status updates, including: failure to obtain Certification, Certification of the Software, placement on the Whitelist, placement on Probation or Suspension status, removal from the Whitelist, and/or termination from the Program.

(z) Just in Time Notice – means notice of a functionality that is added after a User has already consented to install Software but just prior to the execution of that functionality. When this happens, a User is provided with Primary Notice of the new functionality and given the opportunity to provide consent just prior to execution of that functionality. Waiting until just prior to execution of certain functionalities can provide the User with better context to make certain consent decisions. While the Program permits the use of Just in Time Notice for some Certified Software, the Program does not permit its use for Certified Covered Advertising Software. **(Beta Note:** Just in Time Notice may not be used where such use would negatively impact the original value proposition of the Certified Software, as determined by TRUSTe.)

(aa) Legacy User – means all Users who have installed a Participant’s Covered Advertising Software or Covered Tracking Software before the Provisional Certification Date of such Covered Advertising Software or Covered Tracking Software.

(bb) Market Research – The term “Market Research” means the use of Pseudonymous Information to understand how Users are using their computers and the Internet.

(cc) Material Change(s) – means an adverse change in a user’s rights or protections, that would be of importance or consequence to the User, which may include:

(i) Changes to privacy practices, meaning changes relating to:

- (1) Practices regarding notice, disclosure, and use of Personally Identifiable Information and/or Third Party Personally Identifiable Information,
- (2) Practices regarding user choice and consent to how Personally Identifiable Information and/or Third Party Personally Identifiable Information is used and shared, or
- (3) Measures for data security, integrity, or access.

(ii) Modifications to Certified Software that are relevant to these Program Requirements, including but not limited to:

- (1) Changes to one or more functionalities that are required to be disclosed per Sections 3, 5, 6, 7, 10 and 11 of these Program Requirements, and/or;
- (2) Changes to the way any required functionalities are disclosed, including but not limited to changes to wording, font, size and/or order of the disclosures, and/or;

- (3) Changes to the Software's method or means of storing data remotely.
- (iii) Material update or revision to Certified Software functionality including but not limited to: Substantive additions, reconfigurations and/or changes to Software functionality;
- (iv) Material Changes do not include any changes which solely affect the performance or integrity of the Software Unit, such as increases in speed, reliability, or information security.
- (dd) Non-Certified Ad Inventory – means the segregated ad inventory that is displayed to Legacy Users of Covered Advertising Software that have not received the notice and/or given the consent required under Section 11.
- (ee) Notice(s) – means the Primary Notice and the Reference Notice, together and individually.
- (ff) Online Preference Marketing (or OPM) – means a process whereby data are typically collected over time and across web pages to determine or predict User characteristics or preferences for use in ad delivery on the web. The OPM process can use Pseudonymous Information or a combination of Personally Identifiable Information and Pseudonymous Information. OPM does not refer to the use of data by Participants for Ad Delivery or Reporting.
- (gg) Personally Identifiable Information (or PII) – means any information (i) that identifies or is used to identify, contact, or locate the person to whom such information pertains or (ii) from which identification or contact information of an individual person is derived. Personally Identifiable Information includes, but is not limited to: name, address, phone number, fax number, email address, financial profiles, medical profile, social security number, and credit card information. Additionally, to the extent unique information (which by itself is not Personally Identifiable Information) such as, but not necessarily limited to, a personal profile, unique identifier, biometric information, and/or IP address is associated with Personally Identifiable Information, then such unique information also will be considered Personally Identifiable Information. Notwithstanding the above, Personally Identifiable Information does not include information that is collected anonymously (*i.e.*, without identification of the individual user) or demographic information not connected to an identified individual. Personally Identifiable Information includes Third-Party Personally Identifiable Information.
- (hh) Primary Notice – means information actually presented to each user in a manner that is clear, prominent and unavoidable and designed to catch the User's attention during the installation process, prior to completion of the Software Unit(s) installation. The Primary Notice must be fully visible to a User without additional action on the part of the User, such as having to scroll down the page to reach the beginning of the required disclosures. The purpose of the Primary Notice is to ensure that important information is disclosed to Users in a way that they will see and understand so that they can make an informed decision about the proposed software value proposition.
- (ii) Program – means the TRUSTe Trusted Downloadable Certification Program.
- (jj) Participant – means a company that has software that is currently certified or provisionally certified in the Program. A participant must have control over all aspects relevant to Certification of the Certified Software.
- (kk) Program Requirements – means the requirements for participation in the Program as specified in this Schedule A, as may be amended from time to time.
- (ll) Provisional Certification – means an interim level of Certification of a Participant's Software Unit, during which time the Program Participant will be subject to all requirements that apply to its Certified Software as well as certain additional requirements, including, as relevant, those specified in Section 11(c).

(mm) Provisional Certification Date – means the date on which a Participant’s Software Unit receives Provisional Certification pursuant to Section 11.

(nn) Provisionally Certified Software – means Software Unit that has received Provisional Certification.

(oo) Pseudonymous Information – The term “Pseudonymous Information” means information that may correspond to a person, account or profile but is not sufficient, either on its own, or through combination with other easily accessible public information, to identify, contact, or locate the person to whom such information pertains. (Beta Note: Examples include but are not limited to a User’s IP address, machine ID, and the web pages a User views.)

(pp) Reference Notice – means information that is easy to locate (*e.g.*, via an easily accessible scroll box or a prominent and clearly labeled link) and easy to read and comprehend. Examples of Reference Notices include Privacy Statements and End User License Agreements (EULAs).

(qq) Registered Program Advertiser – means a company that has registered with TRUSTe pursuant to Section 14.

(rr) Service Provider(s) – means a third party that performs or assists in the performance of a function or activity involving the use or disclosure of Personally Identifiable Information or Third Party Personally Identifiable Information.

(ss) Software Disclosures – means the statements made in the Self-Assessment in regard to the software.

(tt) Software Unit – means the Software described in Exhibit 1 that is to be tested and reviewed for Certification by TRUSTe.

(uu) Third-Party Personally Identifiable Information (or “Third-Party PII”) - means Personally Identifiable Information that is collected by a Program Participant from a User other than the User to whom it pertains, or whom it identifies. For the purposes of this definition, the collection of Internet search terms entered by a User is not considered PII.

(vv) TRUSTe Marks – means collectively the registered certification marks and trademarks of TRUSTe.

(ww) User – means an authorized user or owner of a computer on which a Software Unit is downloaded.

(xx) Whitelist – means the list maintained by TRUSTe of all Certified and Provisionally Certified software, and the associated Participants that are currently in the Program.

2. Program Management

(a) Certification. The process of certifying Software for compliance with the Program Requirements shall be as provided for below:

(i) Certification shall apply to an individual Software Unit. Participant shall provide TRUSTe with a description, unique identifier and an archival format for each Software Unit it wishes to certify. Participant shall provide TRUSTe with all documentation, whether in written, electronic, or other appropriate format, reasonably requested by TRUSTe in connection with the Certification process. Such documentation shall include a completed Self-Assessment Form, Attestation Form, and other information about the Software as may be reasonably requested by TRUSTe.

(ii) Once Participant has submitted its application, no Material Change is permitted, without written notice to TRUSTe. Any Material Change may trigger restarting the Certification process at TRUSTe’s discretion.

(iii) TRUSTe shall review the Self-Assessment and test the Software Unit for compliance with the Program Requirements. The Software Unit version must remain stable until testing is completed. A Certification decision, and corresponding report or reports summarizing TRUSTe's findings, will be provided to the Participant. If TRUSTe does not certify the Software, Participant shall be permitted 30 days time to remedy the failure and resubmit the Software for Certification, whereupon TRUSTe shall provide a second review and test process, and a second report and Certification decision.

(b) Material Changes. Any Material Change to the Certified Software may trigger the need for recertification of the Software, which may require additional fees as provided for herein. TRUSTe will respond to all requests made by Participants to implement Material Changes within five (5) business days of receipt of notice of the requested Material Change.

(c) Participant Obligations. During the Term hereof, and solely with respect to the Software Units for which it seeks certification, the Participant shall:

(i) Make no Material Change to any features, functions, characteristics, architecture, or coding of the Software, in a manner affecting its compliance with the Program, without 1) notifying TRUSTe in writing or electronically of Participant's intent to do so, and 2) obtaining TRUSTe's written decision as to whether such change triggers a recertification requirement;

(ii) Immediately notify TRUSTe in writing of any Material Change in the Software Unit or in the circumstances or facts that initially served as a basis for Certification, or which are otherwise related to Program compliance;

(iii) Immediately provide notice in writing to TRUSTe of any change in the name of a Software Unit or change in the Participant's name;

(iv) Except to the extent prohibited by law, provide notice to TRUSTe of any private lawsuit or Action against it or the Certified Software by any person, law enforcement, or other governmental entity in any country, related to Participant's activities connected to the Program or to the Program Requirements. Such notice shall be provided within five (5) business days of learning of such private lawsuit or Action;

(v) Cooperate with TRUSTe during TRUSTe's Compliance Monitoring and audit activities; and

(vi) Continually provide updated complaint contact information to TRUSTe.

(d) TRUSTe Obligations. TRUSTe shall within a reasonably prompt period of time:

(i) Test the submitted Software and evaluate the Software and Software Disclosures against the Program Requirements;

(ii) Provide a pass/fail decision, as well as a report, regarding the Software and Software Disclosures, to the Participant;

(iii) Retest and provide a second report, as well as a second pass/fail decision, if necessary; and

(iv) Provide ongoing Compliance Monitoring for Software in the Program, to the extent provided for in these Program Requirements.

(e) Whitelist. TRUSTe may, but is not required to, maintain a list of all current Software and/or Participants that are members of the Program ("Whitelist"). Participant hereby consents to the use of its name and the name of the Certified Software on any Whitelist compiled by TRUSTe during the

Term. TRUSTe may also respond to any inquiry regarding whether Participant and/or the Software Unit is a member of the Program.

(f) **Dispute Resolution.** Participants that are also members of the Truste Web Seal Program must participate in TRUSTe's Watchdog process, as described on the TRUSTe website, to resolve non-frivolous, as defined by TRUSTe, privacy concerns or complaints related to Certified Software raised by Users. If Participant does not respond directly to consumer concerns or complaints in a satisfactory and timely fashion, TRUSTe will act as the liaison between the Participant and the consumer to resolve the issue, including recommending any necessary corrective action. (**Beta Note:** It is anticipated that the Program shall include a dispute resolution program for all Participants, not just those that are Licensees of the TRUSTe Web Seal Program. TRUSTe shall operate a User-facing website that accepts inquiries and complaints from Users. TRUSTe or its designee shall refer all inquiries and complaints from Users to the relevant Participant for the Participant's response within a reasonable time to be specified by TRUSTe or its designee. Inquiries and complaints will also, in appropriate circumstances, trigger additional Compliance Monitoring of the Participant's software.)

(g) **Updates to Informed Third Parties.** TRUSTe will provide ongoing Certification status updates as necessary to Informed Third Parties, if any.

(h) **English Only.** All Software for which Participant is seeking Certification hereunder must have all User-facing statements written entirely in the English language. Downloading of the Software must be the same no matter the geographic location of the User.

3. **Notice.** The Program Requirements adopt a layered-notice approach: Program Participants must disclose, or reasonably ensure disclosure in accordance with Section 3, the most important information as outlined below about their Certified Software (including, in the case of Certified Covered Advertising Software or Certified Covered Tracking Software, the proposed value proposition), clearly and prominently, outside of the Reference Notice, prior to installation, along with a link to the Reference Notice.

(a) **The Primary Notice.** The Primary Notice (which is required when any functionality described in Section 3(a) is present) must appear clearly, prominently and unavoidably, before Users can install the Certified Software. Primary notice may be presented using Just in Time Notice, except in the case of Certified Covered Advertising Software. This Primary Notice must include the following information:

(i) For all Certified Software:

(1) Whether installing the software, alone or as part of a bundle, may:

- A. Redirect the User's Internet searches;
- B. Add a toolbar to the User's web browser or modify other functionality of the browser or desktop as determined by TRUSTe;
- C. Change the User's home page, default search provider or error page handling or otherwise modify browser settings as determined by TRUSTe;
- D. Change the User's default provider, web proxy or other changes to Internet settings as determined by TRUSTe; or
- E. Cause known material adverse effects on system performance for typical Users as determined by TRUSTe.

(2) A prominent link to all applicable Reference Notices.

- (ii) In addition, for all Certified Covered Advertising Software:
 - (1) The name of the Program Participant.
 - (2) The essence of the proposed exchange, including (as applicable):
 - A. The name or brand of the Certified Covered Advertising Software, and if the Certified Covered Advertising Software is bundled with other software (and if such other software has a separate name or brand), the name or brand of the other software;
 - B. Whether the Certified Covered Advertising Software will perform collection and transfer of information to a computer not under the User's control for the purpose of Ad Targeting and/or Market Research.
 - C. That ads will be displayed and a brief indication of the types of ads displayed and when ads will be displayed. As applicable, disclose that the ads will appear only while Users are using software in which the Certified Covered Advertising Software is integrated, while they are online generally, or at other specified times; and
 - D. If applicable, that the software will display ads with pornographic advertisements or advertisements for online gambling, alcohol, tobacco, firearms or other weapons.
 - (3) A prominent link to all applicable Reference Notices.
- (iii) In addition, for all Certified Covered Tracking Software:
 - (1) The name of the Program Participant.
 - (2) The essence of the proposed exchange, including (as applicable):
 - A. The name or brand of the Certified Covered Tracking Software, and if the Certified Covered Tracking Software is integrated into or bundled with other software (and if such other software has a separate name or brand, the name or brand of such other software.);
 - B. When the collection and transfer of information to a computer not under the User's control for the purposes of Ad Targeting and/or Market Research will occur. As applicable, disclose that the collection and transfer of information to a computer not under the User's control will occur only while Users are using the Certified Covered Tracking Software, while they are online generally, or at other specified times; and
 - (3) A prominent link to all applicable Reference Notices.

(b) **The Reference Notice.** The Reference Notice must be available by prominent link from the Primary Notice, when the Primary Notice is required. In addition the Reference Notice must include at least the following elements:

- (i) For All Certified Software:

- (1) All of the information contained in the Primary Notice. It is not necessary to have EULA's and/or Privacy Statements tailored to each means of distribution; and
 - (2) Instructions on how to uninstall the software, as provided for in Section 7.
- (ii) In addition, for all Certified Covered Advertising Software:
 - (1) A description of the types and frequency of the advertisements displayed by the software;
 - (2) Information (such as a link) on how to access the Program Participant's website and customer support mechanism;
 - (3) If the software will display ads with pornographic advertisements or advertisements for online gambling, alcohol, tobacco, firearms or other weapons, an explanation of how Users can manage their computers to make sure that children are not served with advertisements from Certified Covered Advertising Software installed by adults; and
 - (4) If the software will display ads with pornographic advertisements or advertisements for alcohol, tobacco, firearms or other weapons, disclosure that software should be installed only by Users age eighteen (18) and over.
- (iii) In addition, for all Certified Covered Tracking Software:
 - (1) Information (such as a link) on how to access the Participant's website and to the Participant's customer support mechanism; and

4. Consent to Install. Participants must provide Users with a means to give their consent to install the Participant's Certified Software prior to the completion of any such installation. The consent mechanism must meet the following standards:

- (a) For all Certified Software:
 - (i) Users must be given a means to indicate their consent to install the Certified Software after receiving all applicable Primary Notices;
 - (ii) The language used to describe Users' options to consent to install Certified Software must be plain and direct;
 - (iii) Installation of software shall not proceed if a User declines consent to install the Certified Software or closes the dialog box containing the consent option; and
 - (iv) Users may only be asked once in any installation process to reconsider their decision not to install software or to close the dialog box with the consent option, unless Users have indicated it is acceptable to ask them later.
- (b) In addition, for all Certified Covered Advertising Software and Certified Covered Tracking Software:
 - (i) Users must be given a means to indicate their consent to install the software after receiving any applicable Primary Notice, and the option to consent may not be the Default Option; and
 - (ii) The option to decline consent to install Certified Covered Advertising Software or Certified Covered Tracking Software must be of equal prominence to the option to consent to the installation of Certified Covered Advertising Software or Certified Covered Tracking Software.

5. Notice and Choice Requirements for Uses of PII and Pseudonymous Information.

(a) **Primary Notice.** If PII or Pseudonymous Information is collected and transferred to a computer not under the User's control through the Certified Software, the following information must be provided in a Primary Notice:

(i) For all Certified Software: Either (i) a link to the Reference Notice, or (ii) instructions on where the user can find the Reference Notice, alerting Users to the information about choices available to them regarding their data.

(ii) In addition, for all Certified Covered Advertising Software or Certified Covered Tracking Software: A description of the PII collected or transferred to a computer not under the User's control through the Software Unit, the uses of PII obtained through the Certified Software by Participant, and the types of companies to which Participant will transfer PII.

(Beta Note:With TRUSTe's prior approval, certain information required to be included in the Primary Notice may be moved to a "learn more about this" link, as long as all required disclosures are complete, clear, prominent and unavoidable, in TRUSTe's sole judgment and discretion.)

(b) **The Reference Notice.** If PII or Pseudonymous Information is collected through the Certified Software, the Reference Notice must be available by prominent link from the Primary Notice. The Reference Notice must include at least the following elements:

(i) For All Certified Software:

(1) Whether the software collects PII, and if so, the following additional disclosures:

- A. What PII is being collected;
- B. The identity (including name, address and e-mail address) of the entity collecting such information;
- C. How such information will be used;
- D. A description of the types of entities with whom the information is shared, if at all;
- E. The purposes for which data is disclosed to third parties;
- F. How and when the User may exercise choice, as required in Section 5(c), below;
- G. Whether Users' PII will be supplemented with information from other sources;
- H. The User's access rights to correct material inaccuracies in Personally Identifiable Information, such as account or contact information; and
- I. A general statement describing data security practices (Beta Note: Program Participant must implement reasonable procedures to protect Personally Identifiable Information and/or Third Party Personally Identifiable Information within its control from unauthorized use, alteration, disclosure, distribution, or access. Program Participant shall utilize appropriate, commercially reasonable means, such as encryption, to protect

any sensitive information, such as social security numbers, financial account and transaction information, and health information that it collects.)

- (2) In addition, for all Certified Covered Advertising Software or Certified Covered Tracking Software:
 - A. Whether the Certified Software collects Pseudonymous Information, and if so, the following additional disclosures:
 - I. The types of Pseudonymous Information collected by the Certified Software;
 - II. The Participant's use of Pseudonymous Information;
 - III. Whether the Participant shares Pseudonymous Information with Third Parties and if so, whether the Program Participant places any restrictions on its further use or dissemination; and
 - IV. Additionally, the Reference Notice must contain information, such as a link, on how to access the Participant's website and the Participant's customer support mechanism.

(c) **Choice Requirements.**

- (i) For All Certified Software:
 - (1) The User to whom PII pertains must be offered an opt-out choice if PII collected through the software may be used in the following ways:
 - A. Use not related to the primary purpose for which the User provided it. The scope of use deemed related to the primary purpose shall be defined in the Reference Notice and shall be reasonable to Users;
 - B. Disclosure or distribution to third parties, other than Agents; or
 - C. Merger of Pseudonymous Information with previously collected PII on a going forward basis (*i.e.*, after the user provides PII) for use in Online Preference Marketing, where such use had not been previously disclosed to and accepted by the User.
 - D. Certified Software Providers may require the collection or use of PII as part of the value proposition of the software, and may decline to provide the software if User opts out from such use.
 - (2) The User to whom PII pertains must be provided with notice and provide his or her affirmative consent prior to the merger of PII with Pseudonymous Information previously collected through the software for use in Online Preference Marketing.
 - (3) Before Third-Party PII collected through the software may be used or disclosed for any purpose other than the primary purpose for which such information was collected, the person to whom such information pertains must provide affirmative consent. [Notwithstanding such restriction,

such information (i) may be disclosed pursuant to legal process (*e.g.*, subpoenas, warrants) or (ii) may be used to send a one-time e-mail message to the person to whom the information pertains in order to solicit such opt-in consent.] **[Beta Note:** One example of the behavior this provision is intended to prohibit is the use of Third-Party PII collected through the software (*e.g.*, via an address book) to send unsolicited bulk communications to third parties.]

6. **Special Requirements for Certified Covered Advertising Software.** Consumers should be able to understand why they receive ads from a Participant. The mechanism displaying Ads in Certified Covered Advertising Software must be branded so that Users understand the name of the Certified Covered Advertising Software, the name of any software that has bundled with the Certified Covered Advertising Software, and the name of the Participant providing the Certified Covered Advertising Software.

(a) **Reaffirmation.** Shortly after the User consents to the installation, Certified Covered Advertising Software must display an informational notice that (i) demonstrates a representative example of the Certified Covered Advertising Software's advertisements, (ii) provides the User with more information on how the Covered Advertising Software functions, and (iii) provides information on how to uninstall the software, which may be provided via a prominently labeled link. **(Beta Note:** When a Covered Advertising Software provider has more than one format, a representative example must be sufficient to enable a reasonable User to make an informed decision.)

(b) **Branding.** Advertisements displayed by Certified Covered Advertising Software must be branded with, or within close proximity to, the name of the Participant and the brand of the Certified Covered Advertising Software (if distinct from the name of the Participant).

(c) **Co-Branding.** The mechanism displaying the advertisement must also contain, on their face, or via prominently labeled link, a list of the programs and, if applicable, a representative list of the content that cause the display of such advertisements including clear instructions for removal of the Certified Covered Advertising Software. The link itself must be clearly labeled to communicate to Users that (i) the advertisement was displayed because the User has certain software titles on his computer and, if applicable, access to certain web-based content; and (ii) that the link will take the User to a list of those programs. **(Beta Note:** It is anticipated that this Section 6(c) will be amended, in a time period that is reasonable given the technical challenges, to require that Certified Covered Advertising Software make the list of programs referred to in this sub-section displayable within the advertisement itself and not merely as a link.)

7. **Uninstall.** Certified Software must provide Users with an easy and intuitive means of uninstallation. In addition, the following uninstall requirements shall also apply.

(a) For all Certified Software:

(i) The name of the Certified Software must be listed in the customary place for user initiated uninstall within the software platform (*e.g.*, an Add/Remove Programs facility in the Windows operating system);

(ii) Uninstallation of Certified Software must remove the Certified Software from the User's computer. Uninstallation of Certified Software may be conditioned on the uninstallation of other software on a User's computer (for example, uninstallation of Certified Covered Advertising Software may be conditioned on the uninstallation of other software that is bundled with the Certified Covered Advertising Software), provided that the other software meets the uninstall requirements of this section; **(Beta Note:** TRUSTe recognizes that Certified Software may require the User to install other software (*e.g.*, Adobe Acrobat, Flash), and that the other software may legitimately remain on a User's computer after uninstallation of the Certified Software. TRUSTe, in its discretion, will determine whether or not the

other software is left behind after uninstallation for a legitimate reason; for example, because the User has installed software program(s) that also require the use of the other software in order to function.);

(iii) Once a User has uninstalled Certified Software, the Certified Software may not reinstall on a User's computer unless the reinstallation is performed pursuant to the Program Requirements and, in particular, pursuant to new consent;

(iv) Uninstall instructions for all Certified Software must also be available from the Participant's web page either directly or through a link. (**Beta Note:** TRUSTe anticipates a future requirement that Certified Software provide a link to the TRUSTe web page where uninstall instructions are posted); and

(v) No PII shall be required in order to uninstall Certified Software unless the PII was previously collected in compliance with the Program, and it is reasonably necessary, and only used, to authenticate and/or identify the User.

(b) In addition, for all Certified Covered Advertising Software:

(i) Uninstallation instructions for Certified Covered Advertising Software must be available in multiple places that are easy for Users to find. At a minimum, uninstall instructions must be available:

- (1) By a link from the advertisements themselves, or from the browser window or frame where such content is provided, or from a conspicuous and recognizable icon;
- (2) In the Reference Notice;
- (3) By link from a listing in the Start/Programs menu (or functionally similar menu in other non-Windows software platforms); and
- (4) On the Program Participant's website.

(ii) Customer support information for Users' uninstall questions must be available by link from the software mechanism displaying the advertisements.

(c) In addition, for all Certified Covered Tracking Software:

(i) Uninstallation instructions for Certified Covered Tracking Software must be available in multiple places that are easy for Users to find. At a minimum, uninstall instructions must be available:

- (1) In the Reference Notice;
- (2) By link from a listing in the Start/Programs menu (or functionally similar menu in other non-Windows software platforms); and
- (3) On the Participant's website.

8. Software or Notice Updates.

(a) A Participant cannot retroactively apply Material Changes to the Certified Software or to the Privacy Statement or EULA of Certified Software unless it gives Users Primary Notice of the change and an opportunity to uninstall the Certified Software prior to applying the change. Changes to installed Certified Software that would transform it into Covered Advertising Software or Covered Tracking Software must be treated as a new installation under these Program requirements.

9. Third-Party Distribution / Affiliate Practices.

For all Covered Advertising Software or Covered Tracking Software; and certain Certified Software of Participants, as determined by TRUSTe, who distribute Software Units via Distribution Partners; Affiliates, High Control; or Affiliates, Medium Control;

(a) If Participants use Distribution Partners or Affiliates, they must:

(i) Have contractual provisions in place with such Distribution Partners and Affiliates prohibiting them from causing Participant's Certified Software to not comply with these Program Requirements. In the context of an Affiliate Distribution Program, the contract between the Program Participant and its Affiliate must further require that contracts between the Affiliate and its subcontractors bind the subcontractors to comply with these Program Requirements;

(ii) Disclose to TRUSTe and, if applicable, TRUSTe's authorized evaluator, subject to an appropriate confidentiality agreement, the names of Distribution Partners and Affiliates as well as locations (e.g. URLs of affiliates within an Affiliate Distribution Program) where such Distribution Partners and Affiliates provide or drive traffic to Certified Software to consumers so that such third-party distribution and affiliate practices may be reviewed, tested, and monitored for compliance with these Program Requirements;

(iii) Disclose to TRUSTe and, if applicable, TRUSTe's authorized evaluator, subject to an appropriate confidentiality agreement, the modifications that Distribution Partners or Affiliates are permitted to make to Certified Software as well as locations where Distribution Partners and Affiliates provide such modified Certified Software to Users so that such modifications may be monitored for compliance with these Program Requirements;

(iv) Demonstrate to TRUSTe and, if applicable, TRUSTe's authorized evaluator, subject to an appropriate confidentiality agreement, that Participant has an effective process for evaluating Distribution Partners and Affiliates within an Affiliate Distribution Program;

(v) Evaluate on an ongoing basis Distribution Partners and Affiliates, and report any known material non-compliance with these Program Requirements involving Certified Software. Failure to report any such substantive non-compliance in a timely manner shall be grounds for a suspension or termination of a Participant from the Program and de-certification of all or any of such Program Participant's Certified Software; and

(vi) If the Program Participant learns that a Distribution Partner or Affiliate has engaged in practices that materially violate these Program Requirements, the Program Participant must follow the Program's specified re-opt-in procedures (as specified in Section 11 of these Program Requirements) to re-opt in at least one User of each computer that may have received the Certified Software by those means.

10. Special Protections for Children. Participants with Certified Covered Advertising Software or Certified Covered Tracking Software must take the following steps:

(a) Prevent the distribution of their Certified Covered Advertising Software or Certified Covered Tracking Software on Children's Websites, including by prohibiting their Distribution Partners and Affiliates from such distribution;

(b) Engage in commercially reasonable oversight to determine where advertisements promoting the installation of their Certified Covered Advertising Software or Certified Covered Tracking Software appear;

(c) If their Certified Covered Advertising Software delivers pornographic advertisements or advertisements for alcohol, tobacco, firearms or other weapons, disclose in the Reference Notice that their Certified Covered Advertising Software or Certified Covered Tracking Software should be installed only by Users age 18 and over;

(d) If their Certified Covered Advertising Software delivers pornographic advertisements or advertisements for alcohol, tobacco, firearms or other weapons, Program Participants must ensure that such ads are branded so that they may be recognized by child protection software filters by either;

(i) including the phrase “for adults 18 years” in text somewhere on the face of the Covered Advertisement, or

(ii) including the phrase “for adults 18 years” in the meta keyword tag for the page containing the Covered Advertisement, or

(iii) including the phrase “for adults 18 years” within the “alt”, “name” or “id” attribute of the image tags within the Covered Advertisement; and

(e) Follow the branding steps in Section 6 to make sure that each time Users of Certified Covered Advertising Software see an advertisement, they have a means of understanding why they received the advertisement and easy-to-find information on how to stop getting advertisements from the Certified Covered Advertising Software.

11. Provisional Certification. In certain cases additional transparency may be useful to companies considering partnerships with Participants. In particular, companies may desire transparency into both (i) the recent, though terminated, prior practices of a potential partner that are prohibited under Section 12 of these Program Requirements; or (ii) the efforts of a Participant to provide Legacy Users of a Participant’s Certified Covered Advertising Software or Certified Covered Tracking Software with the level of notice now required under this Program. In order to provide such additional transparency, Program Applicants that would otherwise be entitled to Certification of their Software shall have their Software be eligible only for Provisional Certification in the following circumstances:

(a) Legacy Users of Covered Advertising Software or Covered Tracking Software. Compliance with the Program Requirements for new installations of Covered Advertising Software or Covered Tracking Software is just one step in receiving Certification for such Covered Advertising Software or Covered Tracking Software. The next step is making sure that all Users who previously received such Covered Advertising Software or Covered Tracking Software from the Participant (the “Legacy Users”) fully understand the deal they have made and continue to agree to it. To that end, the Program requires a three-step process to achieve full Certification for Covered Advertising Software or Covered Tracking Software.

(i) Step One: Applicant Status. Potential Participants meet the first step, Applicant status, by submitting their software to the Program for review and by obligating themselves to timely make all changes necessary to comply with the Program both prospectively and retroactively as applied to Legacy Users of their Covered Advertising Software or Covered Tracking Software.

(ii) Step Two: Provisional Certification for New Installs and Client Software Upgrades. Once an Applicant has submitted its Covered Advertising Software or Covered Tracking Software to the Program, the Applicant and its software has been determined by TRUSTe to meet the Program Requirements, and the Applicant has warranted that on an ongoing basis all new installations of such Covered Advertising Software or Covered Tracking Software installations will meet the Program Requirements, the submitted Covered Advertising Software or Covered Tracking Software shall receive Provisional Certification (“Provisional Certification Date”). Participants with Provisionally Certified Software that is Covered Advertising Software or Covered Tracking Software shall be required to do the following:

- (1) Within six (6) months of the Provisional Certification Date, the Program Participant must initiate updating/upgrading the Covered Advertising Software or Covered Tracking Software programs of their Legacy Users, where possible, recognizing that some distribution contracts may not

allow for Program Participants software to be modified to become a compliant Covered Advertising Software or Covered Tracking Software program. (**Beta Note:** TRUSTe recognizes that some existing contracts may prohibit the required changes; nevertheless, TRUSTe will not fully certify software that has not been updated/upgraded in accordance with this provision.)

- (2) Immediately undergo a higher degree of Compliance Monitoring of its Covered Advertising Software or Covered Tracking Software under the Program.
- (3) Immediately segregate the advertising inventory that is displayed to its Covered Advertising Software Users into two distinct sets: Certified Ad Inventory and Non-Certified Ad Inventory.
 - A. Certified Ad Inventory shall be inventory that is displayed to Users of Covered Advertising Software installed after the Provisional Certification Date (and thus compliant with these Program Requirements) or displayed to Legacy Users of Covered Advertising Software that was installed prior to the Provisional Certification Date who have received the notice and/or given the consent required under Section 11(a)(iii) below.
 - B. Non-Certified Ad Inventory shall be inventory that is displayed to Legacy Users of Covered Advertising Software that who not received the notice and/or given the consent required under Section 11(a)(iii) below.
- (4) Explicitly make available to advertisers the ability to purchase only Certified Ad Inventory described in Section 11(a)(ii)(3) above.
- (5) Ensure that no advertisements from Registered Program Advertisers (see Section 14 below) appear within Non-Certified Ad Inventory.

(iii) Step Three: Messaging to Legacy Users. Understanding that the Program represents a new, comprehensive standard, and that some Participants have modified their practices over time, the Program allows for a two-tiered notice and consent regime to Legacy Users.

- (1) Participants must complete the appropriate form of messaging, as applicable, within nine (9) months of the Provisional Certification Date to achieve full Certified status for their Provisionally Certified Covered Advertising Software or Covered Tracking Software.
 - A. Legacy Users Who Received Covered Advertising Software or Covered Tracking Software Under Substantially Compliant Disclosures. Legacy Users who received Covered Advertising Software or Covered Tracking Software pursuant to disclosures substantially similar to those in Sections 3 and 5 and who consented to the installation must be given a notice describing the material facts about the operation of the software including uninstallation instructions.
 - B. Legacy Users Who Received Covered Advertising Software or Covered Tracking Software Under Disclosures Not Substantially Compliant with These Program Requirements - Legacy Users who received Covered Advertising Software or Covered

Tracking Software pursuant to disclosures not substantially similar to those in Sections 3 and 5 must be given a notice describing the material facts about the operation of the software and an opportunity to provide consent to continue to have the Covered Advertising Software or Covered Tracking Software on their systems or to uninstall the Covered Advertising Software or Covered Tracking Software. The option to provide consent may not be the Default Option. Users who decline consent or who close the dialog box shall be promptly provided with uninstall instructions. If the User subsequently fails to uninstall the software, any ads served to that User must be part of the Program Participant's Non-Certified Ad Inventory.

- (2) After the full program launch Covered Advertising Software and Covered Tracking Software can no longer serve ads to those Users who have not re-opted in per the Program Requirements.

(b) Other Activities that Trigger Provisional Certification. In TRUSTe's discretion, TRUSTe may designate a Participant's Certified Software as Provisionally Certified if other substantial risk factors calling into question the credibility of the Participant are present, after providing notice to the Participant and a reasonable opportunity to respond.

(c) Additional Requirements for Program Participants with Provisionally Certified Software.

(i) Notwithstanding any written consent obtained pursuant to Section 2(a) of the Agreement, Program Participants with Provisionally Certified Software may not mention their software's Certification in any manner without including the qualification "Provisional."

(ii) Participants with Provisionally Certified Software may be subject to additional Compliance Monitoring or reporting requirements as determined by TRUSTe.

(iii) Provisionally Certified Software will be so designated on a webpage maintained by TRUSTe.

(iv) Provisionally Certified Software will be so designated on any Whitelists maintained by TRUSTe.

(d) Evaluator Requirement - Participants and Program Applicants that meet the following criteria may be required to submit to an evaluation of their compliance with the Program, including Section 11(a)(iii), if applicable.

(i) Evaluation Criteria:

(1) If Program Applicant asserts that one of more of its Legacy Users were acquired in compliance with Program Requirements as per Section 11(a)(iii)(1)(A), TRUSTe may require that they submit to an evaluation of the methods and procedures used in making that determination.

(2) If Program Applicant or Participant currently distributes their Covered Advertising Software or Covered Tracking Software with one or more Medium Control Affiliates, TRUSTe may require that the Program Applicant or Participant submit to an evaluation of the business practices for each of the Program Applicant's or Participant's Affiliates and all Distribution Partners as they reasonably pertain to these Program Requirements.

- (3) If Program Applicant or Participant currently is, or within the past six months was, under investigation by Federal Trade Commission, State Attorneys General, or similar body, TRUSTe may require that Program Applicant or Participant submit to an evaluation of all business practices that reasonably pertain to these Program Requirements.
- (4) If Program Applicant or Participant is, or becomes, within six month of application to the Program, the subject of a publicly filed proceeding and/or settlement by the Federal Trade Commission, State Attorneys General, or similar body, TRUSTe may require that Program Applicant or Participant submit to an evaluation of all of its business practices that reasonably pertain to these Program Requirements.

(ii) **Evaluation Scope**

- (1) The evaluations are to be performed by, in TRUSTe's discretion, either TRUSTe or a firm chosen by the Program Participant from a list of pre-selected evaluators deemed suitable by TRUSTe, and will occur during normal business hours and at a time mutually agreed to by the Participant and the evaluator.
- (2) The results of the evaluation shall be confidential, provided that the top-level results of all evaluations shall be provided to TRUSTe upon completion.
- (3) In all instances, TRUSTe reserves the right define the scope of the evaluation.

(iii) **Eligibility for Full Certification.** Participants with Provisionally Certified Software will be eligible for full Certification of their compliant Software Unit(s) upon the last to occur of the following:

- (1) Six (6) months following the Provisional Certification Date;
- (2) The provision of top-level evaluation results to TRUSTe that demonstrate compliance with the Program; and
- (3) Satisfaction of the requirements described in Section 11, if applicable.

(iv) Notwithstanding any distribution contract constraints, Participants with Legacy Users must re-opt in such Legacy Users within one (1) year.

12. **Prohibited Activities.** All Participants shall not, and shall take steps in accordance with Section 9 to ensure that their Distribution Partners or Affiliates do not, do any of the following: (**Beta Note:** It is anticipated that additional Prohibited Activities may be added to this list over time.)

- (a) Take control of a User's computer by deceptively:
 - (i) using the computer to send unsolicited information or material from the computer to others;
 - (ii) accessing, hijacking or otherwise using the computer's modem or Internet connection or service and thereby causing damage to the computer or causing the owner or authorized User, or a third party defrauded by such conduct, to incur charges or other costs for a service that is not authorized by the owner or User;
 - (iii) using the computer as part of an activity performed by a group of computers that causes damage to another computer;

(iv) delivering advertisements that a User cannot close without turning off the computer or closing all other sessions of the Internet browser for the computer; or

(v) using rootkits or other software that are typically used to hack into a computer and gain administrative-level access for unauthorized use of a computer.

(b) Modify security or other settings of the computer that protect information about the User for the purposes of causing damage or harm to the computer or the User.

(c) Collect PII through the use of a keystroke logging function without authority of the owner of the computer.

(d) Induce the User to provide PII to another person by intentionally misrepresenting the identity of the person seeking the information. This includes inducing the disclosure of information by means of a web page or Software Unit that:

(i) is substantially similar to a web page or Software Unit established or provided by another person; and

(ii) misleads the User that such web page or Software Unit is provided by such other person.

(e) Induce the User to install the Software onto the computer, or prevent reasonable efforts to block the installation or execution of, or to disable the Software, by:

(i) presenting the User with an option to decline installation but, when the option is selected by the User or when the User reasonably attempts to decline the installation, the installation nevertheless proceeds;

(ii) misrepresenting that the Software will be uninstalled or disabled by a User's action, with actual or constructive knowledge that the Software will not be so uninstalled or disabled;

(iii) causing software that the User has properly removed or disabled to automatically reinstall or reactivate on the computer;

(iv) changing or concealing the name, location or other designation information of the software for the purpose of preventing a User from locating the software to remove it;

(v) using randomized or intentionally deceptive file names, directory folders, formats or registry entries for the purpose of avoiding detection and removal by a User;

(vi) causing the installation of software in a particular computer directory or computer memory for the purpose of evading a User's attempt to remove the software;

(vii) requiring completion of a survey, or disclosure of PII, to uninstall software;

(viii) requiring, without the authority of the owner of the computer, that a User obtain a special code or download a third-party program to uninstall the software; or

(ix) intentionally causing damage to or removing any vital component of the operating system when uninstallation is attempted.

(f) Misrepresent that installing software or providing log-in and password information is necessary for security or privacy reasons unrelated to the software itself, or that installing software is necessary to open, view or play a particular type of content online or offline (*e.g.*, can not falsely state software is necessary for accessing web site).

(g) Induce the User to install, download or execute software by misrepresenting the identity or authority of the person or entity providing the software to the User. This includes, but is not limited to use of domains with misspelling of frequently visited web sites (*i.e.*, 404 squatting).

(h) Remove, disable, or render inoperative by deceptive means a security, anti-spyware or anti-virus technology installed on the computer without obtaining prior consent from the User.

(i) Install or execute the Software on the computer with the intent of causing a person to use the software in a way that violates any other provision of this section.

(j) Allow any of their Certified Software to be bundled with the Software unit currently engaging in any of the Prohibited Activities listed in this section.

13. Scope of Certification. Material Changes to the Certified Software may trigger a recertification requirement.

14. Advertiser Registry. TRUSTe shall maintain a website for advertisers to enroll as Registered Program Advertisers.

[Beta Note: It is anticipated that the Program will include an advertiser registry that will permit companies to register with TRUSTe their commitment to avoid advertising to users of Covered Advertising Software that has not been certified under this Program (including Legacy Users of Participants' Covered Advertising Software that have not received the notice and/or given the consent required under Section 11].