



March 23, 2018

James Sullivan, Deputy Assistant Secretary for Services
Krysten Jenci, Director, Office of Digital Services Industries
Shannon Coe, Team Lead, Office of Digital Services Industries
Michael Rose, Office of Digital Services Industries
International Trade Administration
U.S. Department of Commerce
1401 Constitution Ave. NW
Room 4324
Washington, DC 20230

By Email

Re: Submission of APEC Accountability Agent - CBPR Renewal and Initial PRP Application

TRUSTe appreciates the opportunity to renew its application to be an APEC recognized Accountability Agent under the APEC Cross Border Privacy Rules (CBPR) System and to apply for initial application to be an Accountability Agent under the APEC Privacy Rules for Processors (PRP) System.

As of June 8, 2017, True Ultimate Standards Everywhere, Inc. changed its corporate name to TrustArc Inc. (TrustArc). On the same date, TrustArc created a new corporate subsidiary, TRUSTe LLC (TRUSTe). Since June 8, 2017, TRUSTe has assumed responsibility for our APEC Accountability Agent obligations, and we have maintained the brand name TRUSTe for all APEC Accountability Agent purposes. We understand and acknowledge that both TRUSTe and its parent company, TrustArc remain responsible for the obligations set forth in this Application. For purposes of this application all references to TRUSTe should be read to apply to TrustArc as well.

As a US-based for profit entity, TRUSTe is subject to the regulatory oversight and enforcement authority of the United States Federal Trade Commission (FTC), which is recognized as the APEC regulatory enforcement authority in the United States.

In order to continue its recognition as an APEC CBPR Accountability Agent and receive recognition to perform the same function under the PRP System, TRUSTe has outlined how it continues to meet the Accountability Agent Recognition Criteria as outlined in Annex A of the APEC Accountability Agent Application for Recognition utilizing the Accountability Agent Recognition Criteria Checklist provided in Annex B as found in both the CBPR and PRP Accountability Agent Application documents.



APEC Renewal Application 2018
Page 2 of 14

Responses to the questions in the Accountability Agent Recognition Criteria Checklist are provided below in the following sections:

- Conflicts of Interest
- Program Requirements
- Certification Process
- On-going Monitoring and Compliance Review Process
- Re-Certification and Annual Attestation
- Dispute Resolution Process
- Mechanism for Enforcing Program Requirements

Documentation to support the answers to the questions is provided as appendices that are listed at the end of this document.

Please accept this packet as TRUSTe's reapplication to continue its role as a recognized accountability agent under the CBPR system. For questions regarding this renewal application, please contact Josh Harris, Director, International Regulatory Affairs at jharris@trustarc.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Hilary M. Wandall".

Hilary Wandall
General Counsel and Chief Data Governance Officer, TrustArc



Conflicts of Interest

- 1. Applicant Accountability Agent should describe how requirements 1(a) and (b) in Annex A have been met and submit all applicable written policies and documentation.*

Conflict of Interest Policy

TrustArc provides technology solutions and technical and consulting services to clients while TRUSTe provides certification services. We know that the integrity and objectivity of the TRUSTe certification process and TRUSTe seal is critical to maintaining the value of the TRUSTe brand - and its good standing with consumers, regulators and other stakeholders. This is why TRUSTe has documented internal policies to avoid potential conflicts of interest and impartiality risk, including between its consulting, technical service and certification activities.

Copies of the current versions of our Conflict of Interest Policy, including our Consulting and Technical Services conflict of interest policies are attached as Appendix A to this application. As per these policies, all CBPR certifications must be performed by TRUSTe's Global Privacy Solutions Department. Consulting Services and Technical Services provided by TrustArc must be provided by personnel who do not provide certification services to the same client. Consulting Services provided by personnel outside of the Consulting Department staff must be approved by the General Counsel. CBPR certified clients or CBPR applicants (and upon approval those PRP clients and applicants) that use any of TrustArc's technical services independent of the CBPR/PRP certification process will work with a member of the TrustArc workforce outside of the Certification Team for any matters related to those services. With prior approval by the General Counsel, specific Certification Team personnel may provide Technical Services, so long as such personnel do not provide certification and/or verification-related services for the same client.

TRUSTe will notify the Joint Oversight Panel in the event that a CBPR or PRP-certified company makes use of (1) any consulting services or (2) technical services not related to their CBPR or PRP certification. TRUSTe will also notify the Joint Oversight Panel when a client that had previously made use of (1) any consulting services or (2) technical services not related to their CBPR or PRP certification becomes CBPR or PRP certified. In each instance TRUSTe will provide the Joint Oversight Panel with a copy of the relevant conflict of interest policy in demonstration of compliance with Accountability Agent Recognition criterion 2(d)(ii).

Finally, under US trademark law, TRUSTe is required to apply its certification standards in an impartial manner. Any application of the certification process that is not impartial



places the credibility of TRUSTe's certification business at risk. It may also lay the grounds for a Section 5 claim by the FTC, TRUSTe's privacy enforcement authority under the APEC CBPR and PRP Systems.

For each of these reasons, and as documented in the attachments referenced above, TRUSTe believes that it continues to meet the requirements outlined in sections 1 (a) and (b) of Annex A to the APEC Accountability Agent Recognition Criteria.

- 2. Applicant Accountability Agent should submit an overview of the internal structural and procedural safeguards to address any of the potential or actual conflicts of interest identified in 2(b) of Annex A*

Please reference Appendix A to this application for copies of TRUSTe's Director conflict of interest policy, as well as our response to question 1, above. In addition, TRUSTe will promptly disclose the existence of any types of affiliations as identified in 2(b) of Annex A to the Joint Oversight Panel, together with an explanation of the safeguards in place to ensure that such affiliations do not compromise TRUSTe's ability to render a fair decision with respect to an Applicant organization or Participant organization.

Article 9 of the TrustArc Articles of Incorporation imposes penalties on any Director that violates his/her duty of loyalty to the corporation. Based on this fundamental fiduciary duty, directors of TrustArc will recuse themselves from voting on any matter which can give rise to conflict of interest as contemplated by section 2(b) of the CBPR Accountability Agent Recognition Criteria and 2(b) of the PRP Accountability Agent Recognition Criteria. This includes a potential conflict of interest in a commercial transaction normally classified as an "insider transaction."

Finally, as entities doing business in California, TrustArc and TRUSTe are subject to California law, which require that all employees owe a duty of loyalty to their employer. As a result, no employee of TrustArc or TRUSTe, including officers, can be employed by any other entity, whether that entity is a licensee of TRUSTe or not.

- 3. Applicant Accountability Agent should describe the disclosure/withdrawal mechanisms to be used in the event of any actual conflict of interest identified.*

Please reference Appendix A to this application for copies of the TrustArc internal conflict of interest policies, as well as our response to questions 1. and 2. above.

In addition, where a Director identifies a conflict of interest, that Director shall either 1) recuse themselves in the event that the conflict of interest arises from a relationship that Director has, or (2) require that the Director with the conflict of interest to recuse



themselves. This is a fundamental requirement of the fiduciary duty inherent in the membership of TrustArc Board of Directors.

4. *Applicant Accountability Agent should indicate whether it intends to use the relevant template documentation developed by APEC or make use of Annex C to map its existing intake procedures program requirements.*

TRUSTe intends to use the relevant template documentation developed by APEC to perform both CBPR and PRP certifications. Upon APEC approval of this application, TRUSTe will make these standards available at <https://www.truste.com/privacy-certification-standards/apec>. These standards will be augmented by TRUSTe's Assurance Program Governance Standards which are applicable to all TRUSTe certifications (see Appendix B). Upon APEC approval of this application, these guidelines will be made available on the TrustArc website.

5. *Applicant Accountability Agent should submit a description of how the requirements as identified in 5 (a) – (d) of Annex A have been met.*

TRUSTe meets these requirements for both the CBPR and PRP certification programs. TRUSTe has an existing, comprehensive process in place to review an applicant organization's policies and practices with respect to participation in the Cross Border Privacy Rules System and to verify its compliance with the endorsed program requirements. TRUSTe intends to make use of this same process for applicant organizations that apply to the Privacy Rules for Processors System.

Overall, TRUSTe uses a combination of three different methodologies to conduct the privacy certification review: a manual evaluation of the program applicant's practices, the program applicant's own attestations provided during the interview and through responses to the APEC CBPR¹ or PRP² Intake Questionnaires and interviews, and monitoring through TRUSTe's proprietary technology and tools. The extent to which we use one methodology over another is dependent on a program applicant's risk profile. We examine how the program applicant collects, uses and shares personal data; we also identify the program applicant's third party, data-sharing relationships.

To meet the requirements as identified in 5 (a)-(d) of Annex A, the TRUSTe certification process involves five steps: analyze, advise, remedy, award and monitor.

- a) *Analyze*: TRUSTe performs the initial assessment of compliance.³

¹ APEC CBPR System Intake Questionnaire: http://apec.org/Groups/Committee-on-Trade-and-Investment/~/_media/Files/Groups/ECSG/CBPR/CBPR-Intake-Questionnaire.aspx

² APEC PRP System Intake Questionnaire: <https://cbprs.blob.core.windows.net/files/PRP%20-%20Intake%20Questionnaire.pdf>

³ Appendix C is an example of TRUSTe's APEC Privacy program applicant interview form used during the Analyze portion of the certification process.



- b) *Advise*: TRUSTe provides a comprehensive report to the program applicant outlining our findings regarding compliance with TRUSTe's APEC Privacy Program Requirements.⁴
 - c) *Remedy*: TRUSTe verifies that the required changes provided in the comprehensive report have been properly implemented.
 - d) *Award*: TRUSTe has certified that the program applicant is in compliance with the APEC Privacy Program Requirements.
 - e) *Monitor*: TRUSTe verifies ongoing compliance with Program Requirements.
6. *Applicant Accountability Agent should submit a description of the written procedures to ensure the integrity of the certification process and to monitor the participant's compliance with the program requirements described in 5 (a)-(d).*

TRUSTe meets this requirement for both the CBPR and PRP certification programs and has included a description of our written procedures to ensure the integrity of the certification process and to monitor the Participant's compliance with the Program Requirements as described in 5(a)-(d). Once a Participant completes the initial certification process as defined in requirements 5 (a)-(d), TRUSTe uses a combination of approaches to ensure that compliance with APEC's CBPR and PRP Privacy Program Requirements are maintained. The extent to which we use one methodology over another is dependent on a program applicant's risk profile and particular business practices. These methods may include:

- *Web crawling*: Proprietary TRUSTe technology performs website analysis for data collection and cookie identification.
- *E-mail seeding*: A process by which compliance is monitored using unique e-mail addresses that do not reference TRUSTe, to check for e-mail sent by an unauthorized party, or after an unsubscribe request has been processed.
- *Traffic analysis*: A device testing process primarily used to verify mobile device compliance with TRUSTe's certification standards.
- *TRUSTe Feedback and Resolution System*: Defined in detail under section 10, below. TRUSTe investigations may also be initiated after a TRUSTe scan, a media report, regulator inquiry or information obtained through other credible sources.

Finally, upon APEC approval of this application, TRUSTe will augment this monitoring process with randomized reviews of online properties where the TRUSTe seal is hosted by all CBPR and/or PRP Participants to ensure those properties are governed by the

⁴ Appendix D is an example of TRUSTe's APEC Privacy findings report used during the Advise portion of the certification process.



policies and practices TRUSTe reviewed pursuant to the Participant's CBPR and/or PRP certification.

- 7. Applicant Accountability Agent should describe the review process to be used in the event of a suspected breach of the program requirements described in 5(a)-(d) of Annex A.*

TRUSTe meets this requirement for both the CBPR and PRP certification programs and has a review process in place to investigate a suspected breach of the program requirements under both systems.

The TRUSTe enforcement process begins with an internal compliance investigation. TRUSTe may initiate this investigation based on results of our technological monitoring, on information contained in a consumer complaint, news or press reports, regulator inquiry, or reports from other credible sources. This process assists in the verification of compliance or non-compliance with the program requirements.

Where non-compliance with any of the program requirements is found, TRUSTe will investigate the compliance issue, notify the Participant, outline the corrections necessary and provide a reasonable timeframe for the Participant to make such changes, during which time, TRUSTe will work with the Participant to ensure the necessary changes are made.

Our investigations have one of three possible outcomes:

- An agreement between TRUSTe and the Participant over the privacy complaint resulting in Participant resolution that addresses the concern or request. TRUSTe provides a reasonable timeframe to complete the required changes based on the risk and level of non-compliance.
- A disagreement triggering a notice of formal enforcement, resulting in the Participant's suspension or notice of intent to terminate for cause if the matter is not cured.
- A failure to implement the required cure resulting in the Participant's termination from TRUSTe's program and, in extreme cases, publication and/or referral to an appropriate authority.⁵

However, where the Participant is found to have displayed the TRUSTe seal on an out of scope online property, Participant shall promptly remove the seal from that property or face automatic suspension until the seal is removed.

⁵ One of our prior FTC referrals was ClassicCloseouts in 2008; TRUSTe assisted the FTC with the investigation, and the agency brought action for permanent injunction and relief against the site, ultimately obtaining a \$2.08 million settlement to provide redress for consumers. See *Merchandiser Who Illegally Charged Consumers' Accounts Settles with FTC*, available at: <http://www.ftc.gov/opa/2011/01/classicclose.htm>.



8. *Applicant Accountability Agent should describe their re-certification and review process as identified in 8(a)-(d) of Annex A.*

TRUSTe meets this requirement for both the CBPR and PRP certification programs. At least once a year, TRUSTe investigates whether its Participants are meeting and/or exceeding APEC's CBPR Privacy Program Requirements through a re-certification process and intends to follow the same approach for PRP participants. If the Participant notifies TRUSTe of a change or TRUSTe detects a change outside the 'annual' re-certification cycle, the change will be verified by TRUSTe immediately, regardless of whether it is time for the Participant's annual re-certification or not.

Details of the re-certification process and annual attestation to answer questions Annex A 8 (a)-(d) are defined below.

- a) *Analyze*: TRUSTe performs an assessment of compliance.
- b) *Advise*: TRUSTe provides a comprehensive report to the Participant outlining our findings regarding compliance with APEC's CBPR and/or PRP Privacy Program Requirements.
- c) *Remedy*: TRUSTe verifies required changes outlined in the comprehensive report have been properly implemented.
- d) *Notify*: TRUSTe notifies Participant that it is in compliance with the relevant APEC Privacy Program Requirements.

9. *Applicant Accountability Agent should describe the mechanism to receive and investigate complaints and describe the mechanism for cooperation with other APEC recognized Accountability Agents that may be used when appropriate.*

TRUST has an existing Feedback and Dispute Resolution System⁶ that meets this requirement for both the CBPR and PRP Systems. We manage this dispute resolution process in-house and do not contract out this service to a third party. Our dispute resolution process is a mechanism to receive and investigate privacy-related complaints about Participants and to resolve these disputes between complainants and Participants. Consumer dispute resolution is a key component of TRUSTe's privacy management solution suite, and helps us monitor Participants' compliance with the relevant Privacy Program Requirements and hold Participants accountable. Processing complaint disputes also provides TRUSTe with a window into the privacy issues that concern today's online consumers. This dispute resolution process is described in detail below.

⁶ TRUSTe's Feedback and Dispute Resolution System can be found at <http://www.truste.com/consumer-privacy/dispute-resolution/>



10. Applicant Accountability Agent should describe how the dispute resolution process meets the requirements identified in 10 (a) – (h) of Annex A, whether supplied directly by itself or by a third party under contract (and identify the third party supplier of such services if applicable and how it meets the conflict of interest requirements identified in sections 1-3 of Annex A) as well as its process to submit the required information in Annexes D and E.

TRUSTe has its own in-house Feedback and Resolution System that meets the requirements identified in 10(a)-(h) of Annex A as described here:

Receiving a Complaint

The TRUSTe Feedback and Resolution System's process begins with a consumer complaint filed against a TRUSTe program Participant either with the company, or with TRUSTe. After TRUSTe receives a complaint, we initiate an investigation. A TRUSTe investigation may also be initiated after a TRUSTe review, a media report, regulator inquiry or information obtained through other credible sources. TRUSTe then reviews the complaint to determine if the complaint is relevant and falls under the scope of the Program Requirements. This can take up to 10 business days.

Responding to & Investigating a Complaint

The consumer (complainant) receives TRUSTe's initial response within 10 business days, our published time frame⁷. TRUSTe's system notifies the complainant of the response by the Participant, if any. Complainant and the Participant may correspond directly, with TRUSTe copied, such as in the event that the Participant asks the complainant for further information. Complainant and Participant are copied when TRUSTe sends its determination. The nature and duration of the investigation needed can vary widely. TRUSTe quickly checks all issues that can be immediately verified but ultimate resolution of the complaint depends on the nature of the issue.

Resolving a Complaint

After the complaint has been investigated, the Participant ordinarily has 10 business days to provide a written response for the complainant. For more urgent issues, such as security vulnerabilities, we escalate to the Participant via phone as well and generally expect responses much sooner, especially if we are able to verify the problem.

Written Notice of Complaint Resolution

Once the complaint is resolved, TRUSTe will send an email notice to both the complainant and, if participating, the Participant, notifying them of closure of the complaint.

⁷ The published timeframe can be found on TRUSTe's Feedback and Resolution Form at <https://feedback-form.truste.com/watchdog/request>



Process for Obtaining Consent

Our Feedback and Resolution form asks the complainant to provide consent before TRUSTe shares their personal information with the program Participant the complainant is filing a dispute about. All personal information collected during the request for assistance is collected in accordance with the TrustArc Privacy Notice (available at <https://www.trustarc.com/privacy-policy/>) and our internal privacy policies and standards. Below is a screenshot from TRUSTe's Feedback and Resolution Form illustrating TRUSTe's online consent mechanism. Note, the complainant must indicate a preference (around whether they want their complaint shared) prior to submitting their complaint.

A screenshot of a web form titled "TRUSTe may share my information to resolve my issue *". It contains two radio button options: "Yes, I give permission for TRUSTe to share my report and contact information with the organization named above to assist with resolving the issue." and "No, I do not want my report and contact information shared (Note: this may limit the ability of the organization named above to address your concern).". Below the options is a "Submit" button.

TRUSTe may share my information to resolve my issue *

Yes, I give permission for TRUSTe to share my report and contact information with the organization named above to assist with resolving the issue.

No, I do not want my report and contact information shared (Note: this may limit the ability of the organization named above to address your concern).

Submit

Screenshot 1 – Consent Mechanism

Reporting Complaint Statistics and Release of Case Notes

As of the date of submission, 21 companies have received APEC CBPR certification. For a complete list please see Appendix E and online at www.cbprs.org. Please find complaint statistics and selected case notes for the CBPR system for the reporting period March 1, 2017 – February 28, 2018 in Appendix F. TRUSTe intends to follow the same reporting process for the PRP system.

11. Applicant Accountability Agent should provide an explanation of its authority to enforce its program requirements against participants.

TRUSTe has the authority to enforce its program requirements (including our Governance Standards found in Appendix B) against Participants through our Master Services Agreement (“MSA”), or a substantially similar services agreement, which we require all clients to execute before we begin the engagement (see Appendix G). This is reflected in TRUSTe’s MSA, section 4.2.1: “If participating in a TRUSTe Assurance Program, Customer shall fully comply with the applicable Certification Standards, including, but not limited to any annual (or other) certification requirements contained in the application Certification Standards.”

12. Applicant Accountability Agent should describe the policies and procedures for notifying a participant of non-compliance with Applicant’s program requirements and provide a description of the processes in place to ensure the participant remedy the non-compliance.

Once TRUSTe identifies that a Participant is out of compliance with the relevant program



requirements, either through our re-certification process, ongoing monitoring, or dispute resolution process, the Participant will be contacted immediately by the designated contact individual at TRUSTe. We will outline the corrections necessary to come back into compliance with our program requirements and provide a reasonable timeframe. TRUSTe will continue to work with the Participant to come back into compliance.

If the Participant fails to come back into compliance with the relevant program requirements, TRUSTe will take steps, as outlined below, to either temporarily remove the seal from the Participant's website or terminate the Participant's participation in the program.

13. Applicant Accountability Agent should describe the policies and procedures to impose any of the penalties identified in 13 (a) – (e) of Annex A.

If the Participant does not remedy the non-compliance within a specific time period, TRUSTe has a process in place to place the Participant on suspension. This is reflected in TRUSTe's Assurance Program Governance Standards (see Appendix B) - Section K, Certification Status excerpted below:

K. Certification Status

1. In the event TRUSTe determines that Participant's compliance with the Assessment Criteria of the program(s) the Participant is participating in has lapsed, TRUSTe will provide notice and, if not resolved within a reasonable timeframe as determined by TRUSTe, discontinue Participant's certification.
2. TRUSTe may reinstate the Participant's certification if the Participant demonstrates to TRUSTe and TRUSTe has verified that all the required changes have been completed.
3. Upon notice to the Participant, TRUSTe may discontinue immediately the Participant's certification if Participant is found in material breach of the Assurance Program Governance Standards or Assessment Criteria of the program(s) in which the Participant is participating. Material breaches include but are not limited to:
 - a. Participant's material failure (e.g., unauthorized use of the TRUSTe seal, failure to complete Annual Review by the anniversary of the prior year certification date) to adhere to the Assessment Criteria of the program(s) in which they are participating;



- b. Participant's material failure to permit or cooperate with a TRUSTe investigation or review of Participant's policies or practices pursuant to the Assurance Program Governance policies, rules, and guidelines;
 - c. Participant's material failure to cooperate with TRUSTe regarding an audit, privacy-related complaint, or the compliance monitoring activities of TRUSTe; or
 - d. Any deceptive trade practices by the Participant.
4. If TRUSTe discovers unauthorized use of the TRUSTe seal, TRUSTe will notify the Participant and discontinue immediately the Participant's certification.

Referral to Relevant Privacy Authority

If a client does not cure a non-compliance issue and is terminated, TRUSTe evaluates factors such as whether the violation was egregious and intentional, or whether impact was de minimis. TRUSTe may refer the issue to the appropriate public authority or enforcement agency.

TRUSTe's referral to a privacy enforcement authority will also be contingent on whether or not the actions of the client rise to a level which would trigger jurisdiction by the privacy enforcement authority. TRUSTe does not refer clients to privacy enforcement authorities where such authority would be unable to take action against the referred client.

Other penalties – including monetary penalties – as deemed appropriate by the Accountability Agent.

If a client does not cure a non-compliance issue and is terminated, TRUSTe evaluates factors such as whether the violation was egregious and intentional, or whether impact was de minimis, in determining whether to publicize the non-compliance. TRUSTe does not have authority by contract to impose monetary penalties. Further, no commercial entity would enter into a contract with TRUSTe if TRUSTe were to have a contractual authority to impose monetary penalties.

14. Applicant Accountability Agent should describe its policies and procedures for referring matters to the appropriate public authority or enforcement agency for review and possible law enforcement action. [NOTE: immediate notification of violations may be appropriate in some instances.]

TRUSTe's policies and procedures for referral to the appropriate public authority or enforcement agency, including responding to requests from enforcement entities in APEC Economies, are explained above as response to item 7 - *On-going Monitoring and Compliance Review Processes*.



15. Applicant Accountability Agent should describe its policies and procedures to respond to requests from enforcement entities in APEC Economies where possible.

TRUSTe's policies and procedures for referral to the appropriate public authority or enforcement agency, including responding to requests from enforcement entities in APEC Economies, are explained above as response to item 7 - *On-going Monitoring and Compliance Review Processes*.



Appendix

Appendix A

TrustArc Conflict of Interest Policy

- Corporate Policy: Conflicts of Interest
- *Annex I* Provision of Consulting Services Conflict of Interest Policy
- *Annex II* Provision of Technical Services Conflict of Interest Policy
- *Annex III* Director Conflict of Interest Policy

Appendix B

TrustArc Assurance Program Governance Standards

Appendix C

Client Interview Form

Appendix D

TrustArc Sample Findings Report

Appendix E

February 2018 CBPR Compliance Directory

Appendix F

CBPR Complaint statistics and Selected Case Notes (March 1, 2017-February 28, 2018)

Appendix G

TrustArc MSA