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Director, Board of Directors
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Re.: LGPD Implementation and International Data Transfers

Dear Members of the Board of Directors of the National Data Protection Authority,

BSA | The Software Alliance (BSA)¹ and the Global Data Alliance (GDA)² congratulate you on your recent appointment to serve on the inaugural Board of Directors of the Brazilian National Data Protection Authority (ANPD). We look forward to working with you and supporting your many efforts to advance personal data protection in Brazil, including through regulation of various provisions of the Brazilian Personal Data Protection Law (LGPD). We would like to take this opportunity to call your immediate attention to an issue that we hope you will be able to address as soon as possible: the need to reestablish legal certainty regarding international data transfers.

BSA and GDA represent companies committed to high standards of data privacy and security. We understand and appreciate that the important privacy and data protections in the LGPD have been applicable since its effective date, even if administrative enforcement will not happen until August 1st, 2021. We are also aware that the ANPD will soon turn its attention to the important regulations it needs to issue to ensure the proper implementation of many provisions of the LGPD, but that these efforts will take time because such regulations will be carefully drafted and later subject to public consultation before they are enacted.

One important LGPD provision that requires ANPD implementing regulations is the one addressing international data flows. To ensure legal certainty, BSA and GDA respectfully request that, until such regulations are in place, the ANPD issues formal guidance confirming that companies may continue to responsibly transfer data internationally based on global best practices, such as standard contractual clauses and other contractual provisions that comply with data protection requirements applied in various jurisdictions, including the European Union. This approach ensures protection of the data wherever it is transferred to, consistent with the overall LGPD objectives.

BSA and GDA members rely on the ability to transfer data responsibly around the world to create jobs and make local industries more competitive. Cross-border data transfers power innovation and growth across the globe and all sectors of the economy—from manufacturing and farming to local start-ups and service providers. Data transfers enable the digital tools and insights that are critical to enabling entrepreneurs and companies of all sizes, in every country, to create new kinds of jobs, boost efficiency, drive quality, and improve output.

It is very important for Brazil's competitiveness that the LGPD provision regulating international data transfers (Article 33) includes flexible transfer mechanisms. However, most of the mechanisms listed in Article 33—which companies often rely on to transfer data internationally—require ANPD regulation. Some of those mechanisms mirror international best practices, which BSA and GDA companies already follow. Until these ANPD regulations are in place, it is important that there is legal certainty that data transfers can continue based on best practice transfer mechanisms, and that companies will not be adversely affected for relying on such mechanisms.

The fact that the LGPD is already in force without all the necessary implementing regulations in place requires a consistent approach by all Federal Agencies or bodies that could seek the enforcement of various LGPD provisions. This approach should aim at promoting legal certainty. It is, therefore, very important that the ANPD issue guidance herein requested, as soon as possible, to guide the approach to international data flows while applicable regulations are pending.

We, once again, congratulate you on your appointment to serve on the Board of Directors of the ANPD, and we are ready to contribute to your efforts on the issue highlighted above, as well as on other relevant matters. Should you have any questions regarding this request, or if there is anything we can do to assist, please do not hesitate to contact us.

Sincerely,

BSA | The Software Alliance

Global Data Alliance

¹ BSA | The Software Alliance (www.bsa.org) is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 30 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy. BSA's members include: Adobe, Atlassian, Autodesk, Bentley Systems, Box, Cadence, CNC/Mastercam, DocuSign, IBM, Informatica, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens Industry Software Inc., Sitecore, Slack, Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

² The Global Data Alliance (globaldataalliance.org) is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. The Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. Alliance members include BSA members and American Express, Amgen, AT&T, Citi, ITB360, LEGO, Mastercard, Medtronic, Panasonic, Pfizer, Roche, UDS Tecnologia, United Airlines, Verizon, Visa, and WD-40 Company. These companies are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, energy, financial services, health, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance.