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**Núcleo de Informação
e Coordenação do
Ponto BR**

PRIVATE CONTRACTUAL INSTRUMENT

By the present Private Instrument, on the one hand the Brazilian Network Information Center (***NÚCLEO DE INFORMAÇÃO E COORDENAÇÃO DO PONTO BR - NIC.br)***, registered on the Brazilian Corporate Taxpayer Register of the Ministry of Finance (CNPJ/MF) under No. 05.506.560/0001-36, with head office established at Av. das Nações Unidas, n° 11,541, 7th floor, Brooklin Novo, São Paulo, State of São Paulo, Brazil, postcode 04578-000, hereinafter **NIC.br**, here represented by the person of Demi Getschko, and, on the other hand, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, registered on the Brazilian Corporate Taxpayer Register of the Ministry of Finance (CNPJ/MF) under No. xx.xxx.xxx/xxxx-xx, with head office established at xxxxxxxxxxxxxxxxxxx, No. xx, in the neighbourhood of xxxxxxxxxx, postcode: xxxxx-xx, hereafter the **PARTICIPANT**, here represented by the person of xxxxxxxxxxxxxxxxxxxx;

Whereas:

- The NIC.br was established to implement the decisions and the projects asset out by the Brazilian Internet Steering Committee – CGI.br, the party responsible for the co-ordination and the integration of Internet initiatives and services in the country;

- Among the statutory aims of the NIC.br, we have the development of projects aiming to improve the quality of the Internet in Brazil and also to disseminate its use, giving special attention to its technical aspects and infrastructure;

- In compliance with its aims and goals as proposed, NIC.br has, for the past 10 years or so, been working towards the implementation of the PTTmetro initiative of the Brazilian Internet Steering Committee (CGI.br), currently known by the name of IX.br, which takes care of the creation and operation of points of exchange of Internet traffic in Brazil;

- IX.br is the name given to the initiative by the Brazilian Internet Steering Committee (CGI.br) which promotes, creates and operates the infrastructure that is necessary for there to be direct interconnection between the different networks that make up the Brazilian Internet in metropolitan areas which show significant potential for the exchange of Internet traffic;

- The infrastructure for the direct interconnection between the networks is known as an Internet Exchange Point (IX or IXP) or, in Portuguese, *Ponto de Troca de Tráfego Internet* (PTT);

- The networks which, together, make up the Internet are known as *Autonomous Systems* (ASs);

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- The interconnection between Autonomous Systems within a metropolitan area, through IX.br, occurs through the use of one or more interconnection points (PIXs) which, together, form one single matrix for exchange of Internet traffic in this location. The use of the PIXs allows better geographical coverage and greater efficiency in the use of the available resources;

- The model for the interconnection of the Autonomous System through Internet Exchange Points (IXPs) allows the rationalisation of costs, as the balances of traffic are directly and locally solved rather than through third-party networks which, in many cases, are physically distant;

- The model also promotes better organisation of the Internet infrastructure and also a better control of each Autonomous System over the delivery of its traffic, thereby allowing this to be carried out as close as possible to the destination, which, in general, results in better performance and quality, and also in a more efficient operation of the Internet as a whole;

- A locality of IX.br is an interconnection, within a metropolitan area, of Internet Exchange Points (IXPs), be they commercial, Governmental and/or academic, under centralised management, with the following main characteristics: **neutrality** (independence of commercial providers), **quality** (efficient exchange of traffic with lower rate of latency); **low cost** of options, and **high availability**, thereby establishing **a unique matrix for exchange of local traffic**; in other words, one single Internet Exchange Point;

- The coordination of IX.br, which is the responsibility of NIC.br, and its operation in partnership with technically accredited organisations, establishes the requirements with regard to architecture and management of the interconnections, and also ensure the characteristics of **neutrality** and **quality** of IX.br;

- The hosting of Internet Exchange Points (IXPs) in installations with appropriate standard of security and infrastructure is an essential condition for obtaining the basic characteristics of quality, low cost of options, and high availability;

- The NOC of IX.br is an operational centre for networks, that co-ordinates the work of management of the locations, also being responsible for maintaining stability of the matrices for exchange of Internet traffic, as also the whole infrastructure of resources used in the operation of the different locations of IX.br;

- For the purposes set forth in this Instrument, the PARTICIPANT is the manager of an Autonomous System (AS), according to the meaning assigned to the term by BCP6/RFC

4271, "A Border Gateway Protocol BGP4" (see The Internet Engineering Task Force (IETF) on the Internet at https://tools.ietf.org/html/rfc4271);

- The PARTICIPANT has accessed the participant's portal of IX.br (https://meu.ix.br) and has also duly selected the package of features and resources that they have considered most appropriate;

- The PARTICIPANT is identified on the participant's portal of IX.br (https://www.meu.ix.br) as Autonomous System (AS) No. **xxxxxxxxxxxxxxx**.

The Parties have, between themselves, agreed and accepted the terms of the present Contract, which shall be governed by the clauses and conditions as follow hereunder.

CLAUSE ONE – THE OBJECT

1.1. The object of the present Contract is the activity of interconnection of Autonomous Systems (ASs), as made available by NIC.br, at the locations of IX.br. This shall occur through the use of one or more Network Interconnection Points (PIXs).

CLAUSE TWO – REQUIREMENTS FOR JOINING IX.br

2.1. The requirements for a PARTICIPANT to become part of IX.br are the following:

- <u>Having an Autonomous System Number (ASN)</u>: the Participant must possess and operate an Autonomous System duly registered on the organisations responsible for the registration of Internet names and numbers;

- <u>Participation in the multilateral agreement regarding traffic, through a Route Server (RS), or establishment of direct bilateral relations:</u> establishment of agreements for exchange of Internet traffic with other Autonomous Systems (ASs) that participate in IX.br;

- <u>BGP-4</u>: Use of the BGP-4 external routing (Border Gateway Patrol, as standardised by the IETF) to link their own AS to others;

- <u>Follow the Policy for Technical Requirements and Acceptable Use set by IX.br</u>: these policies can be found on the IX.br portal (http://www.ix.br), in its most recent versions.

2.2. Communication between the PARTICIPANT and NIC.br shall take place through the participant's portal within the IX.br website (https://meu.ix.br), where the PARTICIPANT should create a username to be able to login, gaining access to the features thus made available.

2.2.1. Through the participant's portal on IX.br, the PARTICIPANT shall have access to all the necessary information about their account, such as the resources used for the

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interconnection of their own AS with the Network Interconnection Points (PIXs) and also with locations of IX.br as suit them best; prices and methods of payment; how to cancel or add resources; as also any other relevant information.

2.2.2. Also through the participant's portal on IX.br, the PARTICIPANT may also request the cancellation of the link up to IX.br, provided there is observance of the terms and conditions as set out in Clause Five of this Instrument.

2.2.3. The release of the new resources as mentioned in Clause 2.2.1 depends on a prior feasibility analysis, whose result shall be informed to the PARTICIPANT within a time frame of 5 business days, with the immediate acceptance of the request, forecast as to the availability of the resources sought, or a notification informing that it shall be impossible to meet the request.

> 2.2.3.1. If the resources sought are indeed available, then these shall be allocated and configured through interactions made on the participant's portal within the IX.br site, between the NIC.br team and the PARTICIPANT, and in this case NIC.br shall interact within a time frame of five (5) business days, whenever the process is active under their responsibility.

2.3. The base date for harnessing the resources used for the calculation of debt collection shall be the last calendar day of each month. Resources which start being used during the month shall be calculated on a *pro rata temporis* basis.

CLAUSE THREE – OBLIGATIONS OF THE PARTIES

3.1. NIC.br shall have the following obligations:

 I. To continue to invest resources in the IX.br project;

 II. To manage the network infrastructure, making use of technical resources and also the best practices available for the operation and the maintenance of Internet Exchange Points;

 III. To make investments with a view to improving the service provided to the PARTICIPANT;

 IV. To define the equipment, technologies and practices taken up at the IX.br locations;

 V. To analyse and, if the case warrants it, make available the resources of network infrastructure as requested by the PARTICIPANT through the IX.br portal, within a period of thirty (30) calendar days after the notification that the said resources are available;

 VI. To answer, within a time frame of twenty-four (24) hours, seven days a week, any technical

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support calls as made by the PARTICIPANT, with the exception of any request relative to new resources as described in Clause 2.2.1;

VII. To demand financial contributions from the PARTICIPANT, according to the package of resources that has been used;

VIII. To comply with all other clauses, obligations and conditions as set forth in this Contract.

3.2. The PARTICIPANT has the following obligations:

I. To respond to all requests for joining an IX.br location, as described in Clause 2.1 above;

II. To make payment, according to the price charged for the package of features and resources as chosen at IX.br;

III. To name, if deemed necessary, a contact for making the due payment according to the value of the features and the resources as chosen;

IV. To strictly follow the Policy of Acceptable Use (http://ix.br/pua) and the Policy of Technical Requirements of IX.br (http://ix.br/requisitos);

V. To follow possible updates to the Policy of Acceptable Use and the Policy of Technical Requirements of IX.br;

VI. To make efforts towards the improvement of the quality of their network, by linking up to other ASs of the Internet through a physical medium which is not the same one used to interconnect to IX.br, with sufficient capacity, in line with the recommendations made by RFC 1930 (https://tools.ietf.org/html/rfc1930), thereby also collaborating to the robustness and resilience of the Internet as a whole;

VII. Not to take on any obligations in the name of NIC.br or bind this latter institution before third parties, under any conditions or in any manner;

VIII. To inform any unavailability or technical problems faced in IX.br, through making a notification on the participant's portal;

IX. To comply with all other clauses, obligations and conditions as established in this Contract.

CLAUSE FOUR - PAYMENT

4.1. The PARTICIPANT shall pay for the package of resources used in the Interconnection of the AS, as chosen in the participant's portal of IX.br (https://meu.ix.br).

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4.1.1 Any payments originating from abroad shall have the addition of any expenses, fees and taxes as may be additionally charged for the effectuation thereof, it also being agreed that the cost of such expenses shall be borne by the PARTICIPANT.

4.2. The PARTICIPANT, through his/her username, shall access the participant's portal of IX.br and generate a copy of the invoice, bank docket, or other means of payment for the package chosen.

4.2.1 Should this party deem it necessary, the PARTICIPANT may appoint a contact, through the portal, so that the payment may be made.

4.3. The invoice, bank docket, or other means of payment, as also any other information regarding the debt collection, shall be available on the participant's portal at IX.br by the fifth (5th) day of the subsequent month, it also being here agreed that the PARTICIPANT shall access the portal to gain access to the method of payment. The time frame for payment shall be up to the fifteenth (15th) day of the month the invoice is issued.

4.4. The invoice as issued shall mention the deduction of taxes, if any.

4.5. Any technical problems as may occur within the structure of the AS, such as problems with the provider of transport to IX.br, with the data centre where the AS is hosted, or any technical problems with IX.br infrastructure, even should they lead to interruptions of the interconnections between the ASs as promoted by IX.br, shall not generate any deductions on the sums due by the PARTICIPANT.

4.6. The price list for resources made available by the IX.br of the location, as published on the IX.br portal (http://www.ix.br) may be readjusted every year, with a base date of 7/1/2017. This readjustment must not be more than the variation in the IGP-M as published by the Brazilian Economics Institute of the Getúlio Vargas Foundation (IBRE/FGV).

CLAUSE FIVE – VALIDITY AND TERMINATION

5.1. The present Contract takes effect on the date of the signing thereof, and shall remain in effect for an indefinite period.

5.2. The Parties may terminate the present Contract at any moment, provided the interested party informs the other party thirty (30) days in advance.

CLAUSE SIX - RESPONSIBILITIES

6.1. The PARTICIPANT does hereby take on, with regard to those professional people involved in the direct and indirect execution of the activities arising from this Contract, the exclusive responsibility for compliance with the labour laws, pension laws, insurance, labour accidents, and any other legal

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or regulatory obligations arising from the relationship of employment or any other type of contract as they may maintain with their work teams, with NIC.br being exempt from any responsibilities, ties, or obligations.

6.2. In any labour claims, court action or infringement notifications of any type, as may apply to the relationship of employment regarding the employees of the PARTICIPANT or of its subcontracted parties, where NIC.br may be a party being notified, called upon, summoned or called, then the PARTICIPANT shall be required to carry out all procedures as necessary so that NIC.br may be exempted from any asset responsibilities arising from such lawsuits or notifications, as also reimburse NIC.br for any sentencing and/or expenses as may arise from such claims.

6.3. The PARTICIPANT is the only party responsible for the structure that is necessary for this party to become an Autonomous System (AS), and hence must follow the rules applicable to organisations for registration of Internet names and numbers, to be able to operate it.

6.4. NIC.br shall not be held responsible for the configuration or operation of the Autonomous System (AS) of the PARTICIPANT, or for any other consequences as may arise from this configuration and operation.

6.5. The present Contract shall not mean any relationship of employment between NIC.br and the PARTICIPANT, meaning that NIC.br shall have the right to freely exercise its services, without any presentation of exclusivity to the PARTICIPANT.

6.6. NIC.br shall not be held responsible for losses or damages of any kind as may arise from the use of the infrastructure resources of IX.br, be it through operational problems or due to issues concerning the content and data as transported.

> 6.6.1 NIC.br does not have any control over the routes made available by each Autonomous System in IX.br. These can be announced or withdrawn at any time, by decision made by each Autonomous System, meaning granting or denial of access to certain Internet sites and content, through IX.br.

CLAUSE SEVEN – DEFAULT AND NON-COMPLIANCE

7.1. In the event of non-compliance by the PARTICIPANT with regard to payment for the resource package chosen for the Interconnection of Autonomous Systems within a metropolitan area, then the PARTICIPANT shall be automatically declared as in default, and this means that, after a period of sixty (60) days, NIC.br shall then have the right to block the PARTICIPANT on IX.br and terminate the contract, regardless of the collection of the debt through the Courts.

7.2. The NOC of IX.br may, should there be confirmation of non-compliance with the terms of the

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Policy for Acceptable Use or the Policy for Technical Requirements of IX.br, immediately proceed with the logical disconnection or transfer to a test environment, for an indefinite period, until the problem is solved.

7.3. In the case of failure to comply with the terms of the Policy for Acceptable Use or the Policy for Technical Requirements of IX.br, on more than one occasion, or in any case where malicious intent is evident, then NIC.br shall have the right to immediately block the participation of the PARTICIPANT on IX.br and terminate the corresponding contract, regardless of the collection of any outstanding debts, also through the Courts.

CLAUSE EIGHT - MISCELLANEOUS

8.1. It shall be strictly forbidden for the PARTICIPANT to assign or transfer, for any reason, the rights and obligations taken on by means of the present Instrument, without the prior express authorisation from NIC.br.

8.2. Under no circumstances whatsoever shall this Contract be construed as establishing a partnership or a relationship of commercial representation between the Parties, with each such Party being responsible for its own acts and obligations.

8.3. The present Contract may only have changes made to its content by means of a contractual addendum, signed by both Parties, and this Addendum shall then become a constituent part of the present Contract.

8.4. This Contract brings the total terms of the agreement between the signatories with regard to the issues here addressed, and does also hereby supersede, replace and repeal any possible prior understandings, negotiations and agreements.

8.5. The PARTICIPANT does also agree, for self and also for their employees and representatives, to maintain utmost secrecy and not to reproduce, make available, transfer or otherwise assign any information, materials and/or documents from NIC.br to which they may have access by force of compliance with the purpose of this Contract, lest they shall foot the costs of any losses and damages which they may have caused through the violation of the terms of this Clause.

8.6. Should there be any observed technical problems with the connection between the PARTICIPANT and the IX.br network that could lead to instability of the network, then the NOC of IX.br may proceed with the logical disconnection or transfer to a test environment, in order to mitigate the problem.

8.7. NIC.br may monitor the traffic of the PARTICIPANT, including information such as the Autonomous System of origin and destination; the quantity of data that has been transported; and

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Layer 3 and Layer 7 protocols used, with the sole and exclusive purpose of obtaining information that could allow a better technical management of IX.br.

8.8. NIC.br shall be allowed to publicly disclose, on the IX.br portal or by other means, any graphs and statistics based on the data collected through the monitoring mentioned in item 8.7, provided the data is made anonymous and grouped together. The identification of individual Autonomous Systems (ASs) shall not be permitted.

8.9. NIC.br shall also be allowed to conduct tests and security trials, including attempts to access the PARTICIPANT's equipment directly connected to IX.br without a password or using common passwords, and also to actively or passively check protocols and active services that do not comply with the Policy for Acceptable Use or the Policy for Technical Requirements.

CLAUSE NINE – THE FORUM

9.1. To sort out any doubts as may arise with regard to the present Contract, the Parties do hereby appoint the Central Law Courts of the Judicial District of São Paulo, State of São Paulo, with the renouncement of any other, however privileged it may be, as the only competent party to solve any doubts or possible controversies arising from the present Contract.

In agreement.