DRAFT SOW for Independent Counsel for EPDP Team for ICANN -

*We are writing on behalf of a multi-stakeholder policy development team (the “EPDP” Expedited Policy Development Process”) formed by ICANN (the Internet Corporation of Assigned Names and Numbers) to develop GDPR-compliant policies to govern the operation and procedures of the domain name industry with respect to the data of domain name registrants. The EPDP team (made-up of representatives from the stakeholder groups described below) has been charted for a one (1) year period to develop policy recommendations on registration data. It is approximately half-way through its deliberations, and has carefully read and considered the GDPR, explanatory treatises, and the writings of the EDPB and views expressed by respective DPAs to date. The team is in need of legal counsel to provide balanced guidance and clarity in GDPR application on a number of essential issues which are central to the policy determination process, and where there are divergent views in the multi-stakeholder community.*

*The expectations and Statement of Work (“SOW”) to address this need is as follows:*

1. *The Scope of the requested legal services will include a number of issues as outlined and related to the charter questions of the EPDP Initial Report, published on November 20, 2018, and now available for public comment. Counsel should review this Report and be familiar with the open issues identified and be able to provide guidance on how data protection law might apply.*
2. *The Services are required immediately, to continue for the next five (5) months, which is the remaining time the EPDP team has to release and put in place a final report. The Services will be required within a short frame turn-around, as the Team meets bi-weekly and is on a trajectory to produce a draft Final Report within the next three (3) months.*
3. *The Services shall be provided by counsel well-versed in GDPR and global data protection laws and familiar with and knowledgeable about the ICANN framework and process. The counsel should moreover be permitted within its mandate to represent the EPDP and its respective stakeholder groups without conflict and without limitations on public comment.*

*Within this SOW we list two specific issue which we ask legal advice and within the scope of the retainment there will be requested further questions to be addressed by counsel.*

*Question 1-*

1. *The GDPR's scope does not include the data of legal persons, only the personal data of natural persons, but under the Temporary Specification, within the current WHOIS service, does not distinguish between natural and legal persons.  The outstanding issue is that the EDPB and DPAs have indicated that even though legal persons are not protected under the GDPR, the data provided by legal persons in the form of contact details for technical of employees or third-party providers could include personal data.  Therefore, although certain stakeholders want to continue to access the data of legal persons without obstruction, there has been debate on this topic due to the lack of clarity if there is a risk of allowing access to data of legal persons since it could include natural person personal data, with the following specific points raised:*

*Advocating access to legal person data, stakeholder groups provide:*

*-businesses could self-declare, with business registration numbers
-legal persons could be asked to guarantee that they have obtained the consent (“informed”) of an employee or contracted party whose contact data is listed, counting on the agency relationship.*

*-the domain name registration can include clear instructional text (education to registrant), making clear that supplying any email or contact details for a legal entity which may include personal data is to be provided after clear consent is granted by the person whose details are in issue.*

*Advocating against access to legal person data, stakeholder groups express the following concerns:
-seeking consent must be clear and informed and can be withdrawn at any time and therefore the question is whether consent is practically supplied and maintained in this context
-educating registrants as to what category they fall into is difficult and expensive
-in some jurisdictions, notably the EU, certain groups (religious, political, gendered identity, etc.) are entitled to protection from persecution, which might occur if the registration data of their employees or contractors were released.*

*Based on the above questions and positions, please comment on the legal issues and liability risk which could result from a decision to ask registrars to make this distinction between legal and natural persons.*

*Question 2-*

*Can the information supplied-by registrants in the fields within a domain name application by relied upon by registrars and registries when registrars and registries process personal data, particularly if a registrant signs an attestation at the end of the application which states that the above information supplied is true and accurate and to the best of the registrant’s knowledge? E.g., if a registrant checks a box and identifies itself as a legal person and lists the corporate entity or organization name, will a registrar or registry be liable if the registrant made a mistake or incorrectly identified itself?*

*As stated above, the answers to additional questions within the term of this SOW will be requested and required to be answered.*