

JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT (the “Joint Venture Agreement”), is dated and effective this 16th day of June, 2016, by and between K&H Printers-Lithographers, Incorporated, dba Integrity Voting Systems (“IVS”), a Washington corporation with offices at 7720 Hardeson Road, Suite A, Everett, Washington 98203, and Everyone Counts, Inc., a Delaware corporation with offices at 4225 Executive Square, #800, La Jolla, California 92037 (“Everyone Counts”).

WITNESSETH:

WHEREAS, IVS and Everyone Counts (referred to individually as a “Party” and collectively as the “Parties”) have decided to form this joint venture to (1) pursue the contract for services (the “Contract”) set forth in that certain Request for Proposal No. 2015- 8060 dated April 4, 2016 (the “RFP”) by the California Public Employees Retirement System, (“CalPERS”) and (2) if awarded the Contract, to perform all services thereunder;

WHEREAS, nothing in the Joint Venture Agreement shall prohibit either party from independently pursuing other private or public contract work; and

WHEREAS, the Parties now desire to set forth their respective rights, interests and obligations as between themselves with respect to the Contract and the performance thereof;

NOW, THEREFORE, the Parties hereby agree as follows:

1.0 JOINT VENTURE ENTITY

1.1 The Parties hereby associate themselves as a joint venture (the “Joint Venture”) for the sole purpose of performing services required by the future award of the Contract. All services contemplated by the Contract shall be performed under the name of the Joint Venture.

1.2 The name of this Joint Venture under which the Contract shall be entered into and the services performed shall be “IVS/Everyone Counts Joint Venture.” For convenience of communication, the Joint Venture may have the short reference name of “IVS/Everyone Counts” or the Joint Venture.

1.3 The principal office of the Joint Venture shall be located at 7720 Hardeson Road, Suite A, Everett, Washington 98203, or such other location as IVS shall designate.

1.4 The Joint Venture shall remain in existence for that period of time required to perform the Contract, and to recover the compensation attributable thereto, plus any extension of time and compensation required to perform any additional services authorized by CalPERS.

1.5 This Joint Venture Agreement does not create a partnership or any other legal entity between the Parties nor does it constitute either Party as a partner, agent, or representative of the other Party. Neither the Joint Venture Agreement nor operations or activities thereunder or pursuant thereto shall be construed or considered as creating such a relationship or constituting either Party as a partner, agent, or representative of the other Party; except that a Party may be a

representative of the other Party to the extent that such Party is designated as such in this Joint Venture Agreement or by written consent of the other Party.

1.6 Termination of this Joint Venture Agreement may occur for the following reason(s):

1.6.1 Upon written notice from either Party to the other Party that the Joint Venture was not awarded the Contract;

1.6.2 Written notice by either Party to terminate the Joint Venture Agreement at any time prior to award of the Contract;

1.6.3 Upon termination or expiration of the Contract, following prompt reconciliation of the books and records of the Joint Venture and payment of all amounts due to the Parties hereunder (for the avoidance of doubt, this Joint Venture Agreement shall not apply to any renewals or extensions of the Contract without the prior consent of each Party); or

1.6.4 In the event of an Event of Default as described elsewhere in this Joint Venture Agreement, provided that the Parties agree to ensure that the Contract will be satisfactorily completed.

If this Joint Venture Agreement has not terminated pursuant to subsections 1.6.1 – 1.6.4, , it will terminate on January 1, 2022 or five (5) years from the effective date of the contract, whichever is later, plus any extensions to the term of the Contract and the Parties agree to act in good faith to reconsider this agreement and the allocation of rights and obligations hereunder.

Sections 6.3, 7, 8.2, 8.3 and 9 shall survive any termination or expiration of this Joint Venture Agreement.

2.0 MANAGEMENT AND PERFORMANCE OF WORK

2.1 IVS shall be the project manager of the Joint Venture (the “Project Manager”). Everyone Counts shall be consulted with respect to any material decisions provided that final decision making authority for the Joint Venture rests with the IVS, including, but not limited to Joint Venture policy, decisions, and approvals; *provided further that* the Joint Venture or the Project Manager shall not do any of the following without the express prior consent of Everyone Counts: (1) enter into the Contract; (2) enter into (or agree to enter into) any waiver, amendment, supplement or modification to the Contract if it effects Everyone Counts’ rights or obligations under the Contract in any manner including, without limitation, waivers, amendments, supplements or modifications to timelines, deliverables, compensation or the features, capabilities or specifications of any product or service provided by Everyone Counts under the Contract; (3) incur fees or expenses in excess of \$600.00 under clause (1) of Section 4.3 in any calendar quarter; (4) use or authorize the use of the name of Everyone Counts, any of its directors, officers, employees or customers or any of its trademarks or tradenames for any purpose except as expressly set forth in this Joint Venture Agreement or the Contract; (5) submit a bid in response to the RFP or any future request for proposals from CalPERS other than the bid to be submitted by the Joint Venture; (6) appoint a substitute or successor Project Manager or

otherwise delegate authority granted to the Project Manager hereunder; (7) take any action that Everyone Counts determines will have or could reasonably be expected to have a negative effect on its reputation or intellectual property, including goodwill associated with its brand; (8) settle any claims, suits or proceedings or any an material decision relating to litigation, administrative or investigative proceedings on behalf of the Joint Venture; or (9) communicate with any governmental, regulatory or self-regulatory agency with respect to the business of the Joint Venture or Everyone Counts.

2.2 The Contract shall be primarily negotiated by IVS with CalPERS. Both Parties shall be provided reasonable notice of, and the opportunity to be present at, all negotiation sessions and shall be included in any written negotiations, including emails. Per Section 2.1 above, the Contract is subject to approval by Everyone Counts and IVS shall not represent to CalPERS that it has final decision authority on any items negotiated without a representative of Everyone Counts present at any negotiation or in any written negotiation. Subject to the limitations of Section 2.1 above, following execution of the Contract, any adjustment of the Contract price or other amendment, supplement, or modification to the Contract shall be made only with the approval of IVS.

2.3 IVS will be responsible for the management of all activities under the Contract; *provided that*, if IVS is unable, at any time, to provide a “Contract Coordinator” that is acceptable to CalPERS, then Everyone Counts may designate a Contract Coordinator and the Parties shall work together, in good faith, to adjust any provisions in this Joint Venture Agreement to accommodate such designation right. These responsibilities include coordinating the execution of the services in accordance with the requirements of the Contract, acting as the primary contact for communications (oral and written) with CalPERS, and managing the day-to-day financial operations of the Joint Venture and any subsequent Contract modifications.

2.4 The duties, responsibilities and right to compensation of the IVS and Everyone Counts shall be as defined in Attachment A, and as maybe modified or revised by the Parties.

2.5 Each Party shall be responsible for the execution of the services to be performed by such Party, as set forth on Attachment A.

2.6 Any subcontracting shall be through and in the name of the Party responsible under this Joint Venture Agreement for the services to be rendered to CalPERS. The subcontracting Party shall indemnify and hold harmless the other Party with respect to any liabilities under any such subcontract.

2.7 All correspondence to CalPERS by each Party shall be delivered to the other Party simultaneous with the deliver of such correspondence to CalPERS.

3.0 INTERESTS OF THE PARTIES

3.1 To the extent that each Party is obligated hereunder, each of the Parties hereto shall contribute such time and attention as may be necessary to prosecute and carry out the purposes of the Joint Venture and to perform the services required by this Joint Venture Agreement and the Contract in accordance with the terms and conditions hereof and thereof.

3.2 Each Party shall assign sufficient competent professional and/or technical personnel to perform the services allocated to it in an efficient and timely manner.

3.3 The Joint Venture shall not have employees of its own, but shall perform its services with the employees of each Party.

3.4 The Joint Venture shall perform any additional services, which may be duly authorized by CalPERS pursuant to the Contract. The Parties shall mutually designate which Party or Parties shall perform such services and the compensation therefore, provided that the designation shall be generally in accordance and consistent with the duties set forth in Attachment A and any material deviations from Attachment A shall require the consent of both Parties, which shall not be unreasonably delayed or withheld.

4.0 COMPENSATION

4.1 Each Party shall invoice the Joint Venture for the compensation to which it is entitled for services performed, subject to the provisions of the Contract, and supported by such documentation as the Contract may require.

4.2 The Joint Venture shall promptly invoice CalPERS in the name of the Joint Venture in accordance with the Contract. Upon receipt of payment from CalPERS, the Joint Venture shall pay each of the Parties the sums due to the extent reimbursed by CalPERS, net of fees described in Section 4.3 below, *provided that* if payments received from CalPERS do not cover all of the then-outstanding amounts invoiced by the Parties under Section 4.1, any amounts will be paid to the Parties in order of the outstanding invoices (e.g. older invoices are paid first) and, thereafter, in proportion to the amounts owed to the Parties at the time of receipt of such payment from CalPERS. Notwithstanding the foregoing, if CalPERS is withholding payment on an invoice (a "Disputed Invoice"), the Disputed Invoice will not be considered an outstanding invoice for purposes of the preceding sentence. The Project Manager will work to resolve any issues related to a Disputed Invoice with CalPERS on any amount withheld as expeditiously as possible.

4.3 For services rendered and costs incurred pursuant to Section 5.1 below, the Joint Venture will pay IVS the amount of (1) \$100 per hour for IVS staff time for maintaining the books and accounting records of the Joint Venture and (2) all documented reasonable out of pocket costs incurred for the preparation of the Federal Income Tax Returns. The costs incurred under this Section 4.3 shall be borne equally by the Parties.

4.4 Nothing contained herein shall obligate the Joint Venture to pay any Party until or unless it has received payment from CalPERS on account of the amounts invoiced by the Joint Venture.

5.0 BUSINESS MANAGEMENT

5.1 IVS shall be responsible for maintaining the books and accounting records in accordance with generally accepted accounting principles. Each Party shall be responsible for any federal, state, or local tax filings as may be required by law, except that the Federal Income Tax filing for the Joint Venture will be performed by IVS.

5.2 At the end of each calendar year, an accurate accounting of all income, liabilities and disbursements of the Joint Venture shall be made and furnished to each of the Parties.

5.3 Each Party shall keep separate, complete, and detailed records and books of account relating to the services it performs for the Joint Venture and staff time charged the Joint Venture pursuant to Section 4.3 hereof. Such records shall be retained during the term of this agreement and for two (2) years thereafter and shall be subject to inspection/audit by the other Party during regular business hours at the respective Party's office. Any such audit costs shall be borne by the Party conducting such audit.

6.0 INSURANCE

6.1 Each Party shall contract in its own name all necessary Workers' Compensation and Employer's Liability insurance for its own employees and all other insurance in the total amount required by the Contract. The cost of the premiums for such insurance policies shall be paid by the Party taking out such insurance and shall not be directly reimbursed by the Joint Venture or the other Party.

6.2 The specifications for any Joint Venture insurance required by the Contract, will be mutually agreed prior to execution of the Contract and may be procured by and in the name of the Joint Venture. The cost of Joint Venture insurance required by the Contract will be divided between the Parties on a basis mutually agreed prior to binding any such Joint Venture Insurance.

6.3 Notwithstanding any provision in this Joint Venture Agreement to the contrary, in no circumstance shall either Party be liable to the other Party for damages which the other Party has been compensated by insurance proceeds resulting from Joint Venture insurance (but only to the extent of such compensation is actually received). In the event either Party has a claim under the Joint Venture insurance, each Party agrees to execute and deliver any and all documents necessary to effectuate prompt and satisfactory settlement. The proceeds of any Joint Venture insurance claim shall be used to reimburse the Party incurring such loss. Deductible amounts applicable under any of the Joint Venture insurance shall be the liability of the Party receiving the proceeds of the applicable Joint Venture insurance policy.

7.0 ALLOCATION OF LIABILITY AND INDEMNITY

7.1 Under the Contract, each Party will be jointly and severally liable to CalPERS. Any such liability to CalPERS shall be subject to allocation between the Parties as set forth below:

7.1.1.1 Liability resulting from termination by CalPERS for default under the Contract shall be assumed by the Party whose default gave rise to the termination or, in the event the default is caused by both Parties, by each Party in such share as is proportionate to its respective responsibility for the default;

7.1.1.2 Liability for failure to comply with applicable laws (including taxation) and regulations shall be assumed by the Party failing to comply;

7.1.1.3 Liability for failure to observe or fulfill obligations, including warranties or performance guarantees, if any, contained in the Contract shall be assumed by the Party

so failing to observe or fulfill such obligations, or, in the case of failure by both Parties, by each Party in such share as is proportionate to its respective responsibility for the failure;

7.1.1.4 Liability for claims, penalties and damages shall be assumed by the Party whose act or omission has caused such liability, or, in the case of liability caused by both Parties, by each Party in such share as is proportionate to its respective responsibility for the default.

7.2 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING UNDER OR RELATED TO THIS JOINT VENTURE AGREEMENT, THE CONTRACT, OR OTHERWISE, EXCEPT FOR SUCH DAMAGES WHICH ARE CLAIMED BY THIRD PARTIES AND ARE SUBJECT TO INDEMNITY UNDER THIS JOINT VENTURE AGREEMENT.

7.3 If a reasonable dispute arises between the Parties as to which shall assume liability for any third party claim, suit, damages, expense or penalty, each Party shall provisionally assume an equal share of such liability until the dispute is settled as set forth in Section 9.6 below.

7.4 Any liability for third party claims arising out of or relating to the performance of the Contract shall be assumed by the Party whose act or omission has caused such liability, or, in the case of liability caused by both Parties, by each Party in such share as is proportionate to its respective responsibility for the default.

7.5 The Parties expressly acknowledge that, as between the Parties, and except as set forth in Section 8 in the case of an Event of Default, no Party shall be liable to the other Party for any claim, suit, damage, expense or penalty relating to its performance under the Contract.

8.0 DEFAULT

8.1 Should one Party (hereinafter referred to as the “Defaulting Party”) (a) materially default in its obligations under this Joint Venture Agreement, (b) cease to operate the business which can provide the services designated to it on Attachment A; (c) file or fail to discharge within 30 days an involuntary petition in bankruptcy; (d) file a certificate of dissolution by election, court order or operation of law; or (e) make a general assignment for the benefit of creditors, then and on the occurrence of any such default (an “Event of Default”), the other Party (hereinafter referred to as the “surviving Party”) shall, upon notice or discovery thereof, use commercially reasonable efforts to continue the performance of the requirements of the Contract. The surviving Party shall provide notice to the Defaulting Party of Event of Default, and the Defaulting Party shall take reasonable steps to cure the Event of Default within 30 days of such notice.

8.2 After the occurrence of any Event of Default and the expiration of such notice and cure period, the administrators, trustees or representatives of the Defaulting Party shall have no right to participate in the administration of the Joint Venture or to participate in the performance of the Contract. If the Defaulting Party is IVS, the role of Project Manager, and the management rights set forth in Sections 2.2 and 2.3 shall shift to Everyone Counts effective upon expiration of the applicable cure period. The Defaulting Party’s share of any compensation at the time of such

Event of Default shall be placed in a special account until the closing of the accounts of the Joint Venture, from which there shall be deducted all damages and additional expenses incurred, if any, by the surviving Party as a result of such default. The Defaulting Party shall be liable for any losses sustained by the surviving Party or by the Joint Venture as a result of the Event of Default. In the case of such Event of Default, the Defaulting Party shall continue to remain liable under this Joint Venture Agreement. The Defaulting Party shall immediately turn over to the surviving Party all plans, data, drawings, and all other documents and information relating to the Contract. Any and all of the Defaulting Party's subcontracts relating solely to the Contract shall be assigned to the surviving Party.

8.3 For the exclusive purpose of allowing the other Party to complete the delivery of services under the Contract, during any period of an Event of Default, the Defaulting Party shall, at any time after and during the continuance of an Event of Default, grant to the other Party a non-exclusive, irrevocable, royalty-free, limited license (until the termination or cure of the Event of Default) to use, license or sublicense any and all intellectual property and equipment utilized by the Defaulting Party for the delivery of services under the Contract, and wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. In addition, if any materials are required for the performance of services under the Contract, the Party responsible for providing such materials according to Attachment A, including, for example, paper ballots, printing materials and packaging materials, shall be responsible for the costs of such materials incurred by the Party that has to take over completion of the delivery of services under the Contract. For the avoidance of doubt, the use of such license by a Party may be exercised, at the option of such Party, only during the continuation of an Event of Default.

8.4 Promptly following entry into the Contract, the Joint Venture shall establish an escrow account with an escrow agent reasonably acceptable to IVS (the "Escrow Agent") and Everyone Counts shall, within thirty (30) days thereafter, cause to be deposited into such account (the "Escrow Package"): (i) the source code for all software components of the services provided by Everyone Counts under the Contract (there shall be two versions of the source code – one that is human readable and one that is machine readable); (ii) all other proprietary information relative to the source code and its creation; (iii) technical documentation; (iv) maintenance tools including test programs and program specifications; (v) proprietary or third party system utilities, including compiler and assembler; (vi) descriptions of the system/program generation; (vii) descriptions and locations of programs not owned by Everyone Counts but required for use and support of the solution; and (viii) descriptions to accompany the compiler and assembler. As necessary, and, in no event less frequently than once every six (6) months, Everyone Counts shall deposit any updates, improvements, corrections, changes, modifications and enhancement made to the Escrow Package to the escrow account. Everyone Counts shall notify IVS when any updates, improvements, corrections, changes, modifications and enhancements are made to the Escrow Package. The Parties agree that IVS will have the right to a real time visual inspection of the deposit the items described in clauses (i)-(viii) into the Escrow Package, either in person or via a secure web-X portal. The escrow account shall remain active for the term of the Contract. The escrow agreement between the Joint Venture and the Escrow Agent shall authorize IVS to receive full access to and delivery of the Escrow Package promptly following written notification by the Joint Venture to the Escrow Agent of an Event of Default. Any out of pocket

expenses incurred by the Joint Venture or Everyone Counts in the establishment and maintenance of the escrow account, including any fees payable to the Escrow Agent, shall be shared equally by IVS and Everyone Counts.

9.0 MISCELLANEOUS PROVISIONS

9.1 **Nonsolicitation.** Without the prior written consent of Everyone Counts, until one year after the termination or expiration of this Joint Venture Agreement, IVS will not take any action to solicit any officer, employee, contractor or consultant of Everyone Counts to whom IVS may first be introduced or with whom IVS otherwise had first contact as a result of this joint venture, to terminate his or her employment or contract with Everyone Counts or to seek or accept employment or contract with IVS. The parties agree that the restrictions set forth in the immediately preceding sentence shall not prevent IVS from (i) soliciting any such person by means of general advertising or solicitation not specifically targeting such persons (including through headhunter/search firms/advertisements/Internet postings) or from hiring any persons who respond to such solicitations, (ii) soliciting or hiring any such persons who contact IVS on their own initiative regarding employment opportunities without any prior solicitation by IVS of them otherwise in violation of this paragraph or (iii) soliciting or hiring any such persons who have ceased to be employed by Everyone Counts for at least ninety (90) days (provided that IVS has not otherwise breached the provisions of this Section 9.1 in respect of any such person).

9.2 **No License Granted; No Obligation.** Nothing in this Joint Venture Agreement shall be construed as (a) conferring an express or implied license or an option of a license to either Party, whether under any patent, copyright, trademark, license right or trade secret owned or obtained by any Party, except as specified in this Joint Venture Agreement or (b) obligating either party to enter into any other agreement of any kind with another party.

9.3 **Notices.** All notices required to be given under any provision of this Joint Venture Agreement by either Party hereto shall be given by certified mail, email or electronic transmittal, (with original sent immediately thereafter by first class mail), overnight mail delivery, or courier addressed to the office of the Party set forth above, as follows:

IVS	Everyone Counts
Attention: Darren Loken, President	Attention: Lori Steele Contorer, CEO
Phone: (425) 446 3324	Phone: (858) 427 4672
email: dloken@khprint.com	email: lori.steele@everyonecounts.com

9.4 **Amendments.** This Joint Venture Agreement may be modified or amended from time to time in writing by the Parties. Amendments shall be initiated by either Party, then ratified and executed by an officer of each Party.

9.5 **Successors and Assigns.** Neither Party may assign, encumber or otherwise transfer all or any portion of its rights or obligations under this Joint Venture Agreement without the prior written consent of the other Party, except that either Party may assign its rights and interests hereunder to a successor in interest to all or substantially all of its business. In addition, neither Party may subcontract all or any portion of its services without the prior written consent of the other Party, provided however, that either Party may subcontract any part of its portion of the services to its related entities.

9.6 **Binding Agreement.** Subject to the foregoing provision, this Joint Venture Agreement shall inure to the benefit of, and be binding upon, the Parties hereto, their successors, trustees, assigns, receivers, and legal representatives, but shall not inure to the benefit of any other person, firm or corporation.

9.7 **Entire Agreement.** This Joint Venture Agreement and the NDA (defined below) contains all of the agreements, representations, and understandings of the Parties hereto for performance of the Project under the terms of the Contract and supersedes any previous understandings, commitments or agreements whether oral or written.

9.8 **Governing Law and Dispute Resolution.** This Joint Venture Agreement shall be construed in accordance with the laws of the State of Washington. Any controversy or claim arising out of or relating to this Joint Venture Agreement or the breach thereof shall be settled by arbitration in Sacramento, California before one (1) arbitrator and administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. This clause shall not preclude the Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction..

9.9 **Confidentiality.** The Parties have entered into a Confidentiality Agreement, dated as of April 4, 2016 (the “*NDA*”), which shall continue to govern the Parties’ respective obligations with regard to the confidential and/or proprietary information of the Parties.

9.10 **Severability.** The provisions of this Joint Venture Agreement shall be deemed independent and severable, and the invalidity, or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision thereof.

9.11 **Counterparts.** This Joint Venture Agreement may be executed in any number of counterparts and by facsimile, each of which shall be deemed an original and together shall constitute a single instrument.

IN WITNESS WHEREOF, the authorized representatives of the Parties hereto have executed this Joint Venture Agreement the day and year first above written.

K&H Printers-Lithographers, Incorporated



Darren Loken, President

Everyone Counts, Inc.



Lori Steele Contorer, CEO

ATTACHMENT A
RESPONSIBILITIES FOR THE CONTRACT SERVICES

<u>CONTRACT RESPONSIBILITIES</u>	<u>RFP Reference</u>	<u>Contract Section</u>
<u>IVS</u> [describe task in contract] <u>Everyone Counts</u> [describe task in contract]		