Dear Julia,

Please accept the following proposal for consideration in the SIG CHI Bulletin project. Process 39 can help SIG CHI with both the Project Management and Design Aspects of this proposal, as these are our primary competencies.

Included in with the proposal is our contract for your review.

Thanks again for the opportunity to bid this work. We are looking forward to working with you on this project.

Sincerely,

Dale Horstman
Co-Founder & CEO, Process 39

P.S. To view samples of our work visit our web site at:
Welcome to Process 39

Our Studio
Process 39 is a design studio dedicated to creating powerful, appropriate design solutions in digital media. We specialize in plying design skills and methods to online and new media projects including product definition, branding, corporate identity, visual and information design, user interface design, and Website and CD-ROM development.

Our work gains cohesion and elegance from our focus on users' needs, product definition, business goals, and technology integration as key considerations in all of our designs.

Our Process
Process 39's unique design and clever innovation are born out of a very disciplined and formal design process. We know from experience that a disciplined, finite process actually creates the freedom to do great design work. Extended deadlines and budget overages can never make up for the flawed process that causes them in the first place.

That is why Process 39 always works on a fixed bid basis. This ensures that we start with a clear vision of the project. The project coordination necessary to realize the starting vision is an important part of the service we offer our clients. Our coordination and design leadership will keep the project on schedule, in budget, and clearly focused on its design objectives at every step.

Our Team
Process 39 is headed by two creative partners who foster a small studio atmosphere with an intimate approach to creative work. Our complete team also includes four staff designers, a project manager and a programmer. Each person contributes a unique set of skills to the pool of talent, giving Process 39 the broad range of capabilities that it's known for.

At Process 39, we believe that you deserve to speak directly with the creative team rather than a salesperson or account representative. We're confident that you'll find communication with our project team leaders to be refreshingly accurate and articulate when it comes to matters of design, process, and schedule.
Our Leaders

Dale Horstman
Having spent the formative years of his career working as a Designer and ultimately, Art Director for such prestigious studios as Clement Mok designs (now Studio Archetype), Dale has created successful collateral design campaigns for clients ranging from Apple Computer to Esprit. His extensive professional experience has made him intimately versed in the running of a design studio and the motivation of creative teams. Dale has won awards for his work in corporate identity design, computer interface, exhibits, and packaging as well as illustration. His work has appeared in industry publications like MacWorld, HOW, Communication Arts, and New Media Magazine. In addition to his varied professional expertise, and strong visual design ability, Dale brings to Process 39 a personable, friendly communication style, and a genuine love of the design process.

Brenda Stine
Brenda’s strong understanding of movement and staging is evident in her visual work as a programmer and designer. Having earned her creative wings as a professional dancer, Brenda now steps through creative projects with the same goal: fluid, inspiring design. A co-founder of Process 39, she has been focused on user interface design, information architecture, visual design, animation, project management, and programming for over seven years. Brenda has also taught programming and design courses at the Multimedia Studies department of San Francisco State University, the Center for Electronic Art, and the University of Hawaii. She received her B.A. degree from the University of California, Berkeley, where she studied Literature and Dance.

References & Recommendations

David Bacigalupi Director of Marketing Design, DigitalMed and Former Digital Marketing Manager, Medtronic/AVE
(707) 823-8260

Project: Design and production of large interactive product marketing CD-ROMs that included technical papers, information graphics, animation and video.

“Process 39 was very instrumental in the successful transformation of an advanced start-up company that became a 4.1 billion dollar monster in the medical device industry. Their designs set the bar of excellence for all marketing and training material developed for Arterial Vascular Engineering over a two year period.

Process 39 developed a series of highly effective, product launch CD ROMs that surpass anything I have ever seen. Their focused development process meshed perfectly with the pace and goals of AVE and ultimately contributed to the largest company purchase in the history of the medical device industry when Medtronic acquired AVE in 1999”. David Bacigalupi
Fred Silverman, Vice President for Marketing & Communications  
Marin Community Foundation  
(415) 464-2527

Project: Redesign of the public web site for this major foundation

“We chose to work with Process 39 for several reasons: their imaginative design, their willingness to work collaboratively with us as a client, and their quick study in understanding our work and how a web site could enhance our ability to reach out to a wide range of audiences. They brought to the project a wonderful combination of creativity and solid project management--both of which were essential in developing a brand new site. An added bonus was having their good work validated by the trade association to which we belong; the site received the second-place prize for the web sites of community foundations--a field that as a whole relies heavily on outreach via the Internet.”  
Fred Silverman

Michael Tchao, former VP Product Development, Move.com  
Tchao Haus

Project: A functional and organizational redesign of this large consumer web site that resulted in a 600% increase in user activity and property inquiries.

“These days, integrating brand design and user interface design is especially important and especially challenging. Process 39 has a breadth of experience in doing just this sort of integration from print design to software design.”  
Michael Tchao

Jonathan Arnowitz, SIG CHI Executive Committee  
SIG CHI (Special Interest Group, Computer Human Interaction)  
(415) 531-0749


“Our organization’s lifeblood is our CHI conference. Process 39 is helping us shape an exciting user experience through promotional and collateral materials for CHI 2003, giving the conference a much-needed revitalization. Their work with us has also included a redesign of our logo and exhibit graphics. We have been so satisfied with their work that we are already working with Process 39 on two future conferences for user interface design professionals.”  
Jonathan Arnowitz
SIG CHI Bulletin – (Project Management)
Process 39 has applied its project management expertise to many projects from training systems with over 500 pages of materials to web sites such as the latest BayCHI site with its various aspects and shareholders. As a service provider working on a fixed fee, project management has always been a key to our success and staying power through challenging times. Having reached our 8 year mark we have weathered vast changes and economic downturns in our industry and revived when other design companies have failed. We attribute this in part to our ability to understand our clients’ needs, their economic realities and their audience, and to plan and conduct projects that meet these needs efficiently and effectively.

Project Description
SIG CHI seeks project management for the new multiple-media SIG CHI bulletin with the following objectives in mind:

• To create a final product that incorporate the new SIG CHI identity in a high-quality, well designed experience that promotes pride of membership in the organization.
• To incorporate the best practices in user interface and information design that are shaped and promoted by the organization.
• To manage the project with a deep understanding of SIG CHI’s unique structure and constraints.
• To manage the cross functional teams including the (potentially overworked ) volunteers in a manner that befits the community of a professional services organization.

Having worked on many SIG CHI related projects in past 2 years, Process 39 is well poised to shepherd this project to a successful and beautiful final product. We intend to lead the project a deep understanding of SIG CHI’s unique structure and constraints including:

• To work creatively within a tight, fixed budget
• To coordinate timely communications across the globe, ensuring that no time is lost waiting for feedback and other responses.
• To work with volunteers for whom work on the bulletin is in addition to other demands, not the least of which are full time jobs and other SIG CHI responsibilities.
• To build consensus among a group with diverse perspectives on best practices in user interface design and the design process.

As Project Managers/Designers, we will contribute to the design process by being an advocate of SIG CHI and their members. And, we will translate the Client’s directives and communicate them in the most appropriate format to facilitate communication: flow charts, site maps, info-diagrams, prioritized lists. Process 39 will bring to the overall project our time-tested process that allow for exploration, true creative choice, and the opportunity to revise designs based on user-feedback.
**Project Assumptions**

- The quoted cost for the project management assumes the benefit from the efficiency of doing the design phase of this project as well. Should another vendor be chosen for the design, the cost for the project management will increase by 10%.

- The Client, Design and Implementation teams will each provide one single person to be the point person for communications with the project manager.

- As the project manager, we will provide assistance in overcoming any and all obstacles that threaten to throw the project off schedule or over-budget to the extent that is provided by this proposal. We cannot assume responsibility for project delays and over-runs beyond our control.

- All parties involved in this project are contractually committed to the successful completion of the final deliverables according to the schedule and fixed budget.

**Work Description – (Project Management)**

**Phase 1: Design**

The project manager will work closely with the design team to ensure that the user and client needs are central to the design. We will work with the design team to make sure that their vision is communicated effectively to all the stakeholders and we will manage and clarify the feedback on all designs. We will also facilitate communications between the design and development teams in order to ensure that the design works with the implementation strategy. When dissenting opinions among the stakeholders threatens to slow the progress of the project, we will facilitate the decision-making process by employing consensus building techniques.

**Phase 2: Development & Implementation**

In this phase, the project manager will facilitate communications between the design and engineering teams to ensure a faithful implementation of the chosen design. We will manage the implementation team to make sure that they have what they need to work within the constraints of the project and to keep the Client apprised of the progress of the project. When unforeseen technical constraints or other unexpected glitches arise, we will facilitate the process of finding an appropriate solution.

**Phase 3: Follow-up**

This phase involves compiling and generating a report by team members to the client about the relative successes and/or failures of the various aspects of the project.

**Expenses**

No expenses are expected for this project at this time. If an expense (conference call, shipping, high-end color proofs, etc.) are required an approval for the expenditure will be secured in writing from the client.
**SIG CHI Bulletin** – *(Design Segment)*

As Process 39 is the designer of the new SIG CHI identity we feel that we are uniquely positioned to expand on that work and create a new design for the SIG CHI Bulletin materials which take full advantages of the potential of this new identity design.

**Project Description**

SIG CHI seeks a design for their SIG CHI Bulletin with the following objectives in mind:

- Design of an overall visual vocabulary for the Bulletin that incorporates the Organization’s new identity effectively.
- The design for the SIG CHI Bulletin Web Site, utilizing a user centered design approach with a quality, compliance, and completeness appropriate for SIG CHI.
- Design of a print based template for incorporation of Bulletin materials into Interactions Magazine.
- A Work Process System for content creation and publishing on the Web Site. *(NOTE: this is an information & workflow design for the process not the specific technology implementation to complete the intended interaction.)*
- Through this work enhance the pride of membership and communication of members on current issues.

**Project Assumptions**

- This rough estimate DOES NOT include any expense for photography, or illustration. If a strategy is decided upon which utilizes significant amounts of stock photography, or illustration, the associated expenses will be in addition to those described here.
- All SIG CHI decision makers who are involved in any phase of this project will be available to participate from the start of the project *(when many key decisions are made)* and able to attend all conference calls and other key meetings until the project ends.
- Whenever feedback is called for in this project, the project manager or one person on the SIG CHI team will manage the feedback process and deliver a single feedback document that represents the final decision of the whole team. The SIG CHI team will be responsible for resolving any conflicting requests before delivering final feedback to Process 39.
- There are no expected changes to the scope of the project components expressed in this project proposal. Any such additions may be billed as an addition to the proposed project cost.
- This proposal does not include costs for copy writing.
- This proposal does not include costs for printing.
- This proposal does not include costs for web development *(hosting, back-end server technologies, and/or scripting/coding beyond the simple javascript necessary to create the base page archetypes included in this proposal).*
- Process 39 may use some or all of the following software tools in order to accomplish the work: Adobe Photoshop; Adobe Illustrator; Adobe InDesign; Macromedia Dreamweaver; Microsoft Word. Ongoing future maintenance of the final product by client based on Process 39 specifications may require client to purchase the necessary software tools. Fonts are also considered software and cannot be provided by Process 39. Client will also be required to have Adobe Acrobat reader to effectively participate in the review process.
**Phase Descriptions – (Design Phase)**

**Segment 1: Information Architecture, Interaction Design, & Process Workflow**

The analysis phase is where we analyze the needs of the SIG CHI Bulletin overall design, technology options, and users. This will include user definition, functional needs, overall information structure/map, content needs analysis, publication formats, and process needs analysis.

We will begin this phase with a meeting (could be a conference call but a face-to-face meeting is preferred) where the SIG CHI Bulletin Committee presents and explains all content expected for the site, and any criteria for the design that was not already expressed in the RFP (*Process 39 reserves the right to make alterations to this proposal in light of any new project criteria that are revealed*).

Process 39 will then create several initial documents (listed below) to be used for review and collaboration with the Bulletin Committee.

**Segment 1 Deliverables:**
- Prioritized list of project goals
- Initial Site Map
- Initial 3-5 Site Template Page Schematics
- Initial Process Workflow Diagram/Map
- User Activity Matrix (*Here we will take the current scenarios and user definition and make a matrix of activity for each user across the various site components.*)

**Segment 2: Information Architecture, Interaction Design, & Process Workflow Refinement**

After having one or two meetings with the project team where all of the various issues and perspectives will be discussed *Process 39 will then revise the documents presented in phase 1*. The purpose of this revision will be to create a viable starting point for both the visual design phase and materials for the user testing round.

**Segment 2 Deliverables:**
- Site Map
- 7-10 Site Template Page Schematics
- Process Workflow Diagram/Map
- Suggested User Testing Approach (*Design Perspective*)
Phase 3: Visual Design & Refinement
The purpose of this phase is to establish the overall visual style of all materials that support the SIG CHI Bulletin and to create materials that will be used as a test suite for the design. Process 39 will design 2-3 visual styles for 2 key screens of the web site (the home page plus one other page – using the schematics presented at the end of Phase 2) and a proposed page layout for Interactions magazine. We will present the designs as static screen images, (i.e., simulated screen shots and screen comps of the Page Layout) posted to a private URL for the SIG CHI Bulletin Committee’s review.

Following this first presentation, the Bulletin Committee will select one of the designs for further refinement and a user testing round. Process 39 will then produce a simple prototype of the chosen design for this user testing activity. This user “test” will be a simple 30 minute activity with 5-10 users conducted in person or via telephone conversation. Once the testing round has been completed analysis of the results will be discussed between Process 39 and the Bulletin Committee, and recommended changes will be documented.

Process 39 will then refine and expand this design for a second and final presentation based on the recommended changes. One of the 2 choices presented will be chosen as the final design by the Bulletin Committee. Accompanying this choice should be comprehensive written feedback about any required changes/alterations, in the form of a single document that represents the feedback from the whole group.

The Bulletin Committee will then review this final refined design and provide minor feedback. Process 39 will then expand all of the designs to meet the variations required.

Phase 3 Deliverables:
- Initial presentation of 2-3 visual design directions (2 site screens & 1 page layout each)
- Prototype/Test Suite from chosen direction consisting of up to 7 screens.
- Simple User Testing Session(s).
- Revised Information Architecture, Structural Design, & Process Workflow
- Second presentation of 2 refined design directions (2 site screens & 1 page layout each)
- Presentation of all final expanded Materials in static format (7 site screens & 2 page layouts). These materials will represent the templates which will be created in production.

Phase 4: Template Production & Style Guide
Once the Bulletin Committee has signed off on each of the specific designs, Process 39 will produce final art assets, HTML, page layout templates, and post these as an alpha prototype site and download for the Bulletin Committee’s final review. Once a final approval is secured the Web assets will be delivered to the appropriate vendor for implementation.

Phase 4 Deliverables:
- All final web template pages in HTML format (Dreamweaver), including all graphic assets
- All final print template pages in Adobe InDesign format, including all required graphic assets
- An alpha test site consisting of all template pages for the Bulletin Committee’s sign-off
- Style Guide in PDF format
Phase 5: Audit & Continuing Consultation/Support
Once the Bulletin templates & Style Guide have been delivered, and the implementation vendors/volunteers have done their part, Process 39 will audit the beta test site (prior to public roll-out). This will result in a short list of suggestions and changes for the appropriate vendor to implement that will help insure that the intent of the site design is realized.

Phase 5 Deliverables:
• Site Audit and report

Expenses
No expenses are expected for this project at this time. If an expense (conference call, shipping, high-end color proofs, etc.) are required an approval for the expenditure will be secured in writing from the client.

Final Deliverables
Note: The final deliverables listed below are what you will actually own at the end of this project. All interim deliverables as outlined in the Project Plan are for the purpose of review and to aid in the progress of the project only.

All material cited below will be delivered to ACM and to SIG CHI’s preferred vendors electronically.

• 7-10 Tested HTML Template Pages (optional Macromedia Dreamweaver Site files will also be available)
• A set of InDesign, Photoshop and Illustrator Master Files to facilitate site & print production
• A Style Guide in PDF format which guides the use of the above items
# Project Management Estimate

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<th>Cost</th>
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## Design Segment Estimate

### Segment 1: Initial Information Architecture

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### Segment 4: Template Production & Style Guide

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### Segment 5: Audit & Continuing Consultation/Support

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### Design Segment TOTAL

**$16,050.00**

### BOTH PROJECTS TOTAL

**$23,530.00**

**NOTE:** In the case that ACM SIG CHI chooses to use a different vendor for one of the 2 project phases we have proposed, Process 39 reserves the right to change the remaining estimate to phases in tandem.
Project Agreement

THIS AGREEMENT ("Agreement") is entered into on **Thursday, October 11, 2001** ("Effective Date") by and between Process 39, a California corporation doing business at 10 Cleveland Street, San Francisco, CA 94103 ("Designer") and the Association for Computing Machinery (ACM) on behalf of the Special Interest Group on Computer Human Interaction (SIG CHI) ("Client") 1515 Broadway New York, NY 10025.

WHEREAS, Client desires to retain Designer as an independent contractor to perform the design services more fully described herein, and Designer desires to perform such services for Client on the terms set forth below;

NOW THEREFORE, in consideration of the mutual promises contained herein, Designer and Client agree as follows:

1. Services

1.1 Designer agrees to perform the services ("Services") described in the proposal ("Proposal"), attached hereto as Exhibit A. The Proposal will describe the following: Services to be performed; Final Deliverables; the fees for Services; milestones; design schedule and/or work process; and specifications. Each party agrees to act in good faith and cooperate with the other as reasonably required to enable Designer to perform Services.

2. Payment

2.1 Advance. Upon execution of this Agreement, Client shall pay Designer one half (50%) of the first phase fee as a non-refundable advance against the total fee.

2.2 Expenses. Client shall reimburse Designer for only those expenses which are clearly set forth in the Proposal or otherwise approved by Client in advance of purchase. Designer shall submit to Client copies of all receipts necessary to verify all expenses.

2.3 Payment Terms. Upon completion and acceptance of specific milestones, as set forth in the Proposal, Designer shall submit to Client an invoice for services rendered and approved expenses incurred. Payment shall be due upon fifteen (15) days of delivery of invoices, as specified in the invoice. Overdue payments, not subject to a good faith dispute, shall be subject to interest charges of 1.5% monthly. The failure to make a payment when due shall be considered a material breach of this Agreement. In addition to any other remedies available hereunder, any failure of Client to render payment of any undisputed amount when due shall entitle Designer to suspend Services until payment, including any late charges, is made.

3. Term and Termination

3.1 Term. This Agreement shall become effective as of the Effective Date and continue until fully performed or earlier terminated as set forth below.

3.2 Termination for Breach. Either party may terminate this Agreement upon written notice in the event of a material breach by the other party of any of its obligations contained herein if such breach remains uncured for a period of fourteen (14) days after written notice to the other party.

3.3 Termination for Bankruptcy. Either party may terminate this Agreement upon written notice if the other party is adjudicated bankrupt, files a voluntary petition of bankruptcy, makes a general assignment for the benefit of creditors, is unable to meet its obligations in the normal course of business as they become due or if a receiver is appointed on account of insolvency.

3.4 Termination for Convenience. If at any time after commencement of Services, Client shall, in its reasonable judgment, determine that such Services are no longer required for its internal purposes, Client may terminate this Agreement upon thirty (30) days written notice to Designer. In the event that Client terminates this Agreement under this Section 3.4, in addition to any other amounts due, Client shall pay the following cancellation fee: fifty percent (50%) of the difference between the total contract price and the amount that has been paid (including amounts due and payable) on the date of termination. Client agrees that the cancellation fee set forth above is a reasonable approximation of the loss to Designer resulting from a termination for Client’s convenience. In the event of cancellation under this Section 3.4, Designer shall own all rights to the Final Deliverables (defined in Section 8.1 below).

3.5 Payment upon Termination. Upon termination of this Agreement for any reason, Client shall pay Designer (i) all money due for services rendered up to termination (including unpaid invoices and any pro rated amounts for services rendered but not yet invoiced), (i) the cancellation fee set forth in Section 3.4.

4. Suspension

4.1 If at any time during the term of this Agreement Client suspends the Services hereunder, Client shall pay Designer all moneys due for services rendered prior to suspension (including unpaid invoices and any pro rated amounts for services rendered but not yet invoiced).

5. Project Changes

5.1 Change Order. If at any time during the term of this Agreement Client should desire a change in Designer’s Services which materially deviates from the Proposal, Client shall submit to Designer a written change order ("Change Order") specifying the desired changes. Designer will evaluate each such Change Order at its standard rates and charges and submit to Client a written response which will include a statement of the availability of Designer’s personnel and resources, as well as any impact the proposed changes will have on the contract price, delivery schedule or other part of Exhibit A.

5.2 Amendment. If Designer and Client have reached agreement regarding proposed changes, such agreement will be reduced to writing and attached hereto and incorporated herein as an amendment to this Agreement, effective upon signing by both parties.

5.3 Approved Changes Only. Designer shall not be obligated to perform any services additional to or different from the Services set forth in the Proposal prior to an amendment pursuant to Section 5.2 above. Should Designer and Client not reach agreement on proposed changes, Client shall have the right to terminate this Agreement. Such termination shall be deemed “for convenience” and shall be carried out pursuant to Section 3.4 above.

6. Approvals

6.1 Acceptance. Unless otherwise set forth in the Proposal, materials delivered by Designer shall be deemed accepted by Client unless within fourteen (14) days after delivery Client specifies in writing the manner in which the deliverables do not conform to the specifications set forth in the Proposal. Designer shall then have an additional thirty (30) days from receipt of such notice to make and deliver to Client such changes as shall be reasonably required to correct the deficiencies set forth in the notice.
6.2 Contact Person. All approvals, directions and instructions to be provided to Designer by Client, whether such approvals, directions and instructions are concerning a creative, production or business matter, shall be provided by ACM Program Director and Client warrants that such person has full authority to provide all such approvals, directions and instructions.

7. Design Credit

7.1 Credit Not Required. In the event that no design or authorship credit, other than a credit to Client, accompanies the designs or other works produced by Designer hereunder, Client need not attach to the work a credit to Designer.

7.2 Credit Required. In the event that an authorship or design credit, other than a credit to Client, accompanies the designs or other works produced by Designer hereunder, such credit(s) shall include a credit to “Process 39” which accurately reflects Designer’s role in the creation of the work being credited.

7.3 Design Recognition. In the event that the designs or other works produced by Designer hereunder are submitted, reproduced, published or publicly demonstrated for design awards or other recognition, including but not limited to reproduction in design publications, an authorship or design credit to “Process 39” shall accompany the work being recognized.

8. Ownership of Final Deliverables

8.1 Assignment. Upon fulfillment of all of Client’s obligations under this Agreement, Designer shall and hereby does assigns, conveys and otherwise transfers to Client, and its successors and assigned, any and all worldwide rights, title and interest in and to the work product set forth in Exhibit A under the section titled “Final Deliverables”, including all copyrights, trademarks, patent rights, trade secret rights, moral rights and all other intellectual property and proprietary rights therein. Designer shall reasonably assist Client, at Client’s expense and at Designer’s standard rates, to secure, register, maintain and defend for Client’s own benefit Client’s rights in and to the Final Deliverables.

8.2 Demonstration. Designer shall have the irrevocable right to submit elements of the Final Deliverables to design publications and contests for the purpose of design recognition, and to use, reproduce and demonstrate the Final Deliverables, in any format, in whole or in part, for the purpose of self-promotion, providing these materials are not of a non-disclosed or proprietary nature to the client.

8.3 Reservation of Rights. Designer reserves all rights not expressly granted or assigned to Client herein. If any part of the Final Deliverables cannot be reasonably and fully made, used, reproduced, distributed and otherwise exploited without using or violating technology or intellectual property rights owned or licensed by Designer and not assigned hereunder, Designer hereby grants Client and its successors a perpetual, irrevocable, worldwide royalty-free, non-exclusive, sub- licensable right and license to exploit and exercise all such technology and intellectual property rights in support of Client’s exercise or exploitation of the Final Deliverables or any assigned rights (including any modifications, improvements and derivatives of any of them).

8.4 Third Party Licenses. Should Designer determine that it would be advantageous to the project to license stock photos, video, or music from a third party for use with or inclusion in the Final Deliverables ("Third Party License"), Designer shall notify Client of the terms and conditions of such proposed Third Party License. If Client approves such proposed Third Party License, then Client shall be responsible for all costs and obligations associated therewith.

9. Ownership of Non-Deliverables

9.1 Except for the Final Deliverables (defined above), Designer retains all intellectual property and related rights in and to the artwork and all other “works of authorship” (as such term is used under the U.S. Copyright Act), and all processes, methodologies, production tools, techniques, inventions and other proprietary information, which are produced and created in the course of performing the Services (collectively, “Non-Deliverables”); and Designer retains ownership of all tangible materials upon which the Non-Deliverables are expressed, produced and/or reproduced, including but not limited to preliminary sketches, comp, illustrations, video tape, photographic materials, discs and any other medium on which machine-readable data or information is stored.

10. Warranties, Liability and Indemnification

10.1 Warranty of Non-Infringement. Designer represents and warrants that the Final Deliverables and all other materials furnished by Designer under this Agreement will be original creations of Designer, or duly licensed from a third party, and will not infringe any patent, copyright, trademark, trade secret or other proprietary rights of any third party.

10.2 Warranty of Expertise. Designer represents and warrants that it is highly skilled and experienced in the design and production of new media products, and that it also possesses the additional expertise needed to fulfill this Agreement. Designer acknowledges that Client is relying upon the skill and expertise of Designer for the performance of this Agreement.

10.3 Warranty Disclaimer and Limitation of Liability. ALL SERVICES AND MATERIALS PROVIDED BY DESIGNER UNDER THIS AGREEMENT ARE PROVIDED "AS IS,” AND, EXCEPT FOR SECTION 10.1 AND SECTION 10.2 ABOVE, DESIGNER MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EVEN IF DESIGNER HAS BEEN INFORMED OF SUCH PURPOSE, DESIGNER SHALL NOT IN ANY EVENT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY, PROPERTY DAMAGE, OR LOST PROFITS ARISING IN CONNECTION WITH DESIGNER’S SERVICES OR WORK PRODUCT UNDER THIS AGREEMENT EVEN IF DESIGNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS ON LIABILITY AND WARRANTY DISCLAIMERS SET FORTH IN THIS SECTION 10.3 ARE INTEGRAL TO THE AMOUNT OF FEES LEVIED IN CONNECTION WITH THIS AGREEMENT AND THAT, WERE DESIGNER TO ASSUME ANY FURTHER LIABILITY OR MAKE ANY ADDITIONAL WARRANTIES OTHER THAN AS SET FORTH HEREIN, SUCH FEES WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER.

10.4 Indemnification by Designer. Designer shall indemnify and hold harmless Client from and against any loss, damage, liability or expense, including reasonable attorneys’ fees, arising out of any third party claim, suit or recovery resulting from a breach of the warranty set forth in Section 10.1 above.

10.5 Indemnification by Client. Client shall indemnify and hold harmless Designer from and against any loss, damage, liability or expense, including reasonable attorneys’ fees, arising out of any third party claim, suit or recovery due to materials provided by Client, or at the request of Client included in any of Designer’s work product created hereunder, which infringe or allegedly infringe any patent, copyright, trade secret or other proprietary or privacy rights of any third party.
10.6 Sales Tax. Designer’s fees for its Services do not include any sales taxes related to the Services or any deliverables provided under this Agreement. If, during the term of this Agreement or thereafter, any sales taxes on the Services or deliverables should be imposed, Client agrees that it will reimburse and hold Designer harmless for the payment of any and all such sales taxes.

11. Confidential Information

11.1 Separate Confidentiality Agreement. In the event that Designer has signed a nondisclosure, confidentiality or other similar agreement protecting Client’s confidential information, such agreement shall have exclusive force and effect with respect to the terms of this Section 11 only, and shall supersede this Section 11. Where the terms of such agreement are in conflict with or in addition to any part of this Agreement other than this Section 11, this Agreement shall have exclusive control and effect. If no such other agreement is in place, the terms of this Section 11 shall govern the protection of Client’s confidential information.

11.2 Non-Disclosure. During the term of this Agreement and for one (1) year thereafter, Designer will not use or disclose to others without Client’s prior written consent Client’s Confidential Information (defined below), except when reasonably necessary to perform the Services. Designer shall disclose Confidential Information only to those of its employees and subcontractors who need to know it for the performance of this Agreement, and shall ensure that each of those employees and subcontractors has been informed and has agreed to keep such information confidential.

11.3 Confidential Information. “Confidential Information” is limited to: any written or tangible information stamped “confidential,” “proprietary,” or with a similar legend; or any written or tangible information not marked with a confidentiality legend that is treated as confidential when disclosed.

11.4 Limitation. Designer shall have no obligation to keep confidential or refrain from using any information which: (a) was in its possession or known to it, without an obligation to keep it confidential, before such information was disclosed to it by Client; (b) is or becomes public knowledge through no fault of Designer; (c) is independently developed by or for Designer; (d) is disclosed by Client to third parties without any restriction on use and disclosure; or (e) is or becomes lawfully available to Designer from a source other than Client.

12. General

12.1 Assignment. This Agreement may not be assigned without the prior written consent of the non-assigning party. However either party may assign and transfer this agreement without the consent of the other party, in connection with a sale of substantially all of its assets.

12.2 Independent Contractor. Designer is an independent contractor of Client and nothing contained herein will be construed as creating an agency, partnership, joint venture, employment or other form of joint enterprise between the parties.

12.3 Notice. Any notice given under this Agreement shall be in writing and deemed sufficiently given when delivered personally or sent by registered or certified mail (postage prepaid, return receipt requested) to the receiving party at the address set forth above or as subsequently changed by notice duly given. If mailed, the date of mailing such notice shall be deemed the date on which notice has been given. E-Mail will be considered a viable form of Notice only if receipt of an E-mail is confirmed via a live telephone conversation.

12.4 Delays. Any delay or nonperformance of any provisions of this Agreement caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, provided that the delayed party has notified the other of the delay in writing. The delayed party’s time for performance shall be deemed to be extended for a period equal to the duration of the conditions beyond its control. Conditions beyond a party’s reasonable control include, but are not limited to, natural disasters, acts of government after the date of this Agreement, power failure, fire, flood, force majeure, labor disputes, riots, bombs, bomb threats, acts of war, epidemics, failure of subcontractors and inability to obtain production materials. Delays due to Client may postpone delivery by Designer of work hereunder by the length of the delay.

12.5 Complete Agreement. With the sole exception of a separate confidentiality agreement which may be in place pursuant to Section 11 above, this Agreement, together with all exhibits, appendices or other attachments, is the sole and entire Agreement between the parties relating to the subject matter hereof, and this Agreement supersedes all prior and contemporaneous understandings, agreements and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of this Agreement and any attached exhibits, appendices or other materials, unless otherwise stated herein, the main body of this Agreement shall govern.

12.6 Amendments. Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

12.7 Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

12.8 Severability. If any provision of this Agreement is held invalid, void or unenforceable under any applicable statute or rule of law, it shall to that extent be deemed omitted, and the balance of this Agreement shall be enforceable in accordance with its terms.

12.9 Headings. The headings and sub headings in this Agreement are for reference purposes only and shall not be construed as a part of this Agreement.

12.10 Exhibits. All exhibits referred to in this Agreement and attached hereto are incorporated into this Agreement by reference and are made a part hereof.

12.11 Interpretation and Construction. The English language and American usage thereof shall control the interpretation and construction of this Agreement and all other writings between the parties. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party causing this Agreement or any part hereof to be drafted.

12.12 Governing Law. The construction, interpretation and performance of this Agreement and all transactions related thereto shall be governed by and construed in all respects in accordance with the laws of the State of California, without giving effect to the principles of conflicts of law thereof.
12.13 Venue. Each party irrevocably consents to the jurisdiction of, and venue in, the state courts located in San Francisco, California, and the federal courts for the Northern District of California located in San Francisco, and agrees that any action or lawsuit arising under this Agreement or relating to the subject matter thereof shall be maintained in San Francisco, California.

12.14 Attorney Fees. If any action at law or in equity is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reimbursement from the other party for its expenses and reasonable attorneys’ fees associated with the action, in addition to any other relief to which such prevailing party may be entitled.

12.15 Survival. The rights and obligations under Sections 7, 8, 9, 10, 11 and 12 will survive expiration or termination of this Agreement for any reason.

12.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Effective Date set forth above.

Client: Erica C. Johnson, ACM SIG CHI Program Director
signature and date
print name

Client: Jonathan Arnowitz, ACM SIG CHI Bulletin Chair
signature and date
print name

Designer: Dale Horstman, Process 39 Co-Founder & CEO
signature and date
print name