

OPERATIONAL AGREEMENT (Renewal)  
Between  
NAPA BROADCASTING, LLC  
And  
NAPA VALLEY COLLEGE DISTRICT AUXILIARY SERVICES

This OPERATIONAL AGREEMENT (hereinafter “Operational Agreement”) is entered into as of the effective date of the signatories by and between Napa Broadcasting, LLC (hereinafter “NB”) and Napa Valley College District Auxiliary Services, a Community College Auxiliary Foundation organized and existing under the laws of the State of California (hereinafter “NVC-DAS”)

WHEREAS, NB is established as an Internet “radio” station for the Napa community, consisting of local news, talk, information, music, food, wine and health programming, to specifically serve and reflect the Napa community and Napa brand, and

WHEREAS, NVC-DAS seeks to provide NVCCD with unique opportunities to communicate with the public, and reach out to the wider communities and its constituencies without any cost to NVC-DAS, and

WHEREAS, NB is a for profit enterprise which shall seek sponsorship for programming and all such programming shall be available on demand and on a specific streaming schedule, and

WHEREAS, NB will provide in-kind consideration of broadcast air-time for NVC-DAS and WHEREAS NVC-DAS will provide in-kind consideration of a facility from which to produce and broadcasts its programs,

NOW THEREFORE, in consideration of the mutual agreements herein, both parties agree as follows:

**Article 1. TERMS AND RENEWAL**

1.1. This Agreement shall be effective for three years, commencing July 1, 2017 and continuing until June 30, 2020. The Operational Agreement is subject to termination during the term by either party, giving a 60 day notice.

## **Article 2. OPERATIONAL GOVERNANCE**

- 2.1. The Managing Partner of Napa Broadcasting, LLC shall be responsible for all operations of NB and shall have full authority for the operations with respect to [napabroadcasting.com](http://napabroadcasting.com) and Napa Broadcasting, LLC.
- 2.2. For NVC-DAS, NVC Superintendent/President shall have full authority to make decisions with respect to the terms and procedures of this agreement and any and all programming produced by NVC-DAS.

## **Article 3. FACILITIES AND EQUIPMENT**

- 3.1. NVC-DAS shall make available to NB, a facility which it shall use as its offices and studio, herein the "Space." Said Space shall be approximately 500 sq. ft. Space shall be determined by the mutual agreement of the parties. The specific definition and location of said Space shall be included as an Exhibit A herein.
- 3.2. NVC-DAS shall provide access to NB with the existing Internet access at the Space. NB shall have the option to provide its own internet access, if the existing service is found to be insufficient.
- 3.3. NB will assume full responsibility for cleaning and improving the Space, including, but not limited to paint, carpet, lighting, temporary dividers, etc. It is agreed that no permanent construction shall be done, unless approved, in writing, by NVC-DAS, and that any such would be the sole responsibility of NB.
- 3.4. Electricity and HVAC shall be included with the Space.
- 3.5. Space shall be accessible during all of NVC's operational days and hours, which shall be subject to determination annually, coinciding with the operational schedules of the college. Determined space shall be securable by lock and key.
- 3.6. Space shall include 2 Staff Parking Permits, subject to availability and mutual determination of NVC-DAS and NB.

## **Article 4. NVC-DAS PROGRAMMING**

- 4.1. It is understood that NB programming will always be a work in progress. Programs will evolve over time, launching shows when ready and appropriate.
- 4.2. NVC-DAS will be guaranteed a one-hour daily show. NB will work with the team at NVC-DAS to find a host for the show and will help produce the show and work with NVC-DAS to find a producer(s). NVC-DAS will be guaranteed additional times on a first priority basis for unscheduled, un-booked or open time slots to be mutually arranged with NB.
- 4.3. The content of the daily show shall be controlled solely by NVC-DAS. NB will provide support and advice, but final content decisions shall rest solely with NVC-DAS.
- 4.4. A new show may run each weekday, at a time to be mutually determined by NVC-DAS and NB and shall be immediately posted to the NB Website, for on-demand listening.
- 4.5. NVC-DAS may produce a daily program. Content to be determined solely by NVC-DAS which may include a quick update of daily events on campus and/or relevant to the college community. The minute shall run on the NB stream at least four (4) times per day, seven days per week.
- 4.6. NVC-DAS shall be guaranteed an additional scheduled spot for and produce a one hour weekly program, dealing with issues related to the regional or local community at NVC-DAS and in Napa community and surrounding areas.
- 4.7. The NVC Superintendent/President and/or their designee, shall appear at least once per quarter on Jeff Schechtman's Afternoon Edition program.
- 4.8. FUTURE SHOWS: It is understood that future ideas for programs will emerge. Students and faculty will be invited to participate. NB envisions shows built around Music formats, on-campus Clubs, College Sports coverage, NVC-DAS events, theater programs, etc.
- 4.9. All programs will be part of both the ongoing NB stream as well as be available on demand on the NB site.
- 4.10. NB and NB facilities will be available, subject to the needs of NB, for use as part of any broadcasting, journalism, or related courses at NVC-DAS.

- 4.11. NB will work with NVC-DAS to secure interns and student workers to assist with NB and NVC-DAS produced programs.
- 4.12. It is agreed that this is not intended to be a comprehensive or complete list of programs that NVC-DAS will produce and/or air. Rather it represents the minimum under this Operational Agreement.
- 4.13. NB and NVC-DAS agree that no programming content shall be construed to be of a discriminatory, prejudicial or offensive nature, with respect to race, gender, sexual orientation, or creed.

#### **Article 5. REVENUE & METRICS**

- 5.1. It is understood herein, that NB is a private, for profit LLC. As such, NB will seek sponsorship and advertising revenue to fund its operations.
- 5.2. Audio advertising on NB and its local programs will not contain traditional spot advertising. Rather shows will have specific sponsor(s), as in an “NPR model”.
- 5.3. NB shall share with NVC-DAS, through its selected representative, any specific metrics it has with respect to listeners, audience or demographics for any and all NVC-DAS related shows.
- 5.4. NB will be charged for space, utilities, weekly custodial, internet and operational overhead through NVC-DAS. These charges will be at a discounted ‘annual rate’ recognizing the value/benefits of NB to the college communications and outreach efforts, the value of these efforts may offset said charges, said offset to be determined between the parties. These rates and charges are included in Exhibit A; Facilities Contract and are subject to annual evaluation and readjustment by NVC-DAS, but in no case will any one such adjustment exceed 5% annually.

#### **Article 6. INSURANCE**

- 6.1. NB shall maintain comprehensive liability insurance and property damage coverage. NB shall also obtain additional general liability and public officer's liability insurance coverage for NB and to name NVC-DAS as additional insured on a separate endorsement for \$1,000,000.

- 6.2. Such liability insurance, which shall name NVC-DAS as additional insured, shall also include coverage for any injury or liability arising from “Advertising,” defined as the public dissemination of information by NB, including images or audio that has the purpose of inducing the sale of goods, products or services through NB, which may result in any injury or offenses that take place through the internet or similar electronic means of communications.

## Article 7. INDEMNIFICATION

- 7.1. NVC-DAS understands that NB may enter into agreements with vendors and suppliers and will (i) give NVC-DAS the right to inspect such vendors' and suppliers' plants and/or facilities and (ii) require such vendors and suppliers to adhere to standards to ensure the quality of the products purchased by NB.
- 7.2. The undersigned agrees to defend, indemnify, and hold harmless the Napa Valley Community College District, its Board of Trustees, officers, agents and employees, individually, or collectively, from and against all costs, losses, claims, demands, suits, actions, payments, judgments, including legal and attorney fees, arising from personal or bodily injuries, property damage, advertising or otherwise, however caused, brought or recovered against any of the above that might arise for any reason from or during or be alleged to be caused by the undersigned's use of District facilities, furniture and equipment.
- 7.3. To the extent legal liabilities of NB are not covered by insurance or otherwise barred by the California Tort Claims Act, NB agrees to indemnify and hold NVC-DAS, its Board, agents and employees harmless from all liability, claims and demands on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever , including but not limited to breach of contractual or statutory obligations, which arise out of or are in any manner connected with NB operations. The foregoing provision shall not be deemed a relinquishment or waiver of any kind of applicable limitations of liability provided by the California Tort Claims Act.
- 7.4. Notwithstanding anything of the contrary contained in this Operational Agreement, no indemnification shall be provided under this Operational Agreement from NB to NVC-DAS for any claims against NVC-DAS based on, arising out of, or relating to any of the following:
- 7.4.1. Any liability expressly assumed by NVC-DAS in writing expressly referencing

this Operational Agreement;

7.4.2. Any negligent or intentional misconduct of any NVC-DAS officer, director, employee, student, agent, attorney, representative, volunteer, successor or assign; or

7.4.3. Any violation by NVC-DAS, its officers, directors, employees, students, agents, attorneys, representatives, volunteers, successors or assigns of the laws of the United States or any state of the United States.

## **Article 8. DISPUTE RESOLUTION**

8.1. In the event of any dispute, claim, question, or disagreement arising from or relating to this Operational Agreement or breach thereof, the parties agree to use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interest, attempt to reach just and equitable solutions satisfactory to both parties. If they do not reach such solution within a period of thirty (30) days, then, upon written notification to either party, by either to the other, all disputes, claims, questions, or disagreements will be presented to a mediator selected by both parties. If the parties do not reach solution with the assistance of the mediator within a period of sixty (60) days, as stated in writing by the mediator, all disputes, claims, questions, or disagreements will be formally settled by binding arbitration administered by a neutral panel of three representatives from outside of NB or NVC-DAS.

## **Article 9. OVERSIGHT**

9.1. NB Shall comply with all NVC-DAS and Napa Valley College approved policies and regulations and all applicable NVC-DAS, federal and state laws, concerning welfare, safety and health of employees, visitors, volunteers and others.

9.2. NVC-DAS shall identify Carollee Cattolica, the Managing Director of NVC-DAS or designee to be the NVC-DAS contact person for NB.

9.3. Said representative shall have regular access to NB to assure that it is complying with all terms of the this Operational Agreement and complying with all applicable state and federal laws.

## Article 10. MISCELLANEOUS

- 10.1. Force Majeure. Neither party shall be liable if the performance of any part or all of this agreement is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, accident or any other casualty or cause beyond either party's control, and which cannot be overcome by reasonable diligence and without unusual expense.
- 10.2. Third Party Beneficiary Rights. This Operational Agreement is not intended to create any rights of a third party beneficiary.
- 10.3. Construction and Enforcement. This Operational Agreement shall be construed and enforced in accordance with the laws of the State of California. The article and paragraph headings are used solely for convenience, and shall not be deemed to limit the subject of the articles and paragraphs or be considered in their interpretation. This Operational Agreement may be executed in several counterparts, each of which shall be deemed an original.
- 10.4. Independent Contractor Status. The parties to this Operational Agreement intend that the relationship between them created by this Operational Agreement is that of an independent contractor, and not an employer/employee. No agent, employee, or servant of NB shall be deemed to be an employee, agent, or servant of NVC-DAS, except as expressly acknowledged in writing by NVC-DAS. No agent, employee or servant of NVC-DAS shall be deemed to be an employee, agent or servant of NBI, except as expressly acknowledged in writing.
- 10.5. Entire Agreement. This Operational Agreement, and all associated Appendices shall constitute the full and complete agreement between the parties hereto. This Operational Agreement supersedes all prior negotiations, representations or agreements, if any.
- 10.6. Amendments. Changes in this agreement, its policies, practices, and requirements may result in an appropriate amendment.
- 10.7. Invalidity of Provisions of this Operational Agreement. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions shall not be affected.
- 10.8. Nondiscrimination. NB covenants and agrees that it shall not discriminate against

any person or group thereof upon the basis of race, color, religion, sex, ancestry, physical handicap, marital status, or national origin in the operation of NB. NB shall comply with federal and state laws, rules, and regulations pertaining to nondiscrimination of hiring and employment.

- 10.9. Assignment. This Operational Agreement shall not be assigned by either party without the prior written consent of the other party.
- 10.10. No Waiver. No waiver of any provision of this Operational Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressed.
- 10.11. Appendices. Appendices to this Operational Agreement shall become a part of this Operational Agreement and shall be incorporated as of the date both parties agree to the content of the Appendices.
- 10.12. Attorney's Fees. If any action or proceeding is necessary to enforce the provisions of this Operational Agreement, including any claim or demand, or to interpret this Operational Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may otherwise be entitled, whether or not such action or proceeding is prosecuted to judgment.
- 10.13. Survival. All representations, warranties, and indemnities made herein shall survive termination of this Operational Agreement.
- 10.14. Notices. All notices required or permitted by this Operational Agreement shall be in writing and shall either be hand delivered, sent by telecopy or facsimile, sent by U.S. mail, postage prepaid, addressed as set forth on the signature page hereof. A notice shall be effective either when personally delivered, on the date set forth on the receipt of a telecopy or facsimile, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

Notices shall be delivered to the following individuals on behalf of each party:

For NVC-DAS:

Ronald Kraft, Ph.D.  
President

Napa Valley College  
2277 Napa-Vallejo Highway  
Napa, CA 94558

For the NB:

Jeff Schechtman  
Napa Broadcasting, LLC  
P.O. Box 621,  
Napa, CA 94559

Each party represents and warrants that the signatories to this Operational Agreement are legally authorized to sign and enter into this Operational Agreement on behalf of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Operational Agreement as of the day and year first above written.

Authorized Signatures and Date

\_\_\_\_\_  
Jeff Schechtman

\_\_\_\_\_  
Ronald Kraft, Ph.D.



**Exhibit B**  
**NAPAbroadcasting.com**  
**Our Mission**

**The Napa Valley has become a diverse and world-class community, but its media has not kept pace. NAPAbroadcasting.com grows out of the need to address that imbalance.**

**Our mission will be to fill in the gaps in the current media coverage of the Valley and its constituent communities.**

**On the radio or newspaper front, nowhere can you here from the actual people making news in the Valley, or in-depth conversations about local issues. On NAPAbroadcasting.com, you'll hear long form intelligent interviews and conversations. You won't get the daily police blotter, or the latest American Canyon Wal-Mart crime report. We'll leave that to others.**

**We will not shy away from controversy and no one will be afraid to say what's on their mind. And while we may take snapshots of opinions, mostly we'll be holding up a mirror to allow people to see themselves.**

**What you will hear is a diversity of people, of ideas and of opinion.**

**Our efforts, we hope, will be about depth; about holding people's feet to the fire and having some fun.**

**We are going to assume that our audience doesn't need superficial information. We are going to assume that they already have a basic working knowledge of where they live, and that you can look outside the window, or on your App and see the weather and check the traffic. We won't be doing that. But if you stay with us for a while, you will get "the rest of the story."**

**ON THE MUSIC SIDE, it will be about music discovery and new kinds of music programs. We will not be another streaming music service or an online jukebox. We will be about curated music programs, covering a wide variety of genres and personalities.**

**It will be the place to go for learns about new music and about niche music. Our music programs might be about anything under the musical sun, from jazz to oldies to Rock. We will also be interactive, with lots of reviews, samplers and information about the business of contemporary music.**

**OUR FOOD, WINE AND HEALTH programming will embrace all that Napa Valley has to offer. We think that those that live here can enjoy the very same things as those that visit. It's a great perk. If you stay with us, you'll learn a lot about the wine, food, the hospitality business and many of the larger than life personalities that make this place tick. We think that what's good for the visitors, is also good for us.**

**OUR HIGHER EDUCATION programming will present our belief that Napa Valley Community College has the potential to personify the youthful energy and ideas that help define, shape and hold together a community. And we want to help let the public know about the ways in which the College is helping to transform the community.**